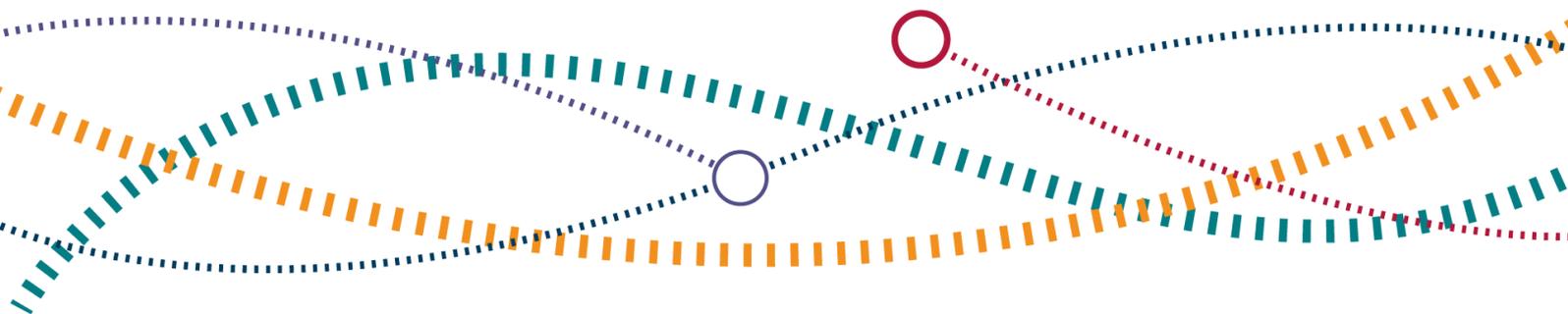




# PR23 policy framework

A consultation on outcomes,  
infrastructure performance and  
managing change

28 July 2022



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# 1. Executive summary

- 1.1 This document is a consultation on the framework for the economic regulation of the national rail network. It is an important part of our periodic review which we will determine in 2023 (PR23). The framework sets out how we propose to hold the infrastructure manager for the national rail network to account for the outcomes it will deliver for the funding it receives for the next control period (CP7).
- 1.2 This is a period of significant change for the rail industry. The UK Government has published the Williams-Shapps Plan for wide ranging reforms to the structure and operation of the industry. The UK Government consulted in June 2022 on the legislative changes required to implement these reforms.
- 1.3 Our proposals are based on the current structure of the rail industry but with a view to rail reform. We recognise that these reforms, as well as PR23, are taking place during a time when the rail sector, along with the rest of the economy, is recovering from the effect of the pandemic. We aim to design a regulatory framework that provides the infrastructure manager with the right long-term incentives to deliver a safe, sustainable, high-performing and efficient rail network. We will also seek to facilitate the UK and Scottish governments' aspirations for the railway while recognising the importance of financial sustainability and affordability. We will stretch Network Rail to deliver for both current and future customers, drive further efficiencies and support the effective operation of the whole railway, alongside other important objectives such as net zero and weather resilience. We will continue to join up our approach to economic and health & safety regulation in doing so.
- 1.4 DfT's legislation consultation proposes that the new entity, Great British Railways (GBR) will take on the PR23 commitments from the current infrastructure manager, Network Rail, and that ORR will retain (and expand) its independent regulatory role. We have set out proposals with a view to them being fit for purpose for the future. We will continue to reflect existing legislation and industry structure (including devolution arrangements) in our design of PR23, until the new legal framework is in place, whilst supporting the direction of rail reform and the creation of GBR as far as is practicable. As such it is even more important that our approach is flexible to change.

## Our proposals

- 1.5 We are not proposing to make significant changes to the way we hold the infrastructure manager to account as we consider it on the whole fit for purpose in the current context. We set out below a summary of five key areas that form our overall framework approach for PR23. Other elements of the framework for economic regulation, such as charges and incentives, have been consulted on separately.

### How we will regulate the infrastructure manager

- 1.6 We will continue to regulate the current infrastructure manager, Network Rail, as one entity, with one licence. We propose to continue to have 'settlements' for key business units; Scotland and the England & Wales regions, and the System Operator (SO). Our monitoring against the baseline settlements, and the infrastructure manager's related five-year and annual business plans will continue to support our assessment of how the organisation delivers as a whole and over time.
- 1.7 The regions and the SO should be accountable through their settlements for delivering for passenger, freight and open access operators, ensuring that the infrastructure manager is sufficiently focussed on the importance of these customers, and delivering outcomes for them.
- 1.8 We propose that the infrastructure manager's 'core' national functions should receive more focus than in our PR18 determination and in CP6 around issues such as efficiency and governance issues with the regions. By 'core' national functions we mean functions which have a significant impact on the efficiency of and delivery by regions and the SO i.e. Route Services and the Technical Authority.

### The role of stakeholders

- 1.9 We set out how we plan to ensure that the infrastructure manager undertakes good stakeholder engagement to support effective and efficient delivery to passengers, freight end users and their representatives. We propose to continue our assessment of the quality of this engagement, but remove the duplication when surveying stakeholders.

### Monitoring and enforcement

- 1.10 Our current Holding to Account policy sets out our approach to monitoring and enforcement. It is our view that the underlying principles and approach are fit for purpose in CP7 and that the Holding to Account policy only needs minor updates

in the short term. In the longer term it will need a further update to take account of GBR's whole-system role. We will continue to take a staged approach to escalating issues in response to any concerns identified.

### **Outcomes framework**

- 1.11 Our outcomes framework sets what the infrastructure manager must deliver for the funding it receives. It will reflect what governments want from rail through their output specifications and their wider strategic objectives the sector. It will also reflect how Network Rail has translated these into its plans. For PR23 we propose to use a tiered framework which includes a small number of top-tier 'success' measures. These will be the headline indicators we will use to publicly hold the infrastructure manager to account. These headline indicators will be supported by a basket of measures that the infrastructure manager should publicly report against in CP7. We will also use additional information for our assurance.
- 1.12 For the top-tier success measures we propose to set baseline trajectories to represent our performance expectations in CP7. We intend to publish the baseline trajectories in our determination, and we will use them to monitor and publicly report on the infrastructure manager's performance against each success measure. We propose to include a robust change control process to allow updates to measures and baseline trajectories where we agree there has been a major change in circumstances that the infrastructure manager could not have reasonably expected and which is outside of its control. We will also take into account the annual targets set by the infrastructure manager itself in our monitoring.
- 1.13 We propose to publish a range of non-exhaustive indicative criteria that we will use when taking decisions on whether to take action on declining performance against the baseline trajectories.

### **Change & flexibility**

- 1.14 Our current Managing Change Policy enables an element of flexibility to the regions' and the SO's settlements when Network Rail needs to respond to changing circumstances. It sets out proportionate processes, dependant on the size of the change, to enable ORR and funders to ensure that the infrastructure manager will still deliver value for money for the funding provided. We propose to improve the clarity of the policy but not to make substantive changes.

# 2. Introduction

This chapter sets out the wider context that we need to consider in setting out our proposed framework for PR23 and how this will impact our proposed approach for how we will regulate in the next control period which runs from April 2024 to March 2029 (and which we refer to as CP7). We also set out next steps and contact details for responses to the questions put forward in this consultation.

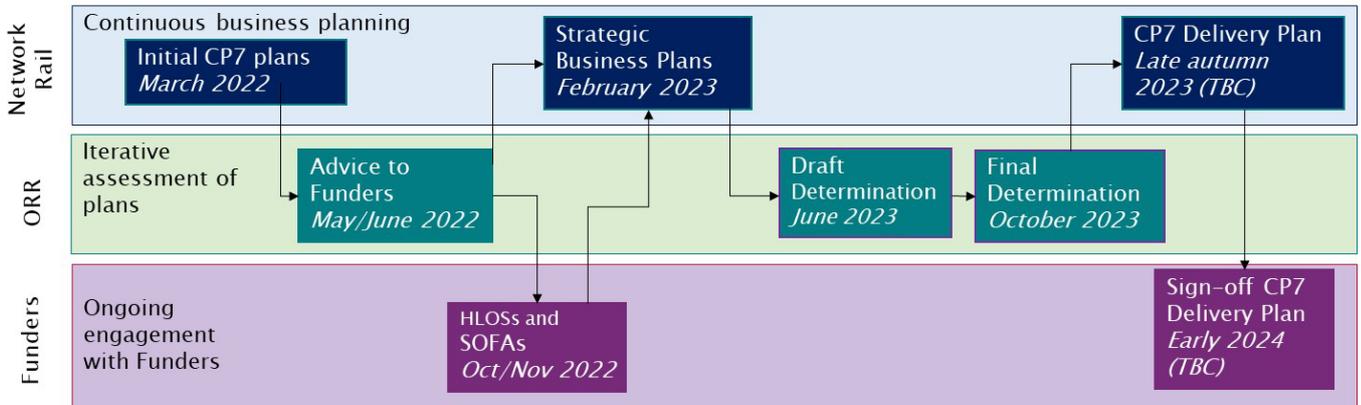
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## Context for PR23

