

Draft design for PR18 overall framework

Version: Consistent with January 2018 conclusions on PR18 overall framework for regulating Network Rail. Policy changes relative to our July 2017 consultation are highlighted.

Purpose

This document lists our conclusions on the overall framework for regulating Network Rail.

Its purpose is as a tool to focus on and develop particular policy issues in discussion with stakeholders, and to communicate policy as it develops. This is a live document, intended to facilitate policy discussions.

Scope

This document summarises our policy positions covering:

- The organisation of Network Rail
- Network Rail and our determination
- Scorecards
- Network Rail's engagement with stakeholders to encourage effective delivery
- Monitoring and enforcement
- Change control

This document does not seek to capture all of the policy detail contained in our overall framework consultations. All of these documents are available on our [overall framework webpage](#).

In particular, this document does not include the reasons behind each of the policy positions. Instead, it focuses on setting out, in one place, the key policy positions to support stakeholder engagement and develop the detail of the overall framework in a consistent and clear manner.

This document does not cover the entire scope of policy development in PR18. For example, it makes no substantial reference to the charges and incentives contained within track access contracts or the financial framework for Network Rail, both of which we have consulted on separately.

Using this document

In addition to summarising our current thinking, the document also states the current stage of policy development for each area. We label policies in the following five ways:

- **“Conclusion”**: ORR has publicly stated that it has concluded on this.
- **“Emerging view”**: ORR emerging view / proposal to be tested (which may still be subject to further consultation)
- **“Straw man”**: early content to test and challenge
- **“Issue”**: issues to resolve, including where several options exist
- **“Info”**: underlying context and assumptions

The distinction between some of these labels requires judgement and is only intended to support discussion. In the right hand column for each item, we signpost the relevant section in our [consultation](#) and / or our [conclusions](#) document summarising responses, to which readers can refer for additional detail.

Version control

ID	Date	Comment
1.0	15/08/17	First publication reflecting the contents of the consultation on the overall framework for regulating Network Rail
2.0	25/01/2018	Second publication reflecting the conclusions of the consultation on the overall framework for regulating Network Rail

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- 2. Network Rail and our determination**
- 3. Scorecards**
- 4. Network Rail's engagement with stakeholders to support effective delivery**
- 5. Our approach to monitoring and enforcement in CP6**
- 6. Managing change**

1. The organisation of Network Rail

This section sets out how Network Rail is organised, for information and context when engaging with the rest of the policy areas.

ID	Description / narrative	Status	Cons ref	Concl ref
1.1	Network Rail is responsible for the operation, maintenance, renewal and enhancement of much of the mainline rail infrastructure in Great Britain. It is a single company with a single network licence (albeit noting its recent devolution of decision making to its routes), as well as being a single duty holder for safety regulation.	<i>Info</i>	2.6 and 2.18	
1.2	Geographic routes operate and manage the railway in their areas. There are six geographic routes in England centred on the main-line routes out of London, and separate geographic routes for Scotland and Wales, with the latter including some infrastructure in the border counties of England.	<i>Info</i>	2.10	
1.3	Freight and National Passenger Operator (FNPO) route provides a 'single point of contact' and is accountable for the delivery of performance and other outputs for customers that operate nationally, across multiple routes. It is also the 'single point of contact' for prospective open access operators, and delivers for its customers by working with the geographic routes, System Operator and other parts of Network Rail.	<i>Info</i>	2.11	
1.4	The System Operator (SO) performs two key roles in Network Rail's devolved structure, providing: <ul style="list-style-type: none"> • expert analysis to support improved timetabling, better use of the existing network and analysis of how the network should be enhanced over time; and • a check against the routes to protect the benefits of a coordinated and integrated network, while also ensuring that operators retain fair and non-discriminatory access to the network. 	<i>Info</i>	2.14	
1.5	Other functions	<i>Info</i>	2.16	2.14

