

**Review of the
Network Rail licence:
statutory notice of proposed
modifications**

December 2008



OFFICE OF RAIL REGULATION

Contents

Summary	1
1. Introduction	3
Background	3
Structure of this document.....	4
Statutory Consultation	4
Next steps	5
2. The licence and Network Rail’s accountability	7
Network Rail’s accountability.....	7
Our objectives.....	8
3. Increasing Network Rail’s accountability	11
Management of the network	11
Stakeholder relationships	25
Governance	28
Changes to financial conditions for the next control period	29
4. A clearer, more coherent licence	43
<i>Annex A Summary of current licence conditions and proposed changes</i>	49
<i>Annex B Statutory notice & link to licence with proposed modifications</i>	.53

Summary

The obligations in Network Rail's network licence form a vital part of the framework for the company's accountability. As the industry safety and economic regulator, we must ensure that the obligations and the way they stimulate the company to behave complement the other aspects of the framework – contracts, general legal obligations, outputs specified in periodic reviews, incentives, the financial framework, our enforcement policies and the company's corporate governance.

This document explains a package of changes we now propose to make to strengthen the obligations in the network licence, following consultation with the industry between June and September 2008. Many of these are changes to move away from some of the detailed or procedural obligations in the existing licence that can detract from the effectiveness of the licence.

We propose to:

- retain the current network stewardship obligation at the heart of the licence and to extend this purposive approach to other parts of the licence;
- strengthen that obligation to emphasise Network Rail's planning, capacity allocation and asset management roles and to clarify Network Rail's role in running an efficient and effective industry timetabling process;
- strengthen the current "dependent persons" condition to give Network Rail a more purposive obligation to treat a wider range of stakeholders appropriately;
- increase the transparency of Network Rail's management incentive arrangements;
- make some changes to ensure the financial conditions are suitable for the company going forward (but not to introduce a restriction on use of the financial indemnity at this stage), and provide adequate protections against importing undue risk into the core regulated business; and to
- make the licence clearer and more coherent.

In developing these proposals, we have considered the need to set out in sufficient breadth, clearly and purposively, Network Rail's obligations, to allow Network Rail

the flexibility to manage its business efficiently, to enable its customers to hold it to account, and for us to intervene where we believe our action is most needed and will be most effective. We have also considered responses to the policy consultations on our main proposals (which ran from 5 July to 4 September), and on the financial aspects of the licence (which ran from 17 July to 4 September).

This document sets out our comments on the responses to our consultations. We have made a number of changes to the detailed drafting of the proposals. We have not made any significant changes to the policies behind them, although we are now proposing to defer introducing a condition to restrict Network Rail's use of the financial indemnity, provided by Government, when raising new debt.

The document includes the statutory notice with our final proposals to change the Network Rail network licence that we are required to publish under section 12 of the Railways Act 1993. It sets out our reasons for making these changes and the effects our proposals will have. The statutory consultation period runs from 19 December 2008 to 5 February 2009, in parallel with the formal review notices needed to implement our periodic review of Network Rail's outputs and funding for 2009-14 (PR08). The formal notice, which includes details of the consultation process, is in annex B and published on our website.

Subject to the consultation process and Network Rail consenting to make these proposed changes, we aim to have the revised licence in place for the start of the next control period on 1 April 2009.

1. Introduction

Background

- 1.1 Network Rail is authorised to operate the main national rail network by a network licence. The Secretary of State for Transport originally granted the licence in 1994. We can change a licence under the Railways Act 1993 by agreement with the licence holder or by making a reference to the Competition Commission.
- 1.2 Network Rail is a monopoly on which its train operator customers and much of the wider industry depends. So the licence, enforced by us, is an important regulatory tool to stimulate the company to operate efficiently, and to meet the needs of its stakeholders.
- 1.3 We set out here a package of changes we propose to make to the network licence. We also explain the link between the licence, our approach to Network Rail's outputs, our enforcement policy and the industry incentives framework. The changes have been developed alongside PR08 to ensure that Network Rail's accountability is fit for purpose for the next control period.
- 1.4 Network Rail has a second licence authorising its operation of 18 stations. We are not making proposals about the station licence, which is in a standard form for all operators of stations. So, when in this document we say "licence", we mean "Network Rail's network licence".¹
- 1.5 We have taken soundings on our thinking at key stages in our review of the licence. In particular, we held an industry workshop in September 2007 on both the licence review and the form and structure of Network Rail's outputs for PR08. As we have developed our proposals, we have had a number of informal discussions with key parties, including Network Rail.

¹ But note that some conditions in the network licence do apply to Network Rail's interests in stations. For example, current licence condition 7.

- 1.6 We consulted the industry on the proposed changes in June² and July³ 2008. We had a good response to the consultation and, where consultees wished to, we have had subsequent meetings to discuss their concerns in more detail⁴. This has led to a number of changes to the detailed drafting of the proposals, although no significant changes to the policies behind them. We have, however, deferred introducing a condition to restrict Network Rail's use of the financial indemnity, provided by Government, when raising new debt.

Structure of this document

- 1.7 Chapter 2 outlines the current arrangements that make Network Rail accountable and our objectives. Chapter 3 explains our proposals to change the licence to make Network Rail's accountability more effective, including changes in light of responses to our consultation. This chapter is divided into four parts dealing with management of the network, stakeholder relationships, governance (including Network Rail's management incentive schemes) and financial issues related to PR08. Chapter 4 summarises our proposals to make the licence clearer and more coherent.
- 1.8 The annexes contain a table that summarises our proposals to change the current licence and a copy of the statutory consultation notice we have issued today. This has a link to a revised licence incorporating all of the changes we propose to make.

Statutory Consultation

- 1.9 This document includes the statutory notice of our proposals to modify the licence. The statutory consultation period runs to 5 February 2009. The statutory consultation notice is in annex B.

² Review of Network Rail's licence: consultation. June 2008. This can be found at <http://www.rail-reg.gov.uk/upload/pdf/366.pdf>

³ *Periodic Review 2008: licence review – consultation on financial conditions*, Office of Rail Regulation, July 2008. This can be found at http://www.rail-reg.gov.uk/upload/pdf/pr08-cons_netlic_170708.pdf.

⁴ Consultation responses can be found on our website at <http://www.rail-reg.gov.uk/server/show/ConWebDoc.9311>

Next steps

- 1.10 We can modify a licence either by agreement with the licence holder following a statutory consultation or by referring the matter to the Competition Commission.
- 1.11 Subject to that consultation process and Network Rail's consent, we plan to implement these changes in time for the start of the next control period.

2. The licence and Network Rail's accountability

Network Rail's accountability

2.1 The licence is an important element of the framework within which Network Rail operates. The framework makes the company accountable for its management of the main national rail network (including both track and stations).

2.2 This framework includes accountability through:

- Network Rail's contracts with its customers;
- Network Rail's general legal obligations, in particular those relating to health and safety and the environment;
- the form and structure of outputs we specify in periodic reviews; and
- compliance with the obligations in its licences

in the context of:

- the incentive and financial framework established in periodic reviews;
- our safety and economic enforcement policies, including our economic penalties statement; and
- Network Rail's corporate governance.

2.3 It is important that these elements fit together. They have all informed our thinking on the review of Network Rail's licence and on PR08 generally.

2.4 The current version of the licence can be found on our website⁵. The licence covers a wide range of issues from Network Rail's core obligation to manage

⁵ Network licence granted to Network Rail Infrastructure Ltd. This can be found at http://www.rail-reg.gov.uk/upload/pdf/netwrk_licence.pdf.

the network efficiently and effectively, through how it deals with its stakeholders, to industry-wide arrangements, ring fencing and other constraints on its business.

2.5 The licence has been strengthened several times by this office since the Secretary of State granted it to Railtrack in 1994. For example:

- in 1997 we introduced the purpose and duty of the current condition 7 to fill a critical gap in Railtrack's accountability;
- in 2001 we introduced several new conditions, including obligations to ensure that the licence holder developed an asset register with accurate information about the condition and nature of its assets, to control the disposal of land, and to provide for the appointment of independent regulatory reporters;
- in 2002 we strengthened the existing ring-fencing condition;
- in 2003 we introduced a requirement to establish a new industry safety body (the Rail Safety and Standards Board); and
- in 2005 we introduced obligations to make Network Rail accountable for the development of route utilisation strategies, and to require it to facilitate railway service performance.

Our objectives

2.6 We have reviewed the licence in the light of our section 4 duties, our work on PR08, the integration of safety and economic regulation, and in the light of practice and experience.

