



OFFICE *of*
RAIL REGULATION

**NOTICE OF PROPOSED MODIFICATIONS
TO NETWORK RAIL'S NETWORK LICENCE:
INDUSTRY PERFORMANCE AND
PLANNING AND
ROUTE UTILISATION STRATEGIES**

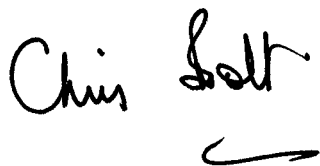
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Foreword

1. This document is a further step in ORR's actions in response to the Government's Rail Review. It describes the proposed modifications to Network Rail's network licence on which ORR is consulting under section 12(2) of the Railways Act 1993 and also contains draft guidelines for the development of route utilisation strategies.
2. We have considered the responses made to the consultation document we published in March this year. Consultees generally supported the approach we proposed, and, subject to responses to this statutory consultation, ORR is minded to modify Network Rail's network licence as soon as possible.
3. The changes envisaged by the Rail Review are already taking place. Network Rail assumed additional responsibilities for whole industry performance on 4 April 2005 and is developing its programme for route utilisation strategies. The Railways Bill has now passed through Parliament and has become the Railways Act 2005. The modifications described in this document are designed to ensure public interest accountability for Network Rail's new responsibilities. It will be for Network Rail to demonstrate that it can work with the industry to deliver its new responsibilities and bring better services for passengers and freight customers and value for money for the taxpayer.



Chris Bolt
Chairman, Office of Rail Regulation

29 April 2005

1. Introduction

Background

- 1.1 The Government's Rail Review White Paper¹ envisaged a wider role for Network Rail, and a new set of public interest obligations for the company. The Railways Act 2005² will lead to the abolition of the Strategic Rail Authority (SRA), with Network Rail taking on certain of its functions.
- 1.2 In September 2004, ORR consulted³ on its initial views as to how Network Rail's accountability might need to be reviewed and strengthened to achieve the aims of the White Paper. In the light of the responses received to that consultation, in March 2005, ORR consulted again⁴ on specific proposals for holding Network Rail to account in respect of its new obligations. ORR proposed a number of modifications to Network Rail's network licence in order to reflect its role in the management of whole industry operational performance, industry planning and the development and establishment of route utilisation strategies (RUSs).
- 1.3 Consultees were broadly supportive of the overall approach and detail of the modifications proposed in ORR's March 2005 consultation document. ORR's response to their specific comments is outlined in Chapters 2 to 4 of this document.

Notice under section 12(2) of the Railways Act 1993

- 1.4 The purpose of this document is to give notice under section 12(2) of the Railways Act 1993 that, subject to consideration of any representations and objections received, ORR intends to make the specific modifications to Network Rail's network licence set out in the notice at Annex A to this document.

¹ *The Future of Rail*, Department for Transport, Cm 6233, July 2004.

² Railways Act 2005, Chapter 14

³ [*Implementing the Future of Rail: ORR's role and proposed work programme*](#), Office of Rail Regulation, London, September 2004

⁴ [*Implementing the Future of Rail: Proposed modifications to Network Rail's network licence*](#), Office of Rail Regulation, March 2005

Regulatory impact assessment

- 1.5 ORR is committed to best practice in regulation. This includes the Better Regulation Task Force's principles that regulation should be proportionate, accountable, consistent, transparent and targeted. ORR is also committed to the Regulatory Impact Unit's initiatives to reduce any undue bureaucratic burden on Network Rail. An assessment of the impact on the rail industry of the proposed modifications is at Annex B to this document.

Consultation on RUS guidelines

- 1.6 The approach which ORR intends to adopt on the RUS guidelines, referred to in paragraph 3A.2 of the proposed licence modifications, is set out in Chapter 3, and revised draft guidelines are at Annex C.
- 1.7 In addition to the statutory consultation on the proposed licence modifications, and following on from the principles set out in the March 2005 document, ORR seeks further views from consultees on these revised draft RUS guidelines. In order that the guidelines can become effective at the same time as the licence modifications, ORR is seeking comments within 28 days, the same period as the statutory consultation on the proposed licence modifications.

Consultation responses

- 1.8 ORR requests that any responses to the statutory consultation on the proposed licence modifications and to the request for comments on the revised draft RUS guidelines are sent in electronic format or hard copy, by no later than 5.00 pm on 31 May 2005, to:

Gill James
Manager, Network Regulation
Office of Rail Regulation
1 Waterhouse Square
138-142 Holborn
London
EC1N 2TQ

Email: gill.james@orr.gsi.gov.uk

- 1.9 It is expected that responses will be made available in ORR's library, published on its website and may be quoted from by ORR. Respondents should indicate clearly if they wish all or part of their response to remain confidential. Where a response is made in confidence, a statement summarising the submission should accompany it, which excludes the confidential information but can be treated as above. ORR may also publish the names of respondents in future documents or on its website, unless a respondent indicates that they wish their name to be withheld.
- 1.10 Following the close of both consultations on 31 May 2005, ORR will consider any representations and objections received. Subject to consideration of any representations and objections, ORR will proceed with the proposed licence modifications. It is ORR's intention to publish initial RUS guidelines at the same time as the modifications to Network Rail's network licence take effect.
- 1.11 Copies of this document may be seen on ORR's website (www.rail-reg.gov.uk) and in its library.

2. Industry performance and planning

Background

- 2.1 In its March 2005 document, ORR consulted on proposals to modify Condition 7 of Network Rail's network licence to make it more explicit about how Network Rail should discharge its stewardship duty and to emphasise its wider role in respect of whole industry planning and performance. In developing the proposed modifications, ORR focused on the implications, for Network Rail's role, of the White Paper and the Railways Act 2005, including the abolition of the SRA.
- 2.2 Consultees were asked to comment in particular on:
- (a) the overall approach;
 - (b) whether it is right to include a reference to the facilitation of railway service performance;
 - (c) including the definition of railway service performance in its entirety from the Railways Bill;
 - (d) the need to ensure that the business planning criteria demonstrate how Network Rail will prioritise different customer requirements; and
 - (e) whether ORR should have the power to direct Network Rail to review the criteria.

Views of consultees

- 2.3 Consultees were, in general, supportive of the overall approach and detail of the modifications proposed by ORR. Many consultees welcomed the broadening of the objective in Condition 7 to include the facilitation of railway service performance, as defined in the Railways Act 2005⁵. Many consultees also supported the proposals to incorporate an explicit requirement for

⁵ Railway service performance as defined in the Railways Act 2005 includes, in particular, performance in securing each of the following in relation to railway services – (a) reliability (including punctuality); (b) the avoidance or mitigation of passenger overcrowding; and (c) that journey times are as short as possible.

Network Rail to demonstrate in its business planning criteria how it prioritises the requirements of different stakeholders, and an obligation to review the criteria when required by ORR.

- 2.4 EWS noted that failure by Network Rail to comply with the additional duties arising from the proposed modifications might result in enforcement action, and trusted that ORR would not be reluctant to take such action, should there be grounds for it to do so. EWS strongly disagreed with ORR's conclusion that it was not necessary to modify the licence to incorporate an explicit requirement to take account of whole industry efficiency and value for money considerations. EWS considered it insufficient to have an implied requirement for Network Rail to behave in this manner and cited concerns over Network Rail's recent handling of disruptive possessions, T-12, network capability, small scheme enhancements and access agreements.
- 2.5 Consultees also made the following comments:
- (a) EWS, Go-Ahead and the Scottish Executive all expressed concern about Network Rail's powers and responsibilities in respect of whole industry performance and the extent to which it might seek to 'interfere' with operators' management of their own resources and ability to plan their own businesses. EWS expressed concern over the manner in which Network Rail is carrying out its duties in respect of whole industry performance, including the development of JPIPs (Joint Performance Improvement Plans), and considered it inappropriate for Network Rail to report on the performance of EWS's services to ORR, DfT or any other administrative body;
 - (b) Angel Trains wished to highlight the need for consultation with all industry parties, including rolling stock leasing companies (ROSCOs) and the need to take contractual arrangements with ROSCOs and other suppliers into account;
 - (c) First noted that the definition of "railway service performance" used a definition of reliability which was in common usage, but not in the railway industry, where reliability and punctuality represented different elements of performance;
 - (d) Go-Ahead considered that the scope of the phrase "facilitation of railway service performance" required particular definition, and that, as

it stood, it provided no specific criteria to measure the efficacy of the facilitation in any terms other than total minutes delay per incident. Network Rail also considered that it would be helpful for ORR to indicate its likely interpretation of the phrase, with appropriate balance given to other components of railway service performance;