	<p>We consider two broad categories of other functions:</p> <ul style="list-style-type: none"> • Route services: <ul style="list-style-type: none"> - Organised centrally for efficiencies of scale (e.g. Group Business Services, National Supply Chain). • Central services: <ul style="list-style-type: none"> - set policies; - provide assurance to the Board, e.g. with regards to compliance of policies and assurance of data; - coordinate across the company; and - either hold routes to account for performance, and/or ensure compliance with the company's obligations and/or objectives. For example, managing compliance with debt limits. - Examples include the technical authority (Safety Technical and Engineering) and the central finance function. <p>We note that some functions perform roles that fall under both categories, e.g. Infrastructure Projects provides services, but also undertakes assurance and sets policies. These functions charge costs to routes and the SO.</p>			
1.6	<p>The routes or SO may be effective in holding some route services to account. We may need to regulate other Network Rail functions directly, for example through requiring improvements in certain capabilities, setting transparency and reporting obligations, or through the application of Network Rail's licence.</p>	<p><i>Emerging view</i></p>		<p>2.14-2.15</p>

2. Network Rail and our determination

This section sets out how we intend to regulate Network Rail as a single (yet devolved) company, and how we will structure our determination and its component settlements.

ID	Description / narrative	Status	Cons ref	Concl ref
2.1	In CP6, Network Rail will be regulated as a single company with a single licence, but with a greater focus at route and SO level.	<i>Conclusion</i>	2.18 – 19	
2.2	The determination will include a settlement for each geographic route, the FNPO, and the SO. Each settlement identifies the funding available together with the outputs it is expected to deliver.	<i>Conclusion</i>	2.18 – 19	
2.3	The settlement for Scotland will be ring-fenced.	<i>Conclusion</i>	2.18 – 19	2.18
2.4	Functions other than the routes / SO will not have a separate settlement, but will recharge their costs to the routes / SO.	<i>Conclusion</i>	2.24	
2.5	<p>For each route and the SO, we will determine the funding requirement and the assumptions regarding the outputs that Network Rail is expected to deliver. These, together with the network licence, the financial framework, charges and contractual incentives, and the monitoring framework, comprise the PR18 settlement for each route.</p> <p>The funding requirements in settlements will be calculated on the basis of assumptions regarding the outputs that Network Rail is required to deliver, and the associated efficient costs of delivering them, incorporating assumptions derived from bottom up targets for Network Rail's efficiency.</p>	<i>Conclusion</i>	2.25	
2.6	ORR will publish the final determination in October 2018, setting out the overall decisions for PR18. Although there will be ten settlements, only Network Rail as a single company (having appropriately engaged with its	<i>Info</i>	2.33	

	<p>routes and the SO) can accept/reject its determination.</p> <p>If Network Rail rejected the determination, ORR could then accept its objections and adjust the determination (and restart the implementation process), or refer the matter to the Competition and Markets Authority to determine.</p>			
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3. Scorecards

This section sets out our envisaged use of scorecards in CP6, and the areas where we may require specific measures and set regulatory floors.

Ref	Description / narrative	Status	Cons ref	Concl ref
3.1	<p>Scorecards will be used as part of the regulatory framework to determine targets and inform ORR's monitoring and enforcement.</p> <p>Scorecards complement other aspects of the regulatory framework, notably: Network Rail's transparency requirements; the company's licence; ORR's ongoing monitoring and enforcement activities; and additional requirements agreed through the periodic review, such as to improve its capabilities.</p>	<i>Conclusion</i>	3. 3	3.18-3.19
3.2	ORR will focus on SO and route (geographic and FNPO) scorecards.	<i>Conclusion</i>	Chapter 3 summary	
3.3	ORR may also place requirements on certain other functions, such as to measure and report their performance.	<i>Emerging View</i>		
3.4	<p>For ORR to make full use of scorecards in CP6, they need to be:</p> <ul style="list-style-type: none"> Balanced – to reflect the full range of outcomes that Network Rail is required to deliver; Support comparison – between routes, and the SO where possible, as well as over time; and 	<i>Conclusion</i>	Box 3.4	3.41

