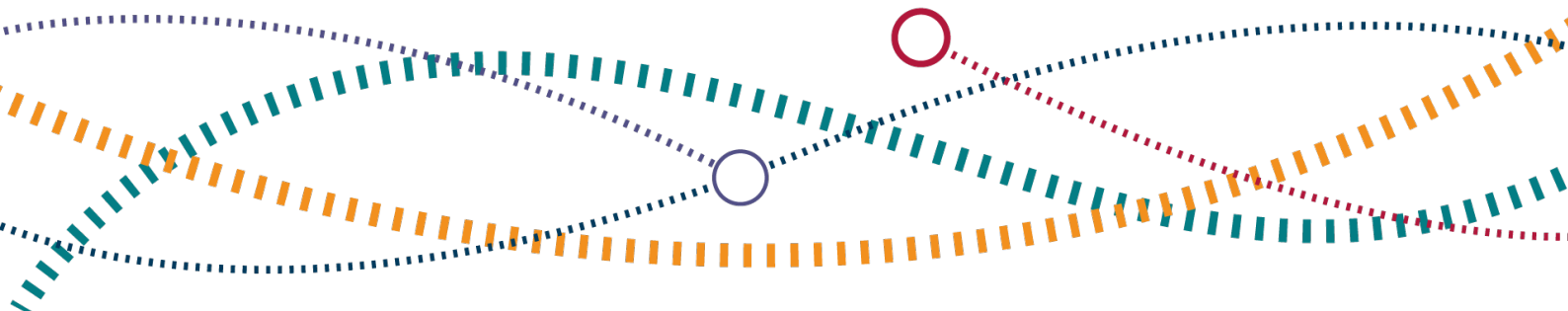




PR23 final determination:

Introduction

31 October 2023



About this document

This document introduces our final determination for the 2023 periodic review (PR23). In this document we:

- summarise the PR23 process, including the final determination, its implementation, and Network Rail's delivery plan;
- provide the background and wider context within which we are making our decisions;
- set out our approach to assessing Network Rail's plans; and
- explain the structure of our final determination document suite.

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1. Overview of PR23

1.1 In the following sections we introduce the:

- purpose of PR23;
- framework for PR23;
- Statements of Funds Available and High-Level Output Specifications;
- draft determination;
- final determination;
- implementing the final determination;
- Network Rail's delivery plan; and
- reset of passenger train performance trajectories, Schedule 8 benchmarks and incentive payment rates

