ORR

Office of Rail Regulation

REGULATING BRITAIN'S
RAILWAYS IN 2009-14:

A CONSULTATION

ORR

OFFICE OF **RAIL REGULATION**

Contents

Foreword and summary

The prospects for Britain's railways are very different now than they were even five years ago. The mainline railway is carrying more passengers than ever before, has levels of reliability which are the highest recorded, and has an ever improving safety record which puts it among the best in Europe. It now has plans for continued improvement in safety, efficiency and performance, and extra capacity over the next five years. Last year's White Paper sought to build on this, and envisaged a railway capable in the longer term of handling double today's level of passengers and freight traffic.

Rising to that long-term challenge will require a transformation of the railway. It will require investment – possibly including new lines and certainly new track, signalling, stations and trains. It will require the industry to work together to plan and deliver that investment more effectively than in the past. And the railway will need to deliver consistently high safety and customer service, day by day, if the ever-increasing expectations of passengers and freight users are to be met.

It must do this while continuing to improve efficiency and value for money, and reducing its carbon footprint. The industry will need to be much more responsive and innovative in the light of changing demands and technological opportunities.

The planning to deliver this transformation needs to start now. We welcome the first tentative steps the industry is taking. But the pace needs to accelerate. The quality and timeliness of decisions we all make over the next five years, and the commitments that result, will be critical to the long-term future of the railways.

As the industry's regulator, we have changed over the past five years – with the move to a Board structure in 2004 and with the merger of safety and economic regulation in 2006, which more than doubled the size of the organisation. We have overseen significant changes in the structure of rail safety regulation with the introduction of the Railways and Other Guided Transport Regulations 2006 (ROGS), and are close to completing the periodic review of Network Rail's outputs and revenues. We have also made significant improvements in our monitoring of industry performance and shown our readiness to take action to ensure where

that monitoring has demonstrated a shortfall.

But we will need to change further over the next five years if we are to play a full role in helping the industry respond effectively and in a timely way to the challenges it faces. That is the background to this document.

Clearly, as the industry's independent regulator, we will need to continue to do our core job of securing safe and effective delivery, so that railway users and funders get the railway services they are paying for. We must prepare for and deliver the next periodic review and work to improve the framework of accountability and incentives in the industry. We need to pursue continuous improvement in the way we do this, building on what we have achieved under our current strategy.

We will focus our work on the outcomes which we believe are most important to the industry and its customers in meeting the future challenges, and where we can add most value. These are: promoting the interests of customers; achieving ever better value; improving the management of the industry's assets (including its people); and making partnerships more effective. We should judge our success by what we achieve under these headings.

This is a development of what we do already. But this is unlikely to be enough in view of the scale of the challenges the railways face. So we are proposing that we should play a bigger role in identifying the longer-term issues and pressing the industry and Government to address them in timely and innovative ways. For instance we could do more to facilitate some of the key decisions that will be needed in the next few years over issues such as new signalling and control systems; electrification; and the need for extra capacity to relieve an increasingly full network.

We could also do more to address issues of direct interest to rail passengers and freight users, such as fare structures and ticket retailing, to complement the role of Passenger Focus and the role of Government as the provider of subsidy for the railways.

Our distinctive contribution to the railways derives from our independence. We can challenge and ask questions of the industry and of Government, backed up by analysis and evidence and use of our regulatory powers. We believe that competition and market mechanisms can make a big contribution to the development of a more responsive and efficient industry, but recognise these will not always work and that regulation will be needed. We can and will take a longer-term view of the industry.
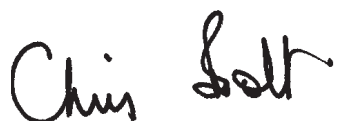
Much of the discussion of our proposed strategy focuses on the mainline railway for which we have extensive economic regulation responsibilities. But we also recognise the importance of our health, safety and competition responsibilities for all railways in Britain and will adopt an approach aligned with that for the mainline railway.

We recognise too that we will need to invest in our own capability and relationships to meet the challenges we face.

In developing our proposed strategy, we need to hear your views on how we can add value – what our priorities should be and what we need to do differently – to help ensure that railway users and funders get the railway services they expect and are paying for, both now and in the future.

The ideas in this document have been developed in the light of initial discussions with a range of stakeholders and engagement with our own staff. We now want to hear views of all our stakeholders on how we as independent regulator can, over the next five years, make the best contribution to the railway industry meeting the short and longer-term challenges it faces. How can we best add value to what the industry is itself doing? What should our priorities be, and what do we need to do differently?

We welcome written responses by 1 October 2008, but also welcome informal discussion. We will then update you on our emerging strategy before confirming it in December.

Chris Bolt
Chairman

Bill Emery
Chief executive

OFFICE OF **RAIL REGULATION**

1. What should our strategy aim to achieve?

The challenge

1.1 The railways in Britain have been successful in recent years in attracting customers and improving safety, performance and efficiency. For the mainline railway, the industry's own plans, the specifications set by Government, and our periodic review of Network Rail's access charges and outputs, plot the course for the next five years. Performance and safety will need to continue to improve, alongside significant investment in improved capacity to meet the growth in demand. To make the necessary improvements affordable, both to the funders and users of the railways, the industry - Network Rail, train operators, and suppliers - will need to continue to improve efficiency. In itself, delivering improvements in 2009-14 will present significant challenges and require significant changes in the way the industry operates. Other railways, notably the London Underground, face similar challenges.

