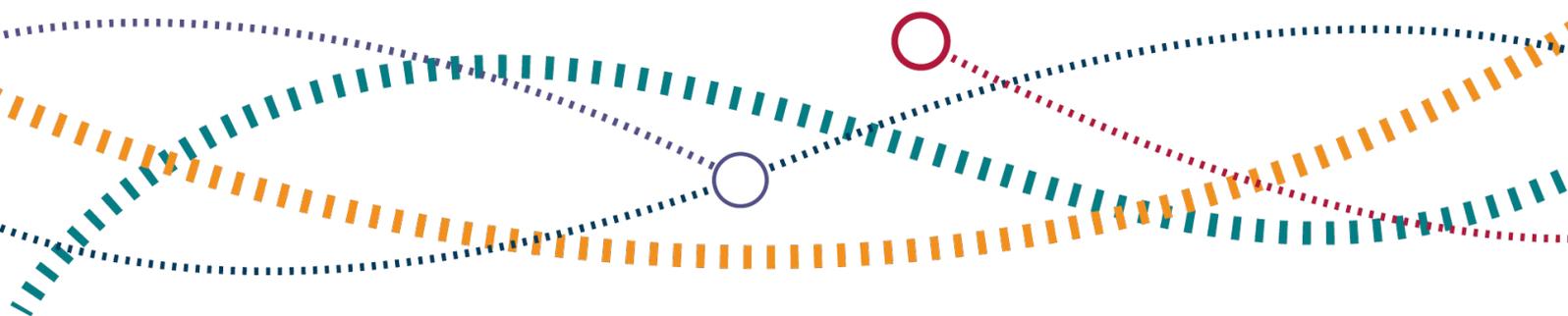




PR23 final determination:

Policy position - CP7 Holding to Account and Managing Change Policies: consultation conclusions

31 October 2023



About this document

This document sets out stakeholder views from our Managing Change and Holding to Account policy position consultations.

PR23 determines what the infrastructure manager for the national rail network, Network Rail, is expected to deliver with respect to its operation, support, maintenance and renewal (OSMR) of the network during control period 7 (CP7), which will run from 1 April 2024 to 31 March 2029, and how the available funding should be best used to support this.

This strongly influences:

- the service that passengers and freight customers receive and, together with taxpayers, ultimately pay for; and
- the charges that Network Rail's passenger, freight and charter train operator customers pay to access its track and stations during CP7.

Our final determination sets out:

- our decisions on Network Rail's outcome delivery and its planned expenditure to secure the condition and reliability of the network;
- changes to access charges and the incentives framework; and
- relevant policies on the financial framework, managing change and holding to account.

In addition to **this document**, we have also published as part of our final determination:

Document type	Details
Summary of conclusions and overviews	<p>Our decisions on what Network Rail will need to deliver and how funding should be allocated:</p> <ul style="list-style-type: none">• Summary of conclusions and overview for England & Wales• Summary of conclusions and settlement for Scotland

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Document type	Details
Consolidated decisions	A summary of our final decisions across Great Britain
Introduction	An overview of PR23 and background to our final determination
Settlement documents	<p>Detailed final decisions for the System Operator and each of Network Rail's regions in England & Wales:</p> <ul style="list-style-type: none">• Eastern region• North West & Central region• Southern region• Wales & Western region <p>See our summary of conclusions and settlement document for detailed information for Scotland.</p>
Supporting documents	<p>Technical assessments of:</p> <ul style="list-style-type: none">• Health and safety• Outcomes• Sustainable and efficient costs• National Functions• Other income
Policy positions	<p>How we intend to regulate Network Rail during CP7 in relation to:</p> <ul style="list-style-type: none">• Financial framework• Access charges• Schedules 4 and 8 incentives regimes• Managing change• Holding to account <p>With the exceptions of managing change and holding to account, our policy position documents include our assessment of stakeholder views on our proposals.</p> <p><u>Stakeholder views for managing change and holding to account are published in a separate document.</u></p>

Document type	Details
Impact assessments	A consolidated set of assessments of the impact of our final policies on access charges and contractual incentives on affected parties

Next steps

We will now implement our final determination. Implementation is the process through which we amend operators' track and station access contracts to give effect to new access charges and incentives (such as Schedule 8 benchmarks and payment rates) determined through the periodic review. We expect to issue our review notices in December 2023 and, subject to Network Rail's acceptance, issue notices of agreement and review implementation notices in time for CP7 to commence from of 1 April 2024.