- (e) RSSB supported the principle that Condition 7 should be broadened to include something concerning wider railway service performance. It considered that this should be couched in terms of planning in a strategic context, so as to reflect the broadest possible overview of railway performance, and stressed the need to ensure that in promoting best practice, safety considerations are fully taken into account;
- (f) the Rail Passengers Committee and London Transport Users Committee (RPC / LTUC), in a joint response, welcomed the clear duty for Network Rail to be responsible for industry performance and the proposed wider definition of railway service performance, but considered that there was a need for a more accurate means of measuring overcrowding. The RPC / LTUC suggested that Network Rail's business planning criteria needed to address how cross boundary issues (e.g. London terminating services) were to be assessed, and that it was important for Network Rail to consult on criteria and take into account views of passengers as well as funders;
- (g) on business planning criteria, the Scottish Executive considered that prioritisation of different customer requirements should be determined by the funder; and
- (h) Transport for London (TfL) considered that Network Rail's business planning criteria had to be able to reflect the requirements of TfL's envisaged comprehensive role in service specification, and, possibly franchising, which it considered might well be more complex than requirements elsewhere in the country.

ORR assessment

Whole industry performance

- 2.6 ORR remains of the view that the licence obligation covering performance should reflect the Railways Act 2005 definition of railway service performance,

which includes reference to punctuality and reliability and also includes mitigating passenger overcrowding and making journey times as short as possible, to achieve an appropriate balance between the different elements making up railway service performance. In particular, ORR considers that it is important to ensure that improved punctuality and reliability are not achieved at the expense of other requirements of passenger and freight train operators and their customers (e.g. through undue extension of journey times or through permitting unacceptable levels of overcrowding).

2.7 ORR notes the points made in consultation that appropriate measures for monitoring the delivery of railway service performance need to be developed. ORR believes these should be developed as part of Network Rail's business planning criteria produced under Condition 7, reflecting a balance of:

- (a) high level objectives (such as PPM, the public performance measure⁶ for passenger operators, and a specific freight measure); and
- (b) specific train operator and customer requirements.

This is a similar approach to that taken by ORR to the production of criteria for the Railway Operational Code being produced under the provisions of the Network Code.

2.8 ORR believes that the responses to the March 2005 consultation reinforce the view that Network Rail's responsibility for whole industry performance is one of facilitation. Some consultees were concerned about the extent to which Network Rail might seek to 'interfere' with operators' management of their own resources, and the potential adverse effect on operators' ability to plan their own businesses. As ORR stated in the March 2005 document, it considers that the delivery of railway service performance must be effectively a joint venture between Network Rail and train operators. In ORR's view, this means using, and where appropriate developing, the mechanisms whereby best practice can be promoted and performance improved (e.g. through the Network Code). ORR believes that joint working between Network Rail and operators, through for example, the development of the joint performance improvement plan process and the establishment of integrated control centres, has a crucial role to play in improving performance.

⁶ PPM measures all day lateness at destination, of franchised passenger train services.

- 2.9 ORR considers it entirely consistent with Network Rail's responsibility to facilitate whole industry performance for it to be the primary source of performance data to ORR and the Government.

Criteria for industry planning

- 2.10 ORR notes the concerns expressed by EWS about whole industry efficiency, and the specific concerns cited. However, ORR remains of the view that Network Rail is already obliged, both in performing the general duty in paragraph 2 of Condition 7 and in developing its business planning criteria, to take account of whole industry efficiency and value for money considerations due to the requirement in paragraph 1 of Condition 7 to act in a timely, efficient and economical manner. ORR considers this would include the impact of, and on, contractual arrangements with rolling stock leasing companies (ROSCOs) and other suppliers.
- 2.11 Clearly, Network Rail's business planning criteria must reflect the requirements of funders including, where appropriate, Scottish Ministers. However, the criteria must also reflect wider stakeholder requirements and the proposed licence modifications will require Network Rail to make explicit reference in its business planning criteria to how it will prioritise the requirements of different stakeholders. This point is addressed in more detail in paragraphs 3.17 to 3.21 of this document.
- 2.12 In response to the RSSB point, ORR would also expect the criteria to take into account and address safety considerations. It would also expect Network Rail to provide reasons for the priorities accorded to the different requirements of its stakeholders.
- 2.13 EWS has stressed the need for Network Rail to conduct itself with high standards to comply with the obligations in its revised network licence, and for ORR to hold the company to account. ORR intends to develop and publish an enforcement policy, and guidance to the industry on compliance with legal requirements, during 2005.

Engagement with stakeholders

- 2.14 ORR recognises the importance of Network Rail engaging with key stakeholders when carrying out its enhanced performance and planning responsibilities. This needs to include engagement with:

- (a) suppliers (such as the ROSCOs) on its planning work. Such engagement will be important to improved efficiency and performance; and
- (b) devolved and local funding bodies. Whilst ORR does not expect that such bodies would seek to micromanage delivery of day-to-day performance, they do have a legitimate interest in how the policies being adopted impact on the achievement of their objectives. In addition to the specifics of the RUS and High Level Output Specification processes, they will also have a legitimate interest in network planning issues and thus it is important that Network Rail works closely with them.

3. Route utilisation strategies

Background

- 3.1 In its March 2005 document, ORR consulted on proposals to incorporate specific requirements into Condition 7 of Network Rail's network licence concerning the development and establishment of RUSs. These covered the definition and scope of RUSs, criteria for evaluation and procedural arrangements, including, in particular, consultation arrangements.
- 3.2 ORR also proposed that Network Rail's role in respect of RUSs should be covered by explicit public interest criteria:
- (a) the business planning criteria which set out how Network Rail complies with the general duty in Condition 7 concerning operation, maintenance, renewal, development and enhancement of the network; and
 - (b) guidelines published from time to time by ORR.
- 3.3 Consultees were asked to comment in particular on:
- (a) the overall approach;
 - (b) the content of the proposed licence modification; and
 - (c) whether the approach should be different in Scotland, and whether there should be other national or regional differences.
- 3.4 ORR also sought consultees' views on the approach to RUS guidelines and whether they should contain:
- (a) anything to ensure consistency with EU requirements on capacity analyses and capacity enhancement plans;
 - (b) any procedural requirements in addition to those set out in Network Rail's network licence (e.g. clarifying the minimum scope of stakeholder consultation); and
 - (c) anything further on specific requirements of funders.

Views of consultees

- 3.5 Consultees were generally supportive of the overall approach and detail of ORR's proposed modifications.
- 3.6 EWS considered that ORR should be more prescriptive about the RUS process and how RUSs would be deployed, and wished to see explicit reference to freight and open access operators and their investors in the definition of a RUS. The company also sought clarification on whether Network Rail was producing studies or strategies, and whether ORR considered there was a significant difference. EWS welcomed ORR's view that a RUS should not assume that existing rights could be overridden, although EWS considered that this could be regarded as diverging from the views expressed in ORR's consultation on long-term access rights.
- 3.7 EWS considered it unhelpful for the RUS guidelines to distinguish freight use from passenger use, and that the optimum use of the network was about balancing different train operating characteristics, irrespective of the traffic conveyed. EWS questioned how future freight needs would be identified and reflected in RUSs. It considered that the SRA appraisal criteria did not fully reflect the benefits of rail freight activity and that to use them would create an inbuilt bias in favour of passenger services.
- 3.8 Network Rail supported the proposed modification and agreed that an evolutionary approach to RUS development was appropriate. Network Rail recognised the need for transparency and the importance of consulting external stakeholders throughout the development of RUSs. It stated that in addition to establishing stakeholder groups for specific RUSs and a Rail Industry Planning Group, it was currently discussing with operators what information was required to assist Network Rail in fulfilling its obligations. It also noted that a mechanism such as the Network Code, might be necessary to formalise those arrangements. Whilst welcoming the opportunity to work with providers and potential providers, of services relating to railways, Network Rail noted that the latter were not clearly defined, and stated that it envisaged addressing this issue in conjunction with the Association of Train Operating Companies (ATOC), to achieve representation of the wider TOC community.