1.2 But the longer-term challenge is even more daunting. There is widespread acceptance that there will be further significant increases in demand for rail transport. For the mainline railway, the Government has said that its ambition is for a reliable network that can handle double today's level of passenger and freight traffic - the graph on the next page highlights the size of this challenge. Alongside this growth passengers and freight customers are likely to demand ever better quality and service.

Illustrative passenger-km trajectory to 2037
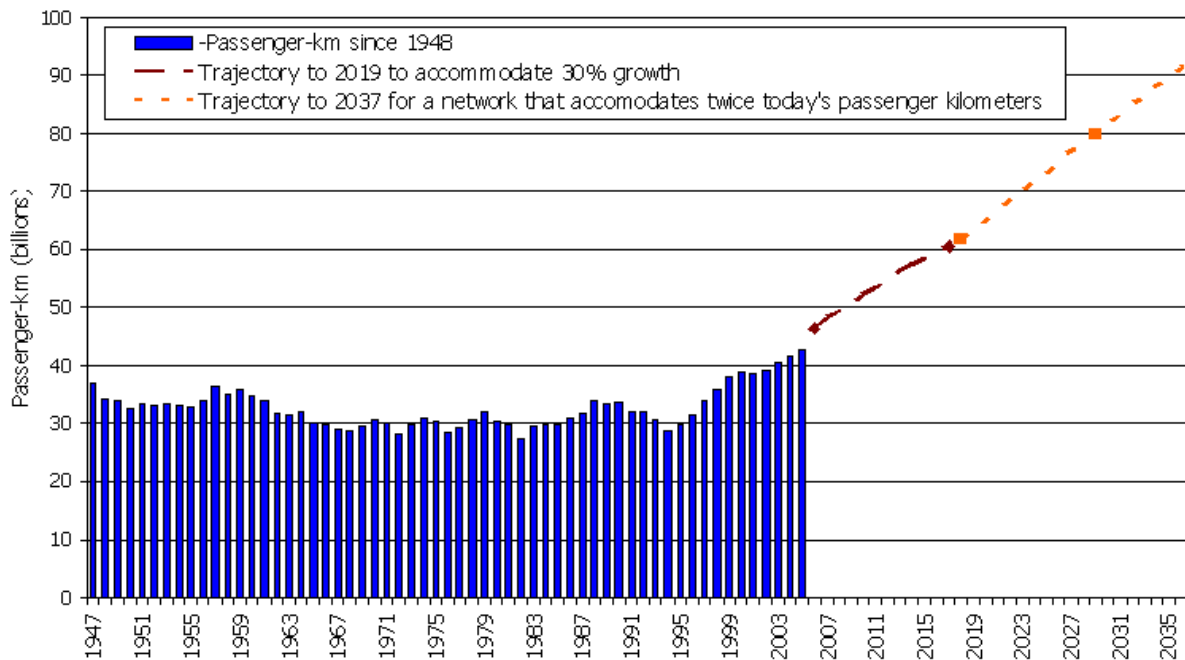
1.3 The Government has highlighted policy challenges for transport[1] and thus the railways:

- climate change;

- competitiveness and productivity;

- equality of opportunity;

- health, safety and security; and

- quality of life and the natural environment.

Scottish Ministers similarly see rail as having a key role in meeting their policy objectives.

1.4 All this will need to be done with ever increasing efficiency and in a way which responds to the changing expectations of the market and external environment and exploits opportunities for technological innovation.

1.5 These challenges will need to be met against a background of increasing internationalisation of markets for the supply of railway equipment and expertise, the Department for Transport's multi-modal approach to transport planning, and the likely further decentralisation of specification and funding responsibilities to devolved governments (as already done in Scotland) and regional funders.

1.6 These challenges to the industry are also challenges to us. Our strategy must answer questions about our approach to regulation and set out what we need to do differently.

---

1 See: http://www.dft.gov.uk/about/strategy/transportstrategy/tasts/tastsletter.

A focus on outcomes

1.7 Our previous corporate strategy was driven by the requirements of the new periodic review process and the merger between ORR and HSE Rail. Thus it was heavily focused on the regulatory activities we were planning to carry out. We believe that our future strategy needs to focus more on the railway service outcomes resulting from our strategy – **what we achieve as regulator rather than just what we do.** This is a significant change in our approach.

1.8 Thus the most important test of our success as a regulator is the success of the railway industry in meeting the needs of its customers and funders and addressing the immediate and longer-term challenges it faces. Our approach is therefore to set out key areas on which we believe the industry needs to focus if it is to meet these challenges and where we can make the most effective contribution as independent regulator.

Vision

1.9 Our assumption for this strategy is that we wish to see an industry that:

- responds positively and creatively to the changing needs and expectations of passengers and freight customers;

- seeks continuous improvement in safety as an integral part of business improvement;

- maximises value for both users of railway services and taxpayers; and

- plays a full part in economic growth and meeting the challenges of sustainable development.

Our contribution as regulator

1.10 Our role is to create the conditions for that success and to challenge the industry to do more – to be an enabling and challenging regulator. Our distinctive contributions to the industry are that:

- we take a view independent of Government and of individual industry parties, backed up by an evidence-based approach and by effective use of our regulatory powers;

- we encourage decentralisation of decisions closer to the user as the most likely means of arriving at optimum solutions for the user;

- we promote market mechanisms and competition where they work, but we recognise that regulation has a role where competitive markets do not exist or where markets fail; and

- we take a long-term view.