	<ul style="list-style-type: none"> Capture requirements specified in HLOSs – where appropriate. 			
3.5	<p>ORR will require specific measures to be included in scorecards to achieve the objectives above.</p> <p>If this requirement, set out in 3.4 above, is not met, ORR would use other approaches to monitor Network Rail's (operational and financial) performance.</p>	Conclusion	Box 3.4, 3.26	3.35-3.36
3.6	<p>A 'regulatory minimum floor' will be set in some areas, where:</p> <ul style="list-style-type: none"> additional assurance that Network Rail will deliver at least a certain level of performance is beneficial; outcomes may not be a priority for other parties; and a reasonable HLOS requirement was not captured. <p>This floor would be below (i.e. worse than) the assumed trajectory in our determination, and set at a level towards the lower end of what customers might reasonably expect to be delivered.</p>	Conclusion	3.42	3.55-3.56
3.7	<p>Performance worse than the regulatory floor would be likely to trigger an investigation for possible licence breach.</p>	Conclusion	3.42	
3.8	<p>We expect to set regulatory minimum floors for:</p> <ul style="list-style-type: none"> passenger train performance (geographic routes); freight train performance (routes, including FNPO); and asset sustainability (geographic routes). 	Conclusion	3.44	3.55
3.9	<p>We may set other reasonable requirements, including qualitative requirements, for example, to secure an output specified in an HLOS.</p>	Conclusion		3.43

3.10	<p>As part of PR18, we will review the scorecards submitted in strategic plans, including the CP6 forecasts.</p> <p>The strategic plans should include proposals for forecast performance levels (potentially with a range of acceptable performance) and proposed levels of any regulatory minimum floor.</p> <p>These forecasts (subject to our review), and the regulatory minimum floors we establish, will form part of the determination and the settlement for each route.</p> <p>ORR will use this as the PR18 baseline for assessing the performance of routes/the SO over CP6.</p>	<i>Conclusion</i>	3.34	
3.11	<p>Network Rail's routes' and SO's scorecards should be updated and published annually. Scorecards should be set in context with an explanation of the measures used and performance against those measures.</p>	<i>Emerging view</i>		
3.12	<p>We would ordinarily expect performance against scorecard measures relevant to particular stakeholders to be shared with those stakeholders by period.</p>	<i>Conclusion</i>		
3.13	<p>Within CP6, alterations to scorecard measures/targets included in the route/SO settlement should include appropriate engagement with relevant stakeholders.</p>	<i>Conclusion</i>	3.47	
3.14	<p>Network Rail should not change the methodology for calculating any measure without having a case for doing so and going through a transparent process with its customers and ORR. Calculation of what ORR has deemed to be a consistent route measures may only be changed with ORR consent.</p>	<i>Conclusion</i>		
3.15	<p>Customer agreed measures should only be changed following agreement with the relevant customers.</p>	<i>Info</i>		
3.16	<p>ORR would normally only reset a regulatory minimum floor following a material change in circumstance,</p>	<i>Conclusion</i>		

	identified through a formal investigation.			
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4. Network Rail's engagement with stakeholders to support effective delivery

This section explains how we hope to facilitate strong stakeholder engagement to achieve better outcomes for the railway.

Ref	Description / narrative	Status	Cons ref	Concl ref
4.1	Network Rail's routes and SO should lead engagement with customers and stakeholders.	Conclusion	Chapter 4 summary	
4.2	Other parts of Network Rail will also need to engage with and be responsive to stakeholders' views.	Emerging view		Chapter 2
4.3	In general, ORR will not be prescriptive in determining how Network Rail routes and the SO should engage with stakeholders. ORR will set some minimum requirements and best practice principles.	Conclusion	Chapter 4 summary	4.25
4.4	We are more prescriptive about how Network Rail engages in certain areas, where necessary/appropriate (e.g. changes to track access agreements).	Information		
4.5	At a minimum, each route and the SO should support stakeholder engagement by: <ul style="list-style-type: none"> • Having a CP6 strategic plan that reflects stakeholders' priorities; • Developing scorecards with stakeholders; • Using annual business plans and / or action plans to set out in more detail what the route/SO is seeking to achieve, how this reflects stakeholders' priorities and what this will deliver for stakeholders; and • Discussions on a bilateral and multi-lateral level to 	Conclusion	4.11	4.21-4.23