2.7 We believe the licence generally works well reflecting how it has been repeatedly strengthened over the past 14 years. But we think there is scope to strengthen it further in several respects.

2.8 We consider that the licence should be more purpose driven ("purposive"), along the lines of the current condition 7. This means setting out the overall objective, within which Network Rail has flexibility about the way in which it delivers. Sometimes some of the specific obligations and procedural requirements in the licence may have led to Network Rail devoting too little attention to the wider purpose of the obligation, and have forced us to

consider minor potential breaches rather than concentrate resources on more significant issues.

- 2.9 Moving to a more purposive licence will mean that we can intervene where there is the greatest benefit – where the impact or potential impact most affects passengers, freight customers, funders and other stakeholders. In some cases there will be separate guidelines for some of the detailed processes, for example, the processes for exchange of information, in much the same way that the route utilisation strategy (RUS) guidelines sit outside the licence now.
- 2.10 We have also considered whether to make specific reference to health and safety, particularly in the core condition. We are satisfied that managing the network safely is already within the existing purpose and duty of the current condition 7, and that we have powers under health and safety legislation to address safety concerns.
- 2.11 Our objectives in implementing our review and addressing the areas described above have therefore been that the licence should:
- set out in sufficient breadth, clearly and purposively, Network Rail's obligations (recognising that specific outputs are set in our PR08 determinations);
 - support our intervention where necessary, in line with our enforcement policy. We expect to focus on serious and/or systemic failures which have the greatest impact or potential impact; we expect individual day to day problems to be resolved through contractual and other processes; and
 - allow Network Rail the flexibility to manage its business efficiently, and to respond to the changing needs of its customers and funders.
- 2.12 In addition to this, some changes are needed to ensure the financial conditions in the licence are suitable for the company going forward (but not to introduce a restriction on use of the financial indemnity at this stage), including protecting the core regulated business against undue risk, and some refinements to improve the drafting which will improve clarity.

- 2.13 We expect these changes to result in a licence better able to meet the objectives above and to enable us to focus on those matters that have the greatest impact on passengers, freight customers, funders and other stakeholders. In short, our proposals should make the licence more powerful and fit for the next control period.
- 2.14 We consider that our approach is consistent with our section 4 duties and the principles of better regulation, to which we are committed. In particular, we consider our proposals help ensure a proportionate approach to enforcement, because an increasingly purposive approach allows us to target our intervention where the impact of a possible contravention is greatest.
- 2.15 This approach relies on strong enforcement by ORR; our economic enforcement policy and penalties statement⁶ sets out in more detail how we enforce the licence. Our strategy for 2009-14⁷ highlights that we will enforce delivery of the outputs (including enhancements) set for Network Rail in PR08 and its firm delivery plan commitments. Our strategy also sets out three key areas that we will concentrate on in CP4: health and safety; the needs of users; and efficiency. These areas will inform our enforcement policy.

⁶ *Economic enforcement policy and penalties statement* – ORR April 2006. This can be found at <http://www.rail-reg.gov.uk/upload/pdf/287a.pdf>

⁷ *Promoting safety and value in Britain's railways. Our strategy for 2009-14*. ORR December 2008. This can be found at <http://www.rail-reg.gov.uk/upload/pdf/388.pdf>

3. Increasing Network Rail's accountability

- 3.1 We have pursued the objectives set out in chapter 2 in developing changes to the licence. A link to the full revised licence including all the changes we propose to make is included at annex B. In this chapter, we explain the most important changes we wanted to make in the June and July consultations. We set out the responses to the consultations and our comments on those responses, including any subsequent changes to the proposed modifications.

Management of the network

The core role

- 3.2 Network Rail's core role is to manage the main national rail network, including the track, structures, and station infrastructure. The way it does this is mainly covered in the current condition 7 of the licence.

- 3.3 Condition 7 starts with a purpose:

"The purpose is to secure –

- a) the operation and maintenance of the network;
- b) the renewal and replacement of the network; and
- c) 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:

- i. the quality and capability of the network; and
- ii. the facilitation of railway service performance in respect of services for the carriage of passengers and goods by railway operating on the network."

- 3.4 The condition then imposes a general duty on Network Rail:

“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.”.

- 3.5 We consider that the purpose and general duty are well drafted and fit with our objectives. In particular, they set out the overall framework within which Network Rail must manage the infrastructure, while giving Network Rail an appropriate level of flexibility to choose how best to deliver its obligations. They also give us a wide discretion to intervene where it is most appropriate, and to focus on systemic problems and those with the greatest impact on passengers, freight customers, funders and other stakeholders.
- 3.6 In the June consultation we proposed to retain these obligations at the heart of a more purposive licence.

We asked consultees whether they agreed if the purposive approach is sensible and should be extended where possible.

- 3.7 Most consultees were supportive of our approach to make the licence more purposive. ATOC and others had concerns about how ORR would enforce this type of licence, given non-specific obligations might lead to uncertainty about when regulatory action could be taken. National Express Group (NEG) felt a better approach would be to specify what Network Rail was required to do in greater detail.
- 3.8 Our enforcement policy is clear about when we would consider enforcement action. It says that we will focus on serious and/or systemic failures, and investigate complaints. We have already used the purpose and general duty in the existing condition 7 effectively in finding and dealing with a number of disparate licence breaches. We consider that a purposive approach is the best approach; it will give Network Rail appropriate flexibility to manage its business and to do the right thing for the industry, while preserving our ability to intervene in a wide range of circumstances.
- 3.9 English, Welsh and Scottish Railway Ltd (EWS) pointed out that breaches that might be considered “minor” might still have significant detrimental effects on customers and funders. We agree that this is an important enforcement issue. Our enforcement policy says that we will intervene where there is the greatest benefit – where the impact or potential impact most affects passengers, freight

customers, funders and other stakeholders⁸ - including serious, one-off incidents.

Stewardship

- 3.10 In the June consultation we proposed to include the stewardship obligation at the heart of the licence in its entirety, subject to two detailed drafting changes to reflect our approach to enforcement of the condition. One change removed the words “take such steps as are necessary or expedient so as to” in the duty. We considered that these words added little to the duty. The rest of the duty clearly recognises that the circumstances of the individual case affect how Network Rail has to meet the purpose of the condition.
- 3.11 We also included wording to make it clear that the obligation also covered potential customers and funders. We consider that this was implicit in the current licence but that this change clarified the obligation and would give greater certainty to these people.
- We asked consultees whether they agreed that the network management obligation should remain at the heart of the licence, with the words “take such steps as are necessary or expedient so as to” removed.**
- 3.12 There was general support for this proposal but several consultees were concerned that removing the reference to “take such steps...” would jeopardise our ability to take pre-emptive regulatory action to prevent a likely breach occurring. However, we consider that our proposed text does not reduce our ability to take preventative action. The Railways Act 1993 requires us to take action (such as issuing an order) to make Network Rail either do something or stop doing something to prevent a likely future breach, except in specified circumstances; taking these words out of the licence will not affect our statutory obligations.
- 3.13 Network Rail was concerned that the amendment to the purpose should not preclude recognition that achievement of the purpose is affected by what is reasonably practicable having regard to all the circumstances. We do not

⁸ We are currently consulting on changes to our penalties statement which looks in more detail at the issue of the seriousness of a breach in relation to the amount of a potential penalty. This consultation closes on 22 February 2009 and can be found at http://www.rail-reg.gov.uk/upload/pdf/cons-gdnce_assess_eco_equilib.pdf

think that removing the reference will affect this interpretation of the specific words in the general duty.

- 3.14 Network Rail was also concerned that the relationship between the purpose and duty and the more specific obligations that hang off it was not as clear as it could be, in particular in relation to the timetabling obligation. It suggested additional text to make it clear that the more specific obligations did not require any higher standard than that required by the general duty. We do not think that this text is needed, because it is clear that achieving the purpose and general duty are the primary obligation; all the additional specific obligations refer to achieving the general duty which must be done (only) to the greatest extent reasonably practicable.
- 3.15 London TravelWatch (LTW) was concerned that the different aspects of the purpose could conflict, and suggested that there should be an indication of their priority. In particular, it felt that securing the operation of the network should have highest priority and other functions should be planned and executed in such a way as to minimise disruption. However, we believe that Network Rail needs to be able to balance the competing needs of its different functions on a case-by-case basis, in order for it to achieve the purpose in a timely, efficient and economical manner. If we considered that Network Rail was concentrating too heavily on one function at the expense of another, we would consider whether it was achieving the purpose overall.
- 3.16 Rail Freight Group (RFG) was worried the proposals did not give enough weight to the needs of freight users and passengers, but concentrated solely on Network Rail's customers and funders. Passengerfocus also queried whether something could be added to the general duty to encourage Network Rail to minimise the disruption to passengers from engineering works. We agree these are important issues and we have strengthened the licence where appropriate to ensure that Network Rail takes proper account of the needs of end users. We have made this link explicit in the timetable planning obligation which requires Network Rail to carry out its timetable planning to enable train companies to plan their businesses and to meet their obligations to railway users.
- 3.17 RFG also suggested that the condition could be further strengthened by including a specific obligation to actively promote the use of the network for freight and passenger transport. We believe that our proposals to include new

planning and capacity allocation obligations in the licence (discussed later), together with the outputs we have specified in our PR08 determination will achieve this⁹. We will be able to enforce these outputs as “customer reasonable requirements” under condition 1.

