

Richard Price
Chief Executive

To the recipients listed in Annex A

27 March 2015

Dear colleagues

Response to the independent evaluation of PR13 by Penny Boys

It is now nearly a year since our 2013 periodic review (PR13) was implemented, with the start of control period 5 (CP5) on 1 April 2014. Since then, an independent evaluation has been carried out into both the overall review process and how effectively we engaged with stakeholders. The report from this evaluation is now available on our website¹.

We welcome the report and we have set out in this letter our response to the report's conclusions. The report will inform our approach for the 2018 periodic review (PR18), which we expect to begin formally in early 2016.

Independent evaluation

In July 2014, we commissioned Penny Boys to carry out an independent review of how we engaged and consulted with stakeholders during PR13. Penny has substantial experience of economic regulation and stakeholder engagement, having held a wide variety of roles including deputy director for electricity regulation, secretary to the Competition Commission, executive director at the Office of Fair Trading and most recently a non-executive director at Ofwat. She is also on the Membership Selection Panel for members of Network Rail.

Penny Boys carried out a series of interviews with various stakeholders to inform her report, including representatives from industry, government and customer representative groups who were involved in PR13.

¹ <http://orr.gov.uk/what-and-how-we-regulate/regulation-of-network-rail/how-we-regulate-network-rail/periodic-review-2013/independent-evaluation-of-pr13>.

The report recognises a number of positive aspects about how we carried out PR13. In particular:

- stakeholders judged PR13 to have been a clear improvement on previous reviews;
- our workshops, and particularly our bigger events at different locations in Great Britain at the beginning of PR13 and following the draft determination, were seen by stakeholders as valuable opportunities to engage with our staff and senior directors; and
- stakeholders appreciated the willingness of ORR staff to engage with and support them.

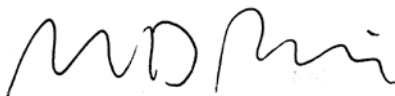
However, the report identifies a number of areas where we can improve for PR18, including:

- providing early clarity for stakeholders on ORR's priorities for the PR18 programme, enabling them to plan their engagement with more certainty;
- simplifying and prioritising the process of engagement, including making our documents shorter, clearer and more accessible, and being clearer on the timetable for consultation;
- considering the use of more collaborative approaches for developing policy; and
- providing fuller explanations of the impact of proposals and conclusions on stakeholders and being more comprehensive in explaining why we have rejected evidence or arguments made against our proposals, if relevant.

Annex B to this letter sets out how we will take the recommendations into account in PR18. We look forward to working closely with stakeholders throughout PR18.

I would like to thank all those who participated in the independent review and Penny for her work in producing the report.

Yours faithfully



Richard Price

Annex A: List of recipients

Association of Train Operating Companies (ATOC)
Charter train operators
Department for Transport
Franchised passenger train operators and owning groups
Freight train operators
Freight Transport Association
HM Treasury
London TravelWatch
Network Rail Infrastructure Limited
Open access passenger train operators
Passenger Focus
Passenger Transport Executives
Pteg
Rail Delivery Group (RDG)
Rail Freight Group
Rail Freight Operators' Association
Rail Safety and Standards Board
Train operator owning groups
Transport for London
Transport Scotland
Transport Select Committee
Welsh Government

Annex B: Response to the recommendations of the independent evaluation of PR13

	Recommendation ² [paragraph reference in report]	Our response
1	<p>ORR should set out as fully as possible in its first PR18 consultation document a timetable for the programme of work to underpin proposals. [6.3]</p>	<p>For PR18, we will aim to set out a programme of consultations for the review in our first consultation document to help define the scope of activity. In planning we will also try to space consultations to minimise peaks in workload for stakeholders.</p> <p>However, it would be unrealistic for us to claim that we will be able to foresee with confidence all the issues that will emerge as we carry out a periodic review. Consultation can itself bring out issues that require further focus. It is therefore important that we retain some flexibility in the consultation schedule to accommodate new issues that may arise. Should we need to make changes to the schedule, we will be clearer in communicating these and any implications for stakeholders.</p>
2	<p>At the start of PR18, ORR should prioritise its aims and explain clearly what it wants to do and why, with reasonably well-developed proposals and supporting data and impact assessments on which to consult.</p> <p>These proposals should be available in time for the First Consultation Document, with clear timelines for consultation on each before they either find their way, or not, into the Draft Determination. As with good project management, proposals to widen the agenda should be resisted. [1.5, 7.7, 7.11]</p>	<p>In our first consultation on PR18 we will set out our priorities, supported by reasonably developed proposals and accompanying data and impact assessments, for consultation.</p> <p>Though, as mentioned under (1) above, it is important to recognise that it would be unrealistic to think that no further issues or proposals will emerge following this first consultation document.</p>