- 2.1 As we highlighted in our [PR23 launch letter](#), our recent [“How we assess” publication](#) and in the [PR23 update letter](#) that accompanies this consultation, we are in a period of change in the rail sector. The UK Government is progressing its [Williams-Shapps Plan for Rail](#) (the Plan for Rail), an ambitious programme seeking to deliver better outcomes and greater value for funders and railway users.
- 2.2 There have also been significant changes in the national passenger operation contracts across the network, including greater use of concession-style arrangements (rather than franchises) and, in Scotland and Wales, operation through direct public ownership.
- 2.3 While passenger journeys have risen in 2021-22, they remain lower than they were before the COVID-19 pandemic, and industry revenues remain significantly below pre-pandemic levels. Rail freight usage has returned to, and moderately exceeded, pre-pandemic levels. More information on this can be found in our most recent statistical releases on [passenger](#) and [freight](#) usage.
- 2.4 Our periodic review process, PR23, which will determine the level of funding for Network Rail or its successor, GBR, is also taking place during a time of wider macroeconomic pressures. The Secretary of State and Scottish Ministers are due to deliver their High Level Output Specifications (HLOSs) and Statements of Funding Available (SoFAs) in autumn 2022. These will set the level of funding each government will make available to the infrastructure manager in CP7 and what they want it to deliver. This is expected to reflect their respective strategic priorities as well as financial sustainability and affordability. For England & Wales, these relate to (amongst other things) the five strategic objectives as outlined in the whole-industry strategic plan (WISP), namely meeting customers’ needs; delivering financial sustainability; contributing to long-term economic growth; levelling-up and connectivity; and delivering environmental sustainability. For Scotland, ministers’ priorities include the decarbonisation of rail by 2035; improved

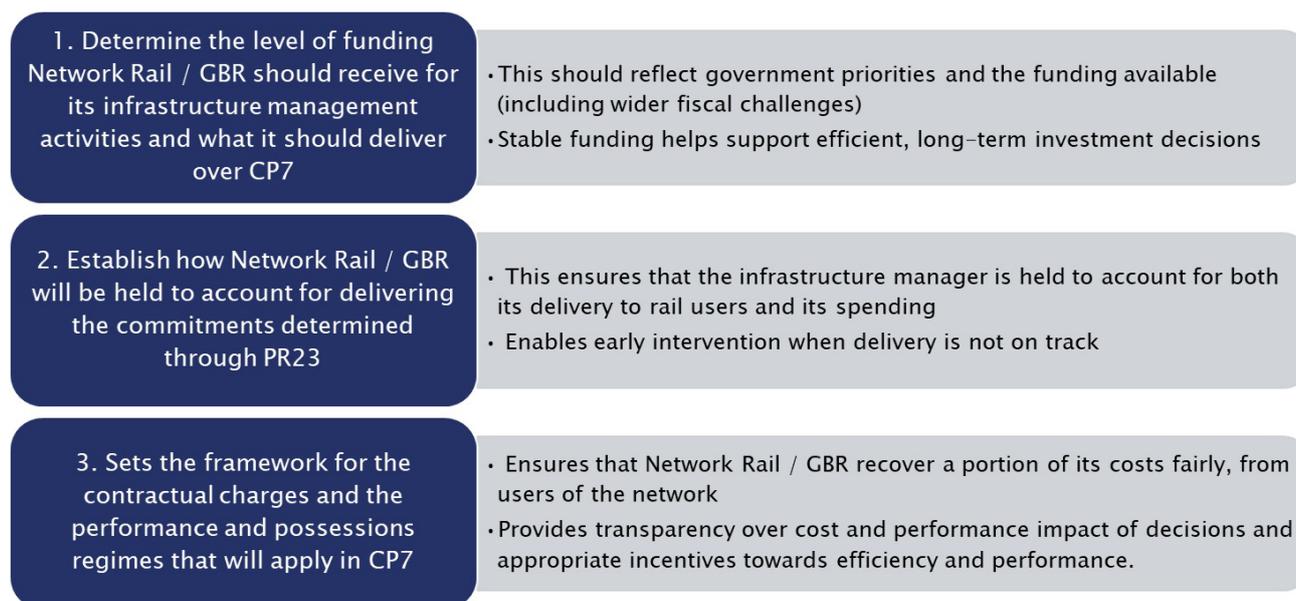
resilience and asset management; growing the freight market; and meeting the net cost challenge.

**Figure 2.1 Roles, responsibilities and key milestones in determining funding and outputs for CP7**



- 2.5 Governments' decisions about the level of funding the network receives over CP7 will be made in light of the prevailing fiscal and inflationary pressures. Network Rail will then translate this into its Strategic Business Plan (SBP), which we will review to determine funding allocations across business units, priorities and associated outputs. This will need to take into account current constraints and future expectations and uncertainty.
- 2.6 This consultation sets out our proposals for how we will hold to account in CP7 – which is one of the three key strands to the periodic review as set out in Figure 2.2 below. The other two strands of the review are being progressed separately. Information about these can be found on our [PR23 pages](#).
- 2.7 Alongside this consultation we have published a [Technical consultation on the measures in our proposed CP7 outcomes framework](#). This document provides further detail on the proposals we set out in Chapter 6, including information on the types of measures we propose to use and how we propose to use them. We have also published our [Guidance to Network Rail on its Strategic Business Plan](#), which forms part of strand one (see Figure 2.2 below) to determine the level of funding the infrastructure manager should receive.

## Figure 2.2 Decisions we will make in PR23



## What does this mean for how we will regulate in CP7?

- 2.8 This document sets out proposals for how we expect to regulate in the forthcoming control period. The aim is to enable those who operate in the rail industry to plan their businesses, by providing transparency and predictability about how we expect to act. This will, in turn, support the interests of passengers, freight users and tax payers by ensuring value for money and focussing on what users of the railway want.
- 2.9 We made significant changes to how we hold to account in the last periodic review (PR18) to reflect Network Rail’s position as a public-sector organisation with devolved business units. From the lessons we have learned in CP6 to date, including feedback from stakeholders and funders, we have concluded that many of these changes remain appropriate. However, in PR23 we are seeking to streamline and simplify our approach and make some improvements in key areas such as outcomes.
- 2.10 Our approach must look to rail reform and what it means for the UK and Scottish governments (as funders), GBR and wider stakeholders. As set out in the Plan for Rail and the recent [DfT consultation on primary legislation](#), ORR will continue to be the economic and safety regulator for the railway, and will provide whole-sector oversight that transparently holds GBR accountable against its licence and its integrated track and train business plan. We have responded to DfT’s consultation and our response can be found [here](#).

- 2.11 There is not yet a confirmed date when GBR will go live. Our policy proposals in this document are focused on the core ‘infrastructure manager’ activity that will be transferred from Network Rail to GBR. For the purposes of this document, when we refer to “infrastructure manager”, we mean the rail network currently managed by Network Rail. We note that there are other infrastructure managers in the UK, e.g. HS1, which are accountable for smaller sections of the total network. As rail reform progresses, we expect to start developing our ‘whole-system’ regulatory role that reflects GBR’s wider role over both infrastructure management and train services. It is worth noting that, under rail reform, Scottish Ministers continue to be responsible for passenger services in Scotland (unless choosing to delegate to GBR), meaning that GBR’s role would be more limited in Scotland.
- 2.12 We have proposed a policy framework that will work for Network Rail while anticipating what we can expect of GBR at this stage. We have sought to balance flexibility with clarity and certainty. This consultation seeks to reflect areas of continuity (and difference where appropriate). Above all, we want to create a framework which maintains the focus on the outcomes to be delivered for the funding provided by governments and rail users efficiently and effectively.
- 2.13 In each chapter we set out:
- (a) our approach to regulating Network Rail as infrastructure manager, and
  - (b) initial thinking on how this would work for GBR’s infrastructure management role, based on the information available at this point.

## Document structure

- 2.14 This consultation sets out our proposals for the shape and role of our ‘overall framework’ of policies. It comprises the following chapters:
- **Chapter 3:** How we will regulate the infrastructure manager
  - **Chapter 4:** The role of stakeholders
  - **Chapter 5:** Our approach to monitoring and enforcement in CP7
  - **Chapter 6:** Our approach to outcomes and monitoring performance in CP7. This section should be read alongside our [Technical consultation on the measures in our proposed CP7 outcomes framework](#)
  - **Chapter 7:** Change and flexibility

## Next steps and PR23 process

- 2.15 We will organise a workshop in early September to take feedback and discuss any points raised in this consultation document. We also welcome further conversations with funders, operators and other stakeholders at any point before the consultation closes.
- 2.16 We will publish our initial conclusions on how we plan to hold the rail infrastructure manager to account in December 2022, summarising the views of stakeholders and funders in response to this consultation and seeking to confirm our broad approach to regulating. To the extent possible, in that document we will also seek to reflect any rail reform developments and provide further clarity on how we might adapt our approach for GBR with its whole-system role. However, beyond December, we may need to issue further consultations on our approach to holding to account in the future as the rail reform proposals are further developed, for instance on how we plan to provide oversight on a whole-system basis.
- 2.17 Our draft determination will bring together the various strands of our approach in June 2023, prior to our final determination in autumn 2023. CP7 begins on 1 April 2024 at which point our new policy approach would take effect.
- 2.18 We plan to update and publish our Holding to Account and Managing Change policies in time for the beginning of the new control period. We aim to promote transparency around our own role and make our behaviour more predictable for funders, taxpayers and the companies we regulate. However, as rail reform is implemented and GBR takes on its wider role, we may need to adapt our regulatory approach. We will consult on any policy changes before implementing them.

## How to respond

- 2.19 Responses to this consultation are invited by **Friday 30 September**. A proforma is available on our website [here](#). Responses should be sent by email to: [PR23@ORR.gov.uk](mailto:PR23@ORR.gov.uk) or by post to: ORR consultation: “PR23 policy framework: A consultation on outcomes, infrastructure performance and managing change”, Office of Rail and Road, 25 Cabot Square, London, E14 4QZ. In addition to the consultation questions we have set out in this document, we also invite any general feedback on our proposals. We ask that, wherever possible, you submit your response via email.

2.20 ORR has actively considered the needs of blind and partially sighted people in accessing this document in PDF format. The text is available in full on the ORR website and may be freely downloaded. Individuals and organisations can use free Adobe Reader accessibility features or screen readers to read the contents of this document. If you need this document in a different format such as large print, easy read, audio recording or braille, please contact our Public Correspondence Team via:

- email: [webteam@orr.gov.uk](mailto:webteam@orr.gov.uk)
- telephone: 020 7282 2000
- postal address: ORR consultation: “PR23 policy framework: A consultation on outcomes, infrastructure performance and managing change”, Office of Rail and Road, 25 Cabot Square, London, E14 4QZ.