- 3.18 We have not made any further changes to our proposals in light of these comments.

Emphasising key aspects of network management

- 3.19 The purpose of the current condition 7 is sufficiently broad to encompass all of Network Rail’s network management activities. However, we believe it is helpful to emphasise some areas because of their importance now and for the next control period.

- 3.20 So in the June consultation we proposed strengthening the core condition to emphasise key aspects of the network management obligation on which we expect Network Rail to focus when delivering its obligations to its stakeholders. In delivering these specific obligations (outlined below), Network Rail will still need to ensure it achieves the overall purpose of the core condition.

Planning, capacity allocation and asset management

- 3.21 Although the purpose of condition 7 is very wide-ranging, there are three areas where we think we should emphasise Network Rail’s role.

Planning

- 3.22 We consider a different approach is needed to business planning. At present Network Rail has an obligation to produce a business plan each year. We do not believe that this has helped its stakeholders plan their own businesses, as the plan can change every twelve months.

- 3.23 In reviewing the licence we have distinguished between planning for delivery and wider, more strategic industry planning.

- 3.24 Network Rail is preparing its delivery plan for the next control period. This will serve as an essential reference document for Network Rail’s stakeholders

⁹ Periodic Review 2008: Determination of Network Rail’s outputs and funding 2009-14. October 2008. This can be found at <http://www.rail-reg.gov.uk/upload/pdf/383.pdf>

during the control period. Our enforcement policy states that delivery of the firm commitments in it are customer reasonable requirements and so would be ultimately enforceable under the licence (though this would not apply to Network Rail's aspirational commitments). It is therefore important that we are able to ensure that the plan adequately reflects our PR08 determination. We see the delivery plan as "short term" planning in the context of the network management condition.

- 3.25 We also consider that the industry should give more thought to effective longer term planning to address the needs of the railway and those who use it. Network Rail is at the centre of the industry and has a key role in taking this forward. But for the plan to serve its purpose Network Rail must engage effectively with its customers. Longer term planning will help the industry and its funders understand the needs of the railway. It will help inform both action that should be taken now and the development of governments' high level output specifications for future control periods.
- 3.26 So in our June consultation we proposed including in the licence a new obligation on Network Rail to plan how it will comply with the duty in the network management condition over the short, medium and long term to meet reasonably foreseeable future demand for railway services. We also proposed to make explicit a requirement to consult with, and take account of the views of, service providers and funders to facilitate effective industry wide planning.
- 3.27 The changes we proposed in June also provided for us to require Network Rail to produce additional plans and to amend plans to reflect changes in circumstances, if needed.

Access planning

- 3.28 The second area we propose to emphasise is access planning. Given the experience of some new operators, we consider more should be done by Network Rail to plan future access to the railway and to be ready to respond effectively to substantive enquiries from those seeking to operate new services. This would help ensure it facilitates the development of new services that could benefit passengers and freight customers.
- 3.29 Therefore in the June consultation we proposed a new obligation to cooperate with the funders and providers of potential new passenger and freight services

to find paths on the network. We think this will help focus Network Rail's attention on solving the problems identified by open access operators in particular. Although access planning is implicit in meeting the purpose of condition 7, there are no specific obligations in this area at present.

Asset management

3.30 The third area is asset management. At present Network Rail has licence obligations in relation to asset information in condition 24. These obligations were introduced to address the failure of Network Rail's predecessor, Railtrack, to have adequate information about its assets. Specific requirements and deadlines were included in guidelines.

3.31 Given Network Rail's progress in meeting the milestones in the current guidelines¹⁰ in relation to establishing an asset register, in June we proposed moving to a wider-ranging obligation to develop, publish and apply asset management policies and criteria, and to keep appropriate, accurate and accessible asset information. This would maintain the general obligation in the current condition to maintain asset information while creating a specific obligation to strive for best practice in asset management generally.

We asked consultees whether we should emphasise Network Rail's planning, capacity allocation and asset management activities in the licence in this way. We also asked if it was appropriate to remove the existing asset register licence condition in the light of this.

3.32 In general consultees supported our proposals but they raised a number of concerns about specific parts. In particular, they felt that the obligation to consult stakeholders about Network Rail's plans may not be strong enough. Most consultees also asked that the current requirement that the business plan should enable customers and funders to plan their businesses with a reasonable degree of assurance be carried over into the new delivery plan obligation condition. There were a number of comments on our proposals relating to asset management.

¹⁰ See letter from ORR to Network Rail of 14 May 2008: <http://www.rail-reg.gov.uk/server/show/nav.145>

Planning

- 3.33 Several consultees were concerned that the obligation to consult stakeholders on the plans may be weak. ATOC wanted to see a more detailed and timetabled process of consultation. However, proper consultation is already required, for example where it is needed for Network Rail to meet the general duty. And including a detailed consultation process within the licence itself would not be in keeping with a more purposive approach.
- 3.34 Arriva Trains Ltd (Arriva) thought the proposed condition might lead Network Rail to only take account of committed and funded schemes, so should be strengthened to include reasonably likely proposals. We consider that this is already covered to an appropriate degree. Under the purpose and general duty, Network Rail is required to plan its activities to meet the reasonable requirements of its customers and funders, so it should take account of reasonably likely proposals.
- 3.35 Several consultees were concerned that there was no obligation on Network Rail to deliver or comply with its plans. NEG noted that it is the delivery of its plans on which operators will rely when preparing their own business plans. EWS said that it was not clear how the plans would be changed over time and questioned how ORR would object to a plan or strategy.
- 3.36 We have set out in our PR08 determination how Network Rail must meet the outputs we have set and which it will include in its delivery plan, how we will enforce these as customer reasonable requirements for the purposes of the licence, and how the agreed outputs may be changed during the control period. In particular we have emphasised train operators' key role in challenging any changes proposed.
- 3.37 There was general agreement that the proposals for a delivery plan were sensible although some consultees noted that it was useful to have an annual plan or update. The proposals are, in fact, silent on the period of time that the delivery plan should cover and it is up to ORR to decide. For this control period, we have decided that the delivery plan should cover the whole period. We will require updates from Network Rail where material changes are made. The new obligation will allow us to set other periods in the future if appropriate.

- 3.38 Most consultees objected to the removal of the words in the current licence that obliges Network Rail to prepare the business plan to enable customers and funders to plan their businesses with a reasonable degree of assurance. We had not included this as we thought it was implicit in the general duty. But we agree that this is an important obligation that should be made explicit. We have amended our proposal accordingly.
- 3.39 Several consultees expressed concern about the changes to the RUS obligations, in particular our proposal to move some obligations into the RUS guidelines. We envisage the guidelines will include the detailed processes by which Network Rail will give effect to its obligations. We have set out later how guidelines in general will work and how we will enforce them. We believe this will meet consultees concerns.
- 3.40 We have made no other changes to our original proposals, other than that in paragraph 3.38.

Access planning

- 3.41 Consultees agreed with the new obligation to co-operate with potential providers or funders on capacity allocation, so long as this did not impact on existing franchises or track access agreements. Several commented that the obligation should not just be helpful to open access passenger TOCs but should apply to freight operators and to current passenger TOCs seeking new routes.
- 3.42 We agree. While this obligation is primarily intended to ensure that Network Rail gives new entrants adequate assistance, the obligation is generally worded so that Network Rail should cooperate with anyone seeking new paths. Network Rail is already bound by the capacity allocation arrangements in its track access agreements with existing operators and by the priority criteria in Part D of the Network Code; these will prevent it giving undue priority to aspiring entrants. Therefore we have not made any further changes to our June proposals.