We expect Network Rail to publish a delivery plan for CP7 that is consistent with our final determination. We have published [a notice](#) alongside our final determination which sets out expectations for the scope and timing of the delivery plan.

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Executive summary

The Holding to Account and Managing Change policies are an important part of the framework for how we will hold Network Rail to account for the outcomes it must deliver for the funding it receives for control period 7, which will run from 1 April 2024 to 31 March 2029 (CP7).

Our Holding to Account policy sets out how we hold Network Rail to account for delivery of the commitments in our PR23 final determination and the obligations in its network licence. It also explains how we will monitor performance, escalate and investigate potential issues and, where necessary, take enforcement action. In doing so we seek to secure the best possible outcomes for passengers, freight customers and taxpayers across the network.

Our Managing Change policy sets out under what circumstances elements of the periodic review determination might change, and the process we and Network Rail will use to manage those changes. This allows appropriate changes to the settlements to happen in a transparent manner and facilitates engagement and collaboration to provide early sight and an opportunity to understand the implications of changes.

The Holding to Account and Managing Change policies are standalone policy documents which ORR may review and update (following consultation) during CP7 if required.

Both policies reflect decisions made across other policy areas through PR23, most notably the CP7 outcomes framework. The Holding to Account policy facilitates our approach to monitoring and enforcing Network Rail's delivery of these requirements, whilst the Managing Change policy will enable a level of flexibility to respond to changes that could affect key aspects of the funding and accountabilities throughout CP7.

Holding to Account policy

We consulted on a [draft CP7 Holding to Account policy](#) in April 2023. Our approach was to largely retain the underlying principles, tools and approach to the existing policy, reflecting that we considered them fit for purpose in the current context with only minor changes.

This conclusions document sets out our rationale for the changes we have made, or not made, to the policy. Stakeholders were broadly supportive of our consultation proposals and, as such, we have not made material changes to our draft policy. However, we have provided further clarity in both this document and the final policy where stakeholders have requested it.

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Our [PR23 final determination: policy position on holding to account](#) is published as a separate document.

Managing Change policy

We consulted on a draft Managing Change Policy alongside our draft determination. Our approach was to evolve the policy approach we have taken in control period 6 (CP6), but to clarify elements of the policy and reflect changes in our wider approach to holding Network Rail to account (in particular success measures).

Our [PR23 final determination: policy position on managing change](#) is published as separate document.

1. Holding to Account policy

Overview of our consultation

- 1.1 Our consultation [PR23 policy framework: consultation on updating the Holding Network Rail to Account policy for CP7](#) ran from 13 April to 9 June 2023. We received 15 written responses, which we have published on our website alongside this document [here](#). Eight respondents to our draft determination also made reference to the Holding to Account policy document, their responses are published [here](#).
- 1.2 The consultation sought stakeholders' views on how the updated policy reflects areas that we had already consulted on as part of our new [policy approach for CP7](#), including the new outcomes framework and non-exhaustive indicative criteria. We also sought views on the general structure and wording of the policy, which we had updated in order to increase clarity on our processes.
- 1.3 Generally, respondents supported our aim and approach of the policy, with some suggestions to clarify detail in places. We consider that the majority of comments or requests for further detail focus primarily on the interpretation and application of the policy.
- 1.4 The key themes raised in the stakeholder responses included:
 - the CP7 outcomes framework;
 - route level versus regional level performance (including train performance);
 - monitoring performance;
 - transparency of data; and
 - use of investigations.
- 1.5 We respond to these areas, and other specific feedback raised in the consultation, below, setting out our final policy positions and any updates to the policy document. Our [PR23 final determination: policy position on holding to account](#) has been published alongside this conclusions document.

