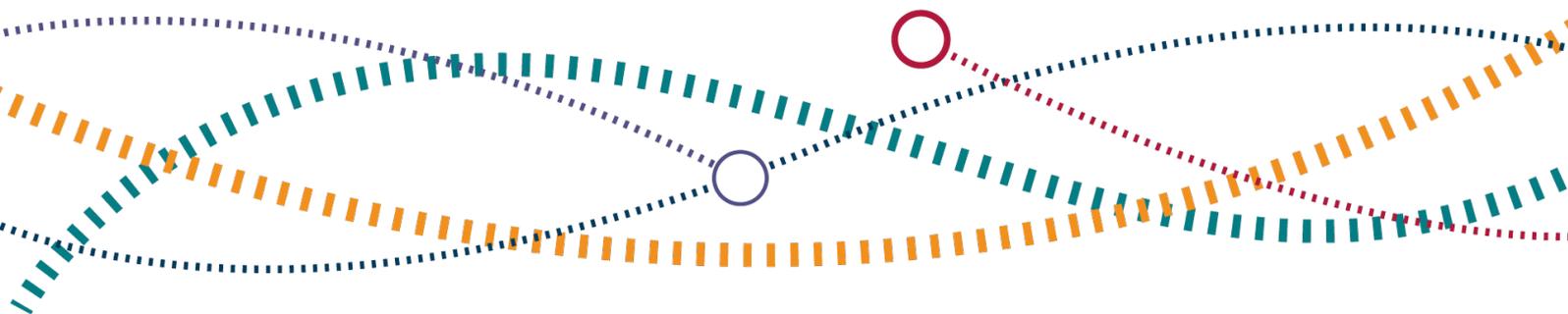




# Investment Framework 2022 Update

## Consultation Conclusions

27 September 2022



# Contents

---

<b>1. Executive Summary</b>	<b>3</b>
<b>2. Introduction</b>	<b>5</b>
<b>3. Key issues raised by consultees</b>	<b>6</b>
<b>4. Conclusion</b>	<b>8</b>

# 1. Executive Summary

---

1. ORR encourages investment in the rail network, supporting the Department for Transport, Transport Scotland and Network Rail's ambition to make it easier for a wider range of investors (such as investment funds, scheme promoters, developers and Local Authorities) to promote and deliver projects. We also ensure that there is a fair and reasonable balance of risk between investors and Network Rail.
2. Our key governance document on third-party investment into the rail network is our [Investment Framework](#), which was originally published in 2006. It contains ORR's policy and guidelines, setting out the legislation and processes for anyone who wishes to invest in the rail industry, including the role of respective parties and remedies for issues that may arise.
3. We have recently updated our Investment Framework to provide clearer and more user-friendly guidance on investment into the rail network. The key objective of this update was to remove obsolete information and provide up-to-date guidance for investors. Substantive changes to policy were not in scope, although we intend to conduct further updates that may result in more significant changes to the Investment Framework in due course.
4. Prior to publishing the updated version of the Investment Framework, we launched a [stakeholder consultation](#) on the draft version in July 2022. The consultation sought feedback on the clarity and comprehensiveness of this draft and to better understand which areas of the guidance stakeholders found useful, where they thought the Framework was unclear, and what, if anything, was missing.
5. The consultation closed on 29<sup>th</sup> July 2022, whereupon the responses were reviewed and amendments to the draft updated version of the Investment Framework were made. We were able to address the majority of comments received from stakeholders, many of which related to points of clarity.
6. There were several requested changes to the Investment Framework that fell outside of the scope of this update, as they would require substantive changes to the underlying policy. These items will be considered in future updates to the Investment Framework.
7. Our next steps are:
  - To monitor stakeholder feedback on the updated Investment Framework;
  - Produce a forward-plan for future updates; and

- Continue to monitor industry change to determine how this could affect the Investment Framework.