Asset management

- 3.43 Network Rail objected to the proposal that it should be required to publish all of its asset policies and criteria, as this was unnecessary. It said that it had made considerable progress in the development of its asset policies through a

proactive approach and had discussed them with key interested stakeholders, including suppliers, but it was not appropriate to oblige it to routinely publish them in their entirety. Our proposal went somewhat beyond Network Rail's current obligation. In the light of their points, our section 4 duty to impose on Network Rail the minimum restrictions necessary, and that no other consultees felt strongly about this point, we have amended our proposal. This now makes clear that we expect Network Rail to make appropriate information about its policies and criteria available to stakeholders as necessary, but that this should be tailored and need not include publishing policies in their entirety.

- 3.44 Several consultees felt strongly that we should not remove the asset register condition as it is important that Network Rail has information on its assets. We agree that it is essential that Network Rail has a good understanding and records of the state of its assets. However, we think it is right to remove the existing licence condition as it was imposed in circumstances where the company had no asset register at all. Network Rail has now established an asset register and the focus needs to be on maintaining appropriate records in the future. We have therefore included a new obligation to maintain appropriate, accurate and readily accessible information about relevant assets in condition 1, linked to the general duty. To reflect the comments we received, we have amended the drafting to change "keep" to "maintain". We have also separated this obligation from the requirement to develop asset policies and criteria for greater clarity.

Timetabling

- 3.45 Network Rail, along with passenger train operators, already has licence obligations about the provision of information for the passenger timetable. We have reviewed the obligations on Network Rail in the light of experience.
- 3.46 The current obligations in the licence cover three different aspects of timetabling. These are:
- an obligation to publish the national passenger train timetable. This is the timetable now published electronically twice a year in December and

in late May or June in line with the Access and Management Regulations¹¹;

- an obligation to plan changes to the timetable in order to provide train operators with timetable information twelve weeks in advance (commonly known as T-12, so train operators can in turn provide information to passengers by T-9); and
- an obligation to make timetabling information available to enquiry bureaux approved by the Secretary of State.

3.47 Establishing the timetable is part of the infrastructure manager's core role and is implicit in the purpose of the current condition 7. But we consider we should make a clearer statement in the licence about Network Rail's role to ensure that sufficient attention is given to making the timetabling process work in the most effective way. In June, therefore, we proposed introducing an obligation in condition 1 (network management) on Network Rail to run an efficient and effective industry timetabling process, which allows service providers to plan their businesses with a reasonable degree of assurance and to meet their obligations to railway users. This condition would also stress Network Rail's role in initiating changes to industry processes, where necessary and appropriate.

3.48 In addition we also proposed a separate condition which focuses on the purpose of advance information and why T-12 is important. We propose to introduce a general duty on Network Rail to provide access to appropriate, accurate and timely information that enables railway passengers to plan their journeys.

3.49 We wanted to emphasise Network Rail's role in getting information about short-term disruption to the timetable due to maintenance, renewals or enhancements through to train operators, so that they can in turn advise their customers. The obligation we proposed would have two parts:

- an obligation to establish and maintain efficient and effective processes reflecting best practice to provide that information; and

¹¹ Statutory Instrument 2005 No. 3049 The Railways Infrastructure (Access and Management) Regulations 2005.

- an obligation to apply those processes to the greatest extent reasonably practicable having regard to all relevant circumstances.

3.50 The obligation we proposed would expressly provide that Network Rail would be in compliance where it provided the information to holders of passenger licences by T-12. If Network Rail failed to do this, but still provided information in time for train operators to inform passengers by T-9, Network Rail would also be in compliance. This would focus Network Rail's attention on the needs of passengers even if it did not meet T-12.

3.51 In addition, we recognised that there may occasionally be good reasons why it will not be possible for Network Rail both to comply with its network management obligations and to meet T-12. In our June consultation, we proposed that Network Rail would not be in breach of its obligations where two tests were met. These would be that:

- it provides access to information about relevant changes to holders of passenger licences as soon as is reasonably practicable having regard to all relevant circumstances; **and**
- providing the information nine weeks or more before the relevant changes are to have effect would conflict, to a significant degree, with its duty under the network management condition.

3.52 The drafting we proposed would also give Network Rail the flexibility to make short notice improvements, such as allowing extra trains or station stops if it was the right thing to do.

3.53 We considered whether, in addition to the requirements set out above, there should be a third test relating to satisfying the interests of passengers. On balance, we took the view that satisfying the duty in this condition and the two tests above should ensure that the interests of passengers were properly addressed.

3.54 We also proposed broadening Network Rail's obligation to provide timetabling information to any enquiry bureaux and to reflect the increased use of the internet for accessing rail service information. We therefore redrafted the current obligation in paragraph 9.5 of condition 9 to refer to enquiry services generally.

We asked consultees whether we had identified the issues in relation to Network Rail's role in the timetabling process. Did they agree that we should clarify Network Rail's roles in timetabling in this way? Were the tests described sufficient?

- 3.55 Consultees raised a number of concerns about the new timetabling condition, with many saying that it was giving Network Rail too much leeway and was much weaker than the current condition. Most objected to the inclusion of the T-9 step, saying that this was not in passengers' interests. Many said that getting accurate information to passengers was paramount, not just for pre-booking tickets but also during times of disruption. There was a mixed reaction to the proposal to remove the caveat in the current condition that any late changes must be in the passengers' interests, with some consultees agreeing that it should be removed on the grounds that it was not for Network Rail to decide what was in passengers' interests.
- 3.56 We believe that the new condition is stronger than the existing condition, but does give Network Rail some flexibility to do the right thing under the network management condition. The general duty in the new condition is wider than in the existing condition as it introduces the requirement to provide appropriate, accurate and timely information on train movements and covers any timescales, from the information required at T-12 to providing up to date information during times of disruption.
- 3.57 The timetabling condition sits outside the network management condition as it introduces much wider relationships, but it will be enforced in conjunction with those obligations, in particular the timetable planning obligations. So if Network Rail provided the relevant information late but showed that providing it on time would have significantly conflicted with condition 1, we would expect to look at that condition to see if Network Rail was compliant in planning its possessions efficiently and in running an efficient and effective timetabling process. In particular, the timetable planning obligation in condition 1, in its requirement to achieve the general duty, retains the obligation to plan the maintenance and renewal *etc.* of the network that was in the existing condition.
- 3.58 In light of the comments received, we have reviewed the inclusion of an obligation relating to T-9. We now agree that it would be confusing and would not add value to the process. Therefore we have removed it, retaining the

clear focus on the deadline at T-12. We have not reinstated the reference to late changes being in the passengers' interests because we agree that it is not for Network Rail to judge what those interests are. In addition, the concept is covered in the general duty to provide information to enable passengers to plan their journeys.

- 3.59 EWS and RFG commented that freight users also needed information on changes to the timetable in order to plan their businesses. We agree that this is important but do not consider it would be sensible to include a similar obligation specifically for freight in the passenger timetabling condition. Freight users have very different planning horizons so the T-12 condition would not properly reflect their needs. Furthermore, we do not consider that it would be desirable to impose a number of different timetable planning obligations in the licence, particularly since the timetabling condition is intended to replace and clarify the existing condition 9. However, the timetable planning obligation in condition 1, coupled with the stakeholder obligations in condition 8, oblige Network Rail to give its freight operators timely and accurate information on the movement of trains to enable them to plan their businesses and meet their requirements to their customers. We consider this is sufficient to ensure that Network Rail properly has regard to the needs of the freight industry and would enable us to take enforcement action in appropriate cases should it fail to do so.
- 3.60 ATOC and Passenger Focus requested that we include a specific obligation on Network Rail to ensure that it provides up-to-date information directly to passengers on days of disruption through station announcements and information boards. We have not included a specific obligation because we consider that this is already implicit in the purpose and general duty to provide accurate and timely information to enable passengers to plan their journeys.
- 3.61 ATOC raised concerns about whether Network Rail should be allowed to give timetabling information to any enquiry bureau as there was no guarantee that the information would be used accurately or updated properly by the recipient. This could give rise to complaints from passengers. We do not think that it is appropriate to restrict Network Rail from providing this information to credible organisations as this is not prohibited under the current licence and to date there have been no problems. However, we would expect Network Rail to ensure that the people it does deal with are

credible and that it updates any information it has supplied as quickly as possible so that the enquiry bureau can in turn update its information.