Consultation feedback

- 1.6 The Department for Transport (DfT) was supportive of the Holding to Account policy, suggesting it provides an effective framework to hold Network Rail to account for delivering on its commitments, whilst offering flexibility to respond to emerging situations that may arise rapidly or that develop over a longer timeframe. The UK government's High-Level Output Specification (HLOS) sets out requirements across a broad range of areas that they expect the available funding to deliver. DfT and Network Rail are working together to produce a consolidated means of accessing the individual elements used to monitor the delivery of these requirements. We expect to use this as an additional piece of information to support our holding to account activity. **We reference this as part of the suite of wider monitoring and reporting tools used to assess licence compliance within the Holding to Account policy.**
- 1.7 In its response to our April consultation, Transport Scotland was content with the proposed policy. Its response requested further detail in places, which we have addressed within this conclusions document and the policy document itself where relevant. In its response to the draft determination, Transport Scotland sought additional assurances in relation to how the policy would work in practice in CP7.
- 1.8 It asked whether the requirements were enforceable (as did Rail Freight Group in relation to the freight requirements in the HLOS). Paragraph 4.25 of our policy document sets out that each of the HLOS requirements is individually enforceable under the network licence via the 'reasonable practicability' test.
- 1.9 Transport Scotland also asked about the effectiveness of holding to account processes in future, including planned remedial action. The policy sets out how we will monitor performance to identify if we need to take action, and the actions we may take to secure improvement; early intervention, investigation and/or enforcement using our powers under the licence. It also contains a statement of the penalties we may impose as a result of enforcement action. Transport Scotland also asked about the proportionality and management of issues on the Network Rail Scotland route. Our [PR23 final determination: Summary of conclusions and settlement for Scotland](#) document addresses this.
- 1.10 In its initial response to our consultation, Network Rail was broadly supportive of the draft policy for CP7, stating that the existing policy has generally worked well in CP6. It reiterated its support for the principles of our Holding to Account policy in its draft determination response. However, Network Rail said that the policy should reflect the wider context surrounding CP7 such as the financial pressures and

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uncertainty around industry train performance forecasting, which in turn will require a flexible regulatory framework in response. It reiterated this in its response to our draft determination.

- 1.11 We recognise that CP7 will commence amid a complex and challenging context for the rail industry, as the sector continues to recover from the pandemic against a backdrop of inflationary pressures, recent industrial action as well as declines in passenger and freight train performance. In recognition of this context, our approach to PR23 is designed to deliver a secure basis for Network Rail and its stakeholders to plan, invest and provide services. The way that we will hold Network Rail to account in CP7 will take into account the context in which Network Rail and the industry operates. Our final determination has also been made taking account of that context. We do not consider that we need to amend the Holding to Account policy document itself for this contextual background.
- 1.12 Network Rail also requested more consistency in how we refer to its National Functions within the policy. **We have sought to provide this and updated references throughout the document.** The National Functions are central business units which provide support functions to Network Rail's five regions and the System Operator, consisting of Route Services, Technical Authority and Corporate Services. Our monitoring of the National Functions has increased as control period 6 (CP6) has progressed. The CP7 holding to account policy and our [PR23 final determination: supporting document on National Functions](#) provide more detail on this.
- 1.13 Operators and other industry groups were generally supportive of the policy and proposed approach, requesting further detail and points of clarification in certain areas and stressing the importance of stakeholders in our holding to account activity. The network licence contains specific requirements in relation to the quality of Network Rail's engagement with its stakeholders. The Stakeholder Engagement Duty will continue to be a priority for routine monitoring, which includes ensuring Network Rail engages appropriately with its supply chain.

Comments on our approach to routine monitoring and assessment

CP7 Outcomes framework

- 1.14 Network Rail stated that ORR's proposal to report against fixed, point value trajectories for train performance does not recognise the uncertainty in developing forecasts for certain outcomes, or the high likelihood of changes to the underlying assumptions.

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- 1.15 As set out in the draft policy, we expect fluctuations in performance around the baseline trajectories and will not automatically assess levels worse than the trajectory as poor performance. We will take a range of information into account, including Network Rail's response to any concerns we raise. We also intend to employ a flexible approach to holding to account against these requirements during the control period; the policy details the non-exhaustive indicative criteria we will consider in our assessment. We recognise that there may be certain circumstances where the trajectory needs to be changed. Our Managing Change Policy document sets out the circumstances under which this might occur.
- 1.16 We think this flexible approach and framework provides Network Rail with enough flexibility and ORR and wider industry enough certainty to consider this an appropriate approach to take. **We have not made any amendments to the Holding to Account policy in relation to this point.** We provide more information on our final position on the process for setting performance trajectories and other outcomes in our [PR23 final determination: supporting document on outcomes](#) and the Managing Change policy section of this document.
- 1.17 Transport for London (TfL) and MTR Elizabeth Line asked for further detail on how we will monitor at route-level or where operators cross regional boundaries to ensure that our monitoring and incentives are disaggregated to the appropriate level. Avanti West Coast questioned whether, given greater devolution to routes (with strategic oversight from regions), ORR should place more focus on those who own activities that directly impact customers.
- 1.18 While we will still monitor at route-level, the focus our CP7 regulatory activity, monitoring and public reporting of the outcomes framework will remain at regional level. However, Network Rail's licence and our Holding to Account policy apply to Network Rail as a whole, covering all parts of its business. We may vary the focus of our monitoring, for example we may decide to look at route level or train operator level performance on occasion.
- 1.19 We will also continue to make use of performance data by operator to support our wider monitoring (referred to as 'additional assurance' in our outcomes framework). We would also expect Network Rail to adopt its own, more detailed, monitoring of operator and route-level performance (e.g. thorough its continued use of scorecards). **We have therefore not made any changes to the Holding to Account policy document in respect to this point.**