- 3.9 Network Rail stated that the addition of a 60-day period at the end of the RUS development process risked endangering the ability of RUSs to influence franchise specifications of forthcoming TOC refranchising, given the existing franchise timetable. It considered that a more efficient arrangement would be for the 60-day period, during which ORR had the opportunity to issue a notice of objection, to run concurrently with Network Rail's consultation with other stakeholders on the RUS. Network Rail also suggested a number of drafting changes to the wording of the proposed licence modification.
- 3.10 Network Rail also considered that the same approach towards RUS development should apply throughout Great Britain to ensure that consistent planning principles are adopted throughout the network, subject to funders' requirements. On the RUS guidelines, Network Rail expressed concern that the drafting in ORR's March 2005 consultation document might be misinterpreted as suggesting that funders would provide assumptions on market growth, which would be inconsistent with the need for Network Rail to engage on this with train operators and other stakeholders.
- 3.11 The Scottish Executive wished to see a different approach towards the development and establishment of RUSs in Scotland. It considered that the outcome of a RUS should be a set of decisions taken by the funder, which, in the case of Scotland, would be the Scottish Ministers. It also considered that it was for funders, and not Network Rail, to take decisions on allocation of priorities where necessary, and the consequent effect on planning. The Scottish Executive expected that future RUSs should include reconciliation of local and regional aspirations with Government aims only to the extent that local and regional authorities were funding the aims. It also expected RUSs to offer options on various tradeoffs and decisions between competing priorities, with the final decision being made by the funder.
- 3.12 The Department for Transport (DfT) asked that the reference to Network Rail leading on RUS appraisal criteria be removed. It suggested amending the guidelines to require Network Rail to seek formal agreement from DfT that revised appraisal criteria were fit for purpose before they could be implemented. DfT considered it essential that the framework by which railway schemes were appraised was wholly consistent, no matter who undertook it and was concerned that any differences in approach could be damaging to the industry's credibility and could lead to pressure for schemes to be appraised against more than one framework.

3.13 TfL wholly supported the proposals set out in ORR's March 2005 document concerning the overall approach on RUSs. However, it considered that there was a need for a more robust obligation on Network Rail to take full account of TfL's role and requirements, and strongly disagreed with ORR's view that a change to the licence to reflect this was not necessary. TfL considered that the RUS guidelines should require Network Rail to take proper account of complementary plans published by other stakeholders such as TfL's Rail Corridor Plans(RCPs). TfL welcomed the proposal that there should be an explicit requirement on Network Rail to have regard to guidance from funders on funding, outputs and assumptions on forecasting demand for capacity, and considered that specific reference should be made in the guidelines to the Mayor of London / TfL and to either the RCPs or the Mayor's Transport Strategy, a statutory requirement of the Greater London Authority Act 1999. TfL considered that RUSs had to reflect EU requirements, but also ensure that Network Rail took full account of their fit with local requirements, which TfL believed will be more stable than international access demands over time.

3.14 Consultees also made the following comments:

- (a) Angel Trains stated that it wished to be consulted on the development of individual RUSs. It also sought clarification of what was meant by "providers and potential providers of services relating to railways" and said that it wanted to see the RUS guidelines expanded to make it clear that the overall objective of RUSs should aim to enable all interested stakeholders, including ROSCOs, better to plan their businesses;
- (b) First noted that the process for establishing an initial RUS appeared to give adequate protection to all parties; but the company sought clarification on how a review of a RUS might be triggered;
- (c) Go-Ahead supported the proposed modification, but suggested that ORR might be more prescriptive about the process, including more explicit reference to timescales for consultation in the licence, to ensure that stakeholders were engaged at the very outset and not on completion of the draft. Go-Ahead also considered that there was scope for strengthening the means by which operators can influence Network Rail's decisions on asset management and maximise synergies for investment and prioritisation of resources;

- (d) the Passenger Transport Executive Group (PTEG) saw no need in principle for a different approach to RUSs between regions and considered that the need to balance local, regional and national requirements (which might vary between individual RUSs) is critical. PTEG considered that consultation and involvement of Passenger Transport Executives (PTEs) was critical to achieving this and that there were enough safeguards in the proposed process to ensure this;
- (e) the RPC / LTUC welcomed the proposed licence modifications and procedural arrangements, including the requirements for consultation and for Network Rail to set out its programme for publishing and revising RUSs in a transparent manner. They considered it essential to include a specific reference to LTUC in paragraph 3A.4(a)(iii) of the proposed modification and considered that the RUS guidelines should include specific criteria on possessions requirements; and
- (f) the Strathclyde Passenger Transport Executive (SPTE) considered that it would be helpful to include specific reference to a requirement for Network Rail to consult PTEs and TfL where geographically appropriate (with a rider including any successor body to a PTE in Scotland). It also sought assurance that there would be full consultation on a whole network RUS, given its potential overarching impact on other RUSs. SPTE questioned how Network Rail would be remunerated for additional activity on RUSs and stated that it considers that, since all users and potential users have an interest in the RUS process and its outcomes, the activity should not be funded out of Network Rail's regulated track access income.

ORR assessment

- 3.15 ORR considers it essential to have separation between Network Rail's consultation with stakeholders on a RUS, and the period within which ORR may issue a notice of objection, not least because ORR would expect to have regard to concerns raised by stakeholders during the consultation process. However, ORR appreciates the reasons for Network Rail's concern over the timing of the RUS process, and the need for it to fit in with the existing franchise timetable (although ORR would expect that Network Rail would plan to accommodate this in the longer term), and ORR will endeavour where possible, to provide early notification of the outcome of its consideration, to

facilitate the early establishment of a RUS. This will, of course, be critically dependent on the quality of Network Rail's consultation process. ORR has incorporated a number of minor drafting changes to the wording of the proposed licence modification, as suggested by Network Rail.

- 3.16 ORR considers it essential that the development and establishment of a RUS is a joint activity between Network Rail and its stakeholders. As explained in its March 2005 document, ORR would not generally expect stakeholders to raise new issues following submission of the final RUS to ORR, unless the matter could not have reasonably been addressed during an earlier stage of its development (e.g. in the event of a significant change of circumstances arising as a result of new, external, events).
- 3.17 ORR shares EWS's view that it is for ORR to set the framework for the RUS process. ORR considers that the proposed modifications to the network licence and proposed RUS guidelines provide sufficient safeguards for the development of RUSs, including the opportunity for ORR to object and amend the guidelines in the light of experience, if necessary. ORR considers that a RUS should comprise a strategy rather than just a study, although it may include options for funders and other industry parties to consider.
- 3.18 In carrying out the function of producing RUSs, Network Rail is delivering a public interest duty. ORR considers that in order for Network Rail to be held accountable for this duty, it is essential for the company to be responsible for developing, in consultation with relevant stakeholders (including the Government), evaluation criteria for RUSs as part of its business planning criteria. The draft RUS guidelines at Annex C suggest that Network Rail should use the SRA's Appraisal Criteria⁷ and, in Scotland, the Scottish Executive's STAG Appraisal Criteria⁸, as the initial basis for the evaluation of options.
- 3.19 An individual funder cannot own the evaluation criteria, nor can it have the right to approve or reject a RUS. This is because there is more than one public sector funder, as well as private sector interests, and because funders

⁷ *Appraisal Criteria, a guide to the appraisal of support for passenger and freight services*, Strategic Rail Authority, London, April 2003.