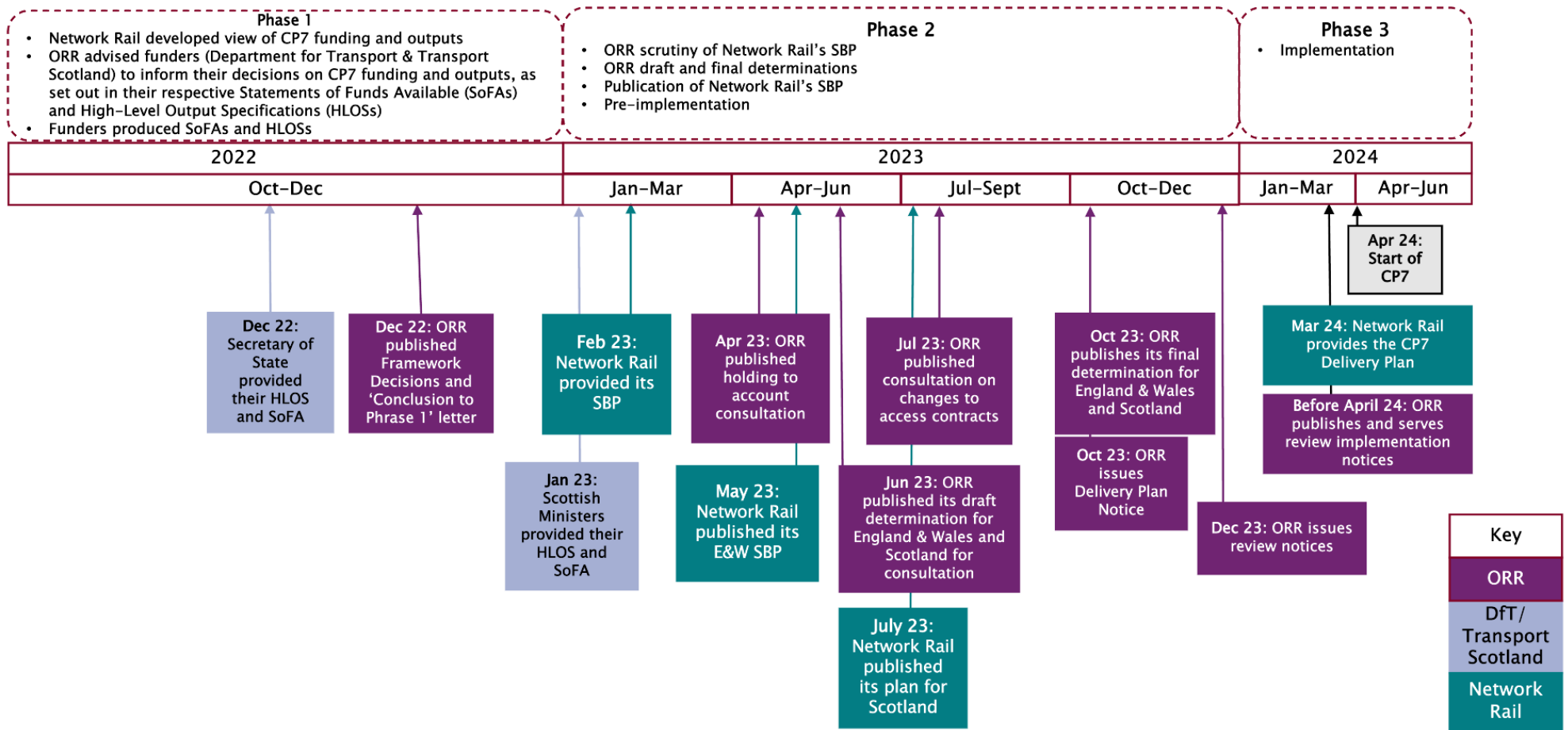
Purpose of PR23

1.2 Through the 2023 periodic review (PR23) we determine what the infrastructure manager for the national rail network, Network Rail, is expected to deliver with respect to its operation, support, maintenance and renewal (OSMR) of the network during control period 7 (CP7) and how the available funding should be best used to support this. This strongly influences:

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

1.3 The key milestones for PR23 are shown in Figure 1.1 and are explained in the following sections.

Figure 1.1 PR23 milestones



Framework for PR23

- 1.4 We set out our approach to PR23 in an [open letter to stakeholders](#) in June 2021. Our approach builds on our current approach to regulating Network Rail, updated to reflect the current context. Our approach:
- sets an outcomes framework which encourages Network Rail to increase focus on what passengers and users care about;
 - reflects differences between England & Wales and Scotland where appropriate; and
 - identifies requirements for Network Rail as one organisation with one network licence, including settlements for Scotland, its regions in England & Wales and its System Operator.
- 1.5 During 2022, we provided advice to the UK and Scottish governments (the funders) about Network Rail's funding requirements for its OSMR activity for CP7 and what it can deliver for that funding. This drew on our existing work to monitor and hold Network Rail to account, as well as our wider engagement with industry and specific work on key aspects of Network Rail's delivery. Our advice to funders is published [here](#). It reflects the wider economic context and Network Rail's CP7 plans at that time.
- 1.6 Our PR23 programme also considered our approach to regulating Network Rail during CP7. Specifically, we consulted with stakeholders on the:
- [overall policy framework](#) we will use to hold Network Rail to account;
 - [outcomes framework](#) including the success measures that we will publicly use to hold Network Rail to account during CP7;
 - applicable [access charges and incentives regimes](#).

Statements of Funds Available and High-Level Output Specifications

- 1.7 Our advice informed the funders' respective Statements of Funds Available (SoFA) and High-Level Output Specifications (HLOS). Together these set the funding governments have made available for Network Rail's OSMR activities during CP7 and what, in return, it needs to deliver for this. Our original timetable for PR23 anticipated that the governments would publish their HLOSs and SoFAs

in October 2022 and November 2022 respectively. However, these were delayed. The UK Government's HLOS and SoFA were published in December 2022 and the Scottish Ministers' HLOS and SoFA were published in February 2023.

- 1.8 The funders' decisions informed Network Rail's Strategic Business Plan (SBP), which sets out how it intended to use the available funding and what it intended to deliver over CP7. Network Rail provided its CP7 SBP to us in February 2023. Network Rail published its SBP for England & Wales on 19 May 2023 and its SBP for Scotland on 27 July 2023.