Our strategic themes

1.11 We have identified five key themes to guide our regulatory priorities:

- better promoting the interests of **customers** of railway services (both passengers and freight users);

- striving for ever better **value** year on year;

- promoting ever better **long-run asset management** across the whole industry (where a key industry asset is its people);

- promoting the development of effective **partnerships** within the industry as a key means of aligning incentives and facilitating success; and

- investing in our **relationships** with our stakeholders and improving our **capability** to carry out our roles effectively.

1.12 In carrying out our functions we are required to pursue statutory objectives set out in the Railways Acts and in health and safety, competition, and European legislation. We will of course continue to do this, but would expect to use our key themes to guide the way we prioritise our work and balance our objectives.

1.13 We propose to define outcomes under each of these themes, which if met, would, in our view, mean that the industry is addressing the challenges it faces. We would test our success as regulator by the delivery of these outcomes and our contribution to that delivery. We will report annually whether the outcomes are being delivered and on our contribution.

1.14 The outcomes reflect the delivery challenge of 2009-14 but also the longer-term challenge.

The 2009-14 delivery challenge

Customers

1.15 As a minimum, the industry must over the next five years deliver the capacity, performance and safety requirements set by governments in England and Wales and in Scotland. But if it is really to be successful in responding to passenger and freight customer expectations we believe it must aim beyond this and its success should be judged by:

- improvement in passenger satisfaction as measured by the Passenger Focus surveys;

- further continuous improvement in passenger and public safety; and

- further improvement in freight customer satisfaction. We will consider whether we should do more to ensure better measurement of this.

Ever better value

1.16 The rail industry still faces a huge challenge to improve value for money delivered to customers and taxpayers. This is not just a matter of reducing costs – improved customer satisfaction is also important. But in 2009-14 it will be important that Network Rail meets the efficiency targets set for it, and, working with its industry partners, aims to beat them. We propose to extend measures of wider industry efficiency and comparisons with peers in other sectors and overseas. This will enable us to monitor the industry's overall progress and thus the success or otherwise of the framework that is in place.

Ever better management of assets

1.17 The people who work in the industry are central to the safe and efficient delivery of rail services. The industry and its constituent companies need to have strategies in place to develop and harness the skills of their people. A further challenge will be the achievement of further continuous improvement in employee safety to match improvements in comparable sectors. For the mainline railway this means improving significantly on the Government specification of a 3% reduction in the risk of death or injury to passengers and employees. In addition we believe the industry needs to give greater priority to occupational health, starting with consistent data collection and promoting benchmarking and good practice across all railway companies.

1.18 In terms of the physical and information assets of the industry, the industry has a long way to go towards best practice in asset management. This was highlighted by the work done for the current periodic review which showed that Network Rail's approach was still very reactive rather than strategic. We will develop a way to measure the quality of asset management based on the benchmarking approach used in the periodic review.

1.19 The industry has now begun to monitor its environmental performance and we would expect a measurable improvement in this over the 2009-14 period.

Partnership

1.20 Cooperation between different companies and organisations in the rail industry will be essential to planning and delivering a better, more efficient, and more sustainable railway. One–off cooperation is unlikely to be adequate – experience has demonstrated the need for effective long-term partnership. Network Rail plays a key role in many industry partnerships and we would expect it to achieve a significant improvement in its own satisfaction ratings from train operators and other stakeholders. We will also consider whether we can measure in a more quantitative way the effectiveness of key industry partnerships.

Our own effectiveness

1.21 We will continue to set efficiency and performance measures for ourselves as a regulator. We will use stakeholder surveys to monitor the effectiveness of our key relationships.

The longer-term

1.22 The lead-times in planning and delivering improvements to the railways mean that the work the industry does over the next five years will be critical to addressing the longer-term challenges. The industry, its constituent companies, and Governments, will need to end the period with plans and commitments containing:

- firm deliverables for 2014-19; and

- a robust and coherent longer-term strategy and vision.

1.23 These plans will need to show credible commitment to addressing longer-term challenges:

- more, and more demanding, customers. Thus, not only do the plans need to

address current customer needs but also look to the future (for instance the needs of longer-term growth and the 24 hour, 7 day demands of a modern economy);

- Government objectives such as sustainable development and economic growth;

- continuous improvement in value for money, including addressing poor customer perceptions of value; and

- a consensus on a technical strategy which sets out how the railway is to be delivered in the future and which facilitates further innovation.

1.24 In view of the scale of the challenges and the lead-times for addressing them, this work cannot be postponed. So a key test will be whether over the next five years such plans and commitments are put in place. The industry (particularly Network Rail and passenger owner groups) has begun work on this, but will need to step up the pace and is likely to need to step up the size of the commitment.

A strategy based on our themes

1.25 We propose to reflect the themes and the associated outcomes set out above in our priorities and the way we regulate. The following two chapters set out how we propose to do this:

- chapter 2 sets out the key things we will do, building on our existing approach; and

- chapter 3 asks whether this is enough, or whether we need to take a much more proactive role in shaping the response to the challenges the railways face.