Use of scorecards

- 1.20 Four respondents (Network Rail, MTR Elizabeth Line, Rail Partners and TfL) raised concerns around the removal of scorecard measures as a tool to measure performance, due to concerns that they remain an important tool for stakeholders to influence outcomes. Network Rail acknowledged the move to the new outcomes framework but requested that ORR continue to consider scorecards alongside other information in our monitoring.
- 1.21 As set out in the draft policy, Network Rail and operators may choose to continue to use scorecards as a management tool to report performance against the success measures and other customer requirements in CP7. Whilst our focus will be on the tiered approach through the use of our new outcomes framework, we will continue to monitor scorecard performance as part of our wider routine monitoring. **We have made a minor update to the 'How we monitor and assess Network Rail's performance' section within the policy document to further clarify this.**

Non-exhaustive indicative criteria

- 1.22 We received three comments on the new non-exhaustive indicative criteria. Rail Partners and ScotRail supported their introduction. Network Rail requested more certainty on the criteria in order to enable more predictability in ORR's escalation.
- 1.23 The criteria balance a range of factors, including known issues and what actions Network Rail has already put in place to address them, and are designed to be indicative and non-exhaustive. They provide an indication of the types of factors that we may take into consideration and are not intended to restrict or prevent us from using other sources of information in our monitoring and investigative phase, such as intelligence from stakeholders, information on significant incidents affecting passenger or freight customers and the quality of performance plans and strategies in place. **We are retaining the non-exhaustive indicative criteria as set out in the draft policy.**

Joint performance strategies and operator performance

- 1.24 Avanti West Coast, DfT and Rail Partners agreed with our expectation that Network Rail should work closely with train operators during CP7 to maintain joint performance strategies and to share these with ORR to support our monitoring. Transport Scotland recognised the benefits of performance strategies but called for ORR to ensure that Network Rail provides these on time to maximise their impact. Network Rail requested that the policy reflects that there may also be other

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mechanisms through which operators agree objectives and priorities with Network Rail.

- 1.25 We expect that performance strategies will continue to be an important part of how Network Rail and operators engage and agree objectives. As set out in the recent [ORR Review of Joint Performance Strategies](#), we have recommended that the process for the production and finalisation of joint performance strategies should be reviewed by Network Rail and operators, to ensure there is a common commitment to achieving timely sign-off.
- 1.26 We also recognise that there may be other mechanisms that Network Rail and operators use to agree objectives and priorities. **We have made a minor change to paragraph 3.15 in the policy document to reflect this.**

Transparency of data

- 1.27 Network Rail, Avanti West Coast and Transport Scotland all provided comments on the use of the data protocol and qualitative data to support our monitoring approach. Network Rail recommended that the data protocol is reviewed ahead of CP7 to ensure that any future monitoring aligns with the new outcomes framework.
- 1.28 We regularly review and update the data protocol to ensure that the data and reports that it contains remain relevant. As with current arrangements, we will continue to be able to make ad-hoc requests for data, such as for specific investigations. **We have not made any updates to the policy document, as we consider that it is sufficiently clear on this.**
- 1.29 In addition, Network Rail also requested greater clarity on the 'reasonable timescales' expected when responding to information requests, and what would constitute a licence breach in relation to this. We consider that – as is currently the case – ORR and Network Rail should work together to understand and agree achievable timescales to respond to information requests on a case-by-case-basis. This has been effective in CP6 and is reflected in the policy drafting. **We have not made any changes to the policy.**
- 1.30 Network Rail also suggested a minor change in the wording that a 'failure to provide' ORR with requested information 'would constitute a licence breach'. In order to reflect the relevant licence obligations and the conditions for determining a licence breach, **we have made a minor change to the wording of paragraph 3.36 to reflect that this 'could' constitute a licence breach**, subject to the normal conditions for determining a licence breach (through investigation and a decision by ORR's Board).