	complement the approaches above, where necessary/appropriate.			
4.6	Principles for stakeholder engagement are that engagement is: <ul style="list-style-type: none"> • Effective, enabling stakeholders to influence priorities and challenge where necessary. Engagement should be proportionate; • Inclusive, involving all relevant stakeholders without undue discrimination; • Well-governed, with processes that encourage meaningful engagement and accountability, as well as providing for challenge and escalation; and • Transparent provision of performance information, and on how engagement has been taken into account. 	<i>Conclusion</i>	4.16	
4.7	ORR will use the information from its assessment and grading of the extent to which the routes and SO's strategic plans reflected engagement with stakeholders (including how they took account of different stakeholders' priorities) when deciding the appropriate scope of and approach to the CP6 assessment. Over CP6, there will be a regular assessment of the routes'/SO's effectiveness at engaging with stakeholders.	<i>Conclusion</i>	4.19	4.36-4.38
4.8	Ongoing engagement will be assessed consistent with the principles of effective stakeholder engagement.	<i>Conclusion</i>	4.20 and 4.21, 4.24	
4.9	ORR's assessment would take account of any assessment undertaken by Network Rail.	<i>Conclusion</i>	4.22	4.39
4.10	ORR will assess the quality of stakeholder engagement through: <ul style="list-style-type: none"> • Stakeholder feedback (e.g. questionnaire or route board reporting); 	<i>Emerging view</i>	4.22	4.39

	<ul style="list-style-type: none"> Grading routes' and SO's governance processes and ongoing implementation (e.g. through maturity assessment); and/or Independent assessment / input. 			
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5. Our approach to monitoring and enforcement in CP6

This section explains how we expect to gauge Network Rail's performance, the range of action we might take in the event of good, poor, or unacceptable performance, and how we propose to use reputational incentives to drive improvements.

Ref	Description / narrative	Status	Cons ref	Concl ref
5.1	Comparisons will be made across routes / the SO (in order to support effective reputational incentives), including where we have identified good practice as well as where we have concerns.	Conclusion	5.8	5.17-5.18
5.2	ORR will establish a balanced set of incentives on Network Rail that reflects its business structure and public sector status, and provides clear benefits for good performance and clear costs for underperformance. These incentives will include a number of new potential incentives, including reputational, procedural and management incentives.	Conclusion	5.5	5.9, 5.35
5.3	Route/SO-level scorecards are to be used by Network Rail to link employee rewards with the performance of their route or business unit. <i>(Note: this is a decision for Network Rail, not ORR)</i>	Emerging view	5.11	
5.4	ORR will use the assessment of route and SO engagement with stakeholders to inform and prioritise the level of our monitoring activity and other interventions, creating a procedural incentive.	Conclusion	5.10	5.28
5.5	As a general principle, where stakeholders have strong mechanisms to hold Network Rail to account, ORR will give these mechanisms space to work.	Conclusion	5.10	