⁸ *Scottish Transport Appraisal Criteria*, Scottish Executive with the assistance of Steer Davies Gleave; Atkins; SIAS Limited; Ironside Farrar; TRL Limited; and Derek Halden Consultancy, Edinburgh, September 2003

specify outputs for railway services as a whole and not Network Rail outputs (although there is obviously a close link between the two). Furthermore, RUSs will be given effect through the allocation of capacity, and the operation, maintenance, renewal and enhancement of the network. These are matters which are overseen by ORR, which therefore considers that the criteria for RUSs (and thus how Network Rail addresses competing priorities and trade offs within an individual RUS) must be consistent with ORR's duties under section 4 of the Railways Act 1993 (and with the purpose of relevant European Directives) and with Condition 7 of the network licence.

- 3.20 Network Rail (and, in the event that Network Rail's evaluation is disputed, ORR) must balance a wider range of interests than those of individual customers and funders, including prioritising between those interests. However, ORR recognises that for franchised passenger services, there must be an alignment of approach with that of funders and that the likely availability of funding is a key consideration.
- 3.21 ORR recognises that Scottish Ministers will give guidance on their initial priorities as determined by a rail strategic plan (as part of a national transport strategy for Scotland). In developing a RUS in response to this, Network Rail will need to have regard to these priorities, but also to other stakeholder requirements (e.g. freight operators, services franchised by DfT and overall prioritisation of its activities). The RUS will then inform decisions by Scottish Ministers on matters such as franchise specification and high-level output specifications, and may need to be revised in the light of such decisions.
- 3.22 ORR does not consider it necessary to include specific reference in the definition of a RUS to TfL, PTEs or other specific funders, or to freight and open access operators. This is because the RUS definition proposed in paragraph 8 of Condition 7 refers to the general duty, which includes all persons providing services relating to railways and funders. ORR considers that the proposed modifications, together with the explicit requirements of the existing Condition 14, provide sufficient safeguards to ensure that Network Rail engages fully with TfL in pursuing its wider industry role. ORR will wish to discuss with rail freight stakeholders their concerns about the inclusion of rail freight user benefits.
- 3.23 ORR also considers that LTUC's concerns over effective consultation with Network Rail can be addressed by the existing requirements in Condition 5 of

the network licence for Network Rail to co-operate with the RPC and individual committees.

- 3.24 As stated in its March 2005 document, ORR considers it essential that all industry stakeholders (including suppliers and potential providers of services where appropriate) engage and co-operate in the consultation process throughout the development of a RUS. ORR also considers it important that Network Rail should establish governance arrangements, for the RUS process and for individual RUSs, which involve key stakeholders. Whilst ORR does not believe that it is necessary to prescribe these in detail in the licence condition or the RUS guidelines, it does consider that it would be helpful for Network Rail to produce a RUS manual to make it clear to stakeholders what the process is and what information is expected from them. ORR therefore proposes to incorporate a requirement in the RUS guidelines for Network Rail to produce such a manual.
- 3.25 It is for Network Rail to consider the most appropriate means of identifying and engaging with potential providers of services relating to railways. ORR would expect some potential providers to contact Network Rail directly to discuss their plans. Others may be informed through consultation (including publications on Network Rail's website) as part of the process to establish a RUS.
- 3.26 ORR considers that it should be Network Rail's responsibility to produce robust demand forecasts, as part of the RUS development process. In doing so, it will need to have regard to assumptions held by funders, operators, customer representatives and other stakeholders.
- 3.27 ORR currently expects to take into account a RUS when exercising its functions under sections 17 to 22A of the Railways Act 1993 and in dealing with matters under the Network Code. It does not consider that a RUS can assume that existing rights can be overridden: indeed, it should reflect existing rights, including the exercise of variation mechanisms within contracts. A RUS might, however, recommend that those mechanisms, or amendment of access rights by agreement, be used to apply the outcome of a RUS (e.g. if a RUS identifies opportunities for a significantly better utilisation of capacity). But a RUS cannot of itself require the change. RUSs should also look beyond existing contracts, and ORR would consider whether new rights are consistent with the RUS. There may be occasions where new access

rights diverge from a RUS, but in considering whether to approve applications, ORR would need to understand, and accept, the public interest reason for this. Similarly, franchise definition and specification is a matter for the relevant franchising body, but a RUS could make recommendations.

- 3.28 In order to comply with the Condition 7 duty, Network Rail must keep RUSs under review. Reasons for reviewing a particular RUS might include:
- (a) changes to the high level output specification issued by the Secretary of State or the Scottish Ministers;
 - (b) forthcoming franchise change; or
 - (c) the need to address specific issues, for example capacity or performance.
- 3.29 On remuneration for developing RUSs, ORR would regard Network Rail's work in this respect as an activity funded from the company's track access income.

Draft RUS guidelines

- 3.30 Draft RUS guidelines reflecting the points above are at Annex C. ORR seeks views from consultees on the draft guidelines. Following receipt of responses, ORR will publish the final guidelines with which Network Rail must comply. It is, however, ORR's intention to review these in due course in the light of experience to ensure they are fit for purpose.

4. Annual business plan requirements

Background

- 4.1 In the March 2005 document, ORR consulted on proposals to modify the requirements in Condition 7 of Network Rail's network licence relating to production of the company's annual business plan and ORR's business plan notice.
- 4.2 Consultees were asked to comment on:
- (a) the proposed modifications to the requirements for Network Rail's business plan; and
 - (b) the level of detail to be provided in the business plan of Network Rail's forecast cashflow and profit and loss for the first year of the plan.

Views of consultees

- 4.3 Consultees were, in general, supportive of the overall approach and detail of the modifications proposed by ORR. The following specific comments were received from consultees:
- (a) Go-Ahead was supportive of ORR's ongoing drive to reduce the administrative burden on Network Rail and to streamline data reporting across the industry. It did not object in principle to the removal of the requirement to report in exhaustive detail on each asset type within the business plan. However it could not support a reduction in the requirement to report on asset management without the RUS element of the modifications reflecting the need for transparency in this area;
 - (b) Network Rail stated that it would prefer the business plan notice to be published by 30 September each year to provide greater certainty for the business planning process. However, in the circumstances, it supported 31 October as the best date to achieve a fair balance with ORR's requirements, at least in the short-term. Network Rail also suggested that the requirement to provide quarterly cash flow forecasts be removed from the licence condition, on the basis that the company

would provide the information separately (and could be required to do so under the general information provisions);

- (c) the Scottish Executive expected that Network Rail's business plan forecasting cashflow and profit and loss should be broken down to a Scotland level, or if not, that a separate Scottish business plan should be provided;
- (d) EWS referred to concern expressed by the rail freight industry about lack of knowledge regarding the capability of the network. EWS thought the issue sufficiently fundamental that ORR should consider amending Network Rail's licence so that it has a clear responsibility to inform users of the network of its capability and to maintain the capability of the network to the level that is advertised;
- (e) RPC / LTUC considered that a clear licence condition to consult them was essential to deliver a more passenger focused and more consistent approach to industry consultation, particularly given Network Rail's past record on consultation, particularly with LTUC.

ORR assessment

- 4.4 ORR remains of the view that it is important for Network Rail to provide information on its policy and practices with respect to asset management, but that the information would be more suitably incorporated within the company's business planning criteria. ORR would expect Network Rail's route plans (which form part of the company's annual business plan) to include sufficient information on its plans for its assets, to enable its customers and funders to plan their businesses and future financial and service requirements. ORR also anticipates that, following review, Network Rail's obligations under the Network Code to provide information on its assets will be strengthened.
- 4.5 ORR accepts the point made by Network Rail concerning quarterly cash flow forecasts and that provision of this data to ORR separately from the business plan would enable Network Rail to reflect the most up-to-date position at the year end. ORR therefore proposes to remove the references to a time period (other than annual) for this, and other financial information in paragraph 5(h) of Condition 7, and will require Network Rail to provide more detailed forecast information, separately from the business plan submission. In response to the point raised by the Scottish Executive, ORR recognises the need for

disaggregated information in respect of Scotland and considers that paragraph 4.2(b) of Condition 7 (which enables ORR to specify the level of detail, format and structure of the business plan) enables ORR also to specify levels of geographical disaggregation for the plan, where this is appropriate. Network Rail agrees that disaggregated information for Scotland will be required and that this can be achieved under the existing licence condition. Both Network Rail and ORR are discussing with the Scottish Executive the most appropriate way of presenting this information. However, ORR does not currently consider that it would be meaningful to require disaggregated cash flow (as opposed to expenditure) projections, since Network Rail raises finance as a single company.