Your views

1.26 Key questions for consultation on this chapter are:

- How do you believe we can best contribute to the rail industry meeting the challenges it faces and what are the implications of this for our priorities?

- Do you agree we should focus more on outcomes, and judge our success more by what we achieve there than what we do?

- Do you agree that the five strategic themes are key areas which should drive our priorities in the light of the challenges faced by the industry and where we can make a difference? Have we missed anything?

- What do you think are the changes we need to make in the way we operate and what are the implications for the skills and capabilities we need as an organisation?

2. Regulation in 2009-14

Introduction

2.1   Our core regulatory job covers:

- making the **framework** of incentives, accountability and competition in the industry work more effectively;

- securing **delivery** by the industry of its regulatory obligations;

- planning and executing a successful 2013 **periodic review** of the mainline industry, building on the 2008 review and with much greater and earlier strategic input and involvement from the industry; and

- improving our own **effectiveness** as a regulator.

2.2   We are the health and safety regulator for all railways and tramways in Britain; we are the competition authority for railways and services relating to railways; and we have a much wider range of economic regulation responsibilities for the mainline network. We are the regulatory body and national safety authority under European law.

2.3   This chapter sets out how we propose to carry out this core job in the light of the approach set out in chapter 1, building on the experience of recent years. Our key themes will inform and prioritise the way we carry out this job. Much of our work already reflects the key themes – for instance our work on passenger safety, securing Network Rail delivery, and aligning incentives through the periodic review, are key ways in which we protect the interests of customers.

The industry framework

2.4   The mainline rail industry works under a structure of contracts, codes, rules and standards which create a framework of accountability, incentives and competition. The effective operation and development of this framework is critical to the industry's ability to respond to the immediate and longer-term challenges it faces.

2.5   We have a statutory role in major parts of this framework, particularly those concerning Network Rail's role as owner and operator of the mainline rail infrastructure, and access to that infrastructure by train operators. We approve or direct track, station and depot access agreements and access charges thus ensuring fair access to essential facilities. We issue and enforce licences and have approval and appeal roles under key industry codes. We back up the contractual regime by the use of our other levers to ensure that Network Rail becomes more responsive to the needs of train operators and customers. We believe there are benefits in extending the degree of independence in the regulation of access to the channel tunnel and the channel tunnel rail link, and Government is considering this.

2.6   Our responsibilities for the safety framework extend beyond the mainline railways. We can make, or advise the Secretary of State to make, changes to safety guidance and regulations. The Railways and other Guided Transport Regulations 2006 (ROGS) made major changes to the framework for safety management and regulation. We are carrying out a comprehensive review of the impact of the changes and will implement lessons from that review.

2.7   In carrying out our statutory obligations we will reflect the priorities set by our strategic themes. We will continue to seek opportunities to reduce unnecessary regulatory burdens and to seek to improve the timeliness and transparency of our decision-making.

2.8   We believe that in our responsibilities for the industry framework we add most value by using our powers to ensure that the framework, both procedures and incentives, facilitates and enables effective cooperation to address short, medium and long–term issues. Experience has shown that productive and sustained cooperation requires effective partnership working across the industry.

2.9   We cannot force such partnership working to happen. What we can do is to identify and help to provide the conditions (particularly alignment of incentives) for successful partnerships, and facilitate their creation and operation. Generally we do not prescribe specific solutions – it is likely to lead to a better result if we focus on identifying problems and ensuring the industry addresses them. There is no single approach to effective partnerships and we will encourage the testing of different approaches and lessons being learned.

2.10   When partnerships are not working effectively, parties to individual contracts should be empowered to take the necessary action – we do not generally enforce the terms of key contracts. But we do provide a safety net through the powers we have (for instance under licences) to deal with systemic failings that are not easily addressed by the individual relationships. We play a role as "honest broker" to identify and deal in a timely and efficient way with blockages and disputes, and to facilitate change, and we intend to develop this role.

Example: Introduction of new technology requiring installation of new equipment on both track and trains

Our general approach to date has been to focus on the framework, with projects like new telecommunications systems being dealt with through the industry standards and contractual arrangements, with ORR involved in setting that framework and then acting as the ultimate appeal body. This runs the risk that important projects are delayed and become more costly pending resolution of the commercial principles and processes underpinning their implementation.

We could do more to ensure these issues are resolved early on. We could take a more proactive role in monitoring projects of this nature, and highlighting issues that appear to be causing delay or unnecessary cost. If there were a safety concern about the delay, then, as now, we could take action to require delivery. If there are difficult commercial and process issues which cannot be resolved by the industry we could act as an "honest broker" identifying solutions earlier in the process.

2.11 The industry framework needs to reflect the increased funding and specification responsibilities of devolved, regional and local governments and we will foster development of this. A key element of this will be the need to balance different interests on different parts of the network. Our investment framework seeks to incentivise and facilitate new investment in the railways, and we will ensure this works effectively and responsively.

2.12 We are the competition authority for railways and their sources of supply in Britain[2] – not just the national network but also other railways such as the London Underground. We encourage competition where it is likely to work in the interests of customers and efficiency, and will continue to carry out studies of the effectiveness of markets and recommend improvements. We see effective competition as being particularly important in the markets for the supply of services to the railway industry, rail franchises and rail freight. We will be reviewing the results of direct competition by 'open access' passenger services.