Stakeholder relationships

- 3.62 Given Network Rail's monopoly position, it is vital that its obligations to those dependent on it are fit for purpose. We have examined this throughout our review of the licence.
- 3.63 Network Rail's relationships with its stakeholders are currently covered in different parts of the licence.
- 3.64 It has an obligation to meet the reasonable requirements of persons providing services relating to railways¹² under condition 7. In June, we proposed retaining that obligation in the core condition, and it is a fundamental part of Network Rail's accountability and the framework for the form and structure of outputs in our PR08 determination.
- 3.65 The licence also provides other mechanisms to protect the interests of Network Rail's stakeholders. For example:
- a broad obligation on Network Rail not to discriminate unduly between persons in its licensed (or related) activities;
 - an obligation to have and comply with an approved code of practice which sets out how Network Rail will deal with prospective customers and funders efficiently; and
 - a specific obligation to attend meetings with passenger representatives and to share information.
- 3.66 We proposed strengthening these arrangements to broaden the focus of Network Rail's attention to its relationships with its stakeholders. In particular, we suggested developing the current "dependent persons" code condition to give Network Rail a more purposive obligation to treat a wider range of stakeholders appropriately.

¹² Broadly defined to include railway services, the provision or maintenance of rolling stock, the development, maintenance or renewal of a network, station or light maintenance depot and the development, provision or maintenance of information systems related to railway services.

- 3.67 We proposed that the new obligation will replace and extend the current licence conditions that deal with Transport *for* London (TfL), the Mayor of London and passenger representatives.
- 3.68 We proposed removing the current obligation on Network Rail to attend up to two meetings a year with passenger representatives. This is because we considered the wider, purposive approach will be more effective. Under our proposals, Network Rail would have to meet with passenger representatives where necessary to achieve the purpose.
- 3.69 The more purposive structure will enable stakeholders to challenge Network Rail where engagement is lacking and contractual remedies are not available.
- 3.70 We proposed to step back from approving a detailed code of practice. This would bring our role more into line with the network statement arrangements¹³. In these, we do not approve the statement published by Network Rail, but we consider appeals from train operators about the statement and related matters. These include being treated unfairly.
- 3.71 But we proposed retaining an obligation on Network Rail to publish appropriate information about how it will deal with its stakeholders. Network Rail will have the flexibility to choose how it does this, whether by a code of practice or through documents like the network statement or otherwise, according to each stakeholder's particular needs. We would be able to require a change if the information published was inadequate to enable it to meet the purpose.
- 3.72 We proposed retaining Network Rail's current obligation not to unduly discriminate between persons in its licensed (or related) activities. Although competition law might apply to some of the behaviour covered by this condition, we consider that this obligation would address other behaviour where it is difficult or not possible to determine an adverse effect on markets. We also consider that use of the licence may provide a swifter remedy than competition law.

¹³ Regulation 11 of the Railways Infrastructure (Access and Management) Regulations 2005 obliges Network Rail to publish a network statement. The latest statement can be accessed here: [Network Rail - Network Statement](#). ORR has an appeal function under regulation 29. The Regulations are available at: [The Railways Infrastructure \(Access and Management\) Regulations 2005](#).

- 3.73 This means that Network Rail's stakeholders will often have multiple protections under different parts of the licence. TfL, for example, would be protected under the network management condition as a funder and (through its concessionaire) as a service provider, and also under a revised and extended stakeholder condition, under the non-discrimination obligation, and through individual contracts.

We asked consultees if they agreed that the existing dependent persons code obligation should be strengthened in this way and the two licence conditions that deal with Transport for London, the Mayor of London and passenger representatives should be replaced?

- 3.74 In general, consultees were in favour of the proposed changes. Arriva was concerned that stepping back from approving the code of practice might mean that it would not have the same regulatory status and would therefore be harder to enforce. We do not consider this to be the case. The code of practice must set out the principles and procedures by which Network Rail will meet the general duty to treat stakeholders appropriately. If it is not adequate to achieve the general duty we can require Network Rail to revise it. Similarly, if Network Rail did not follow its code, it could be in breach of its obligation to achieve the purpose of the condition.
- 3.75 LTW was concerned about the changes to the obligations relating to its relationship with Network Rail and suggested that we retain the obligation for Network Rail to meet it twice a year. We believe that the proposed licence obligation gives LTW greater certainty: the current licence condition only requires Network Rail to meet with LTW twice a year. It does not oblige it to engage with LTW at those meetings, nor does it specify at what level the interaction should be. The proposed condition would oblige Network Rail to co-operate with LTW and to treat it appropriately, including providing relevant information whenever reasonably requested to do so. In addition, Network Rail will be required to set out in its code of practice (or otherwise) the principles and procedures by which it will do this. We understand that Network Rail is already working on a protocol with LTW that could meet this requirement.
- 3.76 RFG suggested that the definition of stakeholders be widened to include bodies formally representing the interests of individual freight users, to complement the inclusion of Passenger Focus and London TravelWatch.

These two organisations are included explicitly as stakeholders as they have statutory duties that require specific co-operation. We consider that Network Rail should continue to engage with the representatives of both passenger and freight users as it does now. But that there are sufficient obligations in the licence as a whole already to ensure that Network Rail does this appropriately as it plans and carries out its activities.

3.77 We have not made any further changes to our original proposals.

Governance

3.78 Two conditions in Network Rail's licence deal with governance issues, including its staff incentive arrangements.

3.79 The current condition 27 concerns Network Rail's corporate governance generally.

3.80 The current condition 28 requires Network Rail to implement and comply with an incentives policy, and to align any staff incentive schemes with that policy. Network Rail is required to publish a summary of its incentive arrangements for senior managers known as the Management Incentive Plan (MIP). In formulating those arrangements, Network Rail must have particular regard to:

- the achievement of the purpose of its network stewardship and dependent persons code obligations (current licence conditions 7 and 25);
- licence enforcement orders made by ORR, and compliance with its access agreement obligations;
- any other objectives set by ORR.

3.81 We will consider separately and at a later date whether any changes are needed to the corporate governance obligations in the licence, in the light of the Network Rail Members' own review, which is ongoing.

3.82 However, we think there are some changes that should be made now to increase the transparency of the development and implementation of the MIP. These changes do not raise any major policy issues about Network Rail's incentive arrangements and are relatively straightforward. But we

consider that it is often unclear to Network Rail's stakeholders how the company has addressed performance issues in the MIP and the bonuses that stem from it. The additional transparency which would result from our changes would increase the accountability of Network Rail's remuneration committee in dealing with the MIP and its implementation.

3.83 In June, we proposed:

- broadening the range of factors Network Rail¹⁴ must consider when formulating its incentive schemes to include compliance with the whole licence;
- clarifying that Network Rail should again consider those factors when applying its incentive schemes; and
- requiring Network Rail to explain how it has balanced all the factors considered when setting the bonuses of its senior managers in a public statement.

We asked if consultees agreed we should modify Network Rail's management incentive plan licence condition in these ways to increase transparency.

3.84 Most consultees agreed with our proposed changes. Network Rail sought clarification on whether the information it provided this year was sufficient to meet the proposed obligation. We are discussing with Network Rail our expectations as to what the company would need to do to satisfy the new requirements.

Changes to financial conditions for the next control period

3.85 We consulted separately on the financial conditions in Network Rail's licence in July 2008.¹⁵ The high level issues that we consulted on in July included:

¹⁴ In particular, its remuneration committee.

¹⁵ *Periodic Review 2008: licence review – consultation on financial conditions*, Office of Rail Regulation, July 2008. This may be accessed at http://www.rail-reg.gov.uk/upload/pdf/pr08-cons_netlic_170708.pdf.

- (a) changes to take appropriate account of Network Rail's corporate status and relationship with government; for example consideration of the detailed mechanics of the indebtedness part of the financial ring-fence condition and how the Government is referred to, in particular in the definition of a cross-default obligation;
- (b) any appropriate changes required as a result of Network Rail's unsupported debt proposals, in particular the restriction of the use of the financial indemnity mechanism (FIM) and removing the current limits on financial indebtedness; and
- (c) updating the financial ring-fence to reflect best practice, for example by re-defining the de minimis threshold and sufficiency of resources statement.

3.86 In developing our proposals for consultation in July 2008, we reviewed the licence conditions used by other utility regulators and considered that Network Rail's current financial licence conditions are largely in line with best practice. However, we proposed that there were some areas that could be improved or that would benefit from greater clarity. For example, we proposed changes to the scope of some of the requirements of the financial conditions so that they will apply to more members of Network Rail's group of companies, for instance extending some of the financial ring-fence requirements to Network Rail Infrastructure Finance.

3.87 Network Rail provided the main response to our July 2008 consultation and its response to the detailed proposals is discussed below. Overall it thought that the financial conditions should broadly reflect those that apply to other utilities, but that our proposals went beyond proportionate regulation in some areas. We have made a number of changes following our review of Network Rail's response. We believe that our proposals are proportionate and for the most part are broadly to reflect regulatory best practice and better protect Network Rail's core business, and ultimately its customers and funders from undue risk. Other consultees were broadly supportive of the general intent of our proposals.