- 4.6 ORR recognises EWS's concerns about published and actual capability of the network. ORR is presently addressing those concerns directly with Network Rail, and will consider whether further action needs to be taken to strengthen either the Network Code or Network Rail's network licence in this respect. Again, it is important that Network Rail's route plans include sufficient information to enable its customers and funders to plan their businesses and future financial and service requirements.
- 4.7 ORR notes the concerns raised by the RPC / LTUC about the effectiveness of Network Rail's engagement in consultation. ORR believes that the existing provisions in Condition 5 of Network Rail's network licence (concerning co-operation with Rail Passengers' Committees and the Rail Passengers' Council) provide an appropriate mechanism for addressing these concerns.

Annex A: Notice under section 12(2) of the Railways Act 1993

1. The Office of Rail Regulation (“ORR”) hereby gives notice, pursuant to section 12(2) of the Railways Act 1993 (“the Act”), that it proposes to modify the network licence granted under section 8 of the Act to Railtrack PLC, now renamed Network Rail Infrastructure Limited (“Network Rail”), by making a number of specific modifications to Condition 7 of the company’s network licence.
2. The proposed modifications are set out in Schedule 1 to this Annex. The reasons why ORR proposes to make the licence modifications and the effect they would have are set out in Schedule 2 to this Annex.
3. Network Rail has consented to the proposed modifications.
4. ORR requests that any representations or objections to the proposed modifications to Network Rail’s network licence are sent in electronic format or hard copy, by no later than 5.00 pm on 31 May 2005 to:

Gill James
Manager, Network Regulation
Office of Rail Regulation
1 Waterhouse Square
138-142 Holborn
London
EC1N 2TQ

Email: gill.james@orr.gsi.gov.uk
5. It is expected that responses will be made available in ORR’s library, published on its website and may be quoted from by ORR. Respondents should indicate clearly if they wish all or part of their response to remain confidential. Where a response is made in confidence, a statement summarising the submission should accompany it, which excludes the confidential information but can be treated as above. ORR may also publish the names of respondents in future documents or on its website, unless a respondent indicates that they wish their name to be withheld.

- 4.8 Following the close of the consultation on 31 May 2005, ORR will consider any representations and objections received. Subject to consideration of any representations and objections, ORR will proceed with the proposed licence modifications.

Schedule 1: Text of proposed modifications to Condition 7 of Network Rail's network licence

Proposed modifications (marked in bold and underlined type for additions, and with strike-out markings for deletions) of the purpose and business planning criteria

1 *Purpose*

The purpose is to secure -

- (i) the operation and maintenance of the network;
- (ii) the renewal and replacement of the network; and
- (iii) the improvement, enhancement and development of the network,

in each case in accordance with best practice and in a timely, efficient and economical manner so as to satisfy the reasonable requirements of persons providing services relating to railways and funders in respect of:

(a) the quality and capability of the network; and

(b) the facilitation of railway service performance in respect of services for the carriage of passengers and goods by railway operating on the network.

2 *General duty*

The licence holder shall take such steps as are necessary or expedient so as to achieve the purpose to the greatest extent reasonably practicable having regard to all relevant circumstances including the ability of the licence holder to finance its licensed activities.

3 *Criteria*

3.1 The licence holder shall develop and publish the criteria which it will apply to comply with the duty including its method for determining the priority and timing of different types of work, the parts of the network on which it will be carried out, the priority to be accorded to the different requirements of the persons and funders referred to in paragraph 1 and (in each case) the basis for reviewing such priority.

- 3.2 The criteria provided for in paragraph 3.1 shall be published -
- ~~(a)~~ on such date as the **Office of Rail Regulation** shall specify after consultation with the licence holder; ~~and~~
 - ~~(b)~~ ~~in any event not later than 31 March 2003.~~
- 3.3 The licence holder shall from time to time **and when so directed by the Office of Rail Regulation** -
- (a) review the criteria to determine whether they are sufficient to comply with the duty; and
 - (b) revise the criteria so as to make them sufficient to comply with the duty, and shall publish any such **revised** criteria.

Proposed modification relating to route utilisation strategy obligation (new paragraph to be inserted after paragraph 3)

3A. *Route utilisation strategies*

3A.1 The licence holder shall establish and maintain route utilisation strategies -

- (a) in respect of the network in its entirety; and
- (b) in respect of parts of the network,

to which it will have due regard when carrying out the licensed activities.

3A.2 Each route utilisation strategy shall be established -

- (a) by such dates as are specified in a programme or programmes proposed by the licence holder and approved by the Office of Rail Regulation;
- (b) in accordance with -
 - (i) the criteria provided for in paragraph 3.1;
 - (ii) such other matters as the Office of Rail Regulation shall have specified in the guidelines referred to in paragraph 3A.2(c); and
 - (iii) the process set out in paragraph 3A.3; and

- (c) in such format and structure, to such standard, in respect of such periods and in accordance with such other matters as the Office of Rail Regulation shall, from time to time, specify in guidelines to the licence holder.

3A.3 The process for establishing a route utilisation strategy shall be as follows -

- (a) the licence holder shall develop a draft route utilisation strategy in consultation with:
 - (i) providers and potential providers of services relating to railways;
 - (ii) funders and potential funders of services relating to railways;
 - (iii) the Rail Passengers' Council or such other public body or bodies as may be performing that Council's duties, other representatives of persons using services for the carriage of passengers by railway, and representatives of persons using services for the carriage of goods by railway; and
 - (iv) the Secretary of State and, in relation to a route utilisation strategy that involves Scotland-only services or cross-border services, the Scottish Ministers;
- (b) after concluding the consultation referred to in paragraph 3A.3(a), the licence holder shall publish the draft route utilisation strategy, specifying a reasonable period within which representations or objections with respect to the draft route utilisation strategy may be made;
- (c) as soon as practicable after the period for receiving representations or objections on the draft route utilisation strategy has expired, and having taken account of any representations or objections received, the licence holder shall provide the route utilisation strategy which it proposes to establish to the Office of Rail Regulation and on the same day shall publish it and any representations or objections received under 3A.3(b); and
- (d) the route utilisation strategy shall be established within the meaning of paragraph 3A.1, in the terms of the route utilisation strategy provided to the Office of Rail Regulation and published under paragraph 3A.3(c),

60 days after the date on which it was so provided and published, unless the Office of Rail Regulation shall have given a notice of objection in relation to it before the end of that 60 day period.

3A.4 A notice of objection under paragraph 3A.3(d) -

- (a) may be given if the Office of Rail Regulation considers that the proposed route utilisation strategy is deficient in either of the following ways:
 - (i) it does not fulfil the requirements of paragraph 3A.2;
 - (ii) it does not adequately promote the route utilisation objective;
- (b) shall specify the ways in which, in the Office of Rail Regulation's consideration, the proposed route utilisation strategy is deficient; and
- (c) shall be given by serving a copy on the licence holder and on the Secretary of State and, where appropriate, on the Scottish Ministers, and by publishing it.

3A.5 If the Office of Rail Regulation has given a notice of objection in accordance with paragraph 3A.3(d) in respect of any proposed route utilisation strategy -

- (a) the licence holder shall, no later than 60 days after the notice of objection has been given, provide to the Office of Rail Regulation a revised proposal for a route utilisation strategy which:
 - (i) remedies the deficiencies specified in the notice of objection;
 - (ii) fulfils the requirements of paragraph 3A.2(b)(i) and (ii) and 3A.2(c);and
 - (iii) adequately promotes the route utilisation objectiveand shall, on the same day, publish it; and
- (b) the route utilisation strategy shall be established within the meaning of paragraph 3A.1, in the terms of that revised proposal, 30 days after the date on which that revised proposal was so provided and published, unless the Office of Rail Regulation shall have given a notice, before the end of that 30 day period:

- (i) stating that the revised proposal has failed to remedy the deficiencies specified in the notice of objection or introduces a further deficiency in relation to which (had that deficiency been present in the proposed route utilisation strategy provided to the Office of Rail Regulation and published under paragraph 3A.3(c)) a notice of objection could have been given; and
- (ii) specifying the ways in which, in the Office of Rail Regulation's consideration, the revised proposal is deficient.