2.21 We plan to publish all responses to this consultation on our website. Should you wish for any information in your response to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the General Data Protection Regulation (GDPR,) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

2.22 If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

# 3. How we will regulate the infrastructure manager

This chapter sets out the suite of tools we propose to use to hold the infrastructure manager to account during the next control period. It covers the structure of our PR23 determination, which we propose will include **settlements for the regions and SO**. It also sets out our expectation that these settlements support the infrastructure manager's effective and efficient delivery of the totality of outcomes and funding specified in the determination. **We also set out how we propose to regulate parts of the infrastructure manager that we do not propose would have a formal settlement** (e.g. National Functions such as Route Services or the Technical Authority), and how we propose to ensure that the infrastructure manager provides sufficient focus on delivering the needs of stakeholders that engage with more than one region.

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## Background: holding the infrastructure manager to account

3.1 We hold the infrastructure manager to account using a suite of tools during a control period. We describe each of these documents below.

### The network licence

3.2 The network licence empowers ORR to hold Network Rail to account. In PR18 we made significant changes to the Network Rail network licence (in part to reflect an increased focus on key business units), and our proposal is that major changes are not required for PR23. We will keep this under review as we progress PR23, but will consider the need to make changes against the expected creation of a new licence for GBR that reflects its whole sector role.

### Our determination

3.3 At a periodic review, we make a final determination setting out the outcomes that the infrastructure manager must deliver for the funding provided. Our determination covers both England & Wales and Scotland, and consists of a suite of documents setting out all the decisions we have made as part of the periodic review (including outcomes, expenditure, efficiency, charges and incentives).

3.4 Our determination is based in part on our assessment of Network Rail's SBP which it submits during the PR23 process (we have now published our [guidance](#) on our expectations regarding the contents of Network Rail's SBP).

## Settlement documents

- 3.5 Our final determination includes settlements in which we set out our baseline expectations (the funding and outputs) for key business units over the control period. In PR18, we created settlements for the routes, the SO and the Freight & National Passenger Operator (FNPO). Network Rail then used these settlements to create its Delivery Plan for the control period. Early in CP6, Network Rail restructured, creating five regions with subordinate routes. We agreed (through our Managing Change Policy – see chapter 7) that we would hold it to account on a regional basis. Similarly, during CP6, Network Rail moved the FNPO into the SO.
- 3.6 The England & Wales regional settlements and the Scotland settlement set out the requirements we have placed on these parts of the infrastructure manager, in the light of the Secretary of State's and Scottish Ministers' HLOSs. The Secretary of State retains responsibility for safety and accessibility for Great Britain as a whole, while other matters are devolved.
- 3.7 The settlements, and how these are translated into the infrastructure manager's business plans, form one component of how we regulate during the control period. Network Rail, as the network licence holder, must do everything reasonably practicable to deliver the outcomes required for the funding it is given. Our regulatory activity involves us engaging closely with its key business units, the England & Wales regions, Scotland and the SO, as well as with other key 'national function' business units. We bring this together to assess Network Rail's performance as a whole to ensure it is delivering the reasonable requirements of all funders and users under the terms of its licence.

## The infrastructure manager's Delivery Plan

- 3.8 Following the publication of our final determination. Network Rail produces its Delivery Plan for the control period. This document reflects our determination and is signed off by the Secretary of State (having taken into account the views of the Scottish Ministers). It sets out how Network Rail plans to deliver the outcomes and funding in the determination.
- 3.9 During the control period, we hold Network Rail to account against the requirements we have set out in the determination and how Network Rail delivers against its annual business plans. The Delivery Plan is also used by stakeholders to plan their activities.

## Our approach to settlements in CP6

- 3.10 We consider that the PR18 settlements have supported increased ‘local’ accountability and devolution of responsibilities. By making greater use of comparative regulation as part of a wider toolkit of monitoring, reporting and enforcement, we (and Network Rail) are more easily and effectively able to identify those regions (and routes) that are performing well (and why), and those that are not. This has enabled us and Network Rail to learn from the experience of different regions and Scotland. It has also enabled us to hold Network Rail to account centrally and at regional/functional levels, and to reflect the separate funding provided by the Scottish and UK governments.
- 3.11 The separate settlement for the SO in CP6 provided clarity on what we expected Network Rail to deliver for the funding determined. While there have been changes to the SO in the period (for example devolution of some SO activities to the regions, and more recently the SO assuming responsibility for freight and national passenger operators) the settlement embedded a set of fundamental principles that remain today. These included the need for sustained improvements and clearer accountabilities that were required following issues with the May 2018 timetable change, about which we conducted an [inquiry](#). The settlement also helped underpin the requirements of funders, for example setting clear accountability for the SO to help deliver the Scottish Government’s requirements for freight and passenger journey time improvements.
- 3.12 We engage with Network Rail’s national functions (for example, the Technical Authority and Route Services teams) on matters of efficiency and also national policy. We use this engagement to inform our view of Network Rail’s overall performance, for example through the national functions’ own assurance of regions.
- 3.13 Our expectation in PR18 was that regions and the SO would play a strong role in holding the national functions to account, and this would help drive efficiency across Network Rail as a whole. It is not clear to us that the regions have strong tools available to them to be able to hold these functions to account, although the Scotland region in particular is increasingly proactive in this area. While we have seen improvements over CP6, we have also found some national functions needed time to become used to the level of engagement we needed to support our holistic view of Network Rail’s performance. We have also learnt lessons about needing to balance engagement with the national functions and engagement with the regions.

## Our proposed approach to settlements for CP7

3.14 We propose to continue to make settlements to reflect the key frontline business units accountable for delivering to passengers and freight end users, to provide:

- (a) **clarity to funders** on what they are receiving from funding provided;
- (b) a **better view for regional stakeholders** on what to expect;
- (c) a **clear baseline** position for Network Rail to build its Delivery Plan on and for us to compare performance to;
- (d) a means of **comparing performance** between regions; and
- (e) a **balance between encouraging accountability at a local level** through the devolved regions and SO, **while also holding Network Rail to account for its overall delivery**.

### What settlements will we create?

3.15 Network Rail currently consists of the following business units:

- (a) five regions (including Scotland);
- (b) fourteen routes (responsible to the relevant regions);
- (c) the SO; and
- (d) a range of national functions which are grouped into Route Services, Technical Authority and Corporate Functions (including Chief Financial Office, Human Resources, Communications etc).

3.16 We propose to create settlements for the key, frontline business units which are accountable for delivering the railway on a day to day basis for passengers and freight end users, i.e. each of the **England & Wales regions** and **Scotland**; and the **SO**. The settlement documents will set out:

- (a) the allowed funding relating to operations, support, maintenance, and renewals (OSMR) costs (net of Other Single Till Income (OSTI)); and
- (b) outcomes to be delivered with that funding (see Chapter 5).

- 3.17 While we are retaining regional settlements, we are keen to see the infrastructure manager increase the sharing of best practice among regions, and to understand how it ensures that all regions are at least meeting minimum requirements.
- 3.18 We propose to retain an SO settlement to maintain the focus on the key activities it undertakes:
- (a) It delivers **key system operation services** to operators and wider customers, including strategic planning, managing changes to what the network delivers, producing the timetable and selling access to the network.
  - (b) It also now plays an important role in the **delivery of national train performance** by supporting the development of performance strategies, supporting engagement with its customers and helping to facilitate improvements. As the SO now owns Network Rail's relationship with freight operators and customers, it is even more important that we monitor it closely to ensure that the infrastructure manager is sufficiently focussed on delivering outcomes for freight users and recognises the important role it plays in enabling growth in freight traffic.

## How will we regulate performance across the Infrastructure Manager as a whole?

- 3.19 We are creating settlements for the regions and the SO because these business units deliver the key outcomes for passengers and freight-end users. But this does not represent the totality of the infrastructure manager's business, nor the funding it receives. Some outcomes (e.g. freight performance) require national coordination for effective and efficient delivery.
- 3.20 Our determination will set requirements for the infrastructure manager to deliver overall as a whole, and we will hold it to account as a single licence holder. We will continue to scrutinise the performance of Network Rail as a whole, including those areas of the business without settlements; the key difference is that these parts of the business are not directly accountable for delivering outcomes in the same way that regions and the SO are. We explain below how we will hold to account for national business performance and efficiency issues.

## Freight and national passenger operators

- 3.21 The FNPO was established to support freight operators, national passenger operators, charter operators and potential future open access operators. These activities are now embedded as part of the SO. We consider that it is important

that all parts of the infrastructure manager which deliver to passenger and freight end users have a clear requirement placed upon them to demonstrate how they will deliver to all operators running on their area. This will also ensure clarity about how the Secretary of State's and Scottish Ministers' requirements will be met.

- 3.22 We propose that each of the regions must put forward in their SBP what they will deliver for freight and national passenger operators and how they will ensure this is met, in addition to delivering for the passenger operators for which they own the relationship. We will expect them to demonstrate how they have engaged with the operators in question. The SO will need to set out in its SBP how it will coordinate and ensure quality outcomes for these operators. We will then hold the regions and SO to account for these commitments as part of their settlements.

### **National functions**

- 3.23 Efficient and effective delivery by the national functions (in particular core functions that relate to Route Services and the Technical Authority) is essential to support efficient and effective delivery by regions and the SO to passengers, freight end users and taxpayers. We have set out more detail about our expectations in the SBP guidance.
- 3.24 We propose to further increase our focus on the activity of the core national functions, how well they are delivering to regions and the SO and what governance and other tools is in place to hold them to account for this. We expect these business units in particular to recognise that all parts of the infrastructure manager must be prepared to be transparent about their activity, expenditure and efficiency and the governance in place (e.g. charging or cost allocation models). We also expect these business units to be clear what they are doing to assess the needs of their direct and indirect stakeholders, and how they are using this information to shape what they do.