5.6	Any formal action would be informed (as currently) by good practice regulatory principles: proportionality; targeting; consistency; transparency; and accountability.	Conclusion	5.31	5.30
5.7	Where overall financial and operational performance is better than, or in line with, expectations, ORR would likely rely on: <ul style="list-style-type: none"> • Routine publications that compare relative performance against targets and over time, highlighting good practice (e.g. Monitor; route level regulatory accounts); • Routine engagement with route/SO management teams and stakeholders; • Targeted monitoring in areas where local stakeholders do not have the interest or capability to engage; and • Assessment of stakeholder engagement, with increased ORR engagement and provision of information to stakeholders if a route/the SO is not engaging effectively. 	Conclusion	5.19-5.21	
5.8	Where performance is worse than expectations, but there is effective stakeholder engagement, ORR would closely monitor the progress of Network Rail / stakeholder discussions and their effectiveness in improving performance. Beyond this, ORR would not automatically increase its information or reporting requirements or escalate issues (but may choose to do so, in light of its own assessment of risks).	Emerging view	5.28	
5.9	Where performance is unacceptable ORR could consider: <ul style="list-style-type: none"> • Placing additional requirements on Network Rail, such as the production of and compliance with an improvement plan; • Calling Network Rail's management to attend a formal industry meeting; 	Straw man	5.32	

	<ul style="list-style-type: none"> Formally notifying the Secretary of State and/or Scottish Ministers where there has been, or is likely to be, a breach of licence; or Applying a 'sanction' to route level regulatory accounts, where there would be an associated impact in management pay (N.B. there would be no impact on the funds available to Network Rail). 			
5.10	We may restructure Network Rail's obligations in the network licence to better reflect the separation of functions between its routes, the system operator and its other functions (with all obligations still being owed by Network Rail as a company).	Strawman		5.32-5.33, 5.35
5.11	The network licence review will also consider reforming the drafting of licence obligations more generally to ensure they are clear, up to date and fit for purpose and reflect any necessary changes in PR18. This will include consideration of overarching licence conditions, as well as more specific reasonable requirements (as referred to in the current licence condition 1).	Conclusion		5.33
5.12	ORR's economic enforcement policy and penalties statement for CP6 will seek to be clear, fit for purpose and practical in light of route regulation and our focus on the SO.	Conclusion	5.27	

6. Managing change

This section explains how we intend to manage changes throughout CP6, retaining a clear link back to our determination and settlements whilst allowing Network Rail the flexibility to manage its business and respond to changing circumstances.

Ref	Description / narrative	Status	Cons ref	Concl ref
6.1	Potential changes in CP6 could affect: <ul style="list-style-type: none"> the routes'/SO's ability to plan effectively; 	Info	6.4	

	<ul style="list-style-type: none"> the accountability of routes/the SO to stakeholders and ourselves; and the ability to compare across routes. 			
6.2	<p>We envisage a number of sources of change, including, but not limited to:</p> <ul style="list-style-type: none"> Organisational changes – Substantial shifts in responsibilities between business units; Geographical changes – Changes in route boundaries; Financial changes – Substantial redistributions of individual routes’ funding; and Changes to what routes/the SO are expected to deliver during CP6. <p>These changes all apply at the level of settlements and would effectively reflect a shift in funding/outputs between routes (and the SO potentially).</p>	Conclusion	6.6	6.13-6.14
6.3	There will need to be appropriate adjustments for the impact of changes to the portfolio and delivery of enhancements on the settlement.	<i>Issue</i>	6.8	
6.4	<p>ORR involvement should be proportionate. Small changes will attract less scrutiny than larger ones. For:</p> <ul style="list-style-type: none"> Medium changes (that will have a material impact on the route/SO’s performance): appropriate stakeholder engagement should take place; and Large changes (that reflect a substantial change to our PR18 settlements): stakeholders should be consulted (except in emergency situations), and ORR would provide a formal opinion. <p>Small changes should be aggregated and adjustments to baselines made at year-end.</p>	Emerging view	6.12	6.23, 6.25

6.5	Network Rail will decide whether to implement a change or not, unless ORR considers that the proposed change fundamentally undermines our PR18 settlement.	<i>Straw man</i>	<i>Fig 6.1 and 6.19</i>	6.26
6.6	We will make the decision whether or not to amend the baseline at year-end, taking into consideration evidence of whether the change was justified or not.	<i>Emerging view</i>	6.19	6.45
6.7	If there is a material change in circumstances that affects large parts of the company, Network Rail can apply for a re-opener of the determination (as a whole).	<i>Info</i>	6.2	



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