Draft determination

- 1.9 We published our draft determination on 15 June 2023. Our draft determination was the product of our scrutiny of Network Rail's SBP and our consultations on how we will regulate it. The draft determination set out our proposals for:
- what Network Rail is expected to deliver for its passenger and freight customers;
 - how its expenditure should be allocated; and
 - changes to our policies on access charges that operators incur to use the network and the incentives that encourage efficient management and use of the rail network.
- 1.10 Our draft determination also included policy positions on the financial framework and managing change. Our draft determination was followed by a [consultation on the relevance of an infrastructure cost charge for open access airport services](#).
- 1.11 We consulted with stakeholders on our draft determination and our proposal for open access airport services and welcomed views until 31 August 2023.

Final determination

- 1.12 During the consultation period on the draft determination we received views from stakeholders, including Network Rail. In its formal response to our draft determination, Network Rail also explained any:
- changes it had made to its CP7 plans; and
 - new evidence that it considered we should take account of for our final determination, including any evidence that it did not provide in sufficient time

for consideration ahead of our draft determination and which remained relevant.

- 1.13 Having considered stakeholders' responses to our draft determination, our final determination sets out what Network Rail is expected to achieve during the five years from 1 April 2024 to 31 March 2029 and how its funding should be used. It also confirms our final policy positions on access charges, contractual incentives, the financial framework and how we will hold Network Rail to account and manage change.

Implementation

- 1.14 Implementation is the process through which we amend operators' track and station access contracts to give effect to new access charges and incentive benchmarks and payment rates determined through the periodic review. Key inputs to the implementation process are:
- **Access charges price lists:** Network Rail published draft access charges price lists in July and August 2023. This allowed operators to review the prices and identify any factual errors. In December 2023, we expect Network Rail to publish its final price lists which will apply throughout CP7.
 - **Schedule 4 and 8 parameters:** we have released recalibrations of the parameters used in contractual incentives in a phased manner since May 2023. We intend to complete this in November 2023. Operators were able to opt in or out of the Schedule 4 incentive regime before October 2023; see our [PR23 final determination: policy position on the Schedules 4 and 8 incentives regimes](#) for details.
- 1.15 In preparation for implementing the final determination, we consulted on amendments to access contracts in July 2023 and welcomed responses until 31 August 2023. We also wrote to parties with bespoke provisions in their contracts and welcomed their responses before 15 August 2023. Stakeholder responses to these consultations inform the final drafting we will use in contracts for CP7.
- 1.16 After publishing our final determination in October 2023, we intend to publish and serve review notices on operators and other relevant parties before 20 December 2023. These will set out the changes to contracts which will apply throughout CP7. We will set a date in February 2024 for Network Rail to provide objections to us on the review notices. Where no objections are received, we will publish and serve a notice of agreement on operators. After allowing operators the opportunity to

terminate their contracts, we will publish and serve review implementation notices. The notices will confirm that the periodic review will be implemented ahead of 1 April 2024.

Delivery plan

- 1.17 Network Rail is required to publish a delivery plan for CP7 that is consistent with our final determination. The delivery plan is a suite of documents that sets out what Network Rail will deliver for its customers and funders over CP7. It has two key functions, it:
- allows stakeholders to plan their business with a reasonable degree of assurance; and
 - provides a transparent baseline against which Network Rail will report its progress and we will monitor delivery and hold it to account.
- 1.18 We have published [a notice](#) alongside our final determination which sets out expectations for the scope and timing of the delivery plan. We will assess the delivery plan in early 2024 and provide assurance to the Secretary of State on the extent to which it reflects our final determination. The Secretary of State signs off the final version of the delivery plan having also considered the views of Scottish Ministers. This allows it to be published.

Reset of passenger train performance trajectories, Schedule 8 benchmarks and incentive payment rates

- 1.19 The business planning cycles for Network Rail and the publicly contracted train operators are currently different which means we do not have the evidence required to assume a stretching contribution from passenger train operators in our train performance trajectories which would have further improved outcomes for passengers during CP7. In our final determination, we call for greater coherence in this process. A joined-up approach to longer-term business planning is vital to ensure that the network and those running services over it deliver for passengers.
- 1.20 Whole industry performance is also affected by factors such as changes in passenger demand following the pandemic. Therefore our final determination commits to reset passenger train performance trajectories for England & Wales in advance of year three of CP7. This two-year window provides an opportunity for Network Rail to work with operators and funders to improve industry processes for aligning longer term performance expectations.