2.13 We publish a range of rail statistics, but we also have a wider role in ensuring the availability of timely and accurate information for decision making in the industry. We will do more to ensure better availability of such information (for instance about costs).

2.14 European Union policies and legislation are increasingly part of the framework for the railways in Britain, and as the economic regulatory body and safety authority we advise on policy development and implementation. We aim to carry out our increasing range of responsibilities under EU legislation in a way that furthers the EU objectives of railways becoming more competitive in the transport market, and our objectives for railways in Britain. We are already in a strong position to influence emerging EU policies, and to advise government on how they should be implemented in Britain. We will do more to assess the likely and actual impact of EU policies, and to shape a

2   We exercise this jurisdiction concurrently with the Office of Fair Trading.

strategy for effective and efficient response. In particular, over time, domestic processes and policies will need to evolve in the light of EU developments.

Securing delivery

2.15 We are responsible for:

- ensuring effective management on the railways of health and safety risks in accordance with legal obligations; and

- holding Network Rail and the industry to account for delivery of all the requirements set by the periodic review and compliance with relevant licences and competition legislation.

2.16 We do these jobs by means of our enforcement powers backed up by monitoring, inspection and influence. There is no 'one-size fits all' approach, but our general principles are:

- our approach is driven by our statutory responsibilities to monitor and secure compliance, regulatory principles of transparency and proportionality, and stakeholder expectations of effective and timely regulatory action;

- currently our inspection work is focused on health and safety, though we share information and intelligence from inspectors across the office, and plan to improve the effectiveness of this. We do extensive monitoring of data on industry safety and economic performance, and use independent reporters to validate economic information we receive;

- we set our priorities according to risks, using our monitoring and inspection to help identify key risk areas and are prepared to challenge companies to address emerging problems. If we identify problems or emerging problems we escalate our involvement. As health and safety regulator we have published topic strategies setting out our approach to the key risk areas. We will consider whether we should take a similar approach for our economic enforcement responsibilities, and how far we should integrate the approaches;

- we focus on systems and systemic problems, but this is supported by a targeted programme of on-the-ground inspection and checking. We employ our inspectors to fulfil our safety responsibilities; currently there is a more limited checking role for the independent regulatory reporters for our economic responsibilities. As we implement our strategy we will consider how we make best use of inspection and whether there would be benefits in a wider role for our inspectors; and

- where we can intervene early to head off emerging problems we aim to do so, but we do not micromanage delivery by the industry. Nor do we just stand back and wait for problems to happen and then take regulatory action. We aim to incentivise future compliance as well as address current failings.

Health and safety

2.17 We have an established health and safety enforcement policy and risk-based topic strategies which we will review in the light of the development of our strategy and regularly refresh. In doing this we will address the following points:

- reducing the risk of train accidents must remain a key priority for us, but we need to consider whether we should put more effort into addressing other major sources of risk. As noted in chapter 1, we see improving employee health and safety as a key priority for the industry; the government specification also highlights the importance of passenger slips, trips and falls. We will also consider whether we should put more work into addressing risks to the general public and whether we should take a wider view of passenger safety to include passenger welfare and personal security;

- the scope for capital investment to achieve step change improvements in safety is less than it was in the past, which means more emphasis on people, systems and processes. But there remain opportunities to achieve improvement in safety through targeted investment (e.g. on high-risk level crossings) and building in better safety as part of other schemes (e.g. improved employee safety as part of signaling renewal). We will also consider whether we should set the industry some specific goals for addressing safety concerns – for instance reduction in and possibly ultimate elimination of 'red zone' working on the track outside engineering possessions;

- the need to ensure that risks associated with the pace and scale of change in the industry are addressed;

- the need to ensure the right balance between work to check on the systems in place to manage risks and work to check on delivery;

- the balance between the resources we put into the mainline railway and the resources we put into other railways and tramways; and

- our role in the establishment and monitoring of industry standards. We already have a project in hand to review this.

Our approach to health and safety regulation

Our health and safety responsibilities cover all railways and tramways in Britain. Core principles of our regulatory approach are:

- continuous improvement in health and safety performance can be achieved by continuous improvement in management, competences and processes;

- it is the responsibility of those who create risks to manage them;

- all companies and organisations have an individual duty to manage risks so far as reasonably practicable alongside any specific regulatory requirements; and

- the overall management of risk must be a joint effort that involves the workforce and all of the companies and organisations in the industry.

We set our priorities according to risk, using our monitoring and inspection to help identify key risk areas. We publish topic strategies setting out our regulatory approach to these key risk areas. Currently our main focus is on high consequence incidents like train accidents. However, these events are now rare and most people, whether they are passengers, workers or the general public, who are harmed on the railway are involved in events that are not train accidents. Clearly, reducing the risks of train accidents must remain a high priority for us, given their potential for major loss of life in a single event and the damage they can do to public confidence in railways. But we will consider whether we should put more effort into addressing other major sources of risk.

Effective and efficient management of health and safety depends on having good systems in place and ensuring these are used appropriately on a daily basis. Getting the balance between our regulatory activity at the two levels is important and depends on a range of factors, particularly where we can be most effective and the degree of confidence we have in industry delivery.

The delivery of safety on the national rail network not only requires effective control of risks by individual duty-holders but also requires them to co-operate to manage systems that control shared risks. For example, the train protection and warning system is a key element in the control of the risk from signals passed at danger. It has on train and on track components and requires cooperation between Network Rail and train operators to ensure it remains fit for purpose over its lifetime, which is now much longer than originally intended. We will want to ensure that a framework is in place for this cooperation.