### **Routes**

- 3.25 We do not think it would be proportionate or appropriate to create settlements for the routes in addition to the regions. However, if there are issues in relation to a particular route in the control period, as now we would engage and investigate through the relevant region.

### **Making changes during a control period**

- 3.26 We recognise that there may be circumstances where the infrastructure manager needs to make changes to the level of funding for regions or to the outputs that

they are required to deliver. For example there may be legislation changes or the organisation may decide to restructure.

- 3.27 We are proposing to update the existing Managing Change Policy (see Chapter 7) which will enable such changes to be made to settlements in a controlled and transparent way. This will enable stakeholders to be clear on the implications for funding and outcomes to be delivered and maintain a clear link between the PR23 settlements and how we assess the infrastructure manager.

## What might settlements look like under rail reform?

- 3.28 The reform consultation proposes that GBR will have a regional structure (inheriting Network Rail's regions) with each region empowered to be accountable for track and train operations within its boundaries. We expect that GBR will adopt the determination and regional and SO settlements we create in PR23. We consider that GBR will also need to ensure that key system operation activities are delivered in a transparent way to support effective operation and co-ordination of the rail network across Great Britain. As noted earlier in this document, under rail reform, Scottish Ministers continue to be responsible for passenger services in Scotland (unless choosing to delegate to GBR), meaning that GBR's role would be more limited in Scotland.
- 3.29 We recognise that over time GBR may identify the need for changes to the PR23 determination to reflect a whole-system approach. Our proposed Managing Change Policy should ensure any changes are made in a transparent manner, with a clear focus on funding and outputs (see Chapter 7).

### Consultation questions:

**Question 3A:** Do you have any comments on our proposal to create separate settlements for regions and the SO?

**Question 3B:** Do you have any comments on our proposals for those parts of the infrastructure manager for which we will not be making a settlement (i.e. the national functions or routes)?

# 4. The role of stakeholders

In this chapter we set out how we propose to ensure the infrastructure manager undertakes **consistently good stakeholder engagement** across its business to support effective and efficient delivery to passengers, freight end users and their representatives. We also propose to **streamline the assessment of stakeholder views** on the quality of the infrastructure manager's engagement.

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## Background: the role of stakeholders

- 4.1 The infrastructure manager has an extensive range of stakeholders. This includes passenger and freight operators; regional transport bodies; passenger groups including accessibility groups and bodies such as Transport Focus, supply chain and their representatives, freight end users such as ports, and lineside neighbours. For clarity, the relationships that the infrastructure manager has with the Secretary of State and Scottish Ministers as shareholders are governed by particular arrangements and are not the subject of this chapter.
- 4.2 Any regulated organisation must be focused on the needs and views of its stakeholders (including customers and end users), and not just on the requirements of shareholders (or in the case of the national rail network, government funders) and the regulator.
- 4.3 Good stakeholder engagement is at the heart of running an effective business. We require the infrastructure manager to engage with its stakeholders in a way that improves delivery for passengers and freight users and enhances value for money.
- 4.4 Stakeholders can play key roles in:
  - (a) sharing information about their needs and views to **inform the infrastructure manager's priorities** including how it should develop and improve its business; and
  - (b) **helping to hold the infrastructure manager to account**, through placing pressure and focus on what is being delivered on a day to day basis. This is particularly true of passenger and freight operators.
- 4.5 Some stakeholders have more influence than others. Those with commercial relationships (such as freight and passenger train operators) have more opportunities to influence the infrastructure manager through contractual

arrangements. Where train operators have a passenger revenue incentive they are particularly incentivised to hold Network Rail to account. Government operator contracts adopted during the pandemic no longer have this, although they do continue to have performance targets and new cooperation incentives. Other stakeholders may have less influence. It is important that the infrastructure manager pays appropriate attention to all its stakeholders.

4.6 This chapter focuses on the role that stakeholders play in informing the infrastructure manager's priorities – and how we propose to ensure it engages appropriately.

## Network Licence requirements

4.7 The network licence states that the infrastructure manager must engage with stakeholders in ways appropriate to their reasonable requirements, and outlines a set of principles (as part of the Stakeholder Engagement Duty):

- **Inclusive** - engagement seeks to involve all relevant stakeholders in a fair and proportionate manner, including by adopting different approaches to reflect stakeholders' different capabilities and interests;
- **Effective** - engagement supports delivery of a safer, more efficient and better used rail network, including by ensuring that stakeholders' views are duly taken into account;
- **Well-governed** - engagement is underpinned by effective processes and governance arrangements, including senior level encouragement of meaningful engagement;
- **Transparent** - provides sufficient information to stakeholders to enable proper engagement, and illustrates how they can demonstrate how they have engaged with their stakeholders, and how this has influenced their actions and delivery.

4.8 The way stakeholders are engaged must be flexible enough to capture the priorities and requirements in different parts of the country. This is clearly the case in relation to the different requirements of governments in England, Scotland and Wales. It also applies at a more local level, for example to reflect the requirements of different types of direct customers such as train operators (commuter, long distance, freight) as well as to accommodate the views of diverse and widespread groups such as lineside neighbours and accessibility groups. However, the

engagement must be of a consistent quality, and key groups of national stakeholders must be able to expect a broadly consistent quality of engagement.

- 4.9 We consider that the licence principles are fit for purpose. They remain sufficiently flexible to allow business units to engage in ways that suit their stakeholders, to innovate and develop, while ensuring consistency of approach and that stakeholders views are considered at all levels of the business.

## Our approach in CP6

- 4.10 During CP6, Network Rail has been engaging with stakeholders at a regional and SO level. This generally works well and allows business units to take different approaches to suit the needs of their specific stakeholders. We have been assessing the effectiveness of Network Rail's stakeholder engagement against the principles contained in its licence. We publish an [annual assessment of Network Rail's stakeholder engagement](#) which is based on the following information:

- (a) an annual survey of Network Rail's stakeholders;
- (b) self-assessment by Network Rail's regions and the SO; and
- (c) analysis by ORR's internal teams and input from ORR's [Consumer Expert Panel](#).

## Our proposed approach for CP7

### A culture of stakeholder engagement

- 4.11 As stated above, we consider the business unit approach to stakeholder engagement has generally worked well and the regions and SO are building experience and expertise year-on-year. However, we have not seen enough evidence of co-ordination, consistency, and sharing of best practice between the regions and the SO. We think there is a risk that stakeholders' views will have different influence in different parts of the business, and that the experience of stakeholders that interact with multiple parts of the business may vary.
- 4.12 We would like to see more strategic direction from the infrastructure manager's senior leadership team to drive a strong culture of stakeholder engagement which both compliments and supports a devolved structure. We expect the infrastructure manager to continue to develop and learn from its stakeholder engagement, with clear evidence of how this is used to inform all parts of the business.

4.13 As well as ongoing engagement, the infrastructure manager should be engaging with its stakeholders in the development of its CP7 plans, as part of the PR23 process. In our guidance for the Strategic Business Plan, published alongside this consultation, we set out our expectations of how the infrastructure manager should demonstrate how it has taken stakeholders views into account in developing the plan.

### **Understanding stakeholder views efficiently**

4.14 We propose to continue to use our CP6 process to assess the effectiveness of the infrastructure manager's stakeholder engagement. However, we propose to consolidate the ORR and the infrastructure manager stakeholder surveys. Currently both ORR and Network Rail business units conduct different assessments of stakeholder satisfaction. This is duplicative and unlikely to be cost effective, and could be a drain on stakeholder time.

4.15 We propose that the key business units (in particular the regions and the SO) should ask stakeholders a set of standard questions agreed with ORR (and in line with the Stakeholder Duty principles) once a year and provide ORR with the responses. A consistent assessment approach should not be a barrier to the regions tailoring their wider engagement to suit their requirements at a local level. We also expect the infrastructure manager to demonstrate more clearly how it ensures that national stakeholders (e.g. any train operators that run across Great Britain) receive an appropriately consistent quality of engagement, and that the need for one stakeholder to engage separately across a number of regions is minimised. We would use the responses to inform our assessment of the infrastructure manager's stakeholder engagement. We consider this approach is proportionate and provides the right balance of scrutiny and assurance.

## **Stakeholder engagement under rail reform**

4.16 The importance of good stakeholder engagement will remain central to the successful delivery of GBR's strategic aims and objectives. We note that compared with Network Rail, GBR will have many more stakeholders and should have an even greater engagement with freight and passengers. It will also have specific new responsibilities in relation to accessible rail travel that will probably require more extensive stakeholder engagement.

4.17 We consider that the current stakeholder engagement principles in the licence are equally applicable to GBR and would form an appropriate basis on which to regulate, although we recognise that GBR will have a new licence issued by the Secretary of State.

## Consultation questions

**Question 4A:** Do you have any comments to make about our proposed approach to stakeholder engagement in CP7?

**Question 4B:** Do you agree that the infrastructure manager should conduct its stakeholder survey on the quality of its engagement which asks a consistent set of questions but which can also be tailored according to the business unit's stakeholder engagement approach?

# 5. Monitoring and enforcement

This chapter describes the principles and broad approach for how we monitor the infrastructure manager's performance and, where necessary, initiate enforcement action. These are set out in our CP6 Holding to Account policy. We propose to refresh and update this policy for CP7, but not make any significant changes to the core principles underlying our approach. We expect that many of the underlying principles to be relevant to our role in regulating GBR. Chapter 6 provides further detail about how our monitoring and enforcement principles apply around the delivery of outcomes.