- 1.21 This mid-control reset will only apply to passenger train performance measures and trajectories and not to freight train performance or other outcome measures from our final determination.
- 1.22 Consistent with our approach to passenger train performance success measures, we commit to resetting Schedule 8 benchmarks and payment rates in advance of year three of CP7. When we recalibrate the payment rates, we will also review the evidence on the passenger impact of disruption as well as whether any unintended consequences have arisen from the transitional adjustment in payment rates confirmed in our final determination.
- 1.23 During the first year of CP7 we will start engaging with stakeholders regarding the reset of passenger train performance trajectories and Schedule 8 benchmarks and incentive rates. The reset will take effect from year 3 of CP7 (1 April 2026). We will expect Network Rail to provide updated passenger train performance forecasts to inform our draft decisions on trajectories which we will consult on with stakeholders before reaching our final decisions.
- 1.24 We intend to produce the Schedule 8 benchmarks and incentive rates through a consultative recalibration process with the industry. We will implement the decisions made during the reset process ahead of them taking effect from 1 April 2026.

2. Background to our PR23 final determination

- 2.1 PR23 is being conducted amid a complex and challenging context for the rail industry: the sector continues to recover from the pandemic against a backdrop of inflationary pressures, industrial action as well as declines in passenger and freight train performance. We also recognise that policy development around rail reform continues. We describe in section 3 on PR23 and rail reform how we have considered the implications of potential reform in our policy development and decision making.
- 2.2 The sector must also meet the challenges of climate change by contributing to a low-emissions railway and planning for severe weather events. In recognition of this context, our approach to PR23 is designed to deliver a secure basis for Network Rail and its stakeholders to plan, invest and provide services. Consequently, our scrutiny of Network Rail's plans and our final determination robustly consider the choices Network Rail has proposed to make in delivering on the objectives for PR23. Throughout our final determination documentation we have been transparent about the impact of decisions on outcomes for the railway during CP7 and in future control periods.
- 2.3 As set out when we launched PR23, we have maintained our focus on the following key objectives:
- **Safety:** the rail network must be maintained in a safe condition for all of its users, workers and the public;
 - **Performance:** the railway must be customer-focused, making effective use of its capacity to deliver passenger and freight services that are punctual and reliable;
 - **Asset sustainability:** assets must be planned and managed to deliver their greatest value over the course of their operational lives;
 - **Efficiency:** Network Rail (or Great British Railways as its successor body) must be subject to stretching but realistic efficiency targets.
- 2.4 We have also aimed to secure funders' objectives as set out in their respective HLOSs. Both governments' HLOSs expect Network Rail to maintain a strong standard of safety, deliver cost efficiency and achieve value for money for

taxpayers, maintain focus on punctuality, reliability and asset and environmental sustainability, including resilience to climate change. The UK Government's HLOS wants Network Rail to support revenue generation while contributing to national and local growth priorities and levelling up. It also sets requirements relating to security, system operation, stakeholder engagement, and financial management. The Scottish Government's HLOS expects Network Rail Scotland to set requirements for effective integration of Network Rail Scotland, ScotRail and other industry stakeholders and target investment to contribute towards increasing economic growth.

2.5 Network Rail's February 2023 SBP was produced to an accelerated timescale because the HLOS and SoFA for both England & Wales and for Scotland were published later than originally planned. As such, the plans we received from Network Rail in February 2023 were in places less developed than originally anticipated and, for Scotland, were marked as interim. We continued to receive information from Network Rail as we produced our draft determination and its plans have continued to evolve.

2.6 Our draft determination was based on the plans as submitted in February 2023 and reflected, to the greatest extent possible, the information and revisions to the plans since. Our final determination is based on:

- the proposals in the plan that Network Rail provided to us at the end of February 2023 and any changes it has confirmed through its formal response to our draft determination;
- any new evidence that it considered we should take account of for our final determination, including any evidence that it did not provide in sufficient time for consideration ahead of our draft determination and which remains relevant; and
- the views stakeholders provided in response to the consultation on our draft determination.

3. PR23 and rail reform

- 3.1 In developing our approach to PR23 we have considered the implications of the UK Government's rail reform agenda, reflected in its consultation in June 2022 on legislative changes to implement rail reform.
- 3.2 Network Rail is currently the railway infrastructure manager. However, under proposals for rail reform we anticipate the creation of a new body called Great British Railways (GBR) which would both own the railway infrastructure and let and manage passenger contracts which are currently awarded by the UK Government.
- 3.3 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.
- 3.4 Uncertainty remains about the timing and details of rail reform and Network Rail will continue to operate for at least some of the next control period. Our expectation is that GBR would inherit Network Rail's funding settlement and therefore the outcomes of the periodic review will be broadly applicable for GBR. We will continue to assess the impacts of developments on rail reform and implement our policy in a way that is adaptive to the changes anticipated.