3.88 We set out below the specific proposals in our July 2008 consultation, the consultation responses, our views on those responses, and our updated proposals.

Restriction of the use of the FIM and removal of the limitations on financial indebtedness

FIM restriction

- 3.89 Early in the periodic review, Network Rail proposed that it should raise corporate debt without reliance on the FIM provided by DfT. We have consistently supported this approach because it will strengthen the corporate financial incentives on Network Rail and we proposed in July 2008 that this should be reflected in a licence modification which restricts Network Rail's ability to use the FIM. Network Rail has confirmed its desire to raise corporate debt if the conditions are right to do so and we remain supportive of this approach.
- 3.90 Most consultees who responded on this issue were supportive in principle of Network Rail's proposal to raise unsupported debt. DfT and Transport Scotland have said that their support is dependent on the proposal representing value for money. We, of course, agree that the benefits brought about by Network Rail raising unsupported debt need to be greater than the costs.
- 3.91 Clearly, both ORR and Network Rail will need to be satisfied that the company would be able to finance its business with the use of the FIM restricted before the proposed licence condition can be introduced. We are not yet in a position to make this assessment, not least because Network Rail is yet to receive its credit ratings. We are therefore not, at this stage, proposing to introduce the licence modification to restrict the FIM alongside the package of other proposed licence changes.
- 3.92 We set out here the process which we will follow in deciding whether to introduce the proposed licence condition. There are two tests that we will consider in this context:
- A financeability test – whether an efficient Network Rail would be able to obtain an investment grade credit rating sufficient for it to raise unsupported debt in the quantum and at the times assumed in ORR's PR08 determination or an alternative quantum and profile as proposed by Network Rail and agreed by ORR; and

- A value for money test – whether the benefits which stem from Network Rail raising unsupported debt outweigh the costs.
- 3.93 Network Rail is undertaking an assessment of whether it considers that it would be able to finance its activities with the proposed restriction on the FIM. As we also need to be satisfied that the financeability test is met, we have agreed with Network Rail that it will write formally to us by 5 February 2009 providing its assessment. Its assessment will be accompanied by independent financial advice which has been used to inform the company's decision. We will discuss with Network Rail the arrangements for procuring that advice, including the proposed terms of reference.
- 3.94 We would expect Network Rail's assessment to:
- set out the implications of the financial market conditions for the availability and price of unsupported debt for Network Rail, which should incorporate an assessment of the availability and price at different durations, and the spreads to nominal FIM debt; and
 - set out projections of the quantum and profile of unsupported debt that Network Rail could raise within the PR08 determination and provide reasons for any difference to the PR08 determination assumptions. This should include showing the magnitude of any differences in cost of debt assumptions from those in the financeability analysis undertaken for the PR08 determination, and any effect on the risk buffer resulting from the different assumptions.
- 3.95 On the basis of the assessment, Network Rail's Board will confirm to ORR whether it believes that the test has been met or not. If it believes the test has been met, it will state its assumptions on the quantum and profile of unsupported debt. It will set out how it has come to its assessment, including setting out its risk analysis and taking into account the package of protections provided in the PR08 determination.
- 3.96 The second test (value for money) will be undertaken by ORR but we will take into account the views of Network Rail and DfT (which, as provider of the FIM, has set out conditions by which it sees value for money as being established). We will assess the costs and benefits of unsupported debt relative to the status quo and publish our assessment.

- 3.97 If we believe that both the above tests are passed, we will consult on a proposed licence modification which would restrict the FIM. We will do this by the end of February 2009 which would enable the licence modification to become effective from the beginning of April 2009, subject to Network Rail's consent. If one or both tests are failed, we would not propose to introduce the FIM restriction at that point.
- 3.98 In the event that the FIM restriction is not introduced for the start of CP4, Network Rail and ORR will keep the matter under review so that progress can be made with unsupported debt during CP4 if possible. In these circumstances, Network Rail will undertake a review of the financeability test as described above by no later than January 2011. However, this review would be brought forward if Network Rail and/or ORR consider that circumstances have improved sufficiently to warrant this. Following any such review, we would re-examine the two tests with a view to deciding whether to propose the introduction of the licence restriction at that time.

FIM fee

- 3.99 Our PR08 determination assumed that Network Rail would pay a fee to DfT for the provision of the FIM of 80 basis points (0.8%) on the actual level of outstanding FIM-backed debt. We have included this requirement in licence condition 3 with a provision that the fee be paid at least annually.

Financial indebtedness

- 3.100 On the basis of the assumption that the use of the FIM would be restricted from 1 April 2009 we said in July 2008 that we would no longer require the limitations on financial indebtedness contained in the current licence condition 29 because raising unsupported debt will introduce a hard budget constraint on Network Rail and enable greater external scrutiny of its performance.
- 3.101 Given that we are not yet in a position to introduce the FIM restriction licence modification, it is necessary to retain, for now, the current licence condition 29 which places limitations on Network Rail's financial indebtedness. If we decide in February 2009 that it would not be appropriate to introduce the FIM restriction from 1 April 2009, we will consult on whether the current financial indebtedness limits in the current condition 29 remain appropriate.

Restriction on holding investments

- 3.102 Network Rail is restricted from holding shares in related entities. This part of the proposed revised licence condition, which we included in the July 2008 consultation was aimed at clarifying these requirements and suggested a change to restrict the circumstances in which Network Rail's group companies could raise finance and extended the scope of the condition to cover restrictions on holding other investments as it is not just shareholdings that are a concern but potentially other investments such as loans, etc.
- 3.103 Transport Scotland wanted to ensure that Network Rail was restricted from making inappropriate investments. TfL wanted to ensure that appropriate management systems were in place for its investments, particularly as in the future Network Rail may wish to use more sophisticated financial instruments. We believe that the proposed condition addresses these issues as indicated below.
- 3.104 In its response Network Rail noted that the changes we proposed in the July 2008 consultation sought to clarify the requirements in relation to holding investments but did not think they were designed appropriately to achieve their purpose.
- 3.105 We have further reviewed this condition in the light of the consultation responses and recognise that some changes need to be made so that it achieves its purpose. We have revised the proposed licence condition to make it clear that Network Rail should be restricted from holding shares or other investments in any entity apart from those which carry on permitted business or de minimis business or those held for treasury management purposes. In addition, when Network Rail wants to raise finance outside of Network Rail Infrastructure Limited it would not be allowed to use entities below it in the corporate chain which it does not control as subsidiary companies. This will ensure that Network Rail retains greater control over its finances.
- 3.106 The other main changes to the condition since the July 2008 consultation are that it no longer refers to holding investments in related undertakings as it is not just those entities that are an issue, but investments held in all entities which could import risk into the regulated business; and the

proposed condition also makes it clear that de minimis investments can be made.

- 3.107 These requirements are similar to those in other regulated industries and the changes should ensure that the regulated business is better protected from the consequences of inappropriate investments. These changes will not restrict Network Rail's ability to conduct its core business.
- 3.108 Network Rail has also said that in relation to Treasury management this condition should not refer to the best corporate governance practice required by the UK Listing Authority because some of these requirements would not be applicable to its particular circumstances. We agree that reference to UK Listing Authority requirements may, in some circumstances, not be applicable in relation to Network Rail. We therefore considered setting out in the licence only the UK Listing Authority requirements that would be applicable to this licence condition and to Network Rail. However, this could be too restrictive and would not allow for changes in requirements over time. We therefore believe, in order to retain flexibility, that it would be more appropriate to refer simply to best corporate governance practice. We have revised the proposed licence condition accordingly.

Credit rating

- 3.109 We are proposing to revise Network Rail's requirement to maintain a credit rating so that it no longer refers to Network Rail as an issuer of debt as Network Rail may organise its financing in such a way that, for example, a subsidiary company raises the debt.
- 3.110 In the July 2008 consultation we included the requirement for the credit rating to be on a 'stand alone' basis on the face of the licence condition. In its response Network Rail thought this requirement was unnecessary and could lead to some confusion about what exactly it means.
- 3.111 On reflection, we no longer think that it is necessary to refer to the credit rating being on a 'stand alone' basis on the face of the licence condition. Credit rating agencies will have to rate Network Rail based on the circumstances it faces and if those circumstances include a restriction on the FIM, the rating will have to reflect the fact that Network Rail will need to raise any incremental debt above the FIM restriction without the benefit of

the Government guarantee. The providers of unsupported debt will therefore be exposed to Network Rail's business risks.