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- 1.31 Avanti West Coast stated that that any qualitative judgements and decisions on performance assessments of Network Rail need to be more transparent, and where possible quantified. Conversely, Network Rail said that the policy should not reference specific reports and that these should be captured instead within reporting protocols developed between Network Rail and ORR.
- 1.32 Qualitative information is vital to filling in the gaps that data cannot explain and can be an important factor in influencing the decision to escalate an issue. We will continue to use this information to supplement regular, quantitative information we collect. The information and reports listed in the policy are non-exhaustive but aim to provide stakeholders some transparency on the types of information that this may include. In addition, throughout CP7 we will continue to publish our Network Rail Annual Assessment which aims to provide an overview and a comparison of regions', System Operator's and National Functions' performance. **We have made some minor additions to the qualitative information section of the policy to reinforce this message, but retain the list of examples.**

Comments on investigation and early resolution

- 1.33 Five respondents to our April consultation (Avanti West Coast, CrossCountry, Network Rail, Railway Industry Association (RIA), TfL and Transport Scotland) provided comments on ORR's approach to investigations and early resolution.

'Informal' investigation versus 'formal' investigation

- 1.34 Network Rail and Avanti West Coast both requested further information on the stages of an investigation and what this constitutes. The type of investigation will be driven by the particular issue. We do not use a fixed two-stage process in our investigations. We adopt a risk-based, staged approach of review, investigation and escalating in a timely manner according to the urgency of the case. Our investigative phase covers stages from initial investigation of an issue through to formal licence compliance investigation, which may follow attempts at early resolution. We note that there is one reference to 'informal' investigations within the drafting of the draft policy (paragraph 4.15). **To increase clarity of our investigative phase, we have updated this reference and added further detail at paragraphs 4.2 and 4.15 of the final policy document.**
- 1.35 Network Rail also suggested that ORR's investigation and early resolution tools should be reviewed to assess whether they remain relevant. We retain the right to review and where necessary update our toolkit where appropriate throughout the control period, this includes both removing and adding to it where we deem appropriate.

Industry interaction during investigations

- 1.36 CrossCountry, TfL and Transport Scotland wanted to see ORR speaking with affected operators as part of the gathering information process during any investigation. CrossCountry also requested a more formal process of informing affected train operating companies (TOCs) of investigation outcomes. Our existing approach already sees us engage with affected operators where we need to, on a case-by-case basis. **We have made a minor amendment to paragraph 4.9 to reinforce this point.**
- 1.37 We publish outcomes of any investigations on the '[holding to account](#)' section of our website. We will notify and engage with affected operators as part of any live investigation which affects them and therefore, they will be sighted on the investigation outcomes. **We are open to reviewing this approach during CP7 if affected operators do not consider it transparent enough, but do not need to update the policy to reflect this.**

Comments on our approach to enforcement

- 1.38 Five respondents (Avanti West Coast, Network Rail, Rail Partners, ScotRail and Transport Scotland) provided comments on our approach to enforcement. **We have not made any changes to our enforcement toolkit as a result of stakeholder feedback. The policy sets out the type of action we may take.**

Financial penalties

- 1.39 ScotRail and Avanti West Coast both suggested that financial penalties are now less of an incentive to hold Network Rail to account given its classification as a public sector body. As stated in the policy, financial penalties are only one of a range of potential regulatory actions we may take (such as enforcement orders) which are dependent on the scale and impact of the licence breach. As part of any decision, consideration will be given to the most appropriate enforcement type.
- 1.40 A financial penalty which reduces the funds available for maintaining and operating the railway remains a last resort, although a de minimis penalty could still have a significant reputational effect. Financial penalties are set out in legislation and as such ORR is required to consider them. **We have not made any changes to the financial penalty tool and will retain this wording for CP7.**

Financial sanctions

- 1.41 Rail Partners and Transport Scotland were interested in more information about how financial sanctions (and other enforcement tools) would be applied in practice.

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The policy document sets out how this would be applied. To date, we have not used it in CP6.