The notice shall be given by serving a copy on the licence holder and on the Secretary of State and, where appropriate, on the Scottish Ministers, and by publishing it.

3A.6 The licence holder shall publish each route utilisation strategy established in accordance with paragraph 3A.3(d) or, as the case may be, paragraph 3A.5(b), as soon as practicable after establishment and, in any event, no later than 15 days after establishment.

3A.7 Each route utilisation strategy shall be reviewed by the licence holder -

- (a) from time to time; and
- (b) when so directed by the Office of Rail Regulation

and, if necessary, the licence holder shall propose amendments of that route utilisation strategy to ensure that it:

- (i) promotes the route utilisation objective; and
- (ii) is in accordance with the criteria and matters referred to in paragraph 3A.2(b)(i) and (ii)

The provisions of paragraphs 3A.2, 3, 4, 5 and 6 shall apply to the amendment of a route utilisation strategy under this paragraph as to a new route utilisation strategy.

3A.8 Where this Condition provides for anything to be done by any person within a particular period of time or on or by a particular day or date, the Office of Rail Regulation may vary that period, day or date by giving notice to the licence

holder and such other persons as appear to it likely to be affected by the variation.

Proposed modification (marked in bold and underlined type and with strike out markings for deletions) to paragraphs 4 and 5

4. *Annual business plan*

4.1 The licence holder shall prepare, provide to the **Office of Rail Regulation** and publish a business plan in respect of the next following ten years.

4.2 The business plan shall—

- (a) be provided to the **Office of Rail Regulation** and be published no later than 31 March in each year or such other date as the **Office of Rail Regulation** may, after consulting the licence holder, specify;
- (b) be prepared in such level of detail, in such format and structure, to such standard and in respect of such periods (within the ten-year period to which the business plan relates) as the **Office of Rail Regulation** shall by notice to the licence holder specify so as to enable—
 - (i) providers and potential providers of services relating to railways to plan their businesses; and
 - (ii) funders and potential funders of services relating to railways to plan their future financial and service requirements

in each case with a reasonable degree of assurance.

4.3 No notice of the **Office of Rail Regulation** under paragraph 4.2(b) shall be effective unless—

- (a) it is given on or before **31 October** in the year before the year in which the business plan is to be published; and
- (b) the **Office of Rail Regulation** has first consulted the licence holder and taken into consideration any representations or objections timeously made and not withdrawn.

- 4.4 A notice given by the **Office of Rail Regulation** under paragraph 4.2(b) may specify different levels of detail, different standards and different periods in respect of different parts or aspects of the business plan.
- 4.5 If the **Office of Rail Regulation** has not given a notice under paragraph 4.2(b) in respect of any year, the notice last given under that paragraph shall apply to that year.
- 4.6 The licence holder shall be excused from the obligation to publish any part of the business plan to the extent that the **Office of Rail Regulation** —
- (a) is satisfied, after consultation with the licence holder, that publication would or might seriously and prejudicially affect the interests of the licence holder or any other person; and
 - (b) gives notice to the licence holder to that effect.

5. *Contents of business plan*

The business plan shall demonstrate the way in which the licence holder expects to carry out the duty and satisfy the criteria. In that respect and without prejudice to the generality of paragraph 4.2(b), the business plan shall include—

- ~~(a) an explanation of how the licence holder will carry out its relevant activities, including details in respect of each relevant asset category as to—~~
 - ~~(i) policies and practices for the carrying out of relevant activities;~~
 - ~~(ii) policies and practices in relation to the resourcing of the carrying out of relevant activities;~~
 - ~~(iii) policies and practices for acquiring and improving information about relevant activities, including the costs of carrying them out;~~
 - ~~(iv) an assessment of the extent to which improvements may reasonably be made to such policies and practices;~~
- (b) projections of future network quality and capability requirements;

- (c) planned activities and volumes of work in respect of the carrying out of—
 - (i) relevant activities; and
 - (ii) network services in relation to the licence holder's network to be carried out by any other person;
- (d) the expected effect of relevant activities on the quality and capability of the network, the quality of network services and the ability of users to provide improved services to their customers;
- (e) the expected effect of relevant activities on the outputs required of the licence holder and established in the last access charges review;
- (f) a plan for identifying and managing the material risks which are likely to be faced in carrying out relevant activities;
- (g) a statement of the licence holder's expected expenditure in carrying out relevant activities in the format used by the **Office of Rail Regulation** in that respect in the last access charges review;
- (h) forecasts of: ~~(i) cashflow, profit and loss, prepared for each relevant period for the first year and on an annual basis for the remaining nine years;~~ and (ii) balance sheets, prepared on an annual basis in the same format as required in the Regulatory Accounting Guidelines established under Condition 22;
- (i) the steps which the licence holder plans to take to secure the necessary finance to enable it to carry out the relevant activities, including details of the licence holder's—
 - (i) existing and planned borrowings; and
 - (ii) liquidity management and hedging policies;
- ~~(j) the licence holder's processes for making decisions in relation to the carrying out of relevant activities;~~
- (k) a statement of the material changes to the business plan compared with the business plan for the immediately preceding year;

- (l) such further information as the **Office of Rail Regulation** may by notice to the licence holder require.

Proposed modification (marked in bold and underlined type) to the interpretation provision in paragraph 8, consequential on the proposed modifications set out above

8 *Interpretation*

[The following should be inserted after the definition of “the purpose”.]

“railway service performance”

includes, in particular, performance in securing each of the following in relation to railway services -

- (a) reliability (including punctuality);**
- (b) the avoidance or mitigation of passenger overcrowding; and**
- (c) that journey times are as short as possible.**

[The following should be inserted after the definition of “relevant period”]

“route utilisation strategy”

means, in respect of the network or a part of the network, a strategy which will promote the route utilisation objective.

“route utilisation objective”

means the effective and efficient use and development of the capacity available, consistent with the funding that is, or is reasonably likely to become, available during the period of the route utilisation strategy and with the licence holder’s

performance of the duty.

Schedule 2: Effect of and reasons for the proposed modifications

1. The modifications that ORR proposes to make to Network Rail's network licence are at Schedule 1 of this Annex. This Schedule describes the proposed modifications, their effect and ORR's reasons for proposing them.

Industry performance and planning

Proposed modifications

2. ORR proposes to modify paragraphs 1 and 3 of Condition 7 of Network Rail's network licence to make the company accountable to the public interest for its additional responsibilities concerning industry planning and performance.

Effect of modifications

3. The effect of the modifications would be to:
 - (a) clarify Network Rail's accountability for facilitating whole industry performance;
 - (b) make explicit reference to the business planning criteria in paragraph 3 of Condition 7, showing how Network Rail prioritises the requirements of different customers; and
 - (c) allow ORR to direct Network Rail to review the criteria.

Reasons

4. ORR believes that the modifications described above are consistent with its duties under section 4 of the Railways Act 1993, in particular to promote:
 - (a) improvements in railway service performance or otherwise to protect the interests of users of railway services;
 - (b) the use and the development of the railway network; and
 - (c) efficiency and economy on the part of persons providing railway services.
5. ORR has reached this view because it believes that Network Rail must be accountable to the public interest for the delivery of its role in industry planning and the management of whole industry performance. Network Rail

has a key role in respect of the facilitation of railway service performance because it is responsible for the operational management of the network including the direction of network operations and getting services back on track following incidents and delays. Network Rail has a key role to play in co-ordinating industry planning and, with its responsibilities right across the network, it is best placed to do so. It is essential that Network Rail engages properly with the industry to deliver that role.

6. ORR considers that the proposed licence modification clarifies Network Rail's new obligations and is consistent with the company's existing stewardship and business planning obligations.

Route utilisation strategies

Proposed modification

7. ORR proposes to incorporate within Network Rail's network licence, obligations on the production of RUSs covering:
 - (a) the definition and scope of RUSs;
 - (b) criteria for evaluation; and
 - (c) procedural arrangements, including in particular, consultation arrangements.