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## Background: Regulating a public sector organisation

- 5.1 Network Rail is a publicly-owned and funded monopoly with no capital at risk, and our monitoring and enforcement approach reflects this. This means that some important incentives and levers available in other regulated industries (e.g. financial penalties and rewards) may be less appropriate or less effective in rail.
- 5.2 We set out our monitoring and enforcement approach in our published [Holding to Account](#) policy. This ensures we are consistent and transparent in how we deal with issues across all Network Rail's business, irrespective of the requirements of the different settlements. It also enables us to take a holistic approach to its performance as a whole. In doing so we seek to secure the best possible outcomes for passengers, freight end-users and taxpayers across the network.

## Our current approach in CP6

- 5.3 Underpinning our Holding to Account policy are general principles of regulatory best practice, including that our approach is:
  - **Risk-based:** meaning that we focus our resources where we consider the risks are greatest;
  - **Targeted:** at specific concerns and the part(s) of the infrastructure business that we consider responsible, to reinforce accountability and strong performance incentives at all levels within the company;
  - **Proportionate:** so that any actions we take reflect the scale and nature of the problems we are seeking to address and the likely costs and benefits to different parties of taking action; and

- **Transparent:** so that we are clear with stakeholders about our view of Network Rail's performance, whether we have any concerns and what action we are taking. We set out more information on our approach to transparency below.

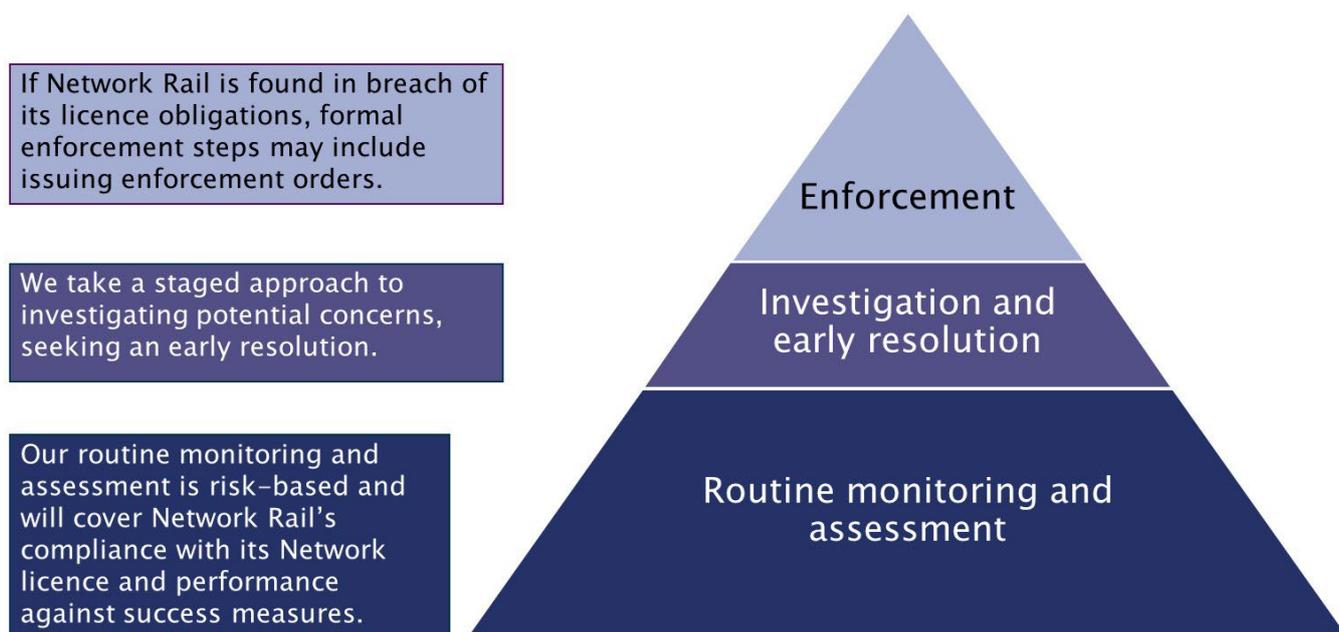
5.4 The policy seeks to create a balanced set of incentives on Network Rail that reflects its business structure and public sector status, and provide clear benefits for good performance and clear costs for underperformance. Our approach is based around the following key principles:

- **Reputational regulation:** We do this primarily through setting regional settlements, and through our approach to monitoring and reporting, including publicly reporting:
  - (ii) Network Rail's delivery against its obligations to customers and funders;
  - (iii) comparisons of performance across its geographic business units; and
  - (iv) compliance with its licence obligations.
- **Comparative regulation:** By highlighting comparative performance of regions, we expect to draw attention to better performing (as well as worse performing) areas of the business. In addition, we envisage giving more information and transparency where we have identified good practice that could be adopted elsewhere.
- **Proportionate regulation:** Designed to link the level of scrutiny to performance (i.e. good performance means less regulatory scrutiny). In CP6 we have sought to deliver this through adjusting our approach depending on the level of performance Network Rail achieves (e.g. doing 'deep dives' on areas of concern)).

5.5 The policy is based around routine monitoring and assessment, with staged, targeted interventions as needed (as set out in Figure 5.1 below).

5.6 To date we have not needed to take any enforcement action in CP6. This is partly as a result of our approach of early intervention, and partly due to the need to take a proportionate approach during the pandemic. However, we have undertaken a range of lower-level interventions and provided information about this on our website.

**Figure 5.1 Summary of the broad stages of our Holding to Account policy**



## Transparency

5.7 We publish a range of documents which demonstrate how we are holding Network Rail to account:

- [Annual Assessment of Network Rail](#); our views on Network Rail's delivery;
- [Mid-year review letters](#); an assessment of Network Rail's delivery in the first half of the year on specific topics, highlighting any areas of concern;
- [Annual Efficiency and Financial Assessment](#); enabling stakeholders to better understand Network Rail's efficiency and financial performance, and reflecting our [benchmarking](#) of Network Rail's maintenance costs and renewals unit costs;
- [Annual Report of Health and Safety Performance on Britain's Railways](#); every year our HM Chief Inspector of Railways publishes his view on the health and safety performance on Britain's railways;
- [Independent Reporter reports](#); professional advice to ORR on the quality of Network Rail's service provision, as specified in its licence, generally conducted jointly with Network Rail; and
- [Targeted Assurance Reviews](#); undertaken by ORR to gain in-depth understanding of ongoing or emerging issues, risks and opportunities within Network Rail which could impact regulatory targets.

- 5.8 We also provide transparency on how we assess changes to Network Rail's plans:
- [Review Network Rail's annual CP6 business plans](#); we review Network Rail's proposed changes to its business plan to ensure it remains on-track with delivering its PR18 commitments. This includes providing assurance to each funder that Network Rail is delivering against the respective HLOS and SoFA; and
  - [Managing change decisions](#); setting out any changes to the settlements. Relevant changes can be categorised depending on their impact and significance.

## Our proposed approach for CP7

- 5.9 For CP7 we propose an evolution of our CP6 approach. The infrastructure manager will need a clear set of commitments to deliver from April 2024, and we will continue to need a strong framework in place for holding it to account.
- 5.10 We propose to continue to take a staged, evidence-based approach to addressing concerns using the three broad stages of our Holding to Account policy. This will allow us to continue to incentivise the infrastructure manager (both at GB and regional level) to address emerging concerns before they reach the point at which formal intervention becomes necessary.
- 5.11 In CP7, we plan to continue to monitor against the determination and settlements, using comparison where it is appropriate to do so. We will continue to encourage sharing of best practice between the business units. We will continue to publish the performance of different business units to encourage competition between them. We will use success measures (and supporting measures, such as performance trajectories) as our headline indicators (which we explain in Chapter 6), in order to provide reputational incentives and to help prioritise our monitoring. We will consult on an updated Holding to Account policy in 2023.
- 5.12 We will continue to take into account all the available evidence on the infrastructure manager's performance (including performance against success measures, business plans, action plans, wider measures reported by the infrastructure manager and any additional ORR monitoring or reporting) in forming our judgement on whether the infrastructure manager is doing everything reasonably practicable to fulfil its licence obligations. We recognise that there are some tools that we have not used for far, such as public hearings, but this is not due to concerns about their suitability. We propose to retain these for CP7, as we

consider that they still have merit and could still be used in the current control period or in future.

- 5.13 We will continue to publish our holding to account activity and welcome views on the information we currently publish, including the format and presentation.

## Monitoring and enforcement under rail reform

- 5.14 We anticipate that much of our proposed approach will remain fit for purpose. GBR will be a publicly-owned monopoly with a devolved structure, like Network Rail. The reform consultation sets out ORR's role in securing improvement with robust powers to monitor and enforce the licence and hold GBR to account for performance across its objectives. We will require GBR to report candidly and transparently, and continue to deliver independent scrutiny to provide assurance to funders and wider stakeholders.
- 5.15 Whilst we consider that the underlying principles on which the current policy is based are likely to remain appropriate, we will need to update the policy to reflect changes to legislation and to the industry. For example, the reform consultation proposes that ORR will no longer be able to issue a financial penalty for breach of licence conditions (although we would still be able to issue enforcement orders and compel GBR to take action to improve).
- 5.16 We expect to consult on our CP7 Holding to Account policy in 2023. Depending on when legislation is passed and GBR is established, we may then refresh this policy to ensure it reflects the latest position on rail reform.

### Consultation questions:

**Question 5A:** Do you agree with our proposed broad approach to monitoring and enforcement in CP7?

# 6. Outcomes and monitoring performance

In this chapter we set out the role of our outcomes framework, which sets the requirements that the infrastructure manager must deliver for the funding it receives. The framework also facilitates our approach to monitoring the infrastructure manager's delivery of these requirements. We set out our proposed outcomes framework for CP7, including how we will use measures together with 'baseline trajectories' to monitor performance, in line with the principles in our wider Holding to Account policy set out in Chapter 5. We provide more detail of the measures we are proposing to use in the [Technical consultation on the measures in our proposed CP7 outcomes framework](#) published alongside this document.