- 1.42 Avanti West Coast agreed that if financial approaches are adopted, financial sanctions should be considered first. Our approach to financial sanctions is to provide an effective, alternative incentive that could reduce the need to resort to financial penalties. However, issuing a financial sanction does not preclude ORR subsequently issuing a financial penalty. **We have made a minor amendment to references of financial sanctions throughout the policy document to reflect these points, including that these could be applied to a range of Network Rail business units such as its National Functions.**

2. Managing Change Policy

Overview of our consultation

- 2.1 Our consultation on our draft Managing Change policy for CP7 ran from June 15 to a close on August 31 2023. We received eight responses from Network Rail, Transport Scotland, R-air Partners, South Eastern Railways, Freightliner, DB Cargo, Arriva Trains UK and First Group.
- 2.2 The consultation sought stakeholders' general views, and also specifically whether the threshold for categorising changes to the allocation of Network Rail's centrally held risk fund is reasonable. The draft policy proposed that for changes up to £50 million Network Rail would have to notify ORR and for changes above this threshold it would have to consult us.
- 2.3 Broadly, stakeholders supported the Managing Change policy. Network Rail raised concerns that the policy would not provide sufficient flexibility in being able to manage the scale, frequency and complexity of the change Network Rail anticipates in CP7.
- 2.4 The key themes raised in the stakeholder responses included:
- (a) the importance of stability for the sector;
 - (b) the importance of industry consultation before significant changes;
 - (c) the need for strong measures to monitor Network Rail's performance; and
 - (d) the need for a flexible and pragmatic approach, recognising that there may be a higher level of change in CP7.
- 2.5 We reply to specific responses and feedback below, setting out our final policy positions and any updates to the policy document. Our [PR23 final determination: policy position on managing change](#) has been published alongside these conclusions.

Consultation feedback

- 2.6 Transport Scotland's response was broadly supportive of the policy but asked for further reassurance on its use in practice. Specifically, it asked that the policy

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ensures that it is involved when Network Rail is developing changes relevant to Scotland.

- 2.7 Rail Partners, Freightliner and DB Cargo stated that they supported the policy approach, noting that operators value stability in order to support investment decisions, and that it is important that there is industry consultation on any material changes.
- 2.8 Network Rail provided the most detailed response. It stated, given the challenges and uncertainties expected to be face in CP7, that ORR needs to be flexible and pragmatic in its approach, recognising the high-level of anticipated change.

Comments on the scope and purpose of the policy

The importance of managing changes

- 2.9 Those stakeholders who responded noted the importance of a stable regulatory settlement, but agreed there should be a mechanism for managing changes. They stated that it is important that material changes are limited and subject to industry consultation.
- 2.10 Network Rail supported the principles of the policy, but raised concerns that the provisions would not provide sufficient flexibility in being able to manage the scale, frequency and complexity of the change Network Rail anticipates in CP7. In particular, it expected that large volumes of changes will be driven by the uncertainty it continues to face across a number of outcomes (e.g. wider industry impacts on efficiency and train performance) and wider financial pressures.
- 2.11 While we recognise the challenges that Network Rail is facing, stakeholders need stability in order to plan their businesses with a reasonable degree of certainty. Given the scale of Network Rail's public funding, and the importance of its role in managing nationally critical infrastructure, it is appropriate that changes are managed in a transparent and controlled manner.
- 2.12 As stated in our consultations, we have taken an evolutionary approach to updating the Managing Change policy, building on the current version in place for CP6. We acknowledge that the context for CP7 may place new challenges on how the policy is used, but even under increased amount of change, we do not believe that it will be unduly burdensome. Its main requirements are that Network Rail understands, documents and consults appropriately on the changes it has to make, and we believe that a robust process to manage these changes is appropriate. We will continue to work closely with Network Rail on the application of the policy in CP7 and ensure that it remains fit for purpose.

2.13 We have not made substantial changes to the requirements set out in the Managing Change Policy (except for around changes to risk funding) but have added some more commentary into Chapter 1 to better explain and clarify its purpose and intent.

The causes of change

2.14 Network Rail noted in its response that many changes will not be in its control, and that changes will often be driven by a variety of external factors (e.g. inflation, funders' choices, safety decisions by ORR). It stated that the causes of changes can be complex and hard to isolate and requested that the policy contain a different approach for externally driven changes.