Effect of modifications

8. ORR considers that the proposed modification, in the form of a new paragraph 3A to Condition 7 of Network Rail's licence, will have the effect of clarifying Network Rail's accountability for the establishment and development of RUSs. Key elements of the proposed modification are as follows:
 - (a) paragraph 3A.1 requires Network Rail to establish RUSs both at the entire network level and in respect of parts of the network, to which it will have due regard in carrying out its licensed activities;
 - (b) a RUS, and the objective of a RUS, are defined in paragraph 8 of Condition 7. A RUS is defined as a strategy which will promote the route utilisation objective, which means the effective and efficient use and development of the capacity available, consistent with the funding that is, or is reasonably likely to become, available during the period of

the RUS and with Network Rail's performance of the general duty in paragraph 2;

- (c) paragraph 3A.2(a) requires Network Rail to produce, subject to ORR approval, a programme of RUSs;
- (d) paragraph 3A.2(b) requires RUSs to be produced in accordance with the process set out in the licence condition, with the business planning criteria produced under paragraph 3 of Condition 7 and with any matters specified in ORR guidelines;
- (e) paragraph 3A.2(c) enables ORR to issue guidelines specifying the format, structure, standard, period and other matters concerning RUSs;
- (f) paragraph 3A.3 sets out the process for establishing a RUS, including stakeholder consultation, publication of a draft RUS, and publication and submission to ORR of a proposed final RUS;
- (g) paragraph 3A.3 to 3A.5 enable ORR to issue a notice of objection to a proposed RUS. In this event, Network Rail would be required to remedy the RUS's failings within the timescales specified; and
- (h) paragraph 3A.7 requires Network Rail to review RUSs from time to time or if specifically directed to do so by ORR.

Reasons

- 9. ORR believes that the proposed licence modification is consistent with the discharge of its duties under section 4 of the Railways Act 1993 and in particular those to:
 - (a) promote the use and development of the railway network to the greatest extent ORR considers economically practicable; and
 - (b) enable providers of railway services to plan the future of their businesses with a reasonable degree of assurance.
- 10. ORR has reached this view for the following reasons:
 - (a) RUSs can provide an important foundation for planning by funders and operators, and to identify opportunities for more effective and efficient use and development of the network;

- (b) the objective of RUSs is to facilitate the effective and efficient use and development of the rail network, which is consistent with Network Rail's general network stewardship duty, in Condition 7 of its network licence;
- (c) following the abolition of the SRA, RUSs should be produced by the industry and Network Rail is in the best position to co-ordinate industry planning and to develop and establish RUSs;
- (d) the proposed licence modification ensures that the approach taken will be one which reflects the public interest; and
- (e) ORR believes the proposed approach provides an appropriate balance, which includes the necessary substance and procedural safeguards, without being unduly detailed or prescriptive.

Annual business plan requirements

Proposed modification

11. ORR proposes to modify the requirements in Condition 7 of Network Rail's network licence relating to production of the company's annual business plan, to:
 - (a) change the date of ORR's annual business plan notice, to provide a better fit with Network Rail's business planning processes; and
 - (b) streamline the requirements relating to the production of Network Rail's annual business plan (by removing the obligation for Network Rail to provide certain specific information in its business plan).

Effect of modifications

12. The effect of the proposed modification to paragraphs 4 and 5 of Condition 7 would be to:
 - (a) bring forward the date by which ORR must issue the annual business plan notice to 31 October in the year before that in which the business plan is to be published;
 - (b) remove the requirements for Network Rail to provide in its annual business plan details of its policies, practices and decision making processes for carrying out activities to fulfil its stewardship duties; and

- (c) reduce the level of detail (in terms of the period covered) of financial forecasts which Network Rail is required to provide in its annual business plan.

Reasons

13. ORR believes that the proposed licence modifications are consistent with the discharge of its duties under section 4 of the Railways Act 1993 and in particular the duties to:
 - (a) impose on the operators of railway services the minimum restrictions which are consistent with the performance of ORR's functions under part I of the Railways Act 1993; and
 - (b) enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.
14. ORR considers that the proposed licence modification will provide a better fit with Network Rail's business planning processes and will streamline the requirements relating to the production of Network Rail's annual business plan.

Annex B: Impact assessment

Purpose and intended effect of the proposed modifications

1. The proposed modifications concern Condition 7 of Network Rail's network licence. The primary purpose of the proposed modifications is to hold Network Rail to account for the wider role envisaged for the company in the White Paper⁹ and Railways Act 2005 in terms of whole industry performance and planning. This represents a shift of responsibility from the Strategic Rail Authority (i.e. the public sector) to Network Rail (i.e. the private sector). In addition, the proposed modifications would streamline the existing regulatory requirements for Network Rail's annual business plan.
2. The Department for Transport (DfT) has published Regulatory Impact Assessments¹⁰ (RIAs) of the impact of the Railways Act 2005 on the public sector, rail industry and wider society.
3. ORR considers that it is in the public interest to make the proposed modifications. In doing so, ORR considers that its actions are consistent with its duties under section 4 of the Railways Act 1993 (as amended), in particular to:
 - promote improvements in railway service performance or otherwise to protect the interests of users of railway services;
 - promote the use and development of the railway network to the greatest extent ORR considers economically practicable;
 - promote efficiency and economy on the part of persons providing railway services;
 - impose on the operators of railway services the minimum restrictions which are consistent with the performance of ORR's functions under part I of the Railways Act 1993; and

⁹ *The Future of Rail*, Department for Transport, Cm 6233, July 2004

¹⁰ The RIAs, published on 11 April 2005, are available on DfT's website at: http://www.dft.gov.uk/stellent/groups/dft_railways/documents/divisionhomepage/032961.hcsp

- enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

Options

4. In reaching the conclusion that Network Rail's network licence should be modified, ORR has considered a number of options.
5. ORR has considered the option of 'no change', but decided that this would be undesirable from a public interest perspective, in view of the importance of Network Rail's increased responsibilities for whole industry performance and planning, and the potential negative impact on the industry, its customers and funders, should Network Rail fail properly to deliver those responsibilities. ORR considers that it is essential to have a clear mechanism for holding Network Rail to account for the delivery of its responsibilities.
6. ORR has consulted widely on how best to hold Network Rail to account. In September 2004, it consulted on its proposed future work programme¹¹ following the White Paper. In that document, ORR set out its initial views on how Network Rail's accountability might need to be reviewed and strengthened, including suggested options as to how this might best be achieved and sought views from consultees. In the light of the responses received, ORR consulted again, in March 2005, on specific proposals¹² for holding Network Rail to account in respect of its new obligations.
7. In its March 2005 document, ORR considered the option of a contractual mechanism (the Network Code, which is incorporated in each track access contract between train operators and Network Rail). It considered that, although in general the obligation at local level should be addressed through contracts with the train operator (and thus through the Network Code), any systemic and national issues are better addressed through the network licence. Consultees agreed that modifications to Condition 7 of Network Rail's network licence provided the most effective and appropriate means of holding Network Rail to account for delivery of its wider role.

¹¹ *Implementing the Future of Rail: ORR's role and proposed work programme*, Office of Rail Regulation, London, September 2004

¹² *Implementing the Future of Rail: Proposed modifications to Network Rail's network licence*, Office of Rail Regulation, March 2005

Benefits

8. The proposed modifications to the network licence will benefit the whole industry, users and taxpayers by ensuring that Network Rail exercises its public interest role efficiently and effectively, and that it is accountable for doing so.
9. The proposed changes concerning requirements for Network Rail's annual business planning process will reduce the administrative burden on Network Rail, with no corresponding diminution in ORR's ability to hold the company to account.

Burdens

10. Network Rail has already (in advance of the proposed modifications to its network licence) taken on responsibility for facilitating whole industry performance and for developing and establishing a number of route utilisation strategies.
11. The proposed modifications will impose the following burdens:
 - (a) on Network Rail:
 - (i) Network Rail will have to comply with specific requirements in respect of the development and establishment of RUSs. This will entail the adoption of new working practices, largely of a management and / or administrative nature, including greater engagement with industry stakeholders on performance issues, and during the development and establishment of RUSs;
 - (ii) in the event that Network Rail fails to comply with its new obligations under the proposed modifications, ORR may take enforcement action against the company; and
 - (b) on the rail industry: Network Rail's increased engagement with rail industry stakeholders will necessitate the provision of some additional management and administrative resources from the stakeholders concerned.