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## Background

- 6.1 The HLOSs for England & Wales and Scotland will set out the high-level outcomes the UK and Scottish governments want from the infrastructure manager in return for their funding. The HLOS for England & Wales is expected to be finalised in October 2022 and the HLOS for Scotland is expected in November 2022. We expect these will include high-level performance requirements, recognising that each funder might take a different approach.
- 6.2 Our determination will set out how we have interpreted each funder's requirements within the funding available as part of our assessment of the infrastructure manager's SBP. Where funders do not set detailed requirements, it is our role to make sure there is clarity about what the infrastructure manager should deliver. Our outcomes framework will therefore reflect governments' HLOSs and set out a comprehensive set of measures to enable us to assess the infrastructure manager's delivery. It is part of our overall framework for holding the infrastructure manager to account (see Chapter 5).

## Our approach in CP6

- 6.3 In CP6 we set baseline trajectories and 'regulatory minimum floors' for three measures which we required Network Rail to report on within its scorecards. We have used these measures together with other measures and targets in Network Rail's scorecards to hold Network Rail to account, as set out in our Holding to Account policy (see Chapter 5 for more details).

- 6.4 However, our focus on the measures and targets in scorecards for our monitoring and reporting has had mixed success. While Network Rail has the flexibility to change some of the measures and targets in its scorecards, our experience is that there is a lack of transparency in how these targets are set and the level of agreement with its operator customers. We have also encountered issues with the accuracy of some of the information provided in the scorecards. These factors, together with the high number of measures in the scorecards and the way they are aggregated, makes it difficult to assess whether Network Rail is meeting its obligations for the funding it receives.
- 6.5 We introduced regulatory minimum floors to provide a further level of certainty around performance. These are a point below which we said we would be highly likely to consider a formal investigation into whether or not Network Rail was breaching its network licence conditions. In CP6 we set a regulatory minimum floor for three consistent regional measures: train performance (passenger and freight) and network sustainability. We also set a minimum floor for freight performance across Great Britain.
- 6.6 We have reviewed how this policy has worked and are concerned that the floors have sometimes created the false impression we will take no action above this level, or always take action if a region or the SO falls below this level. It is our view that the mechanistic nature of the floors does not accurately reflect the proportionate and holistic approach that we adopt in practice.

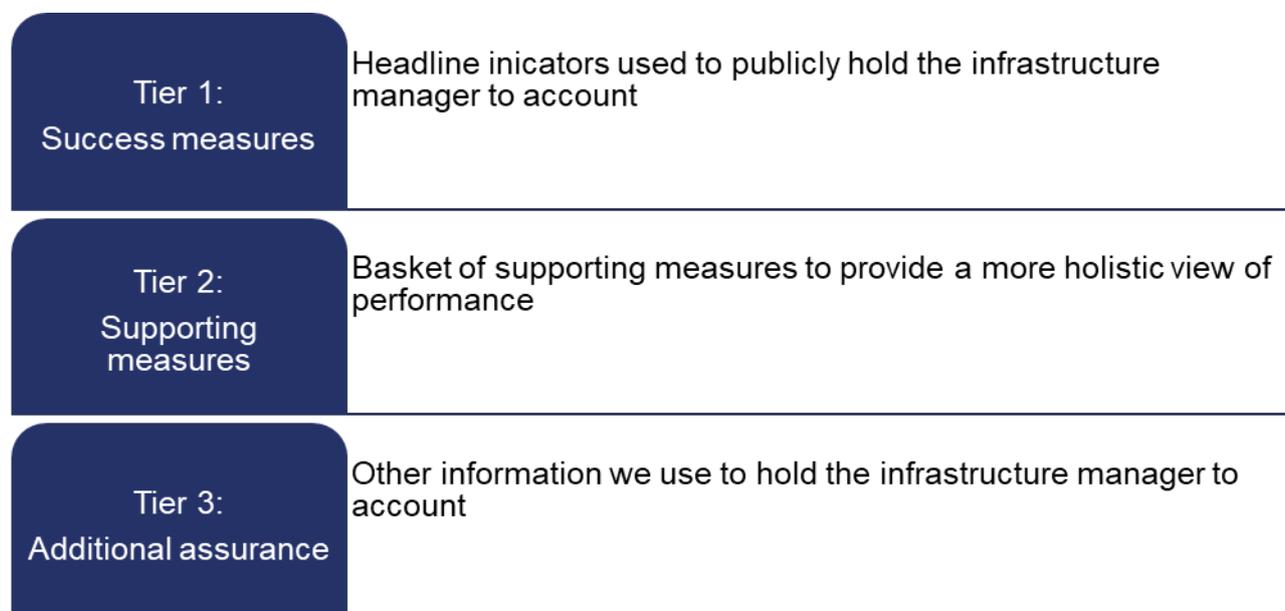
## Our proposed approach in CP7

- 6.7 In this section we set out:
- (a) our use of success measures and supporting measures;
  - (b) our approach to setting outcome requirements;
  - (c) how we plan to monitor performance against these requirements;
  - (d) when changes can be made to measures or outcome requirements;
  - (e) when we would consider initiating a formal investigation; and
  - (f) the role of stakeholders in driving the infrastructure manager's performance.

## Our use of success measures and supporting measures

- 6.8 Our experience focussing on the measures and targets in Network Rail's scorecards during CP6 is outlined above. Based on this we propose to change our approach in CP7 to use a tiered outcomes framework (see Figure 6.1 below). This includes a small number of top-tier success measures. These will be the headline indicators we will use to publicly hold the infrastructure manager to account. They will be, where possible, whole-system measures, which will support the transition from Network Rail to GBR.
- 6.9 To provide a more holistic view of performance we propose to specify a basket of supporting measures that the infrastructure manager should publicly report in CP7 and we will also use additional information for our assurance during the control period.
- 6.10 This tiered approach will allow us to incorporate any measures specified in the HLOSs for England & Wales or Scotland that are not already included in our outcomes framework. We propose to reflect this approach in our updated CP7 Holding to Account policy.
- 6.11 It will also contain measures which support each settlement (the different settlements are explained in Chapter 3). For example, some measures will support regional settlements, whereas others will focus on SO performance.

**Figure 6.1 Our proposed outcomes framework**



- 6.12 We will require the infrastructure manager to use the proposed outcomes framework and the measures within it as part of its own regular business planning

and monitoring activities during CP7. We will closely monitor performance of these key delivery measures for each region and SO (where appropriate) and report on them in our annual assessments.

- 6.13 As part of this wider consultation on our proposed regulatory policy framework, we have published a [Technical consultation on the measures in our proposed CP7 outcomes framework](#) alongside this document. The technical consultation sets out the measures we propose to use in the tiered outcomes framework for CP7, which are designed to support the core fundamentals of PR23 (safety, train performance, asset sustainability and efficiency). However, these will need to be considered in light of each funder's forthcoming HLOS.

## Our approach to setting outcome requirements

- 6.14 For each of the success measures, we propose to set baseline trajectories in the settlements for each year of CP7. These are quantified expectations of performance levels that the infrastructure manager is required to deliver in line with governments' HLOSs and the funding provided through PR23.
- 6.15 We will set most of the baseline trajectories by each region. For the SO, we will set some for Great Britain and some at a national passenger operator level.
- 6.16 To derive the baseline trajectories, we expect the infrastructure manager to produce forecasts for each success measure based on its detailed plans. We will assess the infrastructure manager's approach to producing these forecasts by reviewing its methodology, calculations and models, inputs (including the impact of its plans and key assumptions), assurance activities and stakeholder engagement with its customers.
- 6.17 Where governments include specified measures with quantified expectations in their HLOSs, we expect to set baseline trajectories for them.

## Monitoring performance against outcome requirements

- 6.18 Chapter 5 sets out our broad approach to monitoring and reporting in CP7. We propose to monitor and report on the performance of each success measure against the baseline trajectories published in our determination. We will engage regularly with the infrastructure manager and use the supporting measures together with additional assurance information to understand the performance of these headline indicators.
- 6.19 Where performance is worse than the baseline trajectory, we will use the escalation approach described in Chapter 5 to discuss with the infrastructure

manager whether it is taking reasonable steps to improve performance. In certain cases we would consider initiating a formal investigation. Further information on this is provided later in this chapter. Conversely, if performance is better than the baseline trajectory we will publicly recognise this and encourage the good practice to be shared.

- 6.20 The infrastructure manager should publicly report the performance of each success and supporting measure (by region and for the SO as appropriate) during CP7.
- 6.21 We recognise that the infrastructure manager might set internal targets for success measures which are different to corresponding baseline trajectories. We expect the infrastructure manager to notify us of these differences and to explain the reasons behind them. For example, the infrastructure manager might set a 'stretch' target to further improve where it is already outperforming the baseline trajectory. Alternatively, it may set a target which is less challenging than the baseline trajectory as part of a wider plan to recover performance to baseline trajectory levels later in the control period. Whilst the baseline trajectories are our primary focus and represent our expectations of performance across the control period, we may also reflect the infrastructure manager's internal targets or forecasts in our monitoring and reporting of its performance.
- 6.22 We propose that the infrastructure manager sets internal targets for each supporting measure at the start of each year and that it publishes these targets and the performance against them. We expect the infrastructure manager to provide us with a summary explanation of how it has set these targets including evidence of stakeholder engagement with its customers.

## **Making changes to measures or outcome requirements**

- 6.23 We recognise that there needs to be some flexibility within our approach to react to changes in circumstances during CP7 and to maintain incentives so the infrastructure manager is driven to improve its performance, reflecting the circumstances it is operating within. We propose to include a robust change control process to allow:
- changes to the success and supporting measures in our CP7 outcomes framework i.e. the addition or removal of measures or the transition of a supporting measure to a success measure or vice-versa; and
  - updates to the success measure baseline trajectories where we agree there has been a major change in circumstances that the infrastructure manager

could not have reasonably expected. This could include major changes to assumptions that were used to inform the baseline trajectories set in our determination.