2.15 The Managing Change policy is intended to be 'effects based' where the classification of changes is based on the impact, not the cause of the change. Ultimately, the impact of the change is what matters for stakeholders and funders. It is for Network Rail to understand and explain the driver of changes to its business, and choose how to respond to them.

2.16 We have clarified that the policy is effects based in the introduction to Chapter 1 of the policy.

Comments on managing changes to risk funding

2.17 Network Rail stated that the Managing Change policy requirements around risk funding could cause duplication of engagement, and that using risk funding to manage risks is not a change to its plans (it recognised that using risk funding to implement new activities would constitute a change).

2.18 We, and Network Rail's funders, engage with the company regularly on its use of risk funding. The use of risk funding is also reported on through the reforecasting process that Network Rail uses to make changes to its business plans – which ORR reviews and reports on.

2.19 Since June, when we consulted on the Managing Change Policy, we have discussed new risk principles with Network Rail. These principles provide for governance around the use of risk funding to ensure that it is used efficiently and to manage genuine risks to Network Rail's business. The principles also support transparency in Network Rail's use of its risk funding.

2.20 This new approach would create duplication between the proposed Managing Change policy and the risk principles. To avoid this, we have altered how the Managing Change policy deals with risk funding. **We have changed the policy to**

define Risk Funding Changes as a new category of Relevant Change. When Network Rail makes relevant changes to its risk funding it must act in accordance with the risk funding principles. These changes do not follow the processes for Notified or Consulted Changes.

- 2.21 By incorporating these principles into the Managing Change policy we have made them enforceable should Network Rail fail to act in accordance with the principles.

Risk thresholds

- 2.22 We consulted on introducing a threshold of £50 million to differentiate between changes to risk funding that would need to be notified rather than just consulted. Arriva Trains UK supported the £50 million threshold, while other stakeholders did not comment on it. Southeastern Trains stated it could not comment without understanding how often this threshold was reached in practice. Network Rail stated that the threshold would be potentially burdensome, given the volume of change it expects in CP7.
- 2.23 The new risk principles do not include a threshold. Rather, they apply equally to any changes to risk funding. **The revised Managing Change policy therefore no longer includes a threshold for risk funding changes.**
- 2.24 This means that larger changes to risk funding will no longer follow the process for a Consulted Change, but we would still expect Network Rail to consult its stakeholders on relevant changes to risk funding as set out in paragraph 4.6 of the Managing Change policy. Similarly, ORR will not be able to classify risk funding changes as 'Exceptional'. However, by incorporating these principles into the Managing Change policy, we have made them enforceable should Network Rail fail to act in accordance with the principles, providing assurance.

Comments on managing changes to outcomes

Expected frequency of changes to outcome trajectories

- 2.25 In our consultation, we stated that we do not expect Consulted Changes, including those to success measure baseline trajectories, to be made frequently. We said that changes to baseline trajectories will only be allowed if there is a material change in circumstances.
- 2.26 Stakeholders supported a stable regulatory settlement and the new approach of using success measures to hold Network Rail to account. They stated that it is important that material changes are limited and subject to industry consultation.

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- 2.27 Network Rail stated that it believed our expectations around the amount of change were unrealistic. It noted that small changes in external circumstances could have a large impact on its plans, and that trajectories may need to change regularly as it makes trade-offs in its plans to prioritise outcomes appropriately - particularly where risk funding is constrained.
- 2.28 As set out in our Holding to Account policy, we expect that there will be fluctuations in performance around the baseline trajectories, and will not automatically assess levels worse than the trajectory as poor performance. We will take a range of information into account, including Network Rail's response to any concerns we raise. We also intend to employ a flexible approach to holding to account against these requirements during the control period; the Holding to Account policy details the non-exhaustive criteria we will consider in our assessment.
- 2.29 In addition, as set out in our [PR23 final determination: supporting document on outcomes](#), we recognise that forecasting whole industry train performance is particularly challenging in the context of this control period given uncertainty about future passenger demand and train operator plans. To ensure our passenger train performance trajectories remain realistic throughout CP7, we will reset the trajectories for years 3 to 5 at the end of year 2 of the control period.
- 2.30 For both these reasons, we do not expect to change the baseline trajectories every time that there is a small change in external circumstances. **We have included additional context in the Managing Change policy to recognise the reset of passenger train performance trajectories for years 3 to 5, and have provided additional explanatory text around changes to success measure baseline trajectories.**
- 2.31 Network Rail also said that it will continue to agree local targets with operators, and there is a risk that there will be inconsistency with our baseline trajectories.
- 2.32 As set out in our Holding to Account policy, Network Rail and operators may choose to continue to use scorecards as a management tool to report performance against the success measures and other customer requirements in CP7. Whilst our focus will be on the tiered approach through the use of our CP7 outcomes framework, we will continue to monitor scorecard performance as part of our additional assurance. **Therefore, we do not expect to change the baseline trajectories just because Network Rail has agreed a different target locally with stakeholders.**