It is a duty holder's responsibility to manage safety. We will use our enforcement powers, in line with our enforcement policy, if necessary to ensure they do this effectively. Our aim is prevention - acting only after accidents have happened is of limited benefit to those affected. Where we become aware of significant, unmanaged or inappropriately managed risks to health and safety we can and do intervene. We may give advice, issue improvement and prohibition notices, and in appropriate cases prosecute.

Network Rail

2.18 Our approach to enforcement of Network Rail's periodic review outputs will be set out in our 2008 periodic review determinations[3]. We expect the determinations to set challenging efficiency and delivery targets for Network Rail and for these to be reflected in Network Rail's 2009-14 delivery plan which will set out its commitments to fulfil the obligations. Network Rail will need to develop its capability to meet its obligations and we will press the company to do this. Network Rail is also likely to need to review the adequacy of its governance structures in the light of the challenges it faces.

2.19 We will monitor and enforce Network Rail delivery against the determinations, and also against the reasonable requirements of train operators and funders including those set by the delivery plan, and against its other licence obligations. We will do our own monitoring and reviews but we also expect Network Rail to work with train operators through mechanisms such as joint performance improvement plans, route plans and station plans, with us intervening in the event of significant failings in process or delivery.

Example: A spate of failures of a particular Network Rail asset type

Our focus has been and remains on the outputs we have defined for Network Rail through the periodic review process. In 2009-14 passenger performance measures will comprise the public performance measure, delay minutes and severe delays. We will monitor these and then if the company is failing to deliver against them, or appears unlikely to do so, we will investigate and take any necessary licence action.

We will monitor asset failures by type of asset. We would not generally expect to take formal action in the event of a specific type of failure unless it threatened delivery. We would however consider this if it appeared to have wider importance or represent a systemic failing – for instance if it appeared to be a precursor to wider failings, or if it raised questions about the ability to innovate to improve the railways. We would also take action if the asset failures created concerns about safety.

Other obligations

2.20 As well as our responsibilities for monitoring and enforcing health and safety obligations and Network Rail's obligations, we enforce licence obligations of train operators, and competition law in the rail sector.

2.21 With the extension of European Union technical specifications for interoperability we will have wider enforcement responsibilities covering, for instance, customer concerns such as the needs of passengers with reduced mobility. We will develop our enforcement approach for this.

2.22 Sustainable development is an increasingly important issue for government and society as a whole. The rail industry has done and is continuing to do a lot of work to improve its contribution to sustainable development, and a more efficient and responsive

3 *Periodic review 2008: draft determinations*, Office of Rail Regulation, June 2008. This document can be accessed at: http://www.rail-reg.gov.uk/upload/pdf/368.pdf.

industry is key to that. Our focus has been on monitoring rail's contribution – we will consider whether we should be doing more to help and ensure the industry enhances its contribution.

Periodic review 2013

2.23 Our periodic review of the mainline railway and, more specifically, Network Rail's outputs and funding for the period 2014-2019 and the processes leading up to it, will be a key contribution to all of our strategic themes. Key milestones for the review are:

- during 2011 production of an industry plan setting out the industry's view of what is needed and robust costed options for how it is to be delivered safely and efficiently;

- 2012: Governments in England, Wales and in Scotland produce specifications of what they want the railways to deliver and how much money they have available; the industry through Network Rail produces a plan for delivery; and

- 2013: we conclude on the review.

2.24 We will be consulting on the process for the review during 2009.

2.25 Key differences in the 2013 review compared with the current review will be:

- there needs to be much stronger industry input into the development of the government specifications. We expect the industry, led by Network Rail, owner groups and train operators, to develop credible plans and options by 2011 for what it considers should be delivered in 2014-19;

- the review needs to be based on a longer-term perspective reflecting the longer-term challenges faced by the industry; and

- the review needs to reflect the most efficient whole-industry view of what needs to be delivered and how.

2.26 We will do preparatory work in advance of the review, particularly:

- pursuing much more extensive benchmarking, building for instance on the international comparisons done as part of the current review, and taking more of a whole industry view;

- ensuring better information both on Network Rail and whole industry costs and the linkages between them;

- pressing development of robust demand forecasts and scenarios;

- pressing the use of best practice long-term asset management in Network Rail and elsewhere, covering physical and information assets;

- reviewing key aspects of industry capability, and how future needs can be addressed. People are a key asset in the industry, and this is recognised for instance in Network Rail's apprentice and graduate training programmes. Given the pressures in the future (for instance a supply market facing increased global demand), is enough being done to ensure the availability of the right people with the right competences for the future?

Example: Benchmarking

A key part of our 2008 periodic review has been the comparison of Network Rail efficiency with that of other railways in Europe and elsewhere. We have done this by statistical comparisons and by looking at specific examples of good practice.

We could develop this benchmarking approach to cover:

- safety, performance and delivery as well as just efficiency;
- whole industry costs rather than just infrastructure costs; and
- comparisons with industries other than railways such as other relevant service sectors.

It is likely again to be an integral part of the periodic review process. We could make it more of a continuous process, for instance through regular assessments, to highlight opportunities for improvement and learning from good practice.