4. Assessing the business plan

4.1 Our draft and final determinations were informed by our assessment of Network Rail's SBP. We published [guidance to Network Rail on the preparation of its SBP](#) in July 2022 and advised we would consider publicly grading the plans as part of our assessment. Below we describe our approach to assessment and grading.

SBP assessment

4.2 Our assessment of the information provided to us by Network Rail and other stakeholders during PR23 has challenged whether Network Rail's proposals overall and for each of its five geographic regions and the System Operator:

- are consistent with the UK and Scottish governments' HLOSs and SoFAs;
- make appropriate choices between maintaining the network, renewing it to raise performance levels delivered to passenger and freight operators in the near-term and maintain asset sustainability;
- include a reasonable degree of stretch;
- provide a credible response to challenges which have emerged during CP6 (e.g. on weather resilience);
- are deliverable; and
- would enable Network Rail to continue to operate its network safely and meet its legal obligations.

4.3 Our PR23 final determination supporting documents explain our approach to assessing Network Rail's plans in the areas of outcomes; health and safety; sustainable and efficient costs; other income and National Functions (see section 5 on the structure of our final determination).

4.4 Although Network Rail's proposals have formed the basis for our assessment, we have complemented this with other key sources of evidence, for example, assurance reports and intelligence from our ongoing reporting and monitoring activities.

Grading

- 4.5 A key component of our assessment has been to compare the regions, System Operator and, where relevant, National Functions' plans. This allows us to identify stronger or weaker approaches to activities across the network and could form the basis for grading Network Rail's plans.
- 4.6 As noted in our draft determination, initially we chose to not grade Network Rail's plans but said that it could help drive improvements in the production of future business plans, in particular the CP7 delivery plan and we would review what we published in this area for the final determination.
- 4.7 We have not graded Network Rail's plans for the final determination. This is because we considered that we had already identified, in our review of Network Rail's plans for the draft determination, areas where we wanted the company to improve on or clarify. These areas were set out our [PR23 draft determination: consolidated list of decisions, proposals and actions document](#) and we consider that Network Rail has addressed the key actions satisfactorily. As such, we did not consider that there would be any further benefit from undertaking grading of the plans.

5. Structure of our final determination

5.1 The outputs of our assessment of Network Rail's SBP are set out in a suite of documents, including this Introduction. The contents of each document are described below.

Executive summaries and overviews of our final determination

5.2 We summarise our final determination conclusions in three documents:

- [Summary of conclusions and overview for England & Wales](#);
- [Summary of conclusions and settlement for Scotland](#); and
- a [consolidated list of our final determination decisions](#) for England & Wales and Scotland.

Settlement documents

5.3 We have also set out our final decisions in more detail in settlement documents for each of:

- Network Rail's four regions in England & Wales ([Eastern](#), [North West & Central](#), [Southern](#) and [Wales & Western](#)); and
- the [System Operator](#).

5.4 Alongside our final decisions, we summarise in the settlement documents our key findings from our assessments of health and safety, performance, asset sustainability and efficiency, financial risk and stakeholder engagement.

Supporting documents

5.5 We have provided supporting documents on:

- [Outcomes](#);
- [Health and safety](#);
- [Sustainable and efficient costs](#);

- [National Functions](#); and
- [Other income](#).

5.6 In these documents we set out our decisions and proposals for the final determination. In each of these documents we also provide a detailed summary and our analysis of stakeholder responses, and an explanation of changes from our draft determination. Readers should refer back to the equivalent supporting documents we published in our draft determination for information on how we assessed Network Rail's February 2023 SBP.

Policy positions

5.7 In these policy documents we present our final policy on regulating Network Rail during CP7, specifically the:

- [Financial framework](#), including our expectations for managing financial risk; and
- applicable [access charges](#) and the [Schedules 4 and 8](#) incentives regimes.

5.8 In each of these documents we also provide a detailed summary and our analysis of stakeholder responses, and an explanation of changes from our draft determination.

5.9 Our final determination also includes our final policy positions on [managing change](#) and [holding to account](#). We have published a [separate document](#) which provides detailed summaries and our analysis of stakeholder responses to our consultations on these policies, and an explanation of any changes from our draft proposals.

Impact assessments

5.10 We have published several assessments of the impact of our final determination policies on access charges and contractual incentives on affected parties. These impact assessments are published in a [consolidated document](#).



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