Sufficiency of resources

- 3.112 Network Rail's current financial ring fence requires it to confirm to us that it has adequate management resources, financial resources and financial facilities to fulfil its obligations.
- 3.113 We are proposing to revise the definition of resources in the licence so that it includes personnel, fixed and moveable assets, rights, licences, consents, and facilities. This wider requirement recognises that it is not just management and financial resources that are important in enabling Network Rail to fulfil its obligations. This is consistent with the requirements in other similar regulated industries. No responses were received on this issue.
- 3.114 As we said in chapter 14 of our PR08 determination we are requiring Network Rail to provide forward looking financial ratios. We expect that these financial ratios will be provided on a periodic basis, including as part of the annual sufficiency of resources statement.
- 3.115 Network Rail has expressed a number of concerns if it was required to publish forward looking ratios rather than simply provide them to ORR, including the potential to impact on the company's future capital markets issuance. We are reviewing Network Rail's arguments before making a final decision on whether we would require publication.
- 3.116 The Regulatory Accounting Guidelines (RAGs) will show the financial information, including financial ratios, that we will require Network Rail to provide and how it should be provided.
- 3.117 Network Rail has requested in its response that we reduce the period covered by the certificate to 12 months from 18 months. A period of 12 months is consistent with the time period used by other similar regulators. We are proposing to revise the period to 12 months.

Cross-default obligation

- 3.118 Network Rail's licence includes some restrictions that are designed to ensure that where Network Rail has entered into an arrangement or agreement, its interests cannot be affected by a default of another party.

Network Rail's current licence does not include DfT and Transport Scotland as bodies that can cause such a cross-default. We do not think that this general exclusion for DfT and Transport Scotland is appropriate, and believe that, where possible, they should be treated in the same way as any other external organisation. Therefore, we are proposing that DfT and Transport Scotland should no longer be excluded from the definition of organisations that can cause a cross-default. Transport Scotland supported this change and no other respondent referred to this issue in their written responses.

- 3.119 We will provide a specific consent for appropriate existing cross-default obligations that are currently in place.
- 3.120 There is also a term in Network Rail's current licence that allows it, in certain circumstances, to retain cross-default obligations in existence at 1 January 2003.
- 3.121 We said in the July 2008 consultation that Network Rail should be able to identify any arrangements that have a cross-default obligation and if retaining those arrangements is still appropriate, we will consent to them. Network Rail indicated that it would prefer the existing exemption to be retained in the licence since it could not understand the problem that our proposed approach was attempting to rectify. It said that it would be a huge exercise to identify every single cross-default in the thousands of contracts it has, some of which are over 100 years old.
- 3.122 We accept that if we removed the current exemption, it could involve a significant exercise for Network Rail. The main issue is that we have confidence that the cross default obligations in existence at 1 January 2003 are managed appropriately. We expect that Network Rail will actively monitor and manage these obligations.
- 3.123 Network Rail has confirmed to us in writing the nature of cross-default obligations it has and how it monitors and manages them. Mindful of the issues raised above, we have decided, on balance, to retain the exemption for cross-default obligations in existence at 1 January 2003 in the licence.

Level of de minimis activity

- 3.124 The licence restricts Network Rail from carrying out activities outside its core permitted business without our consent, apart from certain activities that are

de minimis. We don't believe that the current de minimis part of the licence condition is as clear as it could be. In the July 2008 consultation we proposed to revise the de minimis licence condition so that it is clear that the maximum investment of £100m (in February 2004 prices) in non core activities is cumulative (and not an annual limit) and that group investments are appropriately treated. We also proposed to include a second requirement whereby allowed de minimis activities must also comply with a turnover limit, which will ensure that activities that do not need a large investment but can nonetheless create a large risk are more appropriately covered by the restrictions.

- 3.125 In the July 2008 consultation, we proposed to retain the current limit on investments of £100m (in February 2004 prices), and proposed that the turnover limit should be £100m (in February 2004 prices).
- 3.126 In its response to our consultation, Network Rail did not agree with our proposed changes to the calculation of the allowed level of de-minimis activity or our interpretation that the current investment limit is a cumulative limit. However, it has recently suggested that if we are minded not to change our position on these issues, that we should use £318m as the investment limit and £134m as the turnover limit. Network Rail has based its calculation of the investment limit on 1% of its RAB and for turnover has based its calculation on 2.5% of its turnover. The basis of Network Rail's suggested turnover limit is consistent with the requirement in some similar regulated industries, but in those industries the investment limit is 2.5% of capital and reserves, not RAB.
- 3.127 We continue to believe that the combination of a cumulative investment limit and a turnover limit are needed to provide appropriate protections against importing undue financial risk which could affect Network Rail's core business. Our proposals are largely consistent with those used in other similar regulated industries. However, in the light of Network Rail's comments we have reviewed the proposed limits. We now propose a revised investment limit of £210m and a turnover limit of £140m. These limits represent approximately 2.5% of Network Rail's forecast capital and reserves and turnover respectively and provide appropriate protections against the financial risks associated with activities outside the core business.

- 3.128 Network Rail has also suggested that the start date for the investment limit should be 1 April 2009, one of the reasons for this being that it has not treated the existing licence condition as being a cumulative test.
- 3.129 Our view is that the investment test has always been a cumulative test, and that Network Rail must know the level of its de-minimis investment. Therefore, it would be inappropriate to exclude the de-minimis investments that Network Rail has made since this condition was introduced into its licence.
- 3.130 We have also considered the treatment of land disposals in the licence and whether they can be included as an activity that can be treated as de minimis. In the current licence, Network Rail's land disposal activity is specifically not allowed as a de minimis activity. Our view is that the provisions of the disposal of assets condition, give sufficient protection to customers and funders against inappropriate disposals by Network Rail. Therefore, we are proposing to revise the de minimis arrangements so that in future, land disposal activity will be capable of being treated as de minimis business, in the same way as any other disposal of assets.
- 3.131 Given this change to the licence we will check that the criteria that we use for assessing land disposals remain appropriate. We will have the opportunity to do this when we review how the revised regulatory arrangements for land disposals, which came into effect on 1 April 2008, are working in practice.

Payment condition

- 3.132 Network Rail's licence currently imposes certain restrictions on transactions with other group companies, particularly where money or assets are transferred or lent by the licence holder to a group company. The financial ring-fence in other regulated industries contains an additional restriction on how these types of transactions are financed as transactions between group companies are less transparent and can potentially include terms that transfer undue risk to the core regulated business. We proposed in the July 2008 consultation to introduce similar protections by means of a payment condition into Network Rail's licence in order to protect the network business.

3.133 Network Rail did not agree with this proposal. Given that Network Rail is not part of a large complex group of companies and is not shareholder owned, we now accept there is less need for this type of protection than in other similar regulated industries. Therefore, we have decided that it is not necessary to propose this modification to this condition at this time.

Treatment of Network Rail Infrastructure Finance (NRIF) and subsidiary undertakings

3.134 Network Rail's licence currently contains a restriction on the activities that NRIF can engage in so that Network Rail is protected from undue risk. We proposed in the July 2008 consultation that, in order further to protect Network Rail from undue risk, these restrictions should be extended. In its response, Network Rail indicated that it was not clear that this change needed to be made and given that NRIF is independent, Network Rail may not be able to procure the undertakings required.

3.135 We continue to believe that the changes we proposed are desirable to protect Network Rail from undue risk. Therefore, we are still proposing to extend the restrictions on holding investments, cross default, indebtedness and intra-group transactions to NRIF and its subsidiary undertakings. But we acknowledge that Network Rail does not control NRIF, so we will provide that it will comply with this obligation if it uses its reasonable endeavours to obtain undertakings.

Definition of business

3.136 We proposed in the July 2008 consultation to remove the definitions of "Permitted Business", "Permitted Non-Network Business", "Railtrack Transfer Scheme" and "permitted purpose" from the licence. We thought that the inclusion of activities transferred under the Railtrack transfer scheme in the definition of "Permitted Non-Network Business" was done on a transitional basis on the creation of Network Rail and that it would be clearer if the activities that Network Rail is entitled to carry on were expressed as:

- network business;
- de minimis business; and
- business for which we have granted a specific consent for Network Rail to carry out the activity.

3.137 Network Rail has said that revising the licence in the way we proposed in the July 2008 consultation would cause implementation problems, as it would have to change a lot of documentation that referred to these definitions for no great benefit apart from clarity. Given this practical implementation issue we have decided not to propose changes to the definitions of business in the licence at the moment.