Improving our capability and effectiveness

2.27   We pride ourselves on being an open and consultative regulator. Relations with the full range of our stakeholders are a key part of our effectiveness and we propose to develop a more structured approach to this. We are also reviewing the effectiveness of our consultation processes against best practice.

2.28   We will ensure that we have in ORR the capability and competence we need to deliver our strategy and respond to the changing industry environment. It is also important that we set ourselves demanding targets for efficiency and the timeliness of our decisions and adopt best practice from comparable organisations.

2.29   Our governance, including in particular the role of our Board in overseeing our strategy and making key decisions, is a key part of the way we operate. We have in place risk management processes and will continue to develop these in the light of the challenges we face.

2.30   We will do more to understand the impact and effectiveness of our regulatory actions through development of impact assessments. This will help us assess how we carry out our new responsibility[4] to minimise unnecessary regulatory burdens on the industry. More generally we aim to keep under review all the work we do and reduce our commitment to those activities that are not adding value in terms of what they achieve.

---

4   Under the Regulatory Enforcement and Sanctions Bill currently before Parliament

Your views

2.31 Our approach set out above is essentially a continuation of our existing approach, and reflecting the lessons of our current corporate strategy, the 2008 periodic review and the integration of safety and economic regulation. Key questions on which we seek your input are:

- Do you have any comments on our proposed approach?

- Do you consider that there are further changes we should make in the light of experience of our current strategy?

- In what ways could we be more effective in delivering it?

- What should we do less of?

3. Meeting the long-term challenge

What should we do differently?

3.1 We outlined in chapter 1 the scale of the challenge the industry faces, and the desired outcomes by which we would prioritise our regulatory activity. In chapter 2 we outlined the key things we currently plan to do as independent regulator in the light of what the industry needs to deliver in 2009-14. Essentially this is an evolutionary development of our existing strategy.

3.2 This chapter considers whether what we propose in chapter 2 is enough in view of the longer-term challenges the industry faces. Are there areas where we can and should adopt a more radically different approach?

3.3 It is not our job as regulator to take key strategic decisions for the industry or for governments. However, we could play a more leading role in shaping the response to the challenges faced by the railways by:

- highlighting what needs to be done and the choices that need to be made;

- identifying possible solutions based on good information and analysis;

- pressing the industry and governments to respond in a timely way and try different approaches; and

- taking on, or proposing that we take on, new regulatory responsibilities where independent regulation would add value.

3.4 We can do this in those areas where we have specific regulatory functions, and also in other parts of the industry – as independent regulator we have a duty to keep under review the provision of railway services in Britain and elsewhere. We would bring to this an independent view, without political or commercial motivations but based on evidence, and a longer-term perspective. This could be of significant benefit to industry parties and to governments.

3.5 Generally we have not advocated major structural or legislative change in the railway industry, though clearly if the industry fails to deliver and respond to the challenges it faces, more radical options will need to be considered. We believe there are opportunities for evolutionary changes to make the industry work better and more efficiently and to try out different approaches.

3.6 We could review, as independent regulator, aspects of the working of the industry structure and put forward proposals for improvement. Such reviews could be wide-ranging, encompassing, for example, long-range planning, franchising, rolling stock procurement and provision, institutional, and organisational arrangements.

3.7 We have identified specific areas where we could make a bigger contribution to identifying and shaping the industry agenda and pushing forward improvement in ways that will contribute to the improved industry outcomes we are seeking:

- more credible customer protection;

- innovative ways of achieving better value; and

- better alignment of the industry with longer-term needs.

At this stage this is not an exhaustive list – it is intended to highlight some areas where we could make a difference.

More credible customer protection

3.8 We already do a lot to promote the interests of customers of the railways – the passengers and the freight shippers. For instance, holding Network Rail to account for delivery to train operators helps them meet the needs of their customers. Making improved customer satisfaction an outcome by which we will judge our success will of itself focus our work much more effectively on the customer. But as independent regulator we could:

- highlight and make more transparent the policy choices faced by government and ourselves, and the delivery choices faced by the industry and the likely implications of those choices – for instance on fares and ticketing policy;

- ensure improved evidence on the customer experience and the result of policy choices (for instance better information on the extent of overcrowding, better measurement of customer perceptions in the freight market);

- seek more effective ways to align Network Rail's incentives with train operators and passengers and freight users;

- facilitate the further decentralisation of specification and delivery decisions closer to the customer - for instance through information on costs and disaggregated outputs, and by balancing different interests; and

- improve the credibility of passenger protection arrangements by taking a wider role. In other sectors the independent regulator already has such a role; in the rail sector Government has a bigger role through franchise agreements. There could be areas where either using general consumer law or specific railway requirements we could provide more effective and responsive passenger protection.

Example: Improving accessibility for disabled passengers

There is an increasing recognition that the railways need to do more to improve accessibility for passengers who are disabled. Some of this can be achieved through better management, some requires investment and thus impacts on government support to the railways.

We are now responsible (under the technical specification for interoperability) for enforcing the rules for rolling stock on the national network regarding passengers with reduced mobility. Separately, we enforce licence obligations requiring railway companies to establish and comply with disabled people's protection policies, reflecting the code of practice set by ministers. Licences are only granted once DfT has reviewed and approved the individual train operator's policy. Government is considering extending our enforcement responsibilities for rail vehicle access to other railways beyond the mainline network.