## 2. Introduction

---

1. Our consultation on the [Investment Framework Update](#) ran throughout July 2022. This document contains our conclusions from the consultation.
2. The consultation document stated that the scope of the update was to deliver the following:
  - deliver a concise, relevant and informative framework that will clarify the roles and responsibilities of ORR and other stakeholders;
  - provide useful guidance to potential investors delivering a streamlined and accurate framework to support investors, Network Rail and other stakeholders;
  - remove obsolete information in the current Investment Framework; and
  - provide a formal framework that sets out ORR and Network Rail's roles and responsibilities.
3. As part of the consultation, a draft version of the updated Investment Framework was made available for stakeholders to review. Key amendments to the draft version included:
  - removal of references relating to borrowing against the Regulatory Asset Base – an option no longer available since Network Rail was reclassified as a public sector organisation;
  - further detail on the template contractual agreements, which are commonly used to facilitate investment; and
  - updated and additional links to related content and guidance.
4. We received two responses to the consultation. Both responses were supportive of the proposed changes to the Framework. A number of points of feedback raised regarding clarity of wording were readily addressed, and the draft Framework was updated accordingly.
5. There were several aspects of feedback and proposed changes that could not be progressed as part of this update. This was primarily because the changes would require a substantive change to the underlying policies, which is outside of the scope of this update.

## 3. Key issues raised by consultees

---

2. In this section, we address feedback and proposed changes from consultees that could not be taken forward as part of this update and explain the reasons why this is the case.
3. A record of this feedback will be kept and will be considered as part of future, substantive updates.

### Industry Risk Fee and Network Rail Fee Funds

4. The Investment Framework provides an overview of the Industry Risk Fee and Network Rail Fee funds under section 3. This covers the purpose of each fund and the roles and responsibilities of ORR, Network Rail and investors.
5. A respondent asked whether further detail on the management and governance of the Industry Risk Fee and Network Rail Risk Fee Funds could be included in the Investment Framework.
6. We were able to partially address this request by revising the wording under section 3. However, it must be noted that Network Rail oversee the management and governance of both funds, not ORR. We have amended the wording under section 3 to clarify this. We have also added a link to the Network Rail investment website that provides further information on how Network Rail manage and govern the funds. The link also provides updated contact details for the team at Network Rail who lead on this.

### Station Change and Network Change

7. Section 4 of the Investment Framework makes reference to the requirement to complete Station Change and/or Network Change processes when delivering an enhancement to the network.
8. A respondent noted that the timescales for completing the Station and Network Change processes are not always clear in practice and can be underestimated by investors. They requested that we add further information on the timescales associated with both change processes.
9. We noted that Station Change and Network Change are industry processes that are not owned by ORR. The inclusion of further, specific detail on each process would fall outside of the scope of the Investment Framework. We also noted that the timescales for completing both change processes can vary significantly depending on

various factors, including the nature of the proposed change and number of affected stakeholders.

10. We have added some additional wording to the Framework to highlight this, urging investors to consider the complexity of their proposed change and the likely response from stakeholders, and how this can have a major impact on the timescales for completing the change processes. We also provided a link to the Network Code, where further information can be found.

### **The Rebate Mechanism**

11. Section 7 of the Investment Framework covers investment in track enhancements and the rebate mechanism.
12. A respondent asked whether the rebate mechanism could be expanded beyond track enhancements, as 'free riders' can also apply to other station investments. This can result in third parties funding rail investments that deliver wider public benefit without securing any long term asset or other financial benefit.
13. Upon consideration of this request, this would require a substantive change to the policy that is beyond the scope of the current update. However, we will keep a record of this request and it will be considered when we next deliver a substantive update of the policy.

### **Hypothecated Gains**

14. A respondent queried whether Network Rail can still transact using hypothecated gains as consideration, as they understood that this was no longer possible following Network Rail's reclassification to a public sector body.
15. We have consulted further on hypothecated gains with Network Rail and Department for Transport. We have been advised that since reclassification to a public sector body, Network Rail are no longer able to transact using hypothecated gains. We have therefore removed the reference to this from the Investment Framework.

## 4. Conclusion

---

16. We would like to thank those who responded to the consultation and for providing their comments and feedback.
17. We have now published the updated [Investment Framework](#) on our website and have archived the previous version.
18. We will continue to monitor stakeholder feedback on the Investment Framework to ensure that it remains clear and fit for purpose. We will also develop a forward plan so that the Framework will undergo a regular review and update process. This will also include more substantive updates that will review the underlying policy, which will aim to address some of the items noted under section 3.
19. We will also continue to review the effectiveness of the Investment Framework as rail reform is delivered and Great British Railways is stepped up.



© Crown copyright 2022

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3)

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at [orr.gov.uk](https://orr.gov.uk)

Any enquiries regarding this publication should be sent to us at [orr.gov.uk/contact-us](https://orr.gov.uk/contact-us)