It would be misleading to attempt to quantify the additional resources required across the industry as a result of the implementation of the proposals, since

the proposals themselves arise from the White Paper and the Railways Act 2005. The need to hold Network Rail to account for its wider responsibilities for performance and planning of the rail industry, and the benefits accrued, in terms of long-term improved performance and effective and efficient use of the network are considered to outweigh any administrative burden on Network Rail.

Effect on the industry and competition

12. This impact assessment is limited only to ORR's proposals. There are no issues of competition for Network Rail that would be affected by the proposals. The company is the monopoly owner and operator of the national rail network and does not face competition from other rail networks.

Implementation

13. On 4 April 2005, Network Rail took on responsibility for facilitating whole industry performance in practice and the company has commenced work on the development of RUSs. Subject to the outcome of this statutory consultation, ORR expects to implement the proposed licence modifications in June 2005.

Evaluation and review

14. ORR will continue to monitor industry performance and to report on it publicly, in the Network Rail Monitor, which it publishes quarterly. RUSs will be produced through a consultative process and ORR will consider each RUS before it is established.
15. In the light of ongoing performance monitoring and the establishment of individual RUSs, should the proposed modifications require strengthening, ORR may consider and propose further amendments, as appropriate.
16. ORR also expects, from time to time, to review and amend the proposed RUS guidelines, in the light of experience.

Annex C: Text of proposed guidelines on route utilisation strategies

ORR is seeking views from consultees on the draft route utilisation strategy (RUS) guidelines in this Annex. Following receipt of responses, ORR will publish final guidelines with which Network Rail must comply. It is however ORR's intention to review these in due course in the light of experience to ensure that they are fit for purpose.

Proposed guidelines on route utilisation strategies

These are the Office of Rail Regulation's guidelines referred to under paragraph 3A.2(c) of Condition 7 of Network Rail's network licence.

Overall objective and purpose of the route utilisation strategies (RUSs)

1. A RUS is defined in Condition 7 of the network licence as, in respect of the network¹³ or a part of the network, a strategy which will promote the route utilisation objective. The route utilisation objective is defined as: "the effective and efficient use and development of the capacity available, consistent with funding that is, or is reasonably likely to become, available during the period of the route utilisation strategy and with the licence holder's performance of the duty".

Purpose

2. Such strategies should:
 - (a) enable Network Rail and train operators better to plan their businesses, and funders better to plan their activities; and
 - (b) set out feasible options for network capacity, timetable outputs and network capability, and funding implications, for train operators and funders.

¹³ The definition of network in Condition 7 of Network Rail's network licence includes, where the licence holder has any estate or interest in, or right over a station or light maintenance depot, such station or light maintenance depot.

Network Rail should balance the need to enable train operators and funders to plan with a reasonable degree of assurance with the need to enable innovation to meet new market needs and competitive requirements.

Principles for RUS development

3. In developing RUSs, Network Rail should ensure that each RUS:
 - (a) reflects an effective and efficient balance between different uses of the network (e.g. different types of passenger and freight services);
 - (b) combines effective and efficient use of the network with effective and efficient use of other railway assets (e.g. fleet and depot facilities);
 - (c) has regard to the strategies and plans of funders and operators and balances local, regional and national aspirations and objectives;
 - (d) balances use of the network and railway service performance¹⁴;
 - (e) balances use of the network and time for efficient maintenance and renewal activity; and
 - (f) identifies cost-effective opportunities to improve the capability, performance, efficiency and safety of the network (e.g. at the time of renewal).
4. Network Rail's RUS in respect of the whole network should set out principles for services that operate across more than one route (such as long distance freight and cross-country passenger trains) to achieve consistency across the network in the way they are treated.

Statements from funders

5. In developing RUSs, Network Rail should have due regard to statements published from time to time by railway funding authorities (such as the Department for Transport (DfT), the Scottish Ministers, the Welsh Assembly, Transport for London (TfL) and the Passenger Transport Executives (PTEs)) concerning:

¹⁴ Railway service performance as defined in the Railways Act 2005 includes, in particular, performance in securing each of the following in relation to railway services – (a) reliability (including punctuality); (b) the avoidance or mitigation of passenger overcrowding; and (c) that journey times are as short as possible.

- (a) available funding;
- (b) key outputs being sought and options they would like to see tested; and
- (c) assumptions relevant to forecasting demand for capacity (e.g. fares policy and crowding standards).

Establishing customer demand requirements

6. Network Rail should develop demand forecasting assumptions and sensitivity tests for RUSs based on:
 - (a) statements from funders on public policy issues;
 - (b) engagement with train operators and other stakeholders (including passenger representatives and community rail partnerships) on likely passenger and freight demand, and implications for the likely effective demand for network capacity (including open access services); and
 - (c) regional planning assessments (or similar assessments such as the Scottish Planning Assessment and Rail Corridor Plans) prepared by the DfT and any other funders, as well as assumptions on other specific funder requirements, the availability of funding and spatial and other planning considerations.

Establishing what can be done

7. Infrastructure maintenance and renewal requirements/committed network enhancements should be derived from the route plans published in Network Rail's Business Plan. In addition, Network Rail should identify potential benefits arising, for instance, from accelerating or packaging renewal programmes, including opportunities to co-ordinate these with delivery of stakeholder plans and aspirations.
8. Network Rail should engage with its customers and relevant rail industry suppliers and funders with regard to assumptions on:
 - (a) technological change; and
 - (b) rolling stock deployment.

9. Network Rail should ensure that each RUS has due regard to Network Rail's contractual commitments (including any mechanisms for output variation), and any other constraints (e.g. other contracts, such as franchise agreements).

Option selection

10. In the selection of options for evaluation, Network Rail should reflect the outcome of its initial consultation with stakeholders.

Appraisal criteria

11. Network Rail should use the Strategic Rail Authority's Appraisal Criteria¹⁵ and, in Scotland, the Scottish Executive's STAG Appraisal Criteria¹⁶, as the initial basis for the evaluation of options. Network Rail should work with railway funding authorities and other relevant stakeholders to maintain and develop these criteria over time to ensure they remain fit for purpose and are consistent with statements on public policy issues from DfT and the Scottish Executive, including appropriate cost benefit ratios.
12. The overall performance measure should be the Government's public performance measure (for franchised passenger services) and minutes delay (for freight and open access passenger services), or such other measure established in the conclusions of a periodic review.
13. In terms of safety, RUSs must be consistent with legal obligations and with Network Rail and industry safety objectives (as set out in Network Rail's safety and environment plan and the Rail Safety and Standards Board's rail safety strategy).
14. Network Rail should develop specific measures in respect of network availability (possessions), in consultation with stakeholders.

Procedural requirements

15. Network Rail should establish governance arrangements for the overall RUS process, which involve key stakeholders, such as the Government and other

¹⁵ *Appraisal Criteria, a guide to the appraisal of support for passenger and freight services*, Strategic Rail Authority, London, April 2003.

¹⁶ *Scottish Transport Appraisal Criteria*, Scottish Executive with the assistance of Steer Davies Gleave; Atkins; SIAS Limited; Ironside Farrar; TRL Limited; and Derek Halden Consultancy, Edinburgh, September 2003

funderson, and representatives of passenger and freight operators and passenger representatives. Network Rail should also establish governance arrangements for individual RUSs, to involve key stakeholders affected by any particular RUS.

16. Network Rail should produce and publish a RUS manual, to make it clear to stakeholders what the RUS process is, and what information is expected from them.

Programme for development of RUSs

17. In developing a programme for RUSs for approval by ORR under Condition 7, Network Rail should give due priority to those routes where there are capacity constraints (and where it may have to prepare a capacity analysis and enhancement plan in accordance with EC Directive 2001/14/EC) and to the franchising programme.

Resources

18. Network Rail must ensure that it has sufficient resources to develop route plans and RUSs, which meet the requirements of Condition 7 and of these guidelines.