The speed at which improved accessibility for disabled passengers is achieved is thus to a large extent a matter of public policy and funding to be determined by Government. As independent regulator, working with organisations such as the Disabled Persons Transport Advisory Committee, we could help highlight the choices and to secure dissemination of best practice, within the policy set by government. We could enforce the obligations through a combination of monitoring and inspection.

This could provide a model for independent regulation providing more credible regulation in other areas where the policy is set by Government.

Value and innovation

3.9   The approach outlined in chapter 2 will go a long way to promoting improved value. We have introduced incentives to outperform our efficiency trajectory and consider that these will deliver value but, even if Network Rail and the rest of the industry beat the efficiency expectations in 2009-14, there will be a need for further significant improvements. We need to consider what more we could do to address obstacles to improved use of existing assets and to innovatory ways of operating, maintaining, renewing and developing the railways.

3.10   For instance, given the scale of change and innovation the industry is likely to require, we could do more to facilitate thinking on how the industry can best succeed in making the changes that will inevitably be needed. This could include issues of organisational management and governance processes, industrial relations, manpower training and development, asset management policies and processes, safety legislation and safety management policies and processes, implementing new technologies and working methods, structuring and managing commercial relationships, and supply base management and procurement.

3.11   Our periodic review process focuses heavily on Network Rail efficiency; the franchising process incentivises improvements in train operator efficiency. There is less direct pressure on industry costs as a whole and evidence of misalignment of processes and

incentives (for instance lack of understanding of the impact on infrastructure costs before heavier trains were introduced). Efficient management of interfaces will become increasingly important - for instance, with new signalling systems and lighter trains. We believe we should do more to ensure an understanding of the whole industry implications of decisions, and to continue to improve incentive frameworks and procedural arrangements to ensure improved whole industry outcomes.

3.12 With greater clarity on what the railways need to deliver, the industry will need a more effective consensus on the best way of delivering it, and key decisions will need to be made and implemented, rather than delayed. We believe we should do more to improve the quality and timeliness of decision making by identifying issues and options and making clear what decisions are required, by whom and when. This could for instance be a means of helping move the industrys technical strategy forward and ensuring issues such as electrification, new signaling systems and new or expanded lines are addressed in a robust and timely way.

3.13 Vigorous competition in parts of the railway market – for instance much of the supply market, rail freight, and the market for passenger franchises – has created pressure to innovate and to improve value. We will continue to use our powers to improve the working of railway markets. We will consider how far we should press for greater competition in those parts of Network Rail's activity which are potentially open to it, and for Network Rail to test innovative ways to manage parts of its network and provide a basis of comparing different approaches.

Alignment with longer-term needs

3.14 The rail industry faces long-term challenges needing long-term commitments, but much of the current industry framework creates an incentive to focus on the short-term, and was originally designed for a static railway rather than a growing railway. Moreover the link between Network Rail's incentives and the end customer remains weak and there is a risk that franchises force a focus on short run income maximisation rather than long run customer value

3.15 We believe we should be prepared to identify and develop solutions to improve the alignment of the railway industry with its longer-term objectives and customer needs so that behaviour and decisions reflect a longer time horizon. We need to ensure that our regulation of Network Rail requires and incentivises it and its suppliers to take a longer-term, customer-focused view, and that the industry codes and contracts support this. We should be prepared to identify other parts of the industry framework – for instance franchising arrangements - which may encourage short-term behaviour, and recommend solutions and alternative approaches.

Taking this forward

3.16 Thus, we believe that in view of the longer-term challenges the industry faces we should do more as independent regulator to identify what issues the industry needs to address, help find possible solutions, and help to make them happen. To do this credibly we will need to adopt a rigorous approach to prioritisation and impact assessment to ensure initiatives are worthwhile. We will also identify whether we need to bring different capabilities into our organisation. At this stage we have not considered in detail the

resource implications but, recognising the fact that we are funded by the industry, will need to do so for the final strategy.

<div style="border: 3px solid black; border-radius: 15px; background-color: #d3dce6; padding: 20px;">

Your views

3.17 We welcome your views on the approach set out above for meeting the longer-term challenge and particularly:

- Do you think we should do more to help the industry meet the long-term challenges it faces? How do you think we can add most value?

- Do you think we should be more prepared to review and identify industry issues and problems, possible solutions and decision timescales?

- What do you think our priorities should be in this work?

</div>

4. Responses to this consultation

4.1 During the period of this consultation we welcome the opportunity to talk to industry companies, organisations and groups. Formal responses to this consultation should be sent in both hard copy and electronic format, to be received as soon as possible, but no later than 1 October 2008, to:

Michael Beswick
Director, Rail Policy
Office of Rail Regulation
One Kemble Street
LONDON WC2B 4AN

Email to: michael.beswick@orr.gsi.gov.uk

4.2 All formal responses will be made available in our library, published on our website and may be quoted from by us. If a respondent wishes all or part of their response to remain confidential they should set out clearly why this is the case. Where a response is made in confidence, it should be accompanied by a statement summarising the submission, but excluding the confidential information, which can then be used as above. We will publish the names of respondents in future documents or on our website, unless a respondent indicates that they wish their name to be withheld. Further copies of this consultation paper are available from our website (www.rail-reg.gov.uk) and our library.

4.3 After the close of this consultation, we will consider all responses received to help us to finalise our strategy.