² In the interests of brevity and clarity, in this annex, the context around some of the recommendations has been paraphrased from the report.

3	<p>ORR should explore whether a more collaborative approach to consultation and engagement on PR18 could achieve more than the traditional model so far taken. [7.8-7.10]</p>	<p>We welcome opportunities for collaborative engagement and are keen to explore the full potential of new approaches in PR18. In doing so we will want to ensure that any new approaches do not increase risk to the overall process or limit the ability for smaller stakeholders or minority voices to have their views taken into account.</p> <p>We note the suggestion in the report that RDG could provide a forum for collaborative engagement. We are already working with RDG in some early PR18 enabling work. We will consider the extent to which RDG would be an appropriate forum in representing all stakeholders.</p> <p>We also need to acknowledge that there are areas where RDG will not itself have a single view on the best process or approach and we cannot be constrained by that. And as the report itself notes, ultimately this is a process where we have statutory responsibilities.</p>
4	<p>ORR should reconsider the use of specific questions in consultation documents. [6.4]</p> <p>These questions were not always seen as helpful and could have the effect of seeming like an exam paper set by ORR.</p>	<p>We understand there are differing views among stakeholders on whether the 'question' format to consultations is helpful. The independent evaluation of PR08 recommended that we should include specific questions in consultations to help provide a focus for consultees. We sought to do this in PR13 and this was welcomed by some participants. While the question format is also useful for us to be able to evaluate and analyse varying views on specific issues, we always welcome responses on any aspect of a consultation document.</p> <p>For PR18, we will communicate what we want from stakeholders clearly, and continue to provide the option of responding to a set of questions and/or making other points.</p>
5	<p>ORR workshops should be webcast to enable more stakeholders to participate without the cost of</p>	<p>We recognise that attending workshops incurs travel and other costs for stakeholders. We will review how we can make workshops more accessible to</p>

	attending in person. [7.12]	those who would rather not attend in person.
6	Consultation documents should be in the form of a simple summary, with technical details and supporting data annexed. [7.12]	For PR18, we will review how best to structure our documents as part of our engagement strategy, and will consider simpler documents, with more complex information annexed.
7	Further attempts should be made to avoid jargon and to explain the effect of proposals and conclusions. [7.12]	<p>We welcome the feedback in the report that PR13 publications were an improvement on those in previous reviews, in terms of simplification of language and better sign-posting. We recognise that we can go further in reducing jargon and we will aim to do so.</p> <p>We also recognise that we can improve how we explain the effect and impact of proposals and conclusions on stakeholders. Since PR13, we have established a new impact assessment policy. This will provide for a more consistent and coherent framework for us to set out and seek views on likely impacts of proposals and decisions.</p>
8	Where ORR has rejected evidence or arguments put against its proposals, it should try harder to explain why. [7.12]	We recognise the expectations of stakeholders in this respect and, alongside reviewing how we can better structure our publications in PR18, we will aim to be more transparent in explaining how we have come to our decisions, beyond just focusing on the main points raised by stakeholders.
9	ORR's website should be improved so that all consultation documents are immediately accessible on line with e-mail alerts to those known to have a particular interest in the subject. [7.12]	<p>As far as we are aware, in most cases, our published PR13 documents were made immediately available on our website. Any instance where this was not the case would have been an error or technical issues on our side and we will take special care to minimise any instances of this recurring in future.</p> <p>We also have a news-by-email service that alerts interested parties to publications of interest when new documents are published. We will promote this amongst stakeholders as part of our engagement plan for PR18.</p>