- 6.24 The timing of these changes would be aligned to the infrastructure manager's regular business planning activities on an annual basis unless there is a strong case for making changes to measures or updating a success measure baseline trajectory in-year. We propose that the infrastructure manager would make a case as part of its annual business plan submission to make changes to measures or baseline trajectories including the rationale behind the proposed changes, the evidence to support this and engagement with stakeholders.
- 6.25 We would then decide whether to agree to the proposed change. If we approved a baseline trajectory change, we would report performance against the updated trajectory from that point onwards. If we rejected the change request, we would continue to monitor and report performance against the baseline trajectory published in our determination.
- 6.26 We propose to include this change control process within a revised Managing Change Policy for CP7, which we will consult on later this year (see Chapter 7).
- 6.27 We would not have a role in approving changes the infrastructure manager makes to its internal targets for supporting measures. We would expect it to notify us of any changes, with a summary explanation of the reasons for the change and the implications, including the impact on its stakeholders. We may choose to review the infrastructure manager's internal change control processes if we have any concerns regarding how changes to these targets are being managed.

## **When ORR would consider initiating a formal investigation**

- 6.28 In Chapter 5 we describe our proposed escalation approach to managing poor performance. We expect some degree of fluctuation of performance around the baseline trajectories, and we will monitor this on a period-by-period basis, engaging with the infrastructure manager at a working level. We will continue to take a range of information into account when carrying out our monitoring activity, including the infrastructure manager's response to concerns we raise.
- 6.29 Should a decline be substantial or persist over a prolonged period of time, we will consider whether or not we need to take more formal action (as set out in Chapter 5), and if so, what action we will take. We propose to publish non-exhaustive indicative criteria in our determination that we will use to monitor the infrastructure manager's performance against baseline trajectories. These criteria will be

considered in any decisions on whether to initiate a formal investigation relating to poor or declining performance.

- 6.30 We propose to keep the scope of these indicative criteria linked to performance levels and intend to set out these criteria in our determination and our updated Holding to Account policy. The criteria could include:
- (a) sustained decline in performance over time (particularly if this is worse than the baseline trajectory);
  - (b) regional outlier (i.e. performance in one region is particularly poor relative to other regions);
  - (c) exceptionally poor performance (even if only for a short period of time); and/or
  - (d) performance continually below the baseline trajectory.
- 6.31 This proposed approach is aligned with how we currently monitor performance and removes the unintended risks of a regulatory minimum floor placing unrealistic expectations on ORR to act, given our holistic approach to understanding the infrastructure manager's performance.
- 6.32 In addition to using the criteria, we would continue to assess information and analysis from a range of sources as part of our wider monitoring and to inform any action we may need to take. This might include feedback from stakeholders, information on significant incidents affecting passengers or freight customers and the quality of performance plans and strategies.

## The role of stakeholders

- 6.33 Although we are placing less emphasis on the measures and targets in scorecards and the role of stakeholders in holding the infrastructure manager to account, we expect the infrastructure manager to continue to engage with stakeholders as part of the process for setting performance expectations (our baseline trajectories for success measures and the infrastructure manager's annual targets for supporting measures). We are interested in the views of stakeholders on how we propose to set performance expectations and how we will monitor how well the infrastructure manager is performing in meeting these performance expectations.

## How this might work under rail reform

- 6.34 As previously mentioned, GBR will adopt Network Rail's determination and settlements for CP7. The small set of clear high-level CP7 success measures will support the key Plan for Rail expectations of transparency and simplicity. It will help maintain a clear focus on delivery of key outcomes such as train performance and asset sustainability during a period of significant industry change. Our proposed use of whole-system measures (e.g. for train performance) should also be appropriate for GBR's role in managing operator contracts.
- 6.35 We acknowledge that CP7 will be a period of transition and we would expect that GBR will establish a more integrated track and train approach to business planning over CP7. We consider that our Managing Change Policy (see Chapter 7), and the process for changing measures and trajectories set out in this chapter, will enable us to update success measures, if appropriate, within the early years of GBR's existence.
- 6.36 Roles and responsibilities around change management processes for GBR targets and trajectories are yet to be defined. However, our expectations are that any decisions on changes to baseline trajectories published in our determination will be either made by ORR, or we will provide transparent independent advice on these changes to government.
- 6.37 The Department for Transport's rail reform proposals are clear that ORR will independently monitor and enforce the GBR licence. We would expect to continue using our indicative non-exhaustive criteria when considering GBR performance. If appropriate, we will update our Holding to Account policy once the final details of GBR's governance and accountability framework (including the licence) are known. However, in the interests of providing certainty and continuity, we currently expect that very similar core principles would continue to underpin ORR's initial approach in respect of GBR, during CP7.

### Consultation Questions:

**Question 6A:** Do you have any comments on the structure of our proposed CP7 outcomes framework, which includes success measures, supporting measures and wider information to monitor and hold the infrastructure manager to account in CP7?

**Question 6B:** Do you have any comments on the proposed approach to monitoring, reporting and escalating performance against success measures?

# 7. Change and flexibility

In chapter 3 of this document, we set out our proposals to create settlements establishing the funding and accountabilities for the infrastructure manager's regions and the SO. This chapter sets out our proposed approach to managing changes that could affect key aspects of the determination and settlements (funding and accountabilities) throughout CP7. We propose to broadly retain our current approach, but make some small improvements: a principle of timeliness; clarifying the scope to be 'effects-based' and some improvements to clarify and simplify the document.

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## Background: flexibility to change

- 7.1 This chapter sets out our proposed approach to managing changes which affect the key aspects of the determination and settlements (funding and outcomes). Following feedback from this consultation, we will revise the Managing Change Policy for CP7, on which we will consult later this year. We will also consult on the separate processes that can be used to change the infrastructure manager's overall funding in our PR23 Financial Framework consultation in December 2022.
- 7.2 Circumstances will change over the course of a five-year control period. Some of these changes may affect what is in the determination or settlements. Such changes could be driven by decisions within the infrastructure manager or by external factors (including changes in government policy).
- 7.3 We need to enable appropriate changes to take place, while ensuring clarity on what the infrastructure manager has to deliver for the funding. This ensures we are still able to hold the infrastructure manager to account and provide our assurance role for funders. Controlled change also provides certainty for the infrastructure manager, operators, the supply chain and other third-parties over the control period.
- 7.4 We therefore have flexibility mechanisms that allow our funding and accountability decisions to adapt to changing circumstances:
- (a) We **monitor and report on annual [business plan changes](#)** during CP6 that Network Rail makes to ensure that its annual plans continue to be aligned with the PR18 delivery plan. For example, a region may revisit its internal budget allocation to make changes to its renewal plans.

- (b) Our [Managing Change Policy](#) allows changes that impact on the settlements to take place transparently (e.g. when Network Rail implemented its Putting Passengers First programme, which was a significant organisational re-structure that saw it move from eight routes to five regions).
- (c) In exceptional circumstances, and for a narrow range of situations where certain conditions are met, there are processes that can be used to change Network Rail's overall funding during a control period. Examples include **our approval role to return Network Grant money to funders, and our role in the access charge rebates process**.
- (d) Very exceptionally, a significant material change in circumstances might mean that Network Rail no longer has the resources to deliver its outputs. To manage these unlikely situations, an **interim periodic review** could be triggered to carry out a new charges review.

7.5 While we wish to ensure flexibility, we have to recognise certain restrictions, such as the ring-fencing of Scotland's funding. However, there can still be change within the ring-fenced amount, such as a shift in accountability between the Scotland region and the SO.