Comments on the role of ORR in managing change

Ability of ORR to designate and block Exceptional Changes

- 2.33 Network Rail raised a concern that the policy would allow ORR to reclassify a Consulted Change as Exceptional if ORR disagreed with Network Rail's decisions on how to apply the change following ORR's formal opinion.
- 2.34 **We have clarified that ORR's decision on whether a change is Exceptional will be made on receipt of the Consulted Change, according to the criteria set out in Chapter 3 of the Managing Change policy.** While it is important that ORR has the ability to classify changes as Exceptional, we agree that this decision should be based on the change itself, rather than Network Rail's response to our opinion.

The timeliness of ORR responses to Consulted Changes

- 2.35 Network Rail noted that it would not be able to progress with a Consulted Change without receiving ORR's formal opinion. It sought a commitment to timeliness so that ORR is not a blocker to change, particularly where Network Rail needs to be agile. **We agree and have made a commitment to timeliness in Chapter 4.**

Other comments

Use of the Managing Change policy before CP7 begins

- 2.36 Network Rail stated that it may seek to use the Managing Change policy before CP7 begins. It asked that ORR issue the policy at the final determination to enable this to happen.
- 2.37 The purpose of the Managing Change Policy is to manage changes within the control period. There is a policy currently in place for CP6 to manage changes to the CP6 settlements, and our new policy will only take effect at the start of CP7 to manage changes to the CP7 settlements.
- 2.38 There should not be material changes between the final determination and Network Rail's delivery plan. Assuming Network Rail accepts our determination, its delivery plan should be consistent with our conclusions. As set out in Network Rail's framework agreement with the Department for Transport, the Secretary of State's approval of the delivery plan shall consider primarily whether it is consistent with the regulatory outcomes set out in the Final Determination.
- 2.39 We have clarified that **the Managing Change policy applies from 1 April 2024, for CP7.** In the event that there is a material change in circumstances between our determination and the start of the new control period, we recognise that Network

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Rail may need to trigger the Managing Change policy early in CP7 to adjust its plans.

The process for Managing Change

- 2.40 Network Rail suggested that the process for implementing the Managing Change policy should be removed from the policy document, to give greater flexibility in how the policy is applied in CP7 and to avoid ORR needing to consult on any changes to the process.
- 2.41 We consider that the process is described in a reasonably high-level way which clarifies the roles and responsibilities of the relative parties but does not constrain how changes are managed in practice (for instance it does not set fixed timescales). Including the process in the policy helps stakeholders (including Network Rail) understand the intention of the policy and how the different categories of change should work in practice. It also enables stakeholders to understand when they will be engaged and how ORR will make any change decisions. **We have not removed the process from the policy.** We will continue to work closely with Network Rail on the application of the policy in CP7 and ensure that it remains fit for purpose.
- 2.42 Transport Scotland noted that it expected to be involved at the point that Network Rail is developing thinking on anything likely to be progressing to a managed change in Scotland, rather than later in the process. We agree this is sensible and **have reflected this in Chapter 4** to note that Network Rail should engage funders early in the process where the funders want this level of engagement (recognising that DfT and Transport Scotland may want different levels of engagement).

Other edits made for clarity

- 2.43 Network Rail raised some points about the detailed drafting of the policy which we agree can be clarified. We have made the following minor edits to the policy in response:
- (a) clarified in paragraph 1.4 that the final determination is the relevant baseline as being the Final Determination, not the Delivery Plan;
 - (b) clarified in paragraph 3.16 that we would consult on any new success measures before requesting these of Network Rail;
 - (c) clarified in paragraphs 1.8, 4.13 and 4.17 that urgent changes are possible, in line with the text in Chapter 4; and

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- (d) clarified in paragraph 4.11 that the change log should be provided from time to time, rather than 'periodically', to avoid any confusion with railway periods.



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