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24th August 2016

Introduction

These comments respond to the ORR's Working Paper 1 on implementing route-level regulation. The response is provided on behalf of Arriva plc, its subsidiary Arriva UK Trains Limited and its wholly owned train operating companies (TOCs), Arriva Rail North Limited, Arriva Trains Wales/Trenau Arriva Cymru Limited (ATW), DB Regio Tyne & Wear Limited (DBTW), Grand Central Rail Company Limited, The Chiltern Railway Company Limited (CR) and XC Trains Limited (XC). Arriva is a wholly owned subsidiary of Deutsche Bahn AG (DB AG).

Arriva views the Periodic Review (PR18) process as an important element of a coordinated series of activities necessary to ensure that all elements of the Rail Industry structure work together to support the delivery of the vital contribution that rail needs to make to society in the UK.

Therefore, Arriva has played an active part in the Periodic Review process to date and intends to do so going forward. In particular, Arriva is supporting the coordinated industry activity being undertaken by the Rail Delivery Group (RDG).

On this basis, Arriva endorses the responses provided to ORR by RDG relating to the consultation documents issued by ORR to date and confirms that Arriva's views are firmly reflected in the RDG responses.

However, Arriva would like to take this opportunity to emphasise a few key points that have emerged through the work undertaken to date.

PR18 Process

Arriva welcomes the structured approach to the PR18 activity laid out by ORR – in particular,

- the clear identification of the context for PR18 and the associated influencing factors,
- the focus of the objectives of PR18 on delivering benefits for end users (passengers and freight customers)
- the clear identification of prioritised areas for consideration during PR18
- the staged approach using Working Papers for incremental engagement with the rail industry on identified priority areas to allow ideas to be refined progressively.

This has allowed Arriva and RDG to organise suitable resources to engage with ORR to progress the necessary activity in an incremental way rather than try to deal with a very wide range of open issues at the back end of the available time window.

Areas of Focus when considering route-level regulation

Looking at the key areas of focus covered by the Working Paper 1, Arriva has the following observations in addition to those provided in the RDG response:

- **Relationships between Network Rail and its direct customers:**

The relationship between Network Rail and its direct customers is key to enabling the cost effective delivery of safe, high performance rail operations. Network Rail's devolution programme offers the opportunity to strengthen this relationship and to bring it as close as possible to the point of service delivery at route level. The establishment of focused route-based regulation provides a further opportunity to consolidate the progress made in this area.

However, for these developments to be effective, the structure of Network Rail's routes needs to align as closely as is practical to the shape of the operations undertaken by Network Rail's direct customers. Particular challenges exist in addressing the needs of:

- Train operators serving London
- Train Operators serving the North
- Train Operators with national scope.

To address these challenges, it is important that Network Rail reaches conclusions quickly on its route structure and particularly with regard to the establishment of a Northern route.

In addition, while Network Rail has announced that it will be establishing a "virtual route" to work with freight and national passenger operators, it is important that this concept is developed rapidly and made real. Work in this area should be undertaken directly with the operators affected including Cross Country.

Along with the observations on governance arrangements for engagement between Network Rail's routes and their direct customers, providing clarity in these areas should be an immediate priority for Network Rail if the industry is to be able to implement route-based regulation in any meaningful way for the start of CP6.

- **Scale of change involved in establishing effective route-based regulation:**

The establishment of route-based regulation may appear superficially to be relatively simple to implement in an environment where the delivery of the majority of rail operations, maintenance and renewal activity has been or is in the process of being devolved by Network Rail to route level. However, the organisational, resource and process changes necessary to achieve this devolution are in themselves significant and achieving them while ensuring no impact on the safe delivery of high performance rail operations is a formidable undertaking. Adding a formal regulatory dimension to this devolution process will be a further significant change which would need to be undertaken in a considered way with due regard to the pressures already faced by the teams involved.

In addition, the range of competencies necessary to engage directly with a formal regulatory arrangement are broad and complex and have, to date, been deployed at a national level for both Network Rail and train operators. Establishing these capabilities locally in the routes and in the train operators will take time and runs the risk of increasing industry costs as additional resource is required to support the delivery of parallel processes replacing activity previously undertaken once at a national level.

Given the challenges involved in establishing and resourcing effective route-based regulation, it is important that the extent of change implemented for CP6 should be constrained to that which

delivers the maximum benefit within the constraints of what is achievable. Therefore, Arriva would have significant concerns if implementation included the immediate geographic disaggregation of Charges. However, Arriva would support arrangements that build on the increased devolution of Network Rail's activities to gain a better understanding of local cost drivers over time. We have some concern over whether the financial information currently available within Network Rail has sufficient local causation and granularity to support route-based regulation as soon as 2019. We are aware from our involvement in the annual GB Rail Industry Financials Report of the scale of allocation of costs on a fairly arbitrary basis and the high level of central overheads added to route-based costs. We suggest the immediate priority should be to develop and introduce systems identifying a greater proportion of the cost base to identifiable local causes to prepare a more robust base from which to consider route-based cost allocation and charging at a later date on an incremental basis (for example 2024) should that prove worthwhile.

- Governance and process arrangements to support route-based regulation:

While the interaction and engagement between Network Rail and its direct customers is already central to the successful delivery of safe, high performance rail services, the governance and process arrangements through which this activity is undertaken are currently unstructured and delivered in an inconsistent way across the routes and with different customers.

Implementing a more consistent and transparent governance process should, in itself, assist in the more cost effective delivery of better outputs. However, if these improved arrangements are to support a formal regulatory process to commence at the start of CP6, Arriva believes that work needs to start immediately to develop and to start to implement them. To reinforce the key relationship between the routes and their direct customers, this activity should be undertaken jointly with those direct customers.

Key priorities for the governance and process arrangements should be:

- Mechanisms for the development of the Route Strategic Business Plans with the coordinated input of Network Rail's direct customers
- Output monitoring and reporting arrangements
- Mechanisms for systematic joint review of the delivery of the Route Strategic Business Plans.

The governance and process arrangements developed to support route-based regulation will also need to encompass the separate direct relationship operators will need to have with Network Rail's System Operation functions.

In addition, further clarity as to how the governance arrangements covering Network Rail's OMR and Enhancement activities interact is needed if the overall process is to be effective and with operators being enabled to play their part.

While an increased focus on engagement between Network Rail's routes and their direct customers is to be welcomed, Arriva recognises that Network Rail will remain a single national entity. On this basis, Arriva would expect the governance arrangements to address:

- The requirement to adjudicate between routes in the event of conflicting approaches being decided upon – it is important that such adjudication should focus on delivering the best outcomes for end users
- The national deployment of total resources to address unexpected shocks – however, this should not be to the detriment of the outputs delivered to individual direct customers.

- Outputs:

Establishing suitable Output measures in a more complex environment with a greater focus on the outputs delivered by Network Rail's routes will be a challenging task. However, getting this right is key to being able to drive successful delivery of the industry's objectives.

Therefore, Arriva suggest that the Outputs workstream considering these matters needs to run throughout the PR18 process to ensure that developing thinking is reflected in the defined Output measures. In line with the themes of devolution and route-based regulation, the process for developing appropriate Output measures should involve the active engagement of Network Rail's direct customers in a much more effective manner than has been the case for the current Route Scorecards.

In addition, the overall focus needs to remain on end user outcomes.

As part of a route-based regulatory structure, Arriva recognises ORR's desire to establish mechanisms to ensure that Network Rail and its routes are held to account for the Outputs delivered. However, Arriva believes that establishing effective mechanisms focused on the route teams will be much more challenging than has been the case when such matters have been addressed at a national level.

Conclusion

Arriva welcomes the focus that ORR is placing on route-level regulation in the rail industry in PR18 and the opportunity that this gives to enable clear structures and processes to be established within Network Rail for the delivery of its key outputs. In particular, Arriva is strongly supportive of arrangements that increase Network Rail's focus on the needs of its direct customers - Arriva sees that this will enable the rail industry to deliver its objectives more cost effectively.

However, the pace of change needs to be in line with the industry's capacity to implement the new arrangements without overstressing the resources available.

Arriva will continue to actively engage directly and through RDG.

Yours sincerely,



Richard McClean
Managing Director
Grand Central Railway Company Ltd.

The Chartered Institute of Logistics and Transport response to working paper 1: Route level regulation

Dear Emily

Further to the Chartered Institute of Logistics and Transport's response to the general PR18 consultation please find below a note prepared by our Strategic Rail and Rail Freight Groups in response to Working paper 1: Implementing route-level regulation.

The Institute supports the general thrust of the Shaw report and welcomes greater devolution of accountability for efficient delivery to Routes. We support ORR's proposed measures for monitoring and regulating geographical Route performance and the way in which benchmarking and comparison could be used to improve overall Network Rail delivery.

In our response to Shaw we did, however, express considerable reservations that cross-border flows, especially freight, could be seriously disadvantaged by a greater - and potentially incentivised - focus on TOC's and customers enjoying close relationships with a geographical Route. We believe that incentives need to be considered very carefully to avoid unintended consequences. It would be all too easy to incentivise a Route Director to deliver for his/her prime customers but, in the process, lead him/her to ignore the needs of - or even consciously disadvantage - transit traffic in which he/she has no natural or financial interest. Route incentivisation is probably best focused on the production side - the availability and performance of infrastructure assets and operational efficiency of the Route for all customers and users - rather than on some attempt at a Route 'bottom line'.

We welcome the creation of a virtual Freight Route, and its expansion to include national passenger operators, but remain concerned that the ability of the virtual Route to exert direction and influence over geographical Routes will be limited. We believe that the geographical Routes should have a regulatory obligation to cater efficiently and fairly for cross-border flows to ensure that 'home' customers are not unduly favoured.

The virtual Freight Route and the System Operation function should, similarly, have obligations to ensure that long term capacity and capability enhancements are properly planned, that effective long term and short term paths are produced, and that overall performance meets agreed FOC/freight customer/national TOC specifications. We do not, however, believe that the costs of the Freight Route and the System Operator should be heavily regulated - they do not account for a significant proportion of Network Rail costs and it is the output of these organisations that is of critical importance, especially in regard to cross-border flows, and it is here that regulatory scrutiny should be focused.

We consider that network reliability should be a High Priority output, given the considerable disruption caused on a frequent basis by infrastructure failure, notably track circuit failures, points & signal failures and overhead line problems.

We support the continued 'single till' approach for Network Rail revenue and would not wish to see, for example, separate costs and charges raised for the services of the System Operator. We welcome increased understanding and transparency in costs and charges, but would note that for non-franchised operations, i.e. freight and open access where operators are not held harmless to changes in access

charges and real money is involved, it is critically important that charges are predictable and stable. Furthermore, access charges are an important component in overall costs and thus competitiveness of the rail mode - with Government objectives for modal shift and ORR's duty to increase the use of rail for freight as well as passenger, it is crucial that access charges should not drive freight or passengers off the railway and/or discourage the transfer of new flows from road.

We appreciate the need for thorough and comprehensive development of proposals for PR18, but the process inevitably causes uncertainty and worry on the part of those whose businesses stand to be directly affected by any changes, notably FOC's and freight customers. Measures to reduce the length and degree of uncertainty would be welcome.

Whilst stakeholder involvement with Routes is clearly desirable, we have concerns about how this can be achieved by operators and customers who use and traverse a number of Routes. In a highly competitive and low margin business such as freight, even large FOC's do not have the resources to attend numerous Route Stakeholder Groups and small FOC's and customers are unlikely to be able to be represented on more than an occasional basis. This is a serious concern since it could lead to such Groups and Routes developing a skewed and inaccurate perception of what 'the customer' requires. We believe the virtual Freight Route will need to represent all freight customers and FOC's at Route Stakeholder Groups, with customers and FOC's attending personally when they wished to raise a matter of importance. We support the proposed approach to dealing with Network Rail's Centre, but believe the main focus should be on the devolved geographical Routes, the virtual Freight Route and the System Operator. The central support and technical functions should not be ignored but should be studied to the extent that they affect the key functions. The central functions that have the greatest impact are likely to be the Route Services Directorate (notably the National Supply Chain) and to Infrastructure Projects, which also has a major impact on the delivery of enhancement schemes. We are generally in agreement with the process outlined for dealing with IIA, HLOS/SoFA and RSBP's.

I trust this is helpful. The Institute, as an organisation independent from industry profit and loss considerations - and with a considerable body of experience and expertise - is happy to be involved further in the PR18 process and provide neutral objective input and assistance as required.

Kind regards

Daniel Parker-Klein

Head of policy, The Chartered Institute of Logistics and Transport

DB Cargo response to working paper 1: Route level regulation

Dear Chris,

Apologies that due to being away I was unable to respond to these working papers formally before, but you know that DB Cargo have been actively involved in both of the RDG working groups.

DB Cargo supports the RDG responses to Working Papers 1,2 and 3, and these together with our response to your Initial Consultation can be taken as DB Cargo comments.

Rather than inundate you with repetition of all these points, can I just emphasis some key points?

1. It is critical that ORR recognises, and is seen to recognise and take into account, that route- based solutions may not deliver for all (or indeed many) customers, including most freight customers. Over-reliance upon the superficial attraction of route-based solutions might be inadvertently counter-productive.
2. Allied to this, DB Cargo would welcome more explicit ORR acknowledgement of the interrelationship between the routes, the (virtual) freight and national passenger operators route and the system operator. At the moment, thinking and consultation seems unduly weighted towards the routes. It is important that a better balance between the three parts of the future organisational model is achieved as a matter of urgency and before immutable decisions are made.
3. DB Cargo remains concerned that route-level settlements/price controls risk leading ineluctably to an erosion of simple, national charging for national customers; I recognise you do not agree with this, but the greater the comfort you can give to freight customers and operators on this the better.
4. DB Cargo remains concerned that ORR are still not cognisant of the scale of the management task involved in moving to greater operator involvement in the a devolved Network Rail (NR). We urge ORR to retain the maximum flexibility possible in the arrangements for CP6, particularly as the industry has no sight yet of NR plans in detail nor how NR sees industry involvement in route Governance.
5. Equally, we urge ORR to retain the maximum flexibility possible in the financial settlement for Network Rail for CP6, and to only consider arrangements for devolved financial authority that inhibit Network Rail's overall scope for financial manoeuvre in subsequent control periods.
6. DB Cargo has some concern that the scale of the changes implicit in the proposals in Working Papers 1,2 and 3 risks insufficient time or resource being available for NR to physically improve efficiency and reduce cost during CP5. It is self-evident that NR is struggling to achieve the efficiencies and cost reductions required in CP5, and whilst we fully appreciate that the intent of the organisational changes is precisely to address this, there seems considerable risk that there will be some hiatus before this is achieved. This would be unfortunate and we would welcome greater emphasis within the periodic review on reducing infrastructure costs to recognise that freight operators and customers are not protected in any way from NR's costs.

We remain committed to working with ORR and others to make PR18 a success and, as ever, if you would like to discuss any of this further please contact me.

Best regards

Nigel

Nigel Jones
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DB Cargo (UK)
Ltd



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24 August 2016

By e-mail

De Mo Bulman

Response to Working Paper 1: Implementing Route-Level Regulation

1. Thank you for the opportunity to respond to *Working Paper 1: Implementing Route-Level Regulation*. As highlighted in DfT's response to the ORR's PR18 Initial Consultation¹, we welcome the open and consultative approach that the ORR has adopted for the very important PR18 process. We regard this series of discussion papers as a key tool for establishing views and working towards conclusions on issues which will significantly impact on rail users.

Our general objectives for route-level regulation

2. As we set out in our initial consultation response, we strongly support the ORR's ambitious approach to route-based regulation, which we consider can reinforce Network Rail's (NR) programme of transformation, ensuring that it is closer to its customers and more accountable for its performance.
3. Our more specific objectives for maximising the effectiveness of route-based regulation for the benefit of rail users are:
 - a strong customer voice in route regulation, maximising the extent to which it addresses their needs;
 - the empowerment of NR's route directors to work directly with their customers, being directly accountable for meeting their meeting customer needs and demonstrating genuine responsibility for implementing their Route Strategic Business Plans (RSBPs). In doing so, it is important, however that route directors remain engaged with and supportive of network-wide priority objectives;
 - the flexibility for route directors to make decisions that reflect the nature of their infrastructure and services and the particular needs of their users;

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/541399/dft-response-to-orr-initial-consultation-response.pdf

- the preservation of appropriate flexibility on the part of NR to manage resources across its whole portfolio to respond to significant unforecastable demands and stresses;
- effective protections for freight operators and other customers whose operations do not align predominantly with a single route;
- a credible and robust framework for benchmarking costs and performance across routes, including track and station assets, supported by better asset information. This should produce competitive pressures on NR's route directors and sustainable incentives to improve efficiency and performance;
- sufficient flexibility in how financial and operational performance indicators are set and monitored to adapt to enhancements specified during the Control Period;
- that route-based regulation complements the approach taken to regulating the remaining central functions of NR, and that ORR considers both approaches in the round to evaluate their suitability; and
- the grading of RSBPs, which we agree can be a very powerful tool, to maximise accountability.