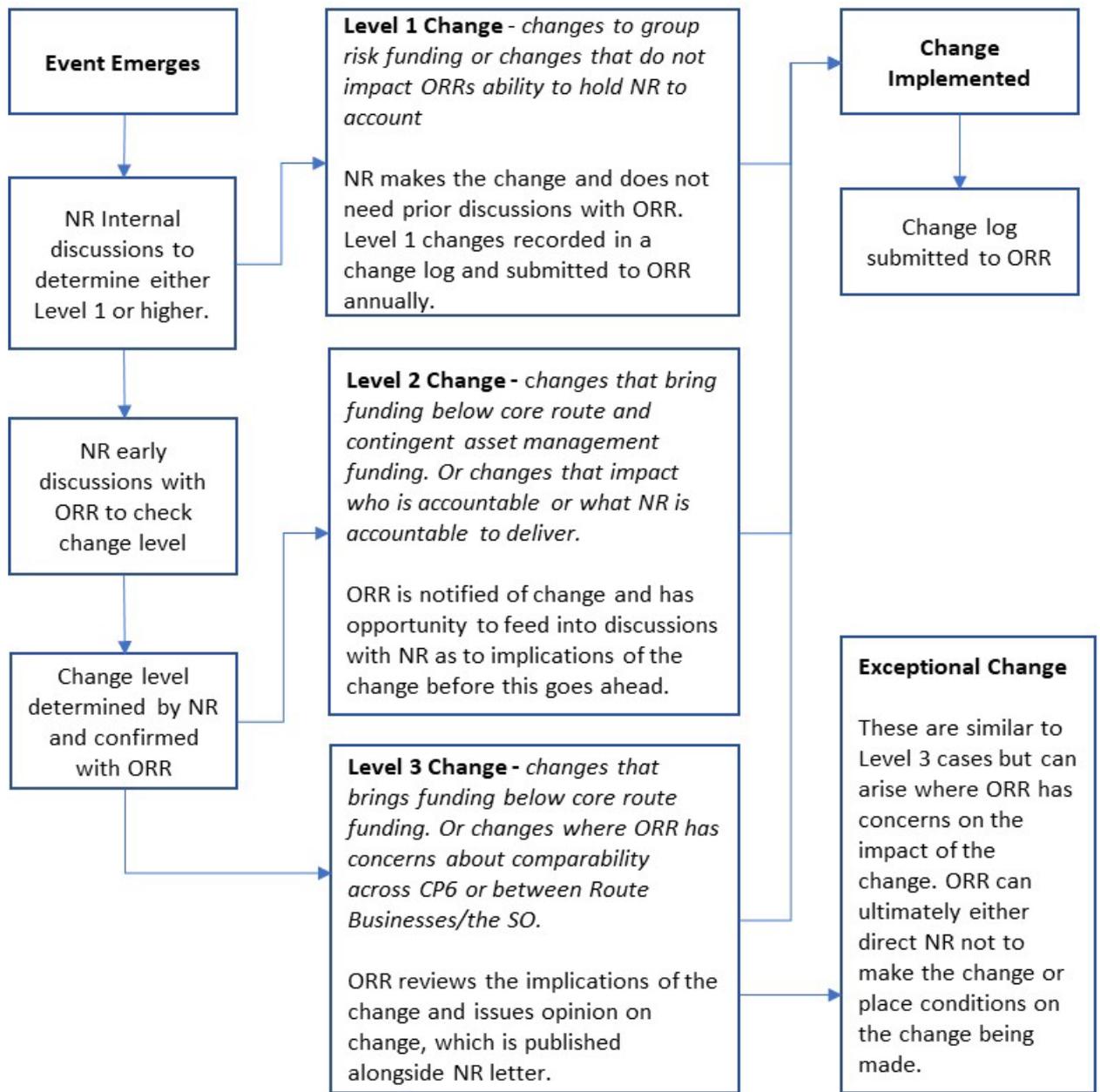
## Our approach in CP6

7.6 Our CP6 Managing Change Policy categorises change into three levels, with different levels of ORR oversight. This is set out in Figure 7.1 below. The policy requires Network Rail to monitor and manage more minor changes, and to report these to us on an annual basis. For more significant changes, we require Network Rail to engage with us. The Managing Change Policy has supported an appropriate focus on CP6 outcomes and funding during significant changes such as Network Rail's Putting Passengers First programme.

## Our proposed approach to CP7

7.7 In PR23 we will create settlements setting out the funding and accountabilities for the infrastructure manager's regions and the SO for CP7. We consider that there is still a strong case for a Managing Change Policy for CP7 that strikes a balance between the infrastructure manager's business flexibility needs and the clarity our settlements provide on funding and outputs.

**Figure 7.1 CP6 Managing Change Policy process diagram**



7.8 Our early engagement with stakeholders indicates broad agreement that the existing Managing Change Policy has worked well to date. We are not proposing to depart from the key objective, principles, or scope of the policy. Neither do we propose changes to the implementation of the policy nor any changes to the licence in this area. However, we consider that there is scope to improve the policy to build in more transparency and encourage collaboration, as well as improving its clarity and reducing complexity.

7.9 We therefore propose that the CP7 Managing Change Policy:

- (a) allows appropriate changes to the settlements to happen in a transparent manner (with continued tools to protect against or mitigate changes that we may have concerns about); and
- (b) facilitates engagement and collaboration to provide early sight and an opportunity to understand the implications of changes.

7.10 Our proposals for a CP7 Managing Change Policy were based on a review of the key areas of our existing policy. The next sections of this chapter explain the main changes in more detail.

### Objective

- The current Managing Change Policy objective is to balance the need for the infrastructure manager to be able to respond flexibly to changing circumstances against the need to: (1) provide some certainty for the regions and the System Operator (and their customers and funders) regarding their responsibilities and funding; and (2) hold the regions and System Operator accountable for delivery.
- For PR23, we are proposing **minimal changes** to reflect our proposals that the PR23 determination contains settlements for regions

### Principles:

- The current principles that underpin the CP6 Managing Change Policy are: *Proportionality* (focus on changes that have the most impact); *Consistency* (similar changes are treated similarly); and *Transparency* (funders, stakeholders and ORR understand the change).
- For PR23, we are proposing to **add** a new '*timeliness*' principle to reinforce the importance of early engagement on more substantive changes (and in keeping timely records of more minor changes, where these are covered by the policy).

### Scope:

- The current policy covers changes to funding and accountabilities within the infrastructure manager that result in a change to the settlements.
- For PR23, we are proposing **minimal changes** to clarify scope to improve certainty.

## Licence:

- Network Rail's [network licence](#) currently includes managing change conditions 4.1 and 4.2. These conditions require compliance with the policy and allow ORR to issue directions to either not make the change or impose conditions to changes in exceptional circumstances.
- For PR23, we only propose to consider minor changes if they are required to improve clarity.

## Process:

- The current Managing Change Policy defines the different levels of change and sets out the process for ORR's involvement based on these levels.
- For PR23, we propose to **consider options** for improving clarity and reducing complexity.

## Add a timeliness principle

- 7.11 For PR23, we propose to keep the existing principles of **proportionality**, **consistency** and **transparency**, and add another: **timeliness**. This principle will ensure that the infrastructure manager gives ORR sight of relevant proposed changes in a timely manner to allow collaborative working between the two organisations (and where appropriate, funders) to ensure those relevant changes are well thought-through and appropriate. This will help improve the quality of decision-making, ensure all parties understand the changes and impacts and ensure that ORR can hold the infrastructure manager to account in an efficient and effective way.
- 7.12 While the policy already requires the infrastructure manager to engage with ORR for certain levels of change, this has not always happened with sufficient time before the change takes place for ORR to be involved appropriately.
- 7.13 For example, if the existing categories of change were to be kept, then the new principle would apply as follows:
- (a) Level one changes – the infrastructure manager should ensure that it has appropriate and timely processes in place to track and make these changes transparent (though it would not be required to engage with us in advance of making this change);
  - (b) Level two and three changes – The principle would reinforce the importance of the existing policy requirement where these changes

should be notified to ORR in advance of a decision being made. We recognise that there may be some confidential changes which the infrastructure manager does not want to be widely known (even inside its organisation) but this does not negate the need to share it with ORR as the regulator. We welcome proposals on how to address this, for example, through initial engagement at the most senior level for particularly sensitive changes.

## Clarify the scope

- 7.14 We are not proposing to change the scope of the current policy, but propose to clarify that the policy is **'effects-based'**. By this we mean that the policy should apply to any change which has an impact on, or results in change to, the funding and accountabilities set out in the settlements, regardless of where those changes originate.
- 7.15 Internal decision-making could impact settlements, such as:
- (a) changes in regions' boundaries;
  - (b) organisational changes: e.g. creating a new region or moving functions between the SO and the regions;
  - (c) changes to success and supporting measures;
  - (d) changes to baseline trajectories; and
  - (e) changes to how financial risk funding is allocated between the regions (this excludes Scotland as outlined above).
- 7.16 External processes and decision-making could also impact the settlements. For example, a regions' settlement funding could be impacted by external changes to funding that the infrastructure manager has agreed at national level with DfT and/or Transport Scotland, e.g. through the rebate policy. We will consult on our approach to external funding changes in our PR23 Financial Framework consultation due to be published in December 2022.
- 7.17 For the avoidance of doubt, changes to how each of the regions and the SO allocate their own budgets to meet their business plan objectives are not in scope of the Managing Change Policy. We will continue to report on these changes as part of the process we use to monitor changes to the infrastructure manager's business plans.

## Improving clarity and simplification

- 7.18 Our lessons learnt exercise and our early engagement with stakeholders has highlighted potential areas for improving the policy by:
- (a) **increasing clarity** – the wording of the current policy is perceived to be unclear in places; and
  - (b) **simplifying** – the current policy is perceived as complex and too specific and could benefit from being more principles-based.
- 7.19 We are exploring ways to make the policy simpler and clearer to increase certainty and reduce regulatory burden. We welcome views on features of the current policy, in particular:
- (a) **Levels of change** – whether the three levels remain the most suitable way to identify and classify the types of change?
  - (b) **Regions' agreement to changes** – whether, given Regional Managing Directors now sit on the executive, this requirement is needed. Currently Network Rail's executive signs off the updated delivery plan that covers all regions, so we are interested in whether there is still a benefit in requiring a Regional Managing Director to endorse a change.
  - (c) **Integration into business planning process and business plan review** – whether there are opportunities to better integrate the policy in the infrastructure manager's business planning process and ORR's process to review the business plans.
  - (d) **Role of stakeholders** – whether stakeholders are being engaged sufficiently on material changes.

## How this might work under rail reform

- 7.20 The Department for Transport's recent consultation proposes a change control process where ORR independently assures changes made to the GBR integrated business plan 'in-life' and provides advice to government funders on the implications of changes. We would envisage this role and process being defined through the GBR licence.
- 7.21 We agree that a transparent and independently overseen change process will continue to be needed to support clear accountability and provide assurance to funders and users. The benefits of such a framework include:

- (a) **Retaining the value of a stable five-year infrastructure funding settlement:** ensuring the appropriate balance of stability and flexibility in infrastructure planning, for the renewal, maintenance and operation of the network.
- (b) **Promoting informed decisions:** an independently overseen change process can give confidence that all significant changes are identified, and their impacts on different parties understood.
- (c) **Ensuring transparency and accountability:** for GBR to be appropriately held to account there must be a clear line of sight to what was planned and funded in the original business plan/settlement, so there is always visibility of any changes to the PR23 settlements and potentially an ORR opinion on the consequences of change.

7.22 In our view, ORR will still need to continue to be able to make independent decisions on whether changes proposed are consistent with GBR's obligations. We consider that the policy objectives, principles and process that we are proposing for PR23 are likely to remain suitable for GBR, particularly in relation to infrastructure.

7.23 When the future framework for integrated track and train planning is confirmed we will anticipate reviewing the Managing Change Policy for CP7 to reflect our role in regulating a more integrated railway.

### Consultation questions:

**Question 7A:** Do you agree with our proposals to improve the Managing Change Policy for CP7?



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