Regulatory accounts

3.138 Network Rail's licence requires it to maintain such accounting records as are necessary to enable Network Rail to prepare properly the regulatory financial statements. Being able to prepare properly regulatory financial statements is not just about the maintenance of accounting records. Therefore, we proposed in the July 2008 consultation that it is appropriate for this requirement to be widened so that:

- Network Rail has to maintain such accounting records, other records and reporting arrangements as are necessary to enable the licence holder to prepare properly the regulatory financial statements; and
- Network Rail shall maintain all systems of control and other governance arrangements that ensure the information collected and reported to ORR is in all material respects accurate, complete and is fairly presented and that all control and other governance arrangements are kept under regular review by the directors of the licence holder so that they remain effective for this purpose.

3.139 These requirements are similar to those in other similar regulated industries and should help to ensure that the information provided by Network Rail will be of an appropriate quality.

3.140 We also proposed in the July 2008 consultation to amend the definition of what can be included in the RAGs so that it is clear that we can require other information to be provided and/or published in order to monitor the licence holder's financial performance and financial position or assist in the determination of the licence holder's access charges.

3.141 There were no comments from respondents on the above regulatory accounts issues and we have included these changes in the attached proposed licence.

- 3.142 The licence allows us to issue RAGs from time to time. Our current working arrangement with Network Rail is to issue the RAGs before the end of the financial year to which they relate. We said in the July 2008 consultation that in the future, we will endeavour to issue the RAGs before the start of the financial year to which they relate. In its response Network Rail said it welcomed our proposed approach but would like us to issue RAGs before 31 December in the year before the start of the relevant financial year and would like this requirement to be included in the licence.
- 3.143 It is in both Network Rail's and our interests to issue RAGs as early as possible. However, we have experienced difficulties in the past in agreeing the form and content of the financial information to be provided by Network Rail. Until we are confident that such problems won't occur in future, it is not appropriate for us to commit to issuing the RAGs by 31 December but we do intend to issue them as early as possible.

Financial information

- 3.144 The current licence condition requires Network Rail to publish information required by the listing rules of the Financial Services Authority for companies whose ordinary shares are for the time being admitted to the Official List of the UK Listing Authority. We think this requirement is too wide-ranging given Network Rail's corporate status, so in the July 2008 consultation we asked for views on whether this requirement is appropriate.
- 3.145 In its response Network Rail said it thought that the requirement is not appropriate as most of the information required to be published under the listing rules is irrelevant to Network Rail.
- 3.146 We agree that some of these requirements may not be appropriate at the moment for Network Rail and therefore we are proposing to amend the condition to allow us, where we agree that a requirement is inappropriate, to consent to Network Rail not complying with some of these requirements.

4. A clearer, more coherent licence

4.1 We consider that the structure of Network Rail's licence could be simplified to make it easier to read and understand. In part, the current structure reflects the licence's evolution with new conditions being gradually added to solve particular problems.

4.2 In June, we proposed restructuring the licence into six parts. This would bring together related obligations currently scattered throughout the licence. The effect of our proposed changes would be to make the licence more coherent and easier for Network Rail's stakeholders to use. The six parts were:

- network management – based on the current licence condition 7, but including those aspects which amplify the purpose of that condition;
- restrictions on activities – bringing together ring fencing, land disposal, debt and other conditions which control the scope of Network Rail's business;
- dealings with third parties – conditions dealing with stakeholder relations and non-discrimination;
- information requirements – consolidating conditions relating to reporters, the annual return, regulatory accounts and similar provisions;
- corporate matters – including governance and incentive schemes; and
- standard industry obligations – with conditions relating to insurance, standards and environmental policy.

We asked consultees whether they agreed that restructuring the licence in this way would be helpful.

4.3 All the consultees who responded to this question were in favour of the change, agreeing that it would make the licence easier to understand and so help improve Network Rail's accountability.

Use of notices and guidelines

- 4.4 We are concerned that some of the detail in the current licence may detract from the focus on the overall purpose of the obligations. In June, we proposed moving some details about key processes from the licence into guidelines or notices. This will make the core requirements in the licence clearer and provide more flexibility to adjust processes as needed. Compliance with such guidelines and notices would still be enforceable through the licence, and we would need to approve any changes.
- 4.5 For example, processes for establishing RUSs and Network Rail's business plan are currently set out in detail in the licence. We propose to move these details into guidelines or notices (as appropriate).
- 4.6 We did not propose to change the arrangements which apply now. For example, the 60 days we have in which to object to a RUS before it is established would remain. We would, however, need to update the relevant guidelines – in the case of RUSs with the assistance of the rail industry planning group. We would also take the opportunity to clarify process issues, such as when representations need to be with us to be properly considered within the 60 day period.
- 4.7 We proposed to adopt a similar approach with Network Rail's delivery plan for a control period. We would expect Network Rail to have worked with its stakeholders in developing the plan.

We asked whether consultees had any views on whether we should move some details about key processes from the licence into guidelines or notices.

- 4.8 Consultees were concerned about putting too much into notices or guidance. Network Rail agreed that it gave greater flexibility and clarity of the core obligations but said that it was important that any changes to notices or guidance must be subject to consultation and due consideration given to any objections. It pointed out that changes to processes in the current licence are subject to Network Rail's agreement, with rights of objection that could trigger referral to the Competition Commission. It suggested either that the guidelines could be drafted so that similar rights would apply or that there should be a general provision to consult included in the licence.

- 4.9 We have followed this second suggestion and included a new provision in the interpretation section of the licence that requires us to consult and take representations into account before issuing or changing any guidelines or notices, and we are bound to act reasonably when making any changes.
- 4.10 We intend that any notices or guidelines would focus on process issues such as the timing and content of the activity to which they relate as these are aspects that are likely to require some flexibility from time to time. In some cases they may also contain specific guidance on consulting stakeholders. The core principles are set out in the licence, in a similar way to the existing arrangements for the business plan in the current condition 7 and the RUS guidelines.
- 4.11 EWS felt that moving processes into notices and guidance could lead to confusion by reducing certainty and transparency. Arriva said that the guidelines must be enforceable through the licence. NEG cautioned that guidelines were less demanding and said that as they relate to processes that are key to operators they should be strengthened.
- 4.12 Notices and guidelines may also contain an objection procedure which would again relate to the timescales within which Network Rail would be expected to rectify any deficiencies in the plan or activity. This would give Network Rail and other stakeholders greater certainty over the process.
- 4.13 ORR would also be able to enforce the plan or activity to which the notice or guidance referred by considering whether it met the purpose and general duty in the relevant licence condition.
- 4.14 We are therefore not making any further changes to our original proposals.

Systems code

- 4.15 The systems code was established in 1996 to ensure that interfaces between key operational and timetabling systems were maintained. However, the current licence obligation only applies to Network Rail and not to other industry parties, and we are not aware of the code being used in recent years. In view of this, we are unsure whether there is any benefit in retaining the obligation. We therefore proposed to remove this condition.

We asked consultees whether they agreed the systems code provisions can be removed from the licence? If so, did they think there is a need to maintain the systems code in some form?

- 4.16 There was a mixed reaction to this suggestion. Network Rail and Arriva thought it would be sensible to remove it but EWS and NEG objected, saying operators relied on it for planning and operating their businesses and that it could even be strengthened to improve the provision of information during disruption.
- 4.17 We accept that there is a need for ensuring that systems are appropriate for their use and are compatible with other systems, but we think that this needs to be widened to ensure this is an industry obligation rather than just resting with Network Rail. We are therefore exploring ways with the industry to contractualise the arrangements between all the parties and we will retain the licence obligation while this work is progressed. To enable us to do this, we have included a 'sunset clause' in the condition whereby it will expire on 31 March 2010 or, if this work highlights new and difficult issues, such other time as we determine.

Safety and Standards

- 4.18 We have considered whether changes are needed to the safety and standards condition (current licence condition 6) in the light of developments since its introduction. These developments include an increasing number of European interoperable standards (technical specifications for interoperability) and changes in our role both as a result of European law and of the merger of economic and safety regulation. These changes give rise to complex issues that we wish to consider separately. We have therefore asked for views on the application of standards¹⁶ and will consider whether any changes are needed to licences following this review at a later stage.

Environmental issues

- 4.19 We have made one minor drafting change to the environmental matters condition (current condition 8). This condition is included in all operator licences in a standard form. It was considered in our review of how we discharge our sustainable development and environmental duties in October

¹⁶ See http://www.rail-reg.gov.uk/upload/pdf/cons-stndrds_reg_160508.pdf

2006. We concluded in April 2007 that we would not seek to change the condition. Work has instead focused on updating associated guidance and developing industry Key