More specific issues

4. Within the context of these general objectives, we thought it would be helpful to highlight at this stage a number of more specific issues, either to support the positions set out in the working paper or to suggest areas for further consideration

Responding to concerns

5. Through our participation in the PR18 working groups, which have been helpfully facilitated by the RDG, we have heard concerns from some parts of the industry regarding the changes that will need to be made to facilitate a route based approach. We welcome the fact that route based regulation is a significant change. However, it remains important concerns about implementation are recognised where these are supported by clear evidence and argumentation. This includes, for example, the concerns from the freight industry, as well as others, regarding services that cross route boundaries.
6. However, even where issues may result in points of concern (e.g. route based charging), it will be important for the ORR to give the benefits proper consideration – if we are not ambitious, then some of the benefits of route based regulation are unlikely to materialise.

The Potential Framework for the Determination

7. We agree with the ORR proposed framework for the proposed determination (paragraphs 30-32 of the working paper) – without a specific settlement for each route, it is difficult to see how the benefits of a route based approach can be effectively realised.
8. Additionally, this approach will help ensure route directors are effectively held accountable for performance, enabling effective benchmarking between routes and creating sustainable incentives for improved performance and efficiency. This

means there must be a regulatory requirement for NR to provide more detailed route-level information. We particularly welcome the econometric efficiency analysis at company and route level (paragraph 131), which we see as a useful tool for facilitating further progress on efficiency.

Outputs and customer engagement

9. We are preparing a separate response to the ORR's working paper on outputs, which sets out your intention to set outputs at a route level. We would like to emphasise our support for this approach, which is indispensable to creating meaningful devolution.
10. It is important the process of setting RSBPs fully engages all NR's customers, including critically its end users – passengers and freight shippers. They must be properly involved in the setting of outputs and priorities and we would like to see greater reassurance about their direct involvement. Transport Focus, for example, may be of assistance here. We understand the ORR's desire not to establish prescriptive stakeholder engagement processes, but we do consider it vital that the ORR can gain sufficient reassurance that meaningful customer engagement is in place and effective. Where this engagement has not taken place, there should be additional regulatory scrutiny of RSBPs.

Resourcing

11. We note the potential tensions (paragraphs 43-46) between allowing NR, as a single regulated entity, at a corporate level to manage its portfolio of risk by shifting funds between routes and empowering route managing directors by giving them more extensive control over their own budgets. This is clearly an issue that will need careful management and detailed consideration.
12. In that regard, it is important routes have strong incentives to outperform their regulatory settlements and to grow their income, but at the same time have appropriate means in place to effectively manage financial risk. While management incentives will play an important role in creating this framework, route financial performance is important to creating the right incentives.

Charging and Incentives

13. We are currently actively engaging with ORR and industry on a wide range of issues relating to incentives, including schedules 4 and 8. We regard it as essential that the incentives framework for PR18 takes full account of the move towards route-based devolution.
14. We also consider it important the Route-level Efficiency Benefit Share (REBS) mechanism is properly constructed for PR18. We regard this as a useful tool for aligning the incentives of NR and train operators, to ensure all parties are working together for the benefit of users.

Health and Safety

15. We agree with you that the consideration of route level regulation requires a full understanding of its implications for health and safety risks at the company and route-level. We expect any new or enhanced risks arising from the restructuring of the company to be addressed as part of its revised operating model. Significantly, We expect the creation of the Technical Authority to be fully risk-assessed. We note that communications between the centre and routes will be particularly critical in maintaining and continuously improving safety performance across the business.

Advice to Ministers

16. Paragraphs 81 to 89 explore issues relating to the advice to Ministers that ORR has typically provided as part of the PR18 process. We are currently in the process of considering the form and scope of advice that Ministers would find most useful. Clearly, advice on how our HLOS and SoFA could best be framed so as to support the implementation of route-based regulation would be welcome. We would welcome discussions on an informal basis, as well as through any formal submission of written advice.

Government's role in Route Strategic Business Plans

17. You have highlighted the need to consider the practical handling of government agreement to the RSBPs, in order to understand how the route-level process could unfold around that. This is an area that requires further consideration by the Department (including in consultation with Transport Scotland) and Network Rail. However, we can say that the main form of UK Government involvement in the periodic review process as funder will continue to be the setting of the HLOS and the SoFA. We would at a minimum expect to see that RSBPs are consistent with the aims and specifications of the HLOS and SoFA. We would also expect RSBPs to give due prominence to the necessary levels of maintenance and renewals; and the efficiency with which they could be delivered so as to maintain a safe railway. The RSBPs will also be expected to explain how the interests of the taxpayer, passengers and freight customers are protected.

Network Rail's ability to accept or object to the determination

18. Paragraphs 144-148 highlight issues arising from NR's ability to accept the ORR's determination or refer it to the CMA. We agree it is critical NR's routes are closely involved in this decision, thereby ensuring route directors are both properly empowered and properly accountable for delivering the determination. We would therefore prefer to see the routes as closely and formally involved in this process as practicable. Regulatory practice should facilitate this with clear roles and responsibilities and a process to ensure ownership and accountability for route directors. We think it is particularly important that NR feels properly able to challenge areas of the determination where it does not accept them, reflecting the

implication within the Bowe report that this option was not properly considered during the PR13 process.²

HS2

19. HS2 is not covered in the working paper. This is understandable, in that services on HS2 will not begin operation until after the end of CP6. However, we are conscious that the framework for route-based regulation that is put in place for CP6 will have longer-term implications. It is important, therefore, that the framework is sufficiently flexible to allow for the incorporation of HS2 following its entry into service. We would also like to see sufficiently flexibility to allow those routes proximate to HS2 to accommodate its construction process during CP6.

Yes

Richard Carter

Richard Carter

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479560/bowe-review.pdf - paragraph 4.17

Freight Transport Association response to working paper 1

Further to Working Paper 1 http://orr.gov.uk/_data/assets/pdf_file/0018/21960/pr18-working-paper-1-implementing-route-level-regulation.pdf our comments are as follows:

Freight operates across routes (most freight flows cross a route boundary). While the ideas presented here of route based output enhancements and benchmarking are welcome, for freight a corridor based approach around end-to-end freight flows is crucial. What is certainly unwelcome for freight due to its added administrative complexity is proposals for route-based charging. For Britain-wide operators this will certainly add cost and complexity to rail freight, where it must be remembered rail freight is competing against road freight that does not have such level of network access financial regulatory complexity.

It is correctly stated that this review takes place in a changed context of reclassification of Network Rail's ownership and thereby increased Government involvement. Also a context post the Hendy Review of current Control Period enhancements delivery and the Bowe Review of delivery of future enhancements, as well as the context of political devolution of funding and the route level devolution of Network Rail and the prospect of deeper alliancing as in the ScotRail Alliance model. Therefore it is particularly important from a freight perspective that the Network Rail Freight and National (GB) Operators team is developed alongside the System Operator role.

Clearly a greater route-based approach is the direction of travel with devolution of funding regionally within England (funding already devolved to Scottish Ministers for the Scottish network). Against this background it is important that a strong System Operator role is developed to protect and advance the needs of freight.

Please feel free to contact me if you wish elaboration on any points.

The Freight Transport Association represents the transport interests of companies moving goods by rail, road, sea and air. Its members consign over 90 per cent of the freight moved by rail and over 70 per cent of sea and air freight. They also operate over 220,000 goods vehicles on road – almost half the UK fleet. The main rail freight operating companies belong to FTA as do the major global logistics service providers operating in the European and UK market.

FTA's Rail Freight Council includes all parties to the rail freight supply chain, including rail freight operating companies, Network Rail, wagon builders, logistics service providers and bulk, intermodal and retail shipper customers.

Chris MacRae FCILT
Head of Policy – Rail Freight and Scotland
Freight Transport Association

Response to ORR consultation

Working papers 1 - Implementing route-level regulation

Freightliner Group

August 2016

Implementing route-level regulation, Working Paper 1 - Freightliner response

Introduction

This is the response of Freightliner Group Limited encompassing its subsidiaries Freightliner Limited and Freightliner Heavy Haul Limited to the Office of Rail and Road's (ORR) Periodic Review 18 (PR18) working paper 1 on route regulation

Freightliner has been participating with the RDG in the various workshops to discuss this consultation and remains keen to continue to engage throughout the process.

Response to Working Paper 1 - Implementing-Route Level Regulation

Overall purpose

Freightliner understands that the 2 major outcomes from Network Rail devolving more responsibility to the routes should be a greater focus on delivering for the customer and to create a competitive tension between the routes as a means to improve outputs, and in particular to reduce costs. Freightliner supports these priorities and believes that they should be central to forming the detail of implementation of route regulation.

Overall Outputs

Network Rail is still one company and will have two regulatory settlements (for England and Wales and for Scotland) and should still be held to account as a whole in delivering overall outcomes and joined up products and outcomes for customers, as well as having separate route settlements.

Reducing Costs

The ORR published its annual monitor of Network Rail's performance in 2015/16 in August 2016. It is clear that Network Rail has many challenges and is not on target to meet some of its Control Period 5 (CP5) regulated outputs, particular with regard to meeting targets for reducing unit costs.

Freightliner would welcome a greater focus on cost reduction in the periodic review process; we like other freight operators have an active interest in a cost efficient Network Rail. There is a need for a greater focus on the granular understanding of costs and action plans to address the efficiency gap - this is a major challenge for the rail industry. It will be important to ensure that route outperformance is delivered through efficiency gains and not by cutting the outputs delivered.

Freightliner therefore suggests that each Route Business Plan submitted to the ORR should include the route's plans to reduce unit costs.

Focussing on delivering for customers

Route level regulation should not distract the routes from delivering for the customer - there is risk that the routes will focus on meeting Regulatory outputs rather than focussing on the needs of customers.

It should be recognised that there is a lack of experience of the regulatory process in the routes and that this experience will take a time to embed in the routes. There seems to be industry agreement that route regulation in CP6 will not be perfect and that the process should be staged over control periods as more experience is gained.

Access Charges

Freightliner understands that a key reason for implementing route level regulation is to enable comparison by benchmarking routes against each other, and to create competitive tension between routes with the aim of reducing unit costs. Freightliner supports this aim.

Although costs are measured at route-level track access charges should not be disaggregated by route. Most freight flows travel over 3 or 4 routes and having different charges by route would make using rail freight more complicated for the user. It would be very complex for operators to quote customers for new business and for Network Rail to bill operators. Not only would any further disaggregation of charges further increase the complexity of the charging regime making rail freight less competitive against road, but it would also require the development of a new system to support it, with many thousands of lines of different charges being possible. This would be neither desirable nor likely to be ready for the start of CP6.

One of the aims of devolution is to focus more on the needs of customers and having route-based charges would have the reverse effect. Our aim is always to make rail freight as simple as possible for our customers to use and the complexity of route-based charges would certainly not fulfil this aim. Route based charging would also create “winners” and ‘losers”, this would undermine the confidence of existing rail freight users and deter potential new users.

However Freightliner believes that it is important that income generated from freight and other national operators, as well as costs or revenue from the incentive schemes, should be allocated to the routes, so there is a broad correlation between the costs incurred the income received

Interaction to deliver the whole

Further clarity is needed in how the routes will interact with the System Operator and the centre to deliver the whole product. It is also not currently clear how pan-route enhancements will be delivered or managed. We understand that Network Rail will be briefing operators on the detail of their new structure once this is finalised during the autumn. We expect Network Rail to take the lead in structuring their organisation and this will be key to understand before any final decisions about the regulation of routes can be made. Regulation should support the change in focus, but not lead the change, this should be led by Network Rail.

It is not clear at this stage how the relationship between asset routes and national routes and the system operator will work or be documented. Will this be an informal or formal relationship? Will the freight/national route have authority over the asset routes or just an advisory role? How will the freight/national route hold routes to account? We assume that this will become much clearer over the next few months and note that this will have an impact on how route regulation is undertaken.

Co- ordination across routes will also be important and the system needs to work for cross border traffic as well as for the dominant train operator in the route. The regulation of routes must encourage them to work together to deliver for customers.

Scorecards

Routes must have balanced scorecards that are not just focussed on performance. In CP5 there has been too great an emphasis on delivery performance and not enough on making best use of capacity or quality of train services e.g. journey times. The need for a balancing metric that considers how well capacity is allocated and identified was highlighted in the ORR’s consultation on system operation last year and the two recent working papers on system operator regulation.

For freight the scorecards currently proposed select the Freight Delivery Metric as the only freight metric. This is wholly focussed on day to day performance. This risks over-incentivising

performance without considering capacity identification or quality of services. It is important that routes' metrics are consistent with those of the national system operator to ensure alignment of objectives.

Freightliner would support the freight metric for each route being based on the total of the route Freight Scorecard. Route Freight Scorecards have been developed by Network Rail's freight team, and the draft of this is attached as Appendix 1 to this consultation response.

Network Change

There is a need for improved processes and provision of information with regard to the Network Change process. Currently there is an inconsistency in engagement about proposed changes and with regard to provision of information. There is a concern that once devolved that inconsistency will increase. Financial information with regard to options considered is not shared and this makes it difficult for operators to holistically assess the impact of the change. Freightliner would welcome a Code of Practice that supports the routes and stakeholders alike with a consistent process for engagement and provision of information.

Improving the processes and information around Network Change will be important in supporting a new efficiency-sharing scheme. Operators did not take up the proposed Route Efficiency Benefit Sharing (REBS) scheme in CP5 as there was too much risk of costs exceeding the regulatory target (as has now proved to be the case) and they felt they did not have sufficient information on, or ability to influence Network Rail's costs. However an upside only scheme that focuses on cost savings could be successful in assisting Network Rail routes in saving costs. Freightliner is keen to engage with the ORR and Network Rail on options for an upside only Freight Efficiency Benefit Sharing scheme.

Engagement

There will be an increased burden on national operators to engage with many routes over business plans and participating at Route Boards. It would help if the standard and process for engaging with route business plans is standardised throughout Network Rail. There should be consistency in the structure of governance across routes - for example implementing good practice about publishing papers in advance of meetings.

Enhancements

There will need to be clarity on a transparent governance process for enhancements. It is currently unclear who will be responsible for delivery of enhancements, particularly where they are cross-route schemes. We recognise that governments are likely to change the way enhancements are funded and their alignment to the periodic review process and therefore the settlement will need to be flexible to accommodate this.

In our view, one area where there could be greater focus is around ensuring that the outputs from enhancements are expressed as delivery of timetables that create new trains or reduced journey times etc. rather than the delivery of physical infrastructure, e.g. a new loop or crossover. This will require greater co-ordination between the part of Network Rail responsible for delivering a project and the System Operator. Our experience is that currently some project teams are too focussed on delivery of a specified project and not focussed enough on the final impact on train services. Without a clear focus on the train service specification delivered from enhancements there is a risk that the benefits of investments are not fully realised.

Network Rail Route Freight Scorecards

Rationale

The Route Freight Scorecards are designed to supplement the Route Scorecards being published by the eight devolved Route's within Network Rail. The Route freight scorecards show how the respective Routes are performing against freight specific targets on a quarterly basis.

Explanation of Measures

Freight Derailment (Quarterly)	No. of freight derailments occurring on NR infrastructure
Freight SPADs (Quarterly)	Number of freight SPADs occurring on NR infrastructure
Overdue freight investigations	Number of investigations open after 28 days involving FOCs
Safety Tour (Quarterly)	Number of joint safety tours completed
FOC reported LTI on NR infra (Quarterly)	Number of FOC reported lost time injuries on NR infrastructure
FMS faults older than 28 days	Number of FOC reported faults open after 28 days
R FDM	Route Freight Delivery Metric
FOC on TOC	Targets are end-year MAA positions
TOC on FOC	Targets are end-year MAA positions
NR cancellations	Number of NR cancelled services
Right Time Departures	Percentage of right time departures
TDA Process Compliance (> 3 months)	Number of TDA spreadsheets more than 3 months old
Gross Tonne Miles (KGTM) (Quarterly)	Gross Kilo-Tonne Miles - representation of freight moved
SPR compliance with milestone	Adherence to KPI for NR to review, accept and progress SPRs
Freight project to GRIP 3 on time	SFN or other freight specific project
Freight project to GRIP 6 on time	SFN or other freight specific project

Emily Bulman
Office of Rail and Road
One Kemble Street
London
WC2B 4AN

24 August 2016

Dear Emily,

PR18 Working Paper 1: Implementing route-level regulation

Thank you for the opportunity to respond to the ORR's PR18 consultation on implementing route-level regulation.

Govia is one of the leading rail operators in the UK and is a joint venture between the Go-Ahead Group (65%) and Keolis (35%). Govia has extensive experience running complex and challenging rail operations. Govia currently runs three major rail franchises: Govia Thameslink Railway (GTR), Southeastern and London Midland. Govia is the UK's busiest rail operator, currently providing around 35% of all passenger journeys. As a key provider of rail services, we welcome the opportunity to respond to your consultation regarding the 2018 periodic review.

This response represents the views of the three Govia-owned Train Operating Companies as well as Go-Ahead Group plc. Go-Ahead has contributed to the industry response prepared by RDG and this is intended to supplement that response.

We understand that many of the areas explored in Working Paper 1 will be developed in more detail in the December consultation and at other stages in the PR18 process. We will continue to engage with the ORR as this progresses, both individually and through participation in the RDG working groups.

Overall, we support the principle of greater Route based regulation, which will put decision-making closer to the customer and we would encourage pace in this area to ensure this takes effect from the start of PR18. In order for this to work effectively; Network Rail needs to do more to devolve financial responsibility from its centre to its individual Routes. It is also important to take into consideration that Network Rail's individual Routes vary, sometimes considerably, in terms of characteristics and challenges. Whilst there needs to be some consistency in terms of benchmarking to enable an effective comparison of efficiency and outputs between Routes, there also needs to be a recognition that customer and end user priorities may differ from Route to Route and between operators.

Similarly, we agree that outputs should be set at a Route level but it should be recognised that within one Route there may be inconsistencies in the service Network Rail provides to its customers, particularly where there is a dominant operator and measuring performance at a Route level may still disguise weaknesses in some areas.

We have been involved in the preliminary work undertaken to develop Route scorecards and we support the overall principle. Engagement between Network Rail and Operators has however been inconsistent; in some areas we feel there was not sufficient consultation before publishing scorecards and we would urge a more collaborative approach going forwards.

We would like to see output targets aligned across the industry; targets set for Network Rail in PR18 should be consistent with the franchise targets set for Train Operators. Currently, we have a situation where some Train Operators have much more stringent performance targets specified in their Franchise Agreements than the joint targets required under the PPRP. The current Operator performance should be taken into account; bidders for the recent Northern franchise were set targets that aligned to Network Rail's regulatory settlement but were patently unachievable in the short term.

In specifying output targets for each Route, customers and stakeholders should be involved to ensure that the priorities of passengers are represented.

If you would like to discuss this response in further detail please contact Chantal Pagram, Head of Rail Policy.

Yours sincerely,

A handwritten signature in purple ink, appearing to read 'CHodgson', is written over a thin horizontal line.

Charlie Hodgson
Managing Director, Rail Development

PR18 WORKING PAPER 1

IMPLEMENTING ROUTE LEVEL REGULATION

Comments from Merseytravel

It must be recognised that the characteristics of the Routes are very different, so the priorities of customers and stakeholders may be different. Some Routes are largely focussed on London commuting; others (e.g. the Wales Route or the proposed Northern Route) are much more diverse. There is still no clarity on the formation and boundaries of the prospective Northern Route, including whether it will include the sections of the West Coast and East Coast Main Lines in Northern England, or whether the two main lines will remain fully within what is currently the LNW and LNE routes respectively.

Merseytravel is content for the previous approach to determining the Revenue Requirement will continue, albeit adapted to facilitate route level regulation, and notes that there will be consultations to follow on outputs, the financial framework, charges and incentives. Merseytravel agrees that Working Paper 1 captures the key issues and considerations that will influence implementation of route level regulation.

Merseytravel notes that the structure of charges is intended to reflect costs at route level. This raises some issues, which Merseytravel anticipates will be part of the future consultation on charges and incentives. Two examples are charging for train paths which cross route boundaries, an issue regardless of whether the Northern Route is set up; and whether there will be disaggregation of charging within or between routes. How, for example, would these arrangements work for the national freight and passenger operations "virtual" routes and by service route/operator. We would wish to see that these arrangements are kept as simple as is practical for the avoidance of creating excessive waste in administration and that any disaggregation of costs within routes does not adversely affect the track access and station access charging regimes that presently exist.

An issue for PR18 is the reclassification of Network Rail as a public body. It is important that there is a clear understanding between ORR, the DfT and Transport Scotland of their respective roles and responsibilities. For example, it is for the DfT and Network Rail to agree the Strategic Business Plans (SBPs) before publication, with the DfT taking full account of the views of Scottish Ministers in respect of the Scotland Route. It will be necessary to ensure that all Route Strategic Business Plans are mutually compatible as part of this process, and are incorporated into the Network Rail Strategic Business Plans, which must be a role for Network Rail's corporate centre. If the DfT and NR have agreed the SBPs, and in totality they deliver the High Level Output Statement (HLOS) and are within the Statement of Funds Available (SoFA), it is difficult to envisage circumstances in which ORR could object to them or require amendments.

A key issue is that stakeholders must be appropriately engaged in the development of the SBPs as highlighted in the paper. Care needs to be taken as to the extent

stakeholder engagement is focussed upon sub-national regional bodies such as Transport for the North/Rail North/Transport for Wales where the roles and accountabilities of those bodies have equally yet to be properly articulated or established.

Siobhan Carty
Office of Rail and Road
One Kemble Street
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WC2B 4AN

19 August 2016

Dear Siobhan

PR18 Consultation

MTR Crossrail welcome the opportunity to comment on the ORR consultation to inform policy development for Network Rail Control Period 6 (PR18). We have provided our comments related to each of the three Working Papers below:-

Working Paper 1: Implementing route-level regulation

MTR Crossrail supports in principle route-level regulation. However, the regulatory measures put in place need to reflect the operations of the route in question and the requirements of the train operators that run on the route.

It would be helpful if the ORR could provide greater clarity as to how it decides appropriate action in the event of Network Rail targets not being met.

Consideration also needs to be given to train services that run on/off the Network Rail network – for example, MTR Crossrail will be operating services that run from Network Rail to TfL infrastructure, and back on to Network Rail infrastructure again; it is important that whatever route-level regulation is put in place encourages Network Rail to work with other infrastructure managers or local transport authorities in order to ensure that such through services operate well.

Working Paper 2: Initial views on potential issues and opportunities in system operation - Question A

Timetable Planning Rules

The process for developing and reviewing Timetable Planning Rules (TPRs) needs an overhaul.

The process is time consuming, with changes being identified but not implemented for many months or even years.

For metro operators (such as MTR Crossrail, who will eventually be operating 24 trains per hour) the current Timetable Planning Rules may not be suitable in the future.

Station dwell times and Sectional Running Times can only currently be expressed in 30 second intervals. In order to deliver good performance and make best use of capacity there may be a need to move towards more granular values (i.e. 45 second dwell times or 75 second SRTs).

There are other TPR values that probably need to be reviewed, for example a junction margin may vary depending on the type of train (i.e. a long slow moving freight train will take more time to cross a junction than a fast moving passenger train). Dwell times may need to vary by

time of day (due to passenger loadings). More detail of movements to and from freight yards and within depots and sidings may be needed.

There also needs to be a consistent and documented process and methodology for calculating TPR values, supported by suitable systems and analysis / simulation. The process for revising TPR values needs to be more dynamic.

There should also be a published, rolling TPR review programme (perhaps linked to when major rolling stock, infrastructure or timetable changes are proposed), which should also involve a comprehensive review of the timetable structure and identify potential improvements from revision to maintenance strategy through to a review of existing values (for example removal of obsolete 'pathing time').

Capacity Allocation / SOAR Process

Changes to the Working Timetable are generally reviewed by the Network Rail Sale of Access Rights Panel (SOAR). The SOAR panel does not directly involve train operators and as a result there is a risk that decisions will be made without understanding all of the implications (such as efficient rolling stock and train crew diagramming and the impact on customers).

SOAR panel process appears to take the same approach to all applications regardless of their risk to the network, which may result in too much scrutiny being applied to small low-risk changes and not enough applied to major timetable changes or higher-risk proposals. A consistent, risk based process may be more appropriate, informed by a number of factors (such as network capacity – see below) and with more input from train operators where appropriate (i.e. how robust are the supporting train crew diagrams).

Consideration should also be given to how short notice (STP) changes are introduced, especially if they could have a negative impact on operators with Firm Access Rights. In some cases it may be appropriate to apply the same scrutiny to STP paths as LTP paths receive via the SOAR panel (for example changes associated with major engineering work).

Developing a long Term View

There are occasions when timetable specifications (in Concession / Franchise agreements) are not consistent with published Route Strategies.

There are also opportunities to develop a long-term timetable strategy, especially in London where TfL has a long-term view, which is less impacted by franchise change.

Future timetable should be designed to make best use of infrastructure and capacity, including the efficient use of rolling stock and train crew resources and a thorough understanding of freight flows.

Working Paper 2: Initial views on potential issues and opportunities in system operation - Question B

London

Planning of an integrated transport system in London is complicated.

There are several infrastructure managers (LUL, Network Rail, HS1, HAL, TfL), several network Rail routes (LNW, LNE, Anglia, Southeast, Wessex and Western routes). There are also various different operators including DLR, Trams, LUL, London Overground, freight, InterCity and Metro operators. These include franchises, concessions and open access operators with both TfL and DfT involved in specifying services.

A review of how transport in London is planned and integrated may be required. There may be benefit in setting up a Network Rail London Route in order to better cater for the increasing

number of operators serving the London area or devolve some of this responsibility to Transport for London.

Timetable Development Process

The timetable development process is over-complicated, slow and labour intensive. The timetable process needs to be more dynamic, more automated (i.e. conflict detection and greater visibility of possessions to reduce manual checks), with fewer systems and closer working between Network Rail and TOCs (to move away from the 'bid/offer' process). The ability to quickly simulate the impact of a timetable change needs to be available.

Moving away from a six-monthly timetable process and towards a perpetual timetable should be a future objective, with Access Rights agreed and then reflected in planning systems until they expire and only modified for engineering work or as a result of an agreed change (i.e. infrastructure change). Network Code Part D may not be appropriate in the longer-term. The timetable could change at any time, subject to an appropriate assurance process. It may also be appropriate to move away from the Informed Traveller (T-12) deadline for all operators. This may not be appropriate for a metro operator. A perpetual timetable may enable this date to be extended further out for InterCity operators, helping them to compete with airlines etc.

There is also the question of how prescriptive access rights should be. On one hand some flexibility is required to avoid paths being too 'hard wired' to the detriment of other operators and efficient use of capacity, but equally a high frequency metro operation (such as MTR Crossrail) will require trains to enter the central London tunnel every 2½ minutes (24tph) so flexing a path by a couple of minutes would not work.

There should also be a regular review of unused train paths but equally provision made for anticipated growth and engineering trains (where appropriate).

Train planners may not always have a good understanding of the relevant Track Access Contracts and as a result they may not optimise capacity. It is important that train planners understand what is specified in Track Access Contracts (i.e. flexing rights, journey time requirements) to enable them to make correct decisions and avoid disputes later on.

Understanding Network Capacity

There does not seem to be a common understanding of how congested each part of the network currently is – or in other words how much of the capacity is currently used, how much is available for new services and what the impact is on train performance as more capacity is utilised.

There needs to be a more detailed understanding of network capability and a consistent way of measuring capacity. This should also identify where capacity is not efficiently utilised - perhaps due to the type of rolling stock, length of trains, stopping patterns or other timetable constraints. It may be appropriate to charge a premium to operators that do not use capacity efficiently (i.e. an operator wanting to depart at a certain time).

The process could also identify timetable, rolling stock or infrastructure enhancements that could release additional capacity in the future.

Consideration should also be given to service recovery in the event of an operational incident to make sure that capacity is prioritised appropriately, including the implications on other Routes.

Working Paper 3: Initial views on the regulatory framework for Network Rail's system operator function – Question A

One of the challenges that Network Rail faces is how to effectively manage operators that cross several Network Rail routes (i.e. freight and CrossCountry Trains) and more local operators that run across only one or two Routes (i.e. MTR Crossrail). The current Network Rail route structure does not align with the majority of operators, so a review of this structure may be beneficial.

In addition, whilst timetable planning and engineering work strategy is developed at a national level (in Milton Keynes), detailed planning of possessions is undertaken at Route level.

Network Rail needs to bring timetable planning, engineering work planning and detailed possession planning closer together, making sure that the needs of both local operators (running on one or two Routes) and operators that cross several Network Rail routes are considered.

Network Rail should make sure that the teams planning the national timetable and engineering work plan work closely alongside the teams planning possessions at a Route level, tapping into local knowledge and experience where appropriate.

Decision making at a Route level needs to take into account the national picture and vice versa.

Network Rail and local operators should be encouraged to work closely together to develop a timetable, engineering work plan and possessions that are as efficient as possible, whilst meeting the needs of the train operator. This needs to be done without compromising longer-distance operators that cross several Routes.

In London for example, there is a need for Network Rail to work closely with TfL to develop an integrated plan for all transport modes across London, including the London Overground and Crossrail networks, which use large sections of Network Rail infrastructure (*this links to the 'London' comments in response to Working Paper 2, Question B*).

It may also be appropriate for the funding and development of enhancement schemes to be managed at Route level, to bring in funding from outside parties and in London work closely with TfL to develop and fund enhancement schemes.

Working Paper 3: Initial views on the regulatory framework for Network Rail's system operator function – Question B

There is some merit in providing a national settlement to facilitate the ongoing development of the System Operator role (i.e. improving national IT systems) alongside Route based system operator funding (i.e. for timetable planning and possession planning) to enable Routes to be flexible in their approach.

Working Paper 3: Initial views on the regulatory framework for Network Rail's system operator function – Question C

The Routes should be incentivised to consider the national picture when planning timetables and engineering work.

Equally, the national System Operator team should be incentivised to work closely with the Routes.

The settlement needs to reflect the move towards greater 'devolution' of rail services to the regions (i.e. to TfL) and should not stifle innovation by over-specifying how Network Rail should structure their business.

For example, the train planning team could still fulfil their 'system operator' duties without being centralised in Milton Keynes. Placing train planners alongside possession planners in a Route may be preferable to having train planners in Milton Keynes and possession planners in the Routes.

Network Rail could be monitored based on how efficiently timetables and possessions are planned at a route level as well as how timetables and possessions impact on cross-route operators such as freight.

Different measures may be required that meet the requirements of different types of operator. For example measuring compliance with Informed Traveller (T-12) may be important to InterCity operators who need to compete with airlines, but different measures may be appropriate for metro type operators (such as MTR Crossrail).

MTR Crossrail has noted that there are regular late changes to possession plans, resulting in short notice changes to timetables and rolling stock and train crew diagrams. Measuring how many late changes are made to the plan (late notice possession changes etc) may be appropriate, to encourage Network Rail and operators to work collaboratively to plan engineering work and deter late change which adds cost, risk and safety implications.

Monitoring asset reliability (i.e. points failures) should also continue, but with a greater weighting being placed on the route and type of operation (i.e. a points failure on a metro route may cause more trains to be delayed and passengers inconvenienced than a points failure on a regional route).

Engineering work could also be monitored to understand how much work is planned in a possession and then how much of the planned work is actually completed, to make sure that possessions are planned efficiently and executed properly.

We look forward to working with ORR, Network Rail and other industry colleagues to inform the development of the strategy for PR18.

Yours faithfully



Mark Eaton
Concession Director
MTR Crossrail
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mtrcrossrail |

Network Rail's response to ORR's PR18 working paper 1: Implementing route-level regulation

24 August 2016

1. INTRODUCTION AND PURPOSE

Context and challenges

We have an established devolution programme to move more decision making from the centre to our route businesses. This programme established the new operating model that we adopted in 2016.

At the heart of devolution is the principle that empowered leaders will be able to focus more precisely on the needs of their customers and can take decisions faster and can innovate more effectively.

The Shaw Report welcomed and endorsed our approach, but encouraged us to go further and faster. We agree and are rebalancing operational responsibility, pursuing deeper devolution to routes that are equipped with the skills, capacity and resources that allow them to run as effective customer-focussed businesses. We will continue to be one company and so our central teams will retain their critical role in supporting the routes and ensuring the network operates as a single integrated system through the System Operator function.

We have recently published an update of our [Delivering for our customers Transformation Plan](#) which sets out the overall transformation journey that Network Rail has been on and what we will do next to accelerate the pace of change. It also explains how we are integrating the conclusions of the Shaw Report into these plans.

Role of route regulation

Our devolved structure provides an opportunity to improve how we are currently regulated, in particular to support our ongoing devolution programme and deliver more for passengers, freight users, rail operators and taxpayers. End-user priorities must be central to industry (and regulatory) decision making. A greater focus on customers should mean that their priorities are firmly embedded in ORR's PR18 determination.

We agree that it may not be possible to deliver route-level regulation in full in CP6 and that its implementation may need to be phased. We consider that it is important for ORR to conclude at an early stage of the review (for example in its conclusions to its PR18 initial consultation) the scope of what can be implemented for CP6. This will allow us and our customers to focus scarce resources on the most important issues. ORR should have realistic expectations about what can be achieved, particularly on the extent to which customers can be involved in the development of the company's plans given the likely limited industry resources and timing constraints.

Implementing route-level regulation in CP6 will be a significant change from the current regulatory approach. We consider that 'getting this right' should be a key priority for ORR during PR18. Recognising that the industry has limited resources, we think that it is important that the PR18 work plan prioritises the basic 'mechanics' of route-level regulation. This is likely to mean that other issues that could be investigated as part of PR18 should be treated as lower priorities. Over the last two years Network Rail has worked closely with its customers, through RDG, to review the access charges and incentives regime. We encourage ORR to give high regard to the RDG Review of Charges project which identified those parts of the charging regime which are fit for purpose and those that are most in need of review as part of PR18. RDG's work should assist ORR in being able to focus its work for PR18.

There will also be a number of practical implications of moving towards route-level regulation that will need to be worked through over the course of PR18. For example, we agree with ORR's view

that there are challenges associated with making effective comparisons between routes, particularly given the different operating environments in each route. Enabling effective and meaningful route comparisons will be complex and we look forward to engaging with ORR and other stakeholders about how this can be done in a meaningful and transparent way. This will, of course, be reliant on the extent to which data is available to allow meaningful comparisons to be made.

We recognise the limitations of the current framework with regards to Network Rail's final decision whether to accept ORR's Final Determination. Therefore, we would welcome discussions with ORR over different ways of potentially reviewing aspects of ORR's Final Determination. This could include, for example, third-party reviews or having regard to our customers' views on the deliverability of the route-level outputs proposed by ORR within the funding available.

Structure of response

The rest of this response reflects the structure of ORR's working paper on implementing route-level regulation. Noting that ORR's working papers are intended to facilitate a more dynamic process of engagement and to support an iterative approach to policy development, our response highlights our emerging thinking in a number of areas.

We welcome ORR's approach in this regard and look forward to continuing discussions on the implementation of route-level regulation with ORR, customers and other stakeholders during PR18. Over the coming months it will be important to move from the conceptual discussions towards being able to assess and analyse the practical implications of route-level regulation in greater detail. We are particularly mindful of issues such as data availability and the potential impact on our billing systems.

2. WHERE WE ARE NOW

The potential for changes in Network Rail's routes

Network Rail may, for cost or operational reasons, wish to change route boundaries during CP6. It is important that the regulatory framework does not hinder our ability to make changes in this regard. We are pleased ORR recognises the need for sufficiently flexible processes to accommodate changes to route boundaries or the creation of new routes.

We note ORR's reference to the issue of having a continuous set of data that allows for meaningful comparisons between routes and as boundaries change. While we agree that transparency is important, we consider that reporting and monitoring requirements should be proportionate and not add unduly to the overall reporting burden.

In particular, we consider that there is limited value in continuing to report against outdated assumptions that do not reflect how the business is run. A recent example of this is that at the time of the PR13 Final Determination we had a ten-route structure in place. ORR's cost and income assumptions were presented on that basis. For operational reasons, this structure subsequently changed to eight routes (and continues to be the current structure). However, we are required to continue to report against the PR13 Final Determination assumptions which is inconsistent with the way in which the business operates. This is confusing and creates an unnecessary reporting burden. We are also concerned that adjusting results for reporting purposes means that the reported data will not be recognisable to each route / function.

We would welcome further discussion with ORR on how to manage such changes in future and, more generally, a suitable change control process for the PR18 settlement. We recognise that any

changes to route boundaries and/or their number must be done transparently and that the effect on route baselines needs to be fully explained.

ORR's working paper also notes we are currently considering the case for a new Northern route, which follows one of Shaw's recommendations. As set out in our Transformation Plan update, we are developing options for the possible creation of a Northern route which our Board will consider in Autumn 2016. Should any structural changes be required following this decision, we will need to reflect this in our CP6 planning and develop our Strategic Business Plan (SBP) accordingly. This could be a significant change that needs to be taken into account when considering overall priorities.

3. ORR'S APPROACH IN PR18

A potential framework for ORR's determination

Separate settlements

We agree that there should be separate revenue requirements for Scotland and each of Network Rail's geographic routes in England & Wales (within Network Rail's overall determination for CP6). We consider that functional plans should be developed for central functions and the System Operator, with their costs being allocated to routes and recovered through existing access charges.

In respect of the 'virtual route' that was recently established for rail freight and national passenger operators, we agree that a 'tailored approach' to its regulation will likely be required. We will be working on the detail of what this may look like over the coming months and would welcome further discussion about this with ORR.

Outputs

We consider that the regulatory output framework should support the achievement of routes' scorecard outputs and outcomes that Network Rail develops in conjunction with its customers and stakeholders. However, we believe ORR, as a key stakeholder, has an important role to assess whether our scorecards are sufficiently challenging and adequately capture long-term requirements (e.g. sustainable asset management). We believe our scorecards should be the primary means by which our performance is monitored in CP6. If we are able to agree scorecard measures and forecasts with our customers that appropriately reflect the requirement of the HLOS (and other stakeholder requirements as necessary) we believe that it should not be necessary for ORR to specify additional regulatory outputs, so that we can focus on one set of industry priorities. As well as reporting our actual performance against the scorecard measures, it will also be important that we are clear on the status of scorecard metrics as part of the overall regulatory framework.

As stated in our response to ORR's PR18 initial consultation, our regulatory outputs also need to be flexible and respond to the possibility of changing customer requirements and other circumstances (i.e. growth) over the control period.

We will respond separately to ORR's working paper on outputs, discussing the issues, above, in more detail.

Revenue requirement

We agree that route revenue requirements should be based on the building block approach. This will require ORR to determine a wide range of income, expenditure and financial assumptions at a route-level. This includes any allowances for risk and uncertainty that Network Rail will face in CP6. We discuss our views on these issues in the section on risk, below.

Treatment of central costs

To calculate route-level revenue requirements, ORR will need to make assumptions about the efficient costs of Network Rail's central functions, for example Finance and HR. It will also need to determine how these costs are apportioned to routes. We think that Network Rail's central costs should be entirely apportioned to Network Rail's routes. Therefore, these central costs should be treated in the same way as operating, maintenance and renewals costs, in the building block approach. This approach would mean that there would not need to be a separate revenue requirement for Network Rail's central functions.

System Operator costs

We note that Network Rail's System Operator function is likely to have its own regulated outputs. However, as we set out in our response to ORR's PR18 initial consultation document, we do not think it is necessary for it to have its own revenue requirement. As above, a functional plan would be developed for the System Operator. Its expenditure would then be allocated to each route for the purposes of calculating track access charges at a route-level, in the same way that we propose Network Rail's central services should be treated.

Cost of capital

One of the main building blocks in Network Rail's revenue requirement is the allowed return. The Weighted Average Cost of Capital (WACC) is a key input into the allowed return, which reflects the cost of financing to Network Rail if it was funded by debt and equity. The value of a company's WACC is related to the perceived risk of an investment (e.g. investors would require a higher return where the perceived risk of an investment is higher).

In previous periodic reviews, ORR has used the same value of WACC for both England & Wales and Scotland determinations. This is because it considered that the financial risk associated with the network in England & Wales and Scotland were broadly similar.

To calculate route revenue requirements, ORR will need to determine the appropriate return on route RABs. For PR18, we think that the return should be set at a company level (i.e. a single WACC). This is because in CP6 Network Rail will continue to raise debt and manage major risks as one company.

Debt and RAB

To calculate CP6 revenue requirements for each operating route in England & Wales, we need to be able to determine the proportion of Network Rail's total England & Wales debt and RAB that should be allocated to each route.

In PR13, ORR calculated indicative route revenue requirements using indicative values for opening CP5 debt and RAB for each England & Wales route. To do this, ORR used Network Rail's methodology for disaggregating Fixed Track Access Charges (FTACs), which was based on route-level assessments of long-run renewals costs. In effect, the indicative RABs were imputed from the route FTACs.

In CP5, Network Rail's regulatory accounts identify the RAB additions and changes in debt for each route, which are added to the same opening CP5 route RAB and debt values that were used to calculate the indicative route revenue requirements.

Route-based RABs and debt will be important inputs in calculating the allowed revenue for each route in CP6. There are a number of possible approaches to calculating these. Therefore, we think that the methodology for allocating debt and RAB to routes in England & Wales should be revisited

to make sure that they are both appropriate. While there will be advantages and disadvantages for each of the options, they are all, to some extent, allocations and approximations. On that basis, there could be merit in concluding that unless a different approach leads to materially improved allocations to routes, ORR formalises the status of the existing indicative route RAB and debt positions that are already reported in Network Rail's regulatory accounts. We will work with ORR and other stakeholders during PR18 to consider the most appropriate approach for CP6.

Once route debt and RABs have been determined for CP6, we consider that the allocation approach should not be revisited in future control periods. This means that once the route RAB and debt have been agreed at the start of CP6, future changes to the value of route debt and RABs should reflect the experience within that route. We do not believe that there should be subsequent revisions to reflect new allocation approaches.

Financial framework

Risk and uncertainty

The approach to allowing Network Rail, as a single company, to manage financial risk and uncertainty for CP6 and beyond is a key priority for Network Rail.

Responding to changing circumstances

ORR needs to consider the extent to which the PR18 determination includes financial buffers to enable Network Rail's routes to respond to changing circumstances during CP6.

In CP5, Network Rail's primary financial buffer was headroom in its loan agreement with DfT, (i.e. the ability to borrow more money during CP6 than was funded through charges in the PR13 determination). We expect that Network Rail's borrowing limits for England & Wales and Scotland will remain in their current form for the foreseeable future. Therefore, ORR needs to consider how any CP6 borrowing limit for England & Wales will affect the way that the routes are able to manage financial risk. We consider that it would be difficult for Network Rail to be able to decide whether it should accept ORR's Final Determination without knowing the size of the borrowing limit. Therefore, we consider that ORR will be well-placed to input into the discussions on the size of the borrowing limit.

Network Rail will ultimately be responsible for managing the appropriate allocation of funds to manage risk between the centre and its routes, as part of its business planning activities. However, to produce CP6 route-based determinations, ORR will need to make assumptions about the way in which routes will deal with financial risk.

In ORR's main consultation document, it set out its view that each route needs some protection from the risk of having to cover significant unexpected costs relative to the funding available to it. We agree with this view and understand that ORR will consult in late 2016 on how the routes should deal with financial risk as part of a wider financial consultation. This will include the role of Network Rail centre and the implications of an over spend for any devolved regional funders in England & Wales.

Types of risk

In advance of ORR's consultation, we have considered how ORR should treat the different types of risk that Network Rail faces. We consider that there are three types of risk, as described, below:

- **route-level uncertainty** – route costs that are 'expected' to arise for which specific activity or cost is unknown;

- **network-level uncertainty** – costs that are ‘expected’ to arise for which the specific route location as well as activity or cost is unknown (e.g. localised costs caused by flooding); and
- **contingent risks** – potential higher expenditure (or lower income) from risks that are ‘unexpected’, particularly in terms of the frequency and scale of unknown events.

We think that route-level and network-level risks should be incorporated into our expenditure assumptions which, in turn, would be recovered through track access charges. Given the uncertainty associated with the location of network-level risks, the funds associated with these costs should be managed by Network Rail’s centre.

Contingent risks are, by their nature, much more uncertain. The associated costs could be significant, particularly if the number of route-level and/or network-level events is higher than could have been reasonably predicted. Therefore, these may be better managed by providing Network Rail with an appropriate debt facility. However, this debt is not without consequences for users of the railway. Risks funded by debt will be paid for by future railway users since they will increase debt and capex will be logged to the RAB.

In addition, when ORR assesses each route’s determination, it needs to use reasonable assumptions about the likely level of costs over CP6. ORR’s assumptions should be based on each route’s expected level of costs reflecting route-level uncertainty. One lesson from PR13 is that making overly tight estimates of each cost category led to an unrealistic determination, when each of the cost estimates was combined.

The size of Network Rail’s borrowing limit and the process for agreeing it will be critical to developing robust revenue requirements for Network Rail’s routes. We agree with ORR that Network Rail’s borrowing limit should be included in the governments’ Statement of Funds Available (SoFA) so that we are clear on the total funds available for CP6.

Variances against PR18 assumptions (overspend and underspend)

It is important that ORR’s CP6 financial framework provides Network Rail with sufficient flexibility to allow it to manage reasonable variances from ORR’s determination assumptions during CP6. For example, variances could include natural re-phasing of capital expenditure plans, outperformance against budgets, and underperformance against budgets. ORR needs to determine how it will deal with these variances in CP6.

Key issues to consider are:

- Where does any additional money come from to fund overspend?
- Who pays in the long run for any overspend and who benefits from underspend?
- Who is rewarded / penalised for variances?

We think that re-phasing of expenditure within CP6 should be managed at the route-level and that there should not be a negative impact on financial performance. However, there may need to be financial adjustments to reflect whether any slippage has an impact on the sustainable asset management of the network.

Slippage of activities beyond CP6 would increase the company’s available debt headroom in the control period but might have an impact on sustainable asset management.

We consider that any financial outperformance should be reflected in route management incentive plans. It should also be reflected in routes’ regulatory accounts so that it is recognised in future periodic reviews and route control period revenue requirements. However, any surplus ‘cash’ should

be held centrally. Similarly, underperformance should initially be managed within each route. Where the route cannot manage any underperformance (or underspend) within the route, it would need to seek to use a central risk allowance or central borrowing facility. In extremis, it may be necessary to make adjustments to route budgets such that any shortfalls in individual route budgets can be managed within an overall framework. A transparent process for reporting 'over' and 'under' expenditure at the route-level will be necessary. This would also include capturing routes' financial performance in their route regulatory accounts and in their RABs.

Charges and incentives

We note ORR's intention to consider the extent to which route-level regulation has implications for the structure of charges. This paper does not repeat the comments we have already made in our response to ORR's PR18 initial consultation relating to charges and incentives. However, we agree with the comments that DfT makes in its recently published response which states that "*changes should only be made where they lead to a significant better outcome for users [and that it would be] concerned at changes which lead to increased complexity, and potentially costs, without clear evidence that they would lead to improvements for users and taxpayers*".

We encourage ORR to give high regard to RDG's Review of Charges project. This identified those parts of the charging regime which are fit for purpose and those that are most in need of review as part of PR18. RDG's work should allow ORR to prioritise its work on charges and incentives for PR18.

We also encourage ORR to conclude on the overall charging and incentives framework as soon as possible so that we have sufficient time to focus on the detailed policy and calculation of access charges for CP6, in consultation with our customers.

Health and safety

We agree that the implementation of route-level regulation requires a full understanding of the implications for healthy and safety risks at the company and route-level and that this should be kept under review throughout PR18.

4. MAKING ROUTE-LEVEL REGULATION WORK: THE PERIODIC REVIEW AND INTERFACES

Key stages of the review

ORR's working paper helpfully sets out its thoughts on the implications of implementing route-level regulation on each of the stages of the periodic review.

In respect of PR18 timescales, as we set out in our response to ORR's PR18 initial consultation, it is important that sufficient time is allowed for routes to produce robust and evidence-based plans, together with effective consultation. An additional factor that needs to be taken into account (and is discussed later in ORR's working paper) is the requirement under our Framework Agreement with DfT for it to approve our SBP prior to publication. More generally, it will be important to be clear about the role of each stakeholder during PR18 – for example, DfT's role as funder, sponsor and shareholder.

It is also important to note that the nature of renewals planning, including the access planning cycle, means that any significant changes to our renewals plans in the first two years of CP6 (for example, following the publication of the HLOSs / SoFAs or ORR's Final Determination) might result in changes to our plan that have a significant impact on efficiency. We are particularly concerned about

the amount of time available to update and agree our Strategic Business Plan (SBP) following the publication of HLOSs / SoFAs. If these result in significant change, this is likely to have a material impact on the quality of our plans. It is important, therefore, that this is taken into account when assessing our plans.

As discussed in section one above, therefore, it will be important that ORR has realistic expectations about what can be achieved in PR18, particularly on the extent to which customers can be involved in the development of the company's plans. We consider that the process for seeking customer input into the planning process will be an iterative one, which will continue beyond PR18.

Network Rail preparation for the Initial Industry Advice (IIA)

As acknowledged in ORR's working paper, routes and central functions are developing their plans as part of our continuous business planning process (as opposed to specifically for the IIA and subsequent SBP). We expect that the IIA will be published around the end of this year. There will be subsequent updates to these plans, prior to the finalisation of the SBP submissions.

Network Rail's and ORR's guidance on planning

We note ORR's intention to publish its guidance to Network Rail on the information it will require from the SBP submissions in February 2017. We consider that this guidance should be focused on the structure of the plan (including ensuring clarity on the production of route and functional plans) and Network Rail's approach to putting it together. Importantly, ORR's guidance should be consistent with how we plan our business and our own planning guidance that is issued to routes and central business functions.

We agree that there should be a plan for each route. However, it is important to note that thought will need to be given to balancing of expenditure, outputs and risk, facilitating a network approach where this is appropriate.

We expect to issue updated planning guidance to routes and central functions in September 2016. Work is underway on developing formats and data structures for the next round of the development of their plans. We would welcome ORR's involvement in this activity as soon as practicable and more generally, we are keen to work closely with ORR in the preparation / development of its guidance.

ORR'S Advice to Ministers

In principle, we support the alternative approach suggested by ORR to provide more frequent advice to governments throughout PR18. It would be consistent with Network Rail's continuous business planning approach, although it would be important to ensure that such an approach does not overburden the periodic review process (for example, an increase in requests for information to support the development of more frequent advice).

Statement of Funds Available (SoFAs) and High-Level Outputs Specification (HLOS)

Network Rail needs clarity on the total available funds for CP6. As set out in section three, above, we agree that Network Rail's borrowing limit should be included in the SoFAs.

We support a less prescriptive approach to the Secretary of State's HLOS which could be based on objectives, rather than specific output targets. We note this position is also consistent with DfT's response to ORR's PR18 initial consultation. DfT's response states that it is attracted to a model of specification that emphasises broad outcomes for users rather than inputs, as well as its

consideration of whether it might be appropriate to specify performance trajectories rather than specific targets. We look forward to discussing this with DfT and ORR over coming months.

We also note ORR's suggestion that the Scottish HLOS is based on a different approach to that for England & Wales, although we consider that a similar approach to the specification of outputs would be desirable.

Production of Route Strategic Plans (RSPs)

We agree that customer engagement will be a core part of the process for developing each route's strategic plan (which will form part of Network Rail's overall SBP), although it will be important to have realistic expectations on the extent to which customers can be involved in the development of plans during PR18.

Network Rail's recent work on the introduction of customer focused scorecards for 2016/17 should provide a pragmatic starting point from which to start discussions for CP6.

We agree that the role of the centre in providing assurance and oversight will be important, particularly if ORR is to take a risk-based approach in the review of route strategic plans.

We recognise the importance of route ownership of the plans, and that any adjustments that have been made should be transparent. In respect of the options put forward by ORR to increase the transparency, we would be concerned if routes were required to submit their strategic plans both before and after any centrally driven adjustment to activities, costs and funding. We consider that this would inevitably shift the emphasis away from customers towards ORR.

We do agree, however, that there needs to be a transparent process around any central adjustments that have been made and that plans will need to be signed off by Route Managing Directors (RMDs). RMDs should be accountable for any adjustments that are required if, for example, the sum of each route's plans is unaffordable.

We agree the importance of a streamlined process for securing DfT's agreement to the plan. We will work with DfT, Transport Scotland and ORR to agree how this process will work.

ORR scrutiny of RSPs

ORR's working paper states that its route-level scrutiny would require that it meets with individual route teams and carries out detailed analysis of the information provided. While we understand the need for ORR to engage with routes directly, it is important to recognise that routes are not currently resourced to manage such engagement and it may take time for this to develop. On this basis, we consider that Network Rail's centre will play an important role particularly in providing oversight and assurance in the production of each route's strategic plan.

We note ORR's intention to continue to use benchmarking techniques and that PR18 provides an opportunity to place some weight on benchmarking comparisons between Network Rail's routes. We intend to benchmark our routes to enable us to drive improvements in business performance. We have started work to look at the practical use of benchmarking between routes, although this is still in its relative infancy. Consistent with the significant issues that we have previously encountered in respect of international benchmarking comparisons, we are mindful of the need to normalise structural differences between routes.

Draft and final determinations

We consider that the submission of Network Rail's representations to the PR18 Draft Determination will be led at the company-level. Of course, in the development of the response, the central team

would engage significantly with the route teams on the deliverability of each of the route settlements, with their views reflected accordingly.

Network Rail's decision to accept or object to the determination

We agree that it will be important to have the buy-in of route teams in Network Rail's single formal acceptance (or otherwise) of the PR18 determination. We envisage that RMDs would be involved in this decision. While we note the need to ensure ownership and accountability for delivery at route-level, we do not believe that route teams should make separate representations to ORR. Network Rail would need to manage this internally and reach agreement with routes on the proposed course of action, prior to formal confirmation of its decision. However, it is likely that our response will include views on the settlement for each route.

Our response to ORR's PR18 initial consultation also sets out our view that there would be merit in exploring how an individual route settlement (or indeed any aspect of ORR's Final Determination) could be challenged without challenging the whole determination, as is currently the case. We would welcome further discussion with ORR on how this could work.

More generally, this reinforces the need for a fair PR18 settlement which allows Network Rail to build its reputation and succeed, as opposed to one that is set on unattainable targets.

NR's route delivery plans

We agree that routes would have a significant role in leading the production of their delivery plans, although envisage that this would be part of our overall continuous business planning process and therefore forms part of an overall business planning process that is managed by the centre.

Regulatory arrangements for CP6 monitoring

We consider that the implementation of route-level regulation for CP6 will require fundamental reform to the way in which Network Rail reports to and is monitored by ORR. The reporting and monitoring framework currently in place cannot be rolled out across a route-based model without significant implications from a cost, headcount and management distraction perspective. The framework needs to recognise, therefore, the importance of ongoing customer engagement and a more prioritised risk-based approach by ORR. We would expect this to lead to a slimmer, more strategic regulator rather than an enlargement of ORR's reporting and monitoring activity.

Furthermore, we believe that our customers and funders should have a strengthened role in holding Network Rail to account for our delivery against the customer-focused scorecards. As we set out in our response to ORR's PR18 initial consultation, a regulatory regime that supports this should result in ORR being able to take a more targeted and risk-based approach, allowing it to focus on more strategic issues.

We consider that there is scope to reduce the scale of formal reporting (for example the Regulatory Financial Statements and Annual Return). Instead, more data could be provided as supporting material to ORR rather than through formal publications. Regulatory reporting would be focused on the delivery of regulated outputs which would ease significantly the regulatory reporting burden.

In respect of ORR's point that there should be a framework for monitoring the effectiveness of routes' engagement with their customers and stakeholders, we consider that the monitoring framework needs to balance this with a requirement not to constrain innovation or differing approaches.

We note that ORR may also make greater use of public performance tables, allowing greater comparison between routes and enhancing the role of reputation in the regulatory framework.

Network Rail is increasingly comparing each route's performance as a way of driving business performance. It will be important to be able to report relevant comparisons between routes, at an appropriate level of detail. As with benchmarking, it will be important to understand and normalise any structural differences between routes to allow for meaningful comparison. As previously noted, regulation should support our devolution programme, therefore, it will be important that ORR adopts the same data and approaches that we ourselves are using in comparing routes' performance, as opposed to developing alternatives.

As noted in our response to ORR's PR18 initial consultation, we need to consider the extent to which management incentives for staff in routes should be based on route performance, while recognising their importance in delivering overall network performance.

Enforcement

In respect of enforcement in CP6, we consider that a much broader discussion is required on the role of enforcement. In particular, we are keen to review the interpretation of licence breaches, particularly for the non-delivery of outputs and whether the imposition of financial penalties on Network Rail remains an appropriate course of action.

Rail Delivery Group

Response to:

ORR's Working Paper 1: Implementing route-level regulation

Date: 7 September 2016

Rail Delivery Group Response to ORR's Working Paper 1: Implementing route-level regulation

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.

Overview

1. This paper outlines key points from industry in response to ORR's Working Paper 1 (WP1) - Implementing route-level regulation – as well as potential opportunities and issues for industry that could arise from introducing new regulation whilst implementing a devolution strategy.
2. The RDG has already provided a full response to the initial PR18 consultation and many of the points made in that are relevant to this response on WP1. Our response to this working paper needs to be read in conjunction with our response to the initial consultation document and also responses on system operation (WP2 and WP3) and the output framework (WP4).
3. There has also been, and will continue to be, extensive industry engagement and discussion with the ORR through the industry working groups that the RDG has set up for PR18. To date there have been a total of 8 RDG 'route-based regulation meetings – each of which has been attended by the ORR. The RDG values this engagement and we understand the ORR has also found it helpful.
4. The RDG industry groups, such as POG and CRRWG, are a useful means for engagement between Network Rail and train operator owning groups to help set out industry views on the PR18 framework in the longer term including, for example, how scorecards fit into route-level regulation. We envisage that the PR18 working groups will continue to operate throughout the rest of the PR18 process as we believe they provide useful forums to work through the detailed issues. We welcome the tone and purpose of the ORR working papers which are intended to facilitate a more dynamic process of industry engagement to support an iterative approach to developing policy.
5. We confirm that we are content for this response to be published on the ORR website.

Overall framework

6. We support the overall aim of route-level regulation building on Network Rail's devolution strategy, as this helps develop better engagement between Network Rail, TOCs and FOCs, and better engagement with passenger and freight customers.
7. We support the principle of separate route settlements where this supports Network Rail's devolution proposals and provide information to allow benchmarking, however we have some concerns about where the regulatory process might lead. For example, we would not support separate regulatory settlements that lead to separate route-based charging regimes.
8. Regulation at route level will require flexibility to allow Network Rail to revise budgets compared to ORR's expenditure assumptions in order that the overall network system is operated efficiently and effectively – for example through the ability to change budgets through a transparent reporting of change rather than a complex change control process.

9. The regulatory and contractual framework in the rail industry is already fairly complex and not widely understood and we believe there is a danger that PR18 increases this complexity. Thus, wherever possible we urge the ORR to keep PR18 simple, both in terms of carrying out the review and also in the determination itself. This echoes the recommendations from the RDG Review of Charges work¹.

Customer engagement

10. It is critical that the regulatory process supports and facilitates constructive engagement between TOCs/FOCs and Network Rail Routes by creating the right framework and incentives. Governance surrounding the relationship between Network Rail and operators at the route level needs to be at the heart of the process. In addition, it is imperative that input from passengers and freight end users, via representative groups, is built into the process in terms of engagement and measuring satisfaction.
11. Although the key customer interface should be at each Network Rail Route (including the virtual route for freight and national passenger operators), effective co-ordination of network-wide activities will also require close engagement with the Network Rail System Operator (NRSO).
12. Establishing effective governance arrangements between the Network Rail Route, NRSO and TOCs/FOCs will be key to making industry engagement work in practice. Governance arrangements will need to provide clarity on how a Network Rail Route, the virtual route (on behalf of freight and national passenger operators), the NRSO, the NR Technical Authority department, TOCs, FOCs and end users work together when, for example, preparing Route Strategic Business Plans (RSBPs) and discussing performance or delivery issues. The governance arrangements should also be clear on how disagreements between the different groups, and between Network Rail Routes, are resolved including any role for the transparent use of the regulatory escalator. The first step in developing appropriate governance arrangements is for Network Rail to set out its proposals. Train operators are keen to be fully consulted on the proposals and involved as the proposals are developed.
13. These engagement processes should also cover the related issue of monitoring outputs and delivery, and hence the roles of ORR and DfT, compared to the industry governance described above, will also need to be clear.
14. We believe that further consideration should be given to how enhancements are developed and agreed, with particular emphasis on cross-route schemes and those that involve renewal opportunities, and how the virtual route will engage effectively with customers, Network Rail Routes and the NRSO. The governance processes must include arrangements for enhancements and other cross-route matters.
15. In general, we expect most reporting to be at a Network Rail Route level, but further consideration is needed in relation to what is reported by TOC and FOC and for the

¹ The outputs from RDG's Review of Charges are available at: <http://www.raildeliverygroup.com/what-we-do/industry-reform/contractual-regulatory-reform/review-of-charges.html>

virtual route as opposed to the geographic Network Rail Route. Transparent reporting, and the reputational incentives that this facilitates, is supported. As most train operators run services that cross route boundaries, TOCs and FOCs are keen to better understand how route outputs will translate into end-to-end journey outputs. The industry supports the principle of route-based scorecards and are keen to engage with Network Rail Routes in developing these for CP6.

Prioritisation

16. We think PR18 should focus on specific areas and build on, not re-open, the work done at PR13 and through the RDG Review of Charges. We suggest that ORR rigorously prioritises its work programme and focuses its efforts only on the most important issues.
17. A route-level review will place a significant burden on the resources of train operators and Network Rail Routes. If PR18 is not tightly focused the industry will not be able to engage properly in the process.
18. Implementing route-level regulation introduces a new way of working for the industry that requires significant change. In part, this is an acknowledgement that, as Network Rail's organisation evolves, so regulation should also evolve. With such a large change comes a variety of risks around consistency and clarity of approach. We therefore believe that the introduction of route based regulation should be staged and that new ways of working should be embedded and understood before introducing further changes. A staged approach can allow for adaptations to manage any opportunities or issues that arise once the approach goes 'live'. A staged approach will also require ORR and industry to prioritise changes required in PR18 whilst also identifying changes that can be introduced in subsequent reviews.

Process

19. We agree that ORR guidelines for the Route Strategic Business Plans (RSBPs), which will include route asset management plans, should build on Network Rail's own plans for devolution rather than being imposed separately and we support the need for these plans to take account of customer requirements. We also agree that route-based scorecards should form a key component for setting outputs and funding at a Route level; the work done to date is a useful start but some train operators want there to be greater engagement with more consistent approaches.
20. As noted above, this review will require considerable industry engagement and analysis to get it right and we are concerned that some timescales look very tight. For example, we suggest that more time is allowed to prepare the RSBPs after the guidelines have been finalised following the HLOS publication.
21. Both the ORR and DfT are issuing consultations in December on charges and incentives for CP6. Both will have a significant impact on the review and so early conclusions by both organisations are needed to allow work to be prioritised appropriately.

22. We would like to see output targets aligned across the industry. By that we mean that targets set for Network Rail at PR18 are consistent with franchise targets set for train operators.
23. Currently, Network Rail can only challenge the whole of, rather than parts of ORR's final determination by taking it to the Competition and Markets Authority. In a route-level regulatory framework, we think it is important that Network Rail, perhaps with input from TOCs/FOCs, have some way of challenging parts of the determination and would welcome further discussion on this.

2018 Periodic Review of Network Rail (PR18) - Initial Consultation and Working Papers 1-3

Response from Rail Freight Group

July 2016

1. Rail Freight Group (RFG) is pleased to respond to the ORR's Initial Consultation on PR18, and the Working Papers 1-4 issued in parallel. No part of this response is confidential.
2. RFG is the representative body for rail freight in the UK. We represent around 120 member companies who are active across the rail freight sector, including train operators, end customers, ports, terminal operators and developers, rolling stock businesses and support services. Our aim is to increase the volume of goods moved by rail.
3. RFG is participating in the RDG Working Groups on PR18, and in the DfT working group on charges, part of DfT's freight strategy workstream. Our comments in this response reflect our overall position as RFG which should be read alongside the industry views from these working groups.

General Comments

4. There can be no doubt over the importance of periodic reviews to the rail freight sector. As independent, private sector business without direct Government contracts, the impact of changes in railway charges, incentives and structure has a direct and immediate impact on the financial position of freight operators and their customers.
5. With most rail business being in direct competition with road freight, the consequential impacts of increased charges or other costs on modal shift must be a key consideration for all aspects of this review. Analysis by ORR during PR13 highlighted that most market sectors are unable to withstand an increase in charges without loss of traffic to road. Such a move would therefore lead to a reduction in environmental and economic benefits to the UK, and whilst some rail costs would be saved, there would be a resulting increase in road costs.
6. Increased charges also impact on the ability and desire of the sector, both operators and end customers, to invest in rail freight. Conversely, stable and simple charging can help to support this investment, which in turn is helping the efficiency of the sector, for example in longer and better loaded trains.
7. It is therefore imperative that work to determine costs and charges for freight is executed as quickly and as simply as possible in the review, and that a holistic assessment of charges is undertaken to ensure that the overall result maintains affordability for the sector. Given the scale of activity implied by the overall programme for PR18, ORR should look to prioritise only those areas of work where there are expected to be significant benefits and consider which, if any,

elements of work relating to freight charges should be prioritised.

8. We note the work that is underway to look at how DfT might continue to support the rail freight sector if charges become unaffordable (under the FISG group and DfT rail strategy workstreams). Whilst we support this work, it must be clear that this is a backstop provision rather than a desired outcome. As the work to date indicates that many options are not legally possible, and that others have major downsides in resource allocation, ORR should look to avoid such an outcome as far as is possible.
9. We note that, unlike in previous periodic reviews, a key focus is on the structure of the regulatory settlement, as well as on the charges themselves. This is inevitable given Network Rail's devolution and the recommendations of the Shaw report. We also note that the review is taking place in parallel with other changes, which are not yet fully included in the consultation, such as the Virtual Route for Freight and Cross Country. Our response provides our initial comments on these plans, recognising that there is much detail yet to be developed.

Specific Comments

Chapter 2 – Context for the Review

10. Network Rail's plans for devolution are not yet fully articulated. The announcement of the Virtual Route for freight and cross country has been widely welcomed, and is seen as a positive move for the freight sector. However there are yet many details to be established around the relative roles of the Virtual and geographic routes, and the system operator.
11. It will be important that Network Rail is free to develop their structure, rather than this being led by plans for its regulation. Early sight of the structure will also be important to allow operators and the wider sector to provide coherent feedback on how regulation can best support the desired outcome from any proposed framework.
12. Whilst it is not a matter for this review as such, we would expect to see greater clarity from Network Rail in coming months on areas including;
 - a. The external Governance of geographic and virtual routes (Route Boards etc.) and System Operator;
 - b. The internal Governance within Network Rail including decision making and authority between routes, and the role of the centre and of the system operator;
 - c. Clarity on engagement with operators, both formal and informal, including for freight consideration of how engagement with the geographic routes, as well as the virtual route is secured;
 - d. Clarity on engagement with freight customers, ports etc., and with passenger representatives;

- e. How costs and charges will be paid and allocated between routes, noting the imperative of a single national variable access charge.
13. Separately, the decision by Government to channel the network grant through train operators could have implications for the freight sector. Although we have been assured it is unlikely that any part of the network grant would be passed via the freight operators, we have yet to see a final decision on this, or any conclusions on what alternative mechanism might be used. This will need to be resolved as part of this work.
 14. In addition there needs to be rapid clarification from Government whether they do or do not intend to expose franchises to any change in access charges – and to what degree. This is important as if there is no intention to do so, the impact of any change is limited to freight and open access, and the priority of that element of work should be assessed accordingly.
 15. The context for freight has also shifted since the last periodic review, with the ongoing and sharp decline of coal. This has a number of implications for the review, not least around the ongoing applicability of charges levied specifically on that market (coal spillage charge and most of the freight specific charge). We welcome the early assessment that the coal spillage charge should be stopped.
 16. The shrink in volume has also overall financial position of the freight operators, and their ability to absorb any increase in charges. The work that ORR did during PR13 highlighted that most market sectors could not afford an increase in charges without some reverse modal shift, and this position is highly unlikely to have changed.
 17. It remains the case that any significant increase in the overall level of charges paid by freight will be difficult, indeed impossible, to absorb, and is likely to lead to reverse modal shift or reduced growth. Road costs remain highly competitive, helped by a prolonged freezing of fuel duty and a low oil price. We note that elements of the CP5 settlement included caps on certain charges and the treatment of this will also need to be resolved.

Chapter 3 – Focussing the Review

18. We agree that given the scale of the challenge, and the relative immaturity and fluidity of Network Rail's new structure, the review must prioritise the key areas for action. Broadly, we agree with the proposed areas. We question whether significant work to assess and change freight access charges is an equal priority given the scale of expected work in other areas.
19. We understand and support the need to reduce Network Rail's costs. Freight operators have, particularly over the last five to ten years, responded to incentives to do this, for example,
 - a. Widespread introduction of track friendly bogies

- b. Running significantly fewer trains on the network (as a result of efficiency, even prior to the recent decline in coal)
 - c. Improving loading of services to run more goods on fewer trains
 - d. A step change in performance
 - e. Releasing unused paths into strategic capacity and white space
 - f. Measures, at the time, to reduce coal spillage
20. Yet despite these measures, freight operators have seen access charges increase, and face the possibility of a further increase in this review. This suggests that the link between operator action and the costs they face is not working. Whilst Network Rail's fixed costs *may* have reduced in consequence, there is no understanding of this reduction, nor any feed through into lower charges.
21. This failure to link action with reduced charges could significantly weaken the incentive on freight operators to pursue such measures in future. We therefore consider it essential that;
- a. Incentives on operators are clear, deliverable and specifically linked to outcomes;
 - b. Operators feel that they share in the gain from taking the 'right' action;
 - c. The regulated outputs take into account measures to support the efficiency of operators as well as of Network Rail, particularly if operators will not see reduced charges as a consequence of their actions.
22. ORR must also continue to challenge Network Rail to be more efficient in absolute terms, not just in reduced activity or by incentivising lower train movements.

Chapter 4 – Proposed Approach

Route Based Regulation

23. As outlined above, it is difficult to fully comment on proposals for route based regulation given the current early development of Network Rail's own plans for route devolution. In particular, the plans for how the virtual route will operate within the devolved structure have yet to be confirmed, and therefore it is difficult to comment on how best it should be regulated. The working paper needs to be updated in light of this development, as the virtual Route is missing from various diagrams and text.
24. We are however clear that the virtual route must be on an equivalent footing to the geographical routes, as far as is possible, (as defined in the Shaw report) and is not to be considered as some subsidiary function of the System Operator, or otherwise
25. We would therefore expect that ORR will need to consider how it chooses to regulate the virtual route, with particular regard to;

- a. An equivalent process for developing a route business plan, including the engagement with operators and the wider freight sector;
- b. The financial flow of costs and revenues to and from the virtual route, albeit that there will not be the same financial framework or regulated settlement as for the geographic routes. This should ensure that there remains a single, national freight charge, and also that the virtual route is adequately funded for its activities.
- c. The regulation of key outputs of the Virtual route, and how they interact with the geographic routes and system operator on areas where shared action is necessary for delivery.

26. More generally, route based regulation should not lead to additional complexity/cost for operators and customers, and should enable Network Rail to retain flexibility to operate a national network effectively.

Improving System Operation

27. As with route based regulation it is difficult to comment on how the system operator should be regulated until there is further clarity on its structure and roles. However we agree that it is a critical area, and one which requires further development. As such targeted and effective regulation should have a role to play.

28. For rail freight, the poor quality of timetabling on the network is currently one of the greatest barriers to cost efficiency. In particular, the impact of poor end to end journey times prohibits effective asset use, and looping causes higher than necessary fuel costs, and is a performance risk particularly with low speed junctions to and from loops. The management of strategic capacity is also poor.

29. Whilst we recognise the complexities of a mixed traffic railway, and that freight is considered as a marginal user, Network Rail do not appear to be equipped to look at different options which may help network efficiency, and are reluctant to use tools they already have, such as flexing rights.

30. We believe therefore that there should be a specific regulated target on the system operator related to freight efficiency – for example, in improving attained average velocity on the network.

31. The Working Paper 2 references potential weakness in the TPRs which may also contribute to this, and to a lack of technological innovation which might hinder timetable development. Regulation of the System Operator should target areas such as this, at least for the upcoming five year period, to support necessary investment in tools and resources.

32. The Working Paper 2 makes repeated references to trade – offs, and to assessing the value of services as part of timetabling. This would require much greater definition and clarity on outcomes than is presented here. For freight, we

would not expect to see challenges to existing rights and strategic capacity arising from such approaches. The priority is surely to improve timetabling, not to 'price off' services from the network.

33. Working paper 3 makes an explicit reference (3.10) to levying an additional charge on operators to fund the System Operator. We oppose this, given that system operation is a fundamental activity of any infrastructure management and should be covered in the core funding settlement.

Refining the Framework for Outputs

34. We agree that the setting of appropriate outputs is important to drive the right behaviour for Network Rail, operators and customers. It is also important to set a simple framework which drives key improvements and does not lead to perverse outcomes.
35. Network Rail should clarify how they anticipate working with freight operators and the wider sector in developing the (freight) scorecard for the Virtual route. The discussion in paras 2.15- 2.18 of the working paper references this, but does not clarify the need for a scorecard for the Virtual route, or how freight outcomes might be represented across routes.
36. Network Rail will also need to decide how national measures, such as FDM, should be allocated between routes. It will be essential that all routes are fully incentivised to deliver outcomes such as FDM, even if they are principally a target for the virtual route (and vice versa for other measures).
37. We broadly agree with the proposed areas in the working paper. We would particularly support;
- a. Retention of FDM for freight performance (and not, as per para 4.62, freight delay minutes) which would apply across all routes
 - b. A new output aimed at improving the efficiency of freight operations which could be around improving freight journey times or average attained velocity, which should be an output for the system operator
 - c. Ongoing regulation of capability, and network availability as now.
38. We support the ongoing survey of freight operator and customer satisfaction, but question whether it needs to be a regulated outcome.

Costs and Incentives

39. We note that further consultation on charges and incentives is expected later this year, and that at this stage, detailed proposals are not fully understood.
40. Although the early engagement in this consultation therefore remains high level, we have been concerned over proposals tabled at the RDG working groups regarding ORR's more detailed plans for charges. These plans appear to include geographic disaggregation of the variable charge, and reopening the approach to calculating charges, based on previous studies by University of Leeds. This risks

a potential increase in access charges, and adding significantly complexity to the regime.

41. Although we have been assured that a holistic assessment of charges will be undertaken, it remains unclear how this will be done. For example, work to look at the capacity charge, which has been identified as a priority by RDG, is not being captured presently either in the charges work or the Schedule 4 and 8 work.
42. It is wholly unclear to us how geographic disaggregation of charges will provide any significant incentive effect for freight operators, whose choice of route is limited and whose services operate in response to customer demand. Even for passenger operators, and to the extent they are exposed to charges, the ability to respond to such an incentive is limited.
43. Whilst there may be interest in understanding the factors which influence costs, the necessity to translate into charges is at best unproven. A clear statement of the incentives which are expected to be delivered is needed, and an understanding of the specific actions which are expected in response should be made. Given the necessity to supplement with a scarcity charge, the likely impact of geographic disaggregation will be an increase in access charges, which will lead to negative outcomes for freight.
44. The calculation of variable costs was considered extensively during PR13 and we are unclear why ORR wishes to reopen the evaluation. The recent Implementing Act on direct costs is also relevant at least until the UK exits the EU.
45. Our specific comments at this stage are therefore;
 - a. ORR should rapidly prioritise the overall work programme for PR18 and confirm why any significant rework of charges is a key priority for this review, given the extensive work required in other areas.
 - b. A holistic approach must be taken to all costs and charges, recognising that operators are exposed to the totality of changes. This includes the capacity charge, and schedules 4 and 8 as well as the variable charge. Any significant increase in freight charges will lead to traffic reduction, and this must be explicitly understood in the context of Government policy for rail freight.
 - c. ORR should be clear on the outcomes for operators and customers that they expect geographic charges to deliver, and be able to explain how and why those outcomes are beneficial to the railway as a whole. Incentives must be realistic and deliverable and aligned to customer needs.
 - d. Freight must maintain a national charging structure and a single freight charge which does not differentiate between competing customers on different routes. Any proposals for geographic charges must be absolutely explicit in their intent and the behaviour they intend to drive.

Enhancements

46. We note the desire from Government and ORR to explore alternative ways of specifying, and managing, enhancements. We absolutely recognise the difficulties with the CP5 enhancement programme, and support the aim of a better, well managed process for CP6 and beyond.
47. It is yet too early to understand the specific proposals and how they might impact on freight. However;
- a. There must continue to be an appropriate framework for specifying freight enhancements should Government wish to fund them. This should include ring fenced funds such as Strategic Freight Network.
 - b. There must be an appropriate way of supporting projects which cross Network Rail route boundaries
 - c. There must continue to be a strategic approach to projects which provides a longer term pipeline of work and avoids short term decision making.
 - d. Network Rail must be incentivised to make significant improvements in its enhancement programme including portfolio management as well as on individual schemes.
48. There are significant implications from the ERTMS programme for freight, and any approach to this must ensure that freight is not disadvantaged. This includes costs and programme of locomotive fitment, operational requirements and policy and regulatory changes.

Chapter 5 – High Level Framework

49. Overall, we consider that the ORR's agenda for PR18 is significant, and there may need to be a pragmatic approach to prioritisation of activity in the available time and resource.
50. As outlined above, we expect that ORR will consider how the virtual route aligns with the proposed approach, as this is not included in the consultation.

Chapter 6 – Process and Engagement

51. We welcome the early engagement from ORR, and the open process to date. As outlined above, we consider that some elements, such as engagement with operators, are a matter for Network Rail to determine in the first instance, and ORR should work with Network Rail to ensure that regulation does not lead the approach, but respond to it.
52. There must be ongoing debate throughout the process, and there should be clear line of sight on how ORR has responded to feedback, and how they intend to prioritise their work plan accordingly.

RSSB Response to ORR Consultation on PR18

Working Paper 1: Implementing Route Level Regulation

In implementing route level regulation, there needs to be clarity as to who the 'Customer' is for Network Rail and the Routes, with regulation of the routes then focused on and supportive of incentivising positive, constructive, collaborative, and mutually beneficial relationships. The direct customers for Network Rail routes are the train operating companies, passenger and freight. In addition to these 'direct' customers, the devolved authorities, regional and local government are also important for the Routes. These relationships then need to be supported by clear line of sight to demonstrably better outcomes for the customers of the railway, freight users and passengers.

Comparisons across routes, and the metrics used for such comparisons, should be a valuable driver of the right behaviours; and support a focus on critical outcomes for customers (depending on who these are defined as). Metrics adopted for such comparison should also reflect both the regional, geographic, and market differences that will exist between routes. For example, the availability of the network will be more critical at different locations at different times of the day. Additionally, consideration should be given to metrics that take account of the end-to-end journey people and goods make, and provide incentives that lead to greater consideration of the totality of the customer experience.

In allowing for the greater autonomy of routes, prioritisation across Routes, and the mechanisms that support this, will need to be clear and transparent. There will need to be a way of managing short-term and long-term plans, such that more immediate, local challenges can be met but not at the expense of the long-term sustainability of the whole railway. At the same time, and building on the Shaw recommendations, regulation needs to allow for and incentivise access to multiple funding sources, to meet both local and national challenges. This includes greater private sector involvement, as well as opportunities for local, regional, and devolved authority funding.

The balance between maintaining a network and offering greater, more locally-based autonomy for Routes needs to be carefully considered. Greater autonomy should free up Routes to be more responsive to the local market, as well as supporting the drive for new markets and growth, where it can be sensibly accommodated. At the same time, the need to address network-wide

approaches remains key to the continued development of the system: for example, whole-life costing, whole system thinking, system-safety, the sustainability of the railway as a whole and the ability to accelerate the introduction of technology.

Also, if there is to be greater flexibility and more autonomy for Routes, consideration needs to be given to the application of standards across them. Network Rail Routes will need to work within the National Rules approved by RSSB, and company standards set by Network Rail as the technical authority. With its experience of managing National Standards on behalf of the industry, RSSB can help Network Rail and the industry develop deviation proposals to better meet local requirements, including applications for low cost solutions. Additionally and in practical terms, a more Route-based approach to regulation will generate more interfaces both within Network Rail and across the rail industry that will need to be managed and supported. RSSB's experience and position within the industry is available to support Network Rail and the industry in helping manage these additional interfaces.

There is potential to go further and be more radical in both the devolution and regulation of Network Rail. The Shaw recommendations point to devolution in its fullest sense. The ORR has the opportunity through its approach to the regulation of Network Rail and its routes to support the implementation of these recommendations and to ensure greater responsiveness to the immediate and long-term needs of the multiple customers of the railway.

Response to ORR’s initial consultation on the 2018 periodic review of Network Rail (PR18)

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr18@orr.gsi.gov.uk by **10 August 2016**.

Full name	
Job title	
Organisation	Transport for the North and Rail North
Email*	
Telephone number*	

*This information will not be published on our website.

Chapter 2: Context for the review

We invite stakeholders to comment on whether they agree with our view of the context for PR18 or whether they consider there are additional significant points. (If the latter, please explain how these might affect the review).

This response is submitted on behalf of Transport for the North and Rail North, following discussion with their individual participating Local Transport Authorities and Combined Authorities.

The contribution of the rail system to national economic growth and well-being has been widely recognised. In its Northern Transport Strategy, published in Spring 2016, the Government set out the vital role that rail must play in the coming years to help make the Northern Powerhouse vision a reality.

We particularly welcome the recognition by the ORR of recent progress relating to the devolution of rail powers to sub-national transport bodies and the need for the regulatory framework to support devolved governance structures. Alongside this the Government’s policy of greater local devolution with particular emphasis on transport has been carried forward by the creation of Transport for the North. These Government initiatives provide crucial context for ORR’s 2018 periodic review and we welcome ORR’s recognition of this in its consultation.

The consultation document highlights the significant decline in train service reliability in recent years, and major problems with delivery of Network Rail’s committed programme of enhancements. These failings are seriously damaging the interests of rail users and the wider community and it is essential that the periodic review addresses them as priorities. Stakeholders need better performance from rail services and therefore an ambitious upgrade programme is needed, which they can have confidence will be delivered on time and as planned.

The Digital Railway and HS2 programmes offer significant benefits in the longer term, but there are reservations regarding the plans for deployment of ERTMS in the North to date. It is therefore critical, that *in addition* to these strategic programmes, it is vital to deliver the many

more modest improvements which are needed urgently to improve services and support economic growth. Funding and resources for such improvements must be protected.

We welcome ORR's proposals for more route level regulation, as set out in paragraphs 2.21 and 3.24, and we look forward to playing a full part in the review. We believe that Transport for North, and Rail North can play an important role in improving the effectiveness of local and regional rail networks. These include, notably: (a) access to more transparent and detailed cost, operational and passenger demand information; (b) greater involvement in the specification and monitoring of regulated outputs and enhancements; and (c) greater oversight of Network Rail and greater local accountability on the part of Network Rail.

There is a very strong need to align infrastructure enhancement with franchise management, in particular through the letting of future franchises. The Rail North Partnership is ideally placed to do precisely that, and indeed has already started to do so through its management of the Northern and TPE franchises, and through its draft submission to the IIA. This would deliver significant benefits for both the railway industry and the taxpayer, and we feel should inform the context of this consultation.

Finally, we urge timely implementation of the recommendation in the Shaw report for Network Rail to create a Northern Route, which will greatly simplify delivering the Government's devolution objectives.

Chapter 3: Focusing the review where it can have most impact for passengers and freight customers

We welcome views on the proposed relative priorities for the review, as well as any other areas that should be prioritised (in which case, we would particularly value views on what should not be prioritised as a consequence).

We substantially agree with ORR's identification of its priorities for the periodic review.

However, achieving a 'better used network' cannot simply be about running additional services. Rail journeys between most major city-pairs in the north of England, even on 'express' services, are far slower than comparable journeys elsewhere on the network. The average end-to-end speed for services between Leeds and Liverpool is just 47mph; between Manchester and Sheffield it is even slower at 44mph. This compares with average speeds of 80-90mph for travel between those cities and London, and what will shortly be circa 65mph Glasgow - Edinburgh. (*Figures from Rail North's Long Term Rail Strategy - 2015*). Higher speeds for journeys between key centres in the North is central to the Government's new Northern Transport Strategy and, therefore, the periodic review and the CP6 enhancement programme must reflect this. While we agree that Network Rail needs to be enterprising in responding to plans for additional services, incentives to run more trains must not be at the expense of accelerating key strategic services which are still very slow.

To achieve a better used network, particularly at a time of constrained funding, it will be essential to ensure that modest investment schemes which can be delivered quickly and unlock significant benefits can still be progressed quickly. It would be perverse if these schemes became casualties of actions taken to address the real delivery and funding challenges arising on the big strategic programmes.

There is a problem with cost estimates in the Route Studies (which are used by Network Rail to decide which enhancement schemes it puts forward), which means that those costs cannot be relied on to inform decisions about scheme choices and programmes.

Recent cost escalation in the Network Rail enhancements programme is another major challenge for the industry and our members are particularly concerned by the lack of engagement and accountability on the part of Network Rail. Given the scale and aspirations for rail in the North, we feel that there is a need to develop a better understanding of the reasons for the decline in performance and escalation in infrastructure costs. There needs to be transparency in whatever mechanism is adopted for assessing and approving the cost of enhancements in CP6, particularly if the development of enhancement schemes is to sit outside of the Control Period and ECAM process. As such, we would also endorse any form of post-scheme assessment of the out-turn costs to understand how they compared with the GRIP4 AFC, including an informed decision as to whether or not the actual final cost was justified.

The emphasis on greater transparency and disaggregation of cost information, and the stated intention to better understand cost drivers and the capability of the network are all steps in the right direction. Those are areas we would encourage the ORR to prioritise in order to ensure that the industry learns from the development and delivery of schemes.

Chapter 4: Our proposed approach to the review

We would like to know if you agree with the overall approach that we have set out for the review.

We would also welcome additional suggestions and proposals for how we might adapt our regulation to the current context. It would be helpful if you could arrange your comments around the headings in the chapter (set out below) where these are relevant to your response.

Route-level regulation

We support this approach. A more local focus in Network Rail, and by ORR, will be entirely consistent with greater political devolution.

The Government's policy of greater local devolution with particular emphasis on transport has been carried forward by the creation of Transport for the North and the direct involvement of Rail North in letting and managing the Northern and TransPennine Express franchises. Route-level regulation will play an important part in realising the benefits of this devolution.

We therefore strongly support plans for greater devolution and ORR's proposals for route-level regulation as means of bringing decision-making closer to rail users and local stakeholders. We welcome ORR's acknowledgement of the important role that Transport for the North and other regional bodies have to play in its periodic review process.

However to realise the full benefit of these moves for customers in the north of England it is essential that the recommendation of the Shaw Report for creation of a Northern route is implemented in a timely manner.

We urge timely implementation of the recommendation in the Shaw report for Network Rail to create a Northern Route, which will greatly simplify delivering the Government's devolution

objectives.

Route level funding

We accept that Network Rail's corporate obligations and interests may, on occasion, require it to reallocate funding between its routes to respond to unforeseen circumstances. However ORR should make clear that this activity would in no way affect its obligations still to deliver agreed route-level outputs.

We are therefore concerned when ORR says (para 40) "...if funding is transferred out of a route its job may have been made more difficult, and our assessment of route-level business performance would need to reflect this."

If ORR considers it appropriate to make some allowance, at a route level, for reductions in funding made by Network Rail HQ, it must ensure that Network Rail HQ itself is held properly accountable for any subsequent failure of the route to meet its obligations.

We note ORR's intention (para 46) to consult on the treatment of financial risk at route level, and the implications for any devolved regional funders. Transport for North clearly has a significant interest in this matter and look forward to ORR's proposals. -suggest (para 104) that Network Rail's customers and stakeholders will have particular interest in the specification of outputs and we agree with ORR on this point.

Outputs

Ideally the Northern route will be in place in time for the review to set outputs at this level. However, should it not be, great care will be needed to ensure that outputs set for the existing routes are relevant and suitable for customers in the north of England. It is crucial that the needs of this substantial and important group, and Network Rail's performance in meeting them, are not obscured by being divided and rolled into route measures in which other services predominate.

It is also very clear from the experience of the last 20 years that the performance measures used, and the incentives set for Network Rail and train operators need to be carefully aligned, if not identical. Misaligned incentives would seriously undermine the cooperation necessary to deliver better system performance. We will wish to engage closely on this matter at the appropriate time.

ORR Scrutiny

We welcome ORR's intention (para 106, para 127) to assess the effectiveness of Network Rail's engagement with customers and stakeholders, and the extent to which it has buy-in from these groups for the plans it submits.

It will be important that stakeholders are given sufficient time to scrutinise the plans finally submitted by Network Rail and to provide considered feedback to ORR, and we are keen to understand how this process might work.

It will be equally important that Network Rail engages effectively with stakeholders in preparing its delivery plans (para 150-151) and that there is time for them to be properly considered before ORR approves them.

System operation

We agree that greater devolution to routes within Network Rail must be supported and

coordinated by an effective overall system operator function. It will be important that this central function is kept focussed and efficient. This will require a radical change of approach by Network Rail, which is used to operating with a large and powerful HQ. The system operator's remit, objectives and resourcing should embrace only genuine 'network' issues and must not duplicate activities which are better performed at individual route level.

A key objective of Network Rail devolution is to increase its responsiveness to its customers – the train operators - and to other local stakeholders. The routes must have clear lines of accountability to customers and stakeholders to ensure that the system operator is responsive to their needs. Current problems will be exacerbated if routes have insufficient leverage on the system operator, and this would undermine their own accountability.

We therefore welcome ORR's intention to develop a specific new approach to regulating the system operator functions. We agree that this approach must address not only the efficiency of the system operator but also its effectiveness in supporting the routes to meet the needs of their customers. We strongly support the inclusion of customer-facing measures in the assessment of the system operator's performance; these need to embrace not only timetabling but also the agreement of access rights and delays or problems arising from infrastructure failures.

Outputs & monitoring

We welcome ORR's proposal to increase the involvement of train operators and other local stakeholders in setting outputs, within the overall context of the HLOS.

We also welcome the intention to improve how the experience of passengers is reflected in output measures and monitoring. However, we have reservations about the proposal to take account of only the number of passengers on each service in monitoring performance. If the approach taken here is too simplistic it would create a situation where Network Rail has no real incentive to maintain the performance of the more lightly-used services. This would be unacceptable. These services are included in franchise specifications, at considerable cost in public money, because of their social and economic importance. Network Rail must continue to face effective incentives to protect and improve their performance.

It is also very clear from the experience of the last 20 years that the performance measures used, and the incentives for Network Rail and train operators need to be carefully aligned, if not identical. There is a disconnect between the PPM and CaSL targets allocated within franchise agreements, those allocated to NR at Route level, and the requirement for JPIPs to be developed. This variation leads to a conflicting interest in achieving set regulatory targets, and we would request that ORR seeks to redress this for the benefit of customers, and the industry.

As a principle, we feel that all TOC services should be required to meet the national standard of reliability, both PPM and CaSL. The current position on both ECML and WCML whereby our (Rail North area) services to/from London are allowed to perform below the national standard, has a significant impact on the wider North, and is unacceptable. In addition to providing crucial connectivity for most of the Rail North area to/from London, both the ECML and the WCML provide important connectivity within the Rail North area (e.g. Newcastle - York, or Preston - Carlisle), and connectivity between the Rail North area and other significant parts of Britain e.g. Scotland, Birmingham/the West Midlands, the West Country etc).

We would request that ORR requires Network Rail to identify what works are required to address and resolve the causes of this below national standard performance, so as to bring both lines' performance up to the national standard at the earliest possible date.

Misaligned incentives would seriously undermine the necessary cooperation to deliver better system performance. There needs to be an incentive mechanism for Network Rail to reduce

whole industry costs and clarity on the commitments in the Secretary of State Guidance should be considered.

ORR should have regard to the effect on 'Periodic Review' issues of decisions that it (ORR) takes outside the Periodic Review process, including level crossings and open access rights (e.g. on the ECML). These 2 measures in particular can and do have a detrimental effect on (variously) the costs and revenue for franchised TOCs; on the ability of both Network Rail and franchised TOCs to achieve required levels of reliability (both PPM and CaSL); and on the availability of resources (e.g. signalling engineers) for schemes which are required for the fulfilment of franchise obligations.

We would request that ORR specifically acknowledges the link with the periodic review, and that a clear process is developed to ensure that any such decision making has the necessary rationale/justification, and that supporting evidence is provided to meet the standards of transparency and testability that are used elsewhere in the periodic review.

Once route level outputs have been set in ORR's determination, Network Rail must not be able to flex them between routes, unless it has the full agreement of the train operators affected, and regulatory bodies such as Rail North and Transport for the North too.

One area that seems to have been largely missed out from the consultation document is station devolution. This is a topic of significant interest to our organisation and one which we are also actively exploring through the joint work of the Urban Transport Group. At this point, we only wish to flag up the need for the regulatory framework to take account of the possibility that new station ownership and development models may emerge in the course of the Periodic Review.

At a practical level, the key enabling factor, from a regulatory point of view, is an improved and detailed understanding of asset condition, and the importance of identifying and protecting funding for stations from a regulatory point of view and periodic review perspective as well as the ability for Transport for the North to better understand the geography and socio economic cases to facilitate and optimise station development.

As part of the PR18 periodic review, Network Rail should be required to make an assessment of the resilience of the network, including resilience to all 4 main aspects of adverse weather (flooding, high wind, ice and snow, and excessive tides), and resilience in every day operation. The Rail North area suffers far more from adverse weather than any other part of England and Wales.

Nearly all of the locations which repeatedly featured on the national news as experiencing the worst flooding are in the North of England. The main locations in the south of England with railway lines that have experienced repeated disruption from adverse weather - at Dawlish, Exeter and Chipping Sodbury - have all had extensive infrastructure works to address their problems. However, the various locations in the North of England which regularly have flooding problems - York, the Calder Valley, Carlisle, Cumbria, Lancashire etc - have not yet had the railway strengthened and so suffer repeated line closures and consequently severe disruption.

In general, ice and snow is more prevalent the further north one goes, and on average the Rail North area receives far larger amounts of ice and snow, and therefore suffers more disruption from ice and snow, than is the case in the rest of England and Wales.

The ECML and WCML suffer more OLE problems due to high wind than any other lines in Britain, in particular on their northern sections

Significant parts of the network including in the Rail North area, are operating with very little resilience to any day-to-day disruption. The network is vulnerable to trains being delayed in the

first instance, but there is insufficient capacity to recover from such disruption as does occur which often means that a single train running late through a busy location will cause a very large resulting knock-on delays, including trains at other locations.

This lack of resilience is undoubtedly a significant part of the reason why the national network persistently (for year after year after year) fails to meet the requirements stipulated by the Secretary of State in successive HLOSs. We would draw attention to the persistent underperformance (i.e. failure to meet the national PPM standard) of northern services right across the North West, and Rail North requires this to be properly addressed in the periodic review.

We would also like to point out how well-placed Rail North is to initiate and drive a significant improvement in dealing with these challenges, through both the Rail North Partnership and the proposed Northern Route of Network Rail. It is also worth mentioning the Transport for Greater Manchester capacity study which should identify many of the root causes of existing problems.

Charges & incentives

We support ORR's aim of achieving a better understanding of infrastructure costs. This is important both to inform better decision making about use of the network and to drive overall cost reduction. Matching variable access charges more closely to local cost structures will help, but needs to be accompanied by a coordinated review of how 'fixed' charges are allocated. Variable costs can be high on routes where the basic infrastructure receives little investment, because a greater burden is then placed on maintenance. Such routes should attract a lower proportion of fixed charge.

A proper understanding of cost drivers must take the full picture into account, and both fixed and variable charges must reflect this. Even if, when all franchised services were sponsored by the Secretary of State, the allocation of fixed charges was to some extent academic, as devolution progresses this is no longer the case.

We welcome the proposal that Open Access operators should make a contribution to network fixed costs. These services provide real customer benefits but, at present, do so at the expense of the public purse as they capture revenue from the core network while making only a small contribution to costs through access.

Approaches for enhancements

We note the issues related to the treatment of enhancements. We will send a fuller written response to ORR's working paper on this subject *[when it is published]*.

While we can see that there would be advantages to taking the larger, strategic enhancement programmes outside the periodic review process, we do not believe this applies to smaller schemes. Modest investments in enhancements to improve performance, capacity, connectivity or passenger facilities can provide excellent value for money. They will generally be straightforward for Network Rail to deliver, bringing customer benefits more quickly and at lower risk. Driving continuous improvement through such schemes is particularly important at times when funding for larger programmes is severely constrained. We believe it is essential that sufficient funding is provided, through the periodic review, for smaller schemes to be taken forward separately from any new process governing the strategic programmes. This should include ring-fenced funds for tactical deployment during CP6, with appropriate governance arrangements which include local train operators and stakeholders.

A central purpose of Rail North is to drive growth of both passenger and freight in the North of England at a rate greater than the national figure, as part of rebalancing the national economy e.g. 40% passenger growth by 2022 and very substantially beyond that in further franchises. Network Rail should therefore be required to assess the most cost-effective way of

accommodating longer-term growth, including whether it is beneficial to stage the necessary enhancement, rather than simply providing a minimum first stage in isolation from future need.

For the periodic review process, we would request that the ORR takes a much longer term view of the efficiency of enhancements that has been the case in previous Periodic Reviews, and we propose that Rail North should be instrumental in moving Network Rail to a position of far better long-term efficiency for enhancements.

At present, there is essentially no consideration of future proofing in enhancement schemes. Each enhancement by Network Rail provides only the smallest intervention that is necessary to meet the immediate requirement but takes no account of the need for future expansion. The result is that, even after enhancement, many parts of the rail network are still at capacity with all the difficulties that brings greater unreliability; more difficult/expensive to arrange maintenance possessions; inability to accommodate future growth etc).

Cost effectiveness is one of the 4 key objectives set out in the Rail North long-term rail strategy. Rail North and Transport for the North plans for growth of both passenger and freight exceed what is planned nationally, partly because the North of England has significant economic growth plans, but also to meet the high level Government imperative to rebalance the national economy. Therefore, there needs to be appropriate mechanisms to meet the specific (and different) requirements of the North of England. Through our management of the two franchises, the Rail North Partnership is ideally placed to work with a Network Rail 'northern route' to develop such appropriate mechanisms, and we also propose that Rail North should be given a central role in developing a move away from the current short-term process to a position of much enhanced longer term efficiency.

It is important to underline that the greatest contribution that Rail North, Transport for the North, and the city region can make is to assess the overall balance of interventions (e.g.: capacity allocation, targeted infrastructure improvements as part of renewals, rolling stock investment, as well as more conventional infrastructure enhancements) and to select the combination that delivers the best outcome, from a wider economic and social perspective, in the most cost effective way.

ERTMS and related technology

ETCS L3 does not exist as a standard, with 27 variations currently being applied across Europe, and as a result confidence is being undermined in the ERTMS system as a whole. The relationship between performance, capacity and cost on the UK rail network is largely determined (and constrained) by antiquated signalling, but implementing ERTMS as currently proposed by Network Rail looks both unaffordable and unlikely to deliver the desired performance and/or capacity improvements.

Both Rail North and Transport for the North feel that we could play a key part in helping roll this out cost effectively across the North of England. In particular, we would point to the cost effectiveness of early deployment of ERTMS to replace existing semaphore signalling, the majority of which is now in the Rail North area. The ROC migration programme undertaken by Network Rail is very late, and there are a number of lines serving our key cities where evening train services do not occur much beyond 2300 hours, thus damaging their emerging night time economies.

The current performance of Network Rail in delivering signalling schemes is also a concern, with slippage, delays, and cost overruns being commonplace. We feel that there are very significant cost savings that Rail North could help realise by revising Network Rail's current very expensive plans to replace much of this semaphore signalling with other line side signals (colour light), which ERTMS would render redundant in a very short time.

We recommend that prioritisation is given to the deployment of traffic management systems and the associated decision support tools to maximise punctuality performance across the North as soon as is practicable. We would request that the development and securing of the funding, the specification of the outputs, and the commissioning of this work should sit with Transport for the North. Utilising the regulatory powers set aside for determining HLOS, we would welcome further discussion on this matter, and in particular, any wider industry options for funding, optimising delivery, and providing a more cohesive, efficient, system wide solution.

Chapter 5: Developing the high-level framework for the review

We welcome views on how our high-level approach could be implemented and on the potential framework set out in chapter 5. As part of this, we invite thoughts on what it is practicable to achieve in PR18 and in CP6, and what might be more realistic to achieve in the subsequent periodic review.¹

We would also welcome any further suggestions and ideas on how we might improve how we regulate Network Rail.

We support the overall approach proposed by ORR.

In permitting Network Rail flexibility to reallocate money across routes (para 5.26) it will be essential that any such action does nothing to relieve the company of the obligation to deliver its committed outputs on every route. We strongly support ORR's proposal to develop route-level monitoring and reporting. However, route level reporting under the current route structure would be of only limited use to Transport for the North and its partners. It will be of immeasurably greater value, and easier for Network Rail to align with train operator measures, once a Northern Route is created as recommended by the Shaw report. Of course, such reporting must be sufficiently frequent to expose at an early stage any emerging problems and enable effective intervention with Network Rail resolve to resolve them quickly. While annual reporting is sufficient for some matters, others – in particular train service performance and the underlying causes of performance problems – must be reviewed and reported more frequently.

Chapter 6: Process and engagement

We would be grateful for comments on the proposed phases of the review, including any views on the [draft timetable](#) and our proposed approach to engagement.

We also invite high-level views on the process for customer engagement by Network Rail's routes and the system operator to inform their business plans, in terms of what is achievable for this review.

We would also welcome any views on how Network Rail and train operators would like to engage and be involved in the implementation process for PR18 and any thoughts on the process relating to Network Rail's right to object to our determination.

¹ You may also wish to read and comment separately on the working papers that we will publish following this consultation document.

We welcome ORR's proposed greater focus on devolved routes and political devolution, and the engagement set out in paragraph 6.24. Transport for the North and Rail North, together, are ready and committed to engage fully with ORR in this.

We agree with ORR (paragraph 6.15) that it would be helpful for the Rail Delivery Group (RDG) hosted working groups to have wider membership and we ask to be kept fully informed of opportunities to participate in these groups. We will also wish to engage directly with ORR where this is more appropriate.

In the event that the ORR decides to make use of the RDG's resources to develop some of the work for PR18, we strongly support the principle that these need to be open to the wider stakeholder community. In the past, we have not always been kept abreast of progress with RDG work-streams despite our initial involvement (presumably, because of inconsistencies in mailing lists) and feel that it would be best if communications relating to any stakeholder events continued to be dealt with by the ORR.

Finally, in the context of the Government's clear devolution agenda, we request that Transport for the North is now included in the PR18 Joint Steering Group chaired by ORR, or as a minimum that we are included among those parties - such as the Welsh Government - who are consulted on draft documents prepared for this Group.

Any other points that you would like to make

Rail North and Transport for the North welcome this consultation, and would very much like to discuss a number of the points raised in further detail, such that there is a clearer understanding of our requirements and aspirations, particularly given the fast evolving devolution agenda.

We would request that any such meetings are coordinated with Rail North's Director, David Hoggarth.

Thank you for taking the time to respond.

Director, Rail

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Emily Bulman
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By e-mail

Your ref:

Our ref:
PR18/WP1/01

Date:
24 August 2016

Response to PR18 Working Paper 1: Implementing Route-Level Regulation

Thank you for the opportunity to respond to your *Working Paper 1: Implementing Route-Level Regulation (WP1)*. As outlined in our response to the ORR's initial consultation document, we welcome the open and inclusive approach to encouraging discussion on the key issues that the ORR has adopted in this initial phase of the PR18 process.

Set out below are some general points that we would wish the ORR to reflect on as well as some more specific points relating to the key themes and issues as set out in the working paper.

Route-level regulation and Scotland's Railways

Over the last ten years or so the Scotland route has enjoyed a significant degree of route-level regulation with the route commanding a greater degree of autonomy than other Network Rail (NR) routes in England and Wales. This devolution of operational autonomy to the route has been a success with the industry being empowered to work together, both in terms of alliancing arrangements between Network Rail and the ScotRail franchisee and indeed the broader arrangements in place with national freight and passenger operators, to support the development and implementation of more customer-focussed solutions that are better tailored to local conditions and priorities.

Such collaborative whole-industry approaches to meeting local needs is in alignment with one of the Scottish Government's key objectives for the railway in PR18; namely to ensure that the regulatory framework for rail in Scotland is developed with the **needs and priorities of customers at its heart** and is sufficiently flexible to adapt to local circumstances and priorities.

Following publication of, and in response to, the Shaw Report, there is a general consensus of support within the industry for the principle of increased local autonomy and collaborative working in the operation of the railway to ensure that customers' needs are met. We note that WP1 seeks to build on this consensus and consider how such principles could be enacted in practice across the network. Given the success that increased operational autonomy has brought to the Scotland route, we welcome the principle of route based regulation and increased local decision-making being delegated to individual routes across the GB network, including the



newly created GB-wide freight and national operator 'virtual' route, subject to the qualifications recorded elsewhere in this response.

We reiterate our support for the full devolution of Network Rail to Scotland, in order to provide greater whole-system accountability to the Scottish Parliament, and enable all rail services to maximise their full potential through collaboration and more localised bespoke solutions. It remains our view that such a structure could be introduced with the appropriate safeguards in place to protect the interests of national freight and passenger operators.

Specific Issues highlighted in or arising from WP1

Where we are now: Substantial devolution of NR's functions

The working paper provides commentary on how NR has been making changes to its internal structure to move more responsibility from the centre towards its routes (paragraphs 12 to 14). At this stage NR is still to properly set out how it will roll out its plans for route-based regulation. We are also of the view that the progress of further decentralisation has not kept pace with the requirements of funders and the railway's customers. In particular we are very disappointed that the NR Transformation Plan published in July failed to specifically set out what further devolution will entail for Scotland given the considerable difference in starting positions.

Moreover, our experience in the Scotland route is that some ostensibly devolved functions are often referred back to the centre rather than dealt with locally (e.g. standards and compliance, regulatory finance issues etc.) and that other functions which could be more efficiently discharged at route-level, for example major infrastructure projects, have been retained at the centre.

A potential framework for the ORR determination

We welcome the confirmation that the settlement for Scotland will continue to reflect the separate legislative arrangements and the distinct role of the Scottish Government (paragraph 30). We are very clear that any movement towards increased route-based regulation across the entire GB-wide network must respect the integrity of the current devolved settlement for Scotland, the separate funding arrangements (which now includes borrowing) for Scotland and the established principle of a separate Periodic Review determination for Scotland i.e. there can be no distribution of funds from the Scotland route to any other NR route including the emerging GB-wide cross-country/ freight virtual route without the agreement of Scottish Ministers. We would welcome further details on how the ORR intends to regulate for this given NR's legal status as a single company.

We would also welcome clarity on how the assets of the new freight and national operator virtual route will be managed and funded and what the nature of its relationship with other asset routes will be.

We note the likely use of NR scorecards to measure performance against some outputs at route level (paragraph 37). While we accept that the introduction of route scorecards is a new innovation adopted in 2016/17 for the first time, we would like to see more engagement by NR with funders and passenger and freight train operators in devising their route scorecards and metrics to increase their effectiveness. This is essential if route level scorecards are to be a credible means of measuring performance against the things that matter to NR's customers and the railway's users. It will also be an important step in satisfying the governance arrangements put in place post reclassification.

We agree that it is important to understand the implications of route-level regulation on the structure of charges and explore whether there is a case to disaggregate charges in line with any variation in costs that may be present between routes (paragraph 49). We would endorse the position of considering fundamental changes where they are likely to lead to a significantly better outcome for rail customers. We note the concerns of freight operators on this issue and would ask that any consideration of such changes also takes into account the practical impact that following varying route-specific charging structures would have on those who operate across different operating routes.

We further welcome the undertaking to review existing incentive regimes to ensure that they remain fit for purpose in the context of route-based regulation (paragraph 50) and would expect this to draw appropriately from the conclusions set out in the RDG Review of Charges work.

Making route-level regulation work: the periodic review process and interfaces

We welcome the ORR's offer to continue to provide advice to governments to assist with the production of their HLOS and SoFAs and in particular on how these could be framed to best support route-level regulation (paragraphs 81-93 and 98-99). While we are in the early stages of considering how our HLOS could be framed, we would welcome this advice, particularly in terms of how our HLOS would interact with the GB-wide cross-country passenger and freight virtual route. We are happy to receive this advice in either a formal or an informal manner and shall engage with the ORR on this over the coming months.

The working paper reflects the changed relationship between NR and the DfT since reclassification, the need for governments to agree NR's Route Strategic Business Plans (RSBPs) and how the move towards route-level regulation could impact upon the scrutiny and agreement of these RSBPs (paragraphs 117 to 122). We will give this matter further consideration in collaboration with the DfT and ORR in due course but can at this stage summarise our minimum expectation that the Scotland Route SBP would be aligned with the specifications of our HLOS and SoFA.

Yours sincerely,



Aidan Grisewood
Director, Rail

Consultation response

PR18 Initial Consultation

Working paper 1: Implementing route-level regulation

Office of Road and Rail

August 2016

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1. Introduction

- 1.1. The Urban Transport Group (UTG) represents the seven largest city region strategic transport bodies¹ in England, which, between them, serve over twenty million people in Greater Manchester, London, the Liverpool City Region, the North East Combined Authority area, South Yorkshire, the West Midlands conurbation and West Yorkshire. Nottingham City Council, the West of England Partnership and Strathclyde Partnership for Transport (SPT) are associate members of the UTG.
- 1.2. Our members plan, procure, provide and promote public transport in some of Britain's largest city regions, with the aim of delivering integrated public transport networks accessible to all.
- 1.3. This response supplements our submission to the main PR18 initial consultation document.

2. Summary of key ORR proposals

- 2.1. Below is a summary of what we consider to be the key proposals in the ORR's Working Paper One on route-level regulation:
 1. Relevant outputs¹ to be specified at route-level.
 2. Routes to produce route strategic business plans (RSBPs). Customer engagement to be a central part of this process with stakeholders being primarily involved in specifying outputs, operational improvements, (possibly) enhancement priorities, possessions strategy/scheme delivery.
 3. RSBPs to be consolidated into a single submission to DfT which would be agreed by Network Rail as a whole. ORR considers the possibility that individual routes may be able to choose not to sign up to the final submission though it acknowledges there are practical constraints to this approach.
 4. Each route to have their own funding settlement. But Network Rail would still be able to move funds between routes.
 5. ORR is proposing not to be prescriptive on the approach to customer engagement although it suggests that "*routes that do not [demonstrate customer engagement] are likely to be subject to more detailed scrutiny*".
 6. Network Rail centre is expected to provide guidance and technical support to routes in developing their individual plans. We take this to mean that routes would remain dependent on the centre for business case skills.
 7. Route-level regulation could lead to greater spatial disaggregation of charges.
 8. ORR proposes two concrete regulatory innovations:
 - a. Benchmarking, whereby the ORR would use econometric techniques to compare efficiency levels between NR routes.
 - b. Grading of business plans, whereby the ORR would recognise routes that produce high-quality business plans by either giving them lower levels of scrutiny or by rewarding management teams through public recognition.

¹ With the exception of Transport for London, these bodies were formally known as Passenger Transport Executives (PTEs) and the UTG was formerly known as the Passenger Transport Executive Group (*pteg*). In recent years, some PTEs have been abolished with their functions transferred onto successor bodies, such as Combined Authorities. The new name for our group reflects these changes.

3. Our views

- 3.1. Points one and two (see above) are to be welcomed and we would encourage the ORR to go further and consider setting outputs at operator, and potentially even service group, level (more on this below in relation to benchmarking). This would go some way towards meeting the objective of city region transport authorities and sub-national transport bodies to have greater involvement in the specification and monitoring of rail infrastructure outputs in their areas. These proposals are also likely to make Network Rail's required outputs and performance more visible at local level which would be a positive outcome more generally.
- 3.2. Our members have some concerns over points three to six.
- 3.3. Point three effectively curtails the power of route management teams and, by extension, the ability of local stakeholders to influence Route Strategic Business Plans.
- 3.4. The proposal, under point four, for each route to have their own funding settlement is to be welcomed. But the fact that Network Rail would be able to move funding between routes suggests that this could be a meaningless change and render local stakeholders and customers powerless.
- 3.5. Point five implies a relatively soft regulatory approach to customer engagement on the part of the ORR. Network Rail faces a large number of competing incentives and objectives so, given this approach, we feel that customer engagement is unlikely to become top of its list of priorities.
- 3.6. Point six suggests to us that existing bottlenecks in terms of scheme development are likely to remain. We feel that it is important for Network Rail routes to be adequately resourced so as to be able to take ownership of their own decisions and be sufficiently accountable for their relationship with local stakeholders/customers.
- 3.7. We touch on point seven in our response to the main PR18 initial consultation document (see paras 3.32 to 3.35). We are generally supportive of proposals to make track access charges more cost reflective but argue that this needs to be done in a coherent and consistent way across the network, taking account of all costs.
- 3.8. On the issue of benchmarking (point 8a above), the ORR's proposal is a move in the right direction as it would give industry another tool with which to objectively compare route efficiency and understand cost drivers. However, we feel that the ORR and Network Rail will have to delve deeper into the data (for example, by taking route sections as the unit of analysis) in order to be able to gain insights of real value.
- 3.9. On the idea of grading business plans (point 8b), this proposal has some similarities with the old Local Transport Plan process administered by the Department for Transport, whereby local transport authorities with the best plans (as judged by the DfT) could get up to an extra 25% funding relative to the base level determined by formula. It could be argued that there were some merits in the DfT's approach and that this did lead to better quality plans (as defined by the DfT) than would have otherwise been the case. An alternative view is that this encouraged transport authorities to find ways to write plans that complied with the DfT's evaluation criteria. It may be worthwhile for the ORR to look into the research that has been done to evaluate the LTP process.

- 3.10. Whichever the case, we are sceptical that the ORR's proposal will have a significant impact. In its most basic form, it would represent a relatively weak reputational incentive (route managers would presumably have far more challenging problems to solve than writing route business plans). In its more sophisticated form (whereby the quality of plans could be linked to route management compensation), it may have a measurable impact although we wouldn't expect this to represent a material proportion of management compensation.
- 3.11. At a deeper level, we feel that none of the ORR's proposals above directly tackle the fundamental underlying issue that Network Rail remains only truly accountable to the DfT (and to some extent, Transport Scotland). It is assumed that NR as a whole will continue to be the regulated entity and that its relationships with the DfT and Transport Scotland will remain its only real lines of accountability. As the ORR itself recognises, "NR [statutory] responsibilities with the DfT and Transport Scotland (...) may constrain the ability of the routes to prepare independent plans".
- 3.12. Success of ORR's proposals (which we would define as greater local leverage over route management) would entirely depend on local stakeholders' ability to influence route management without any formal powers. However, route management will remain beholden to NR HQ, which is where the formal regulatory power will continue to be exercised.
- 3.13. Whilst route devolution is likely to have a number of positive outcomes, we would encourage the ORR to be bolder in its thinking about the regulatory tools that could be put in place to make the most of this structural change. We recognise that there are limits to the powers of the ORR in this respect. But we feel that, as a minimum, the ORR could be more explicit about the strengths and weaknesses of different approaches and their likelihood of success.

ORR PR18 Consultation - Welsh Government Comments on Working Papers 1, 2 and 3

I am writing to provide the Welsh Government's comments on the 'implementing route-level regulation' and 'system operation' working papers issued by the ORR to support the development of detailed policy for PR18.

The Welsh Government welcomes proposals to focus on regulation of the rail network at the route level. Devolution of greater responsibility to Network Rail's routes should result in the Welsh Government's role in decision-making in relation to Wales being enhanced in respect of both activities funded by the UK Government and the Welsh Government. Alongside this, a high level of accountability and transparency will be needed throughout. We would like the ORR to continue to engage with the Welsh Government to ensure that the regulatory regime will be fit for purpose in respect of arrangements yet to be finalised for delivering the South Wales Metro system.

Powers to direct Network Rail and funding for rail infrastructure have not yet been devolved to the Welsh Government. However, in recent years the Welsh Government has stepped in to fund a number of rail infrastructure enhancement schemes and Network Rail has delivered many of these schemes. The mechanisms and accountability arrangements available to the Welsh Government in delivering these schemes have been inadequate. It will be important for this to be addressed, with Network Rail's accountability for delivery not differing depending on which public body is providing funding.

The development of route-level strategic business plans provides an important opportunity for local engagement. These need to be informed by meaningful and timely consultation with stakeholders. The Welsh Government has an interest in a number of routes enabling connectivity within – as well as to and from – Wales (including the virtual route for rail freight and national passenger operators). The arrangements for specifying and changing outputs should take account of the new devolved context. The ORR should also ensure mechanisms are put in place to join up national and route level thinking so that economies of scale and opportunities for linking renewal and enhancement works are not lost.

A requirement for stakeholders to be involved in the development of performance measurement mechanisms needs to be set which, once in place, includes

meaningful and transparent feedback in both directions between Network Rail and stakeholders.

The Welsh Government's previous Minister for Economy, Science and Transport responded to the ORR consultation on network charges which sets out our view in this area.

Best regards,
Matt

Matt Edwards
Rail Policy Programme Manager
Transport - Policy, Planning and Partnerships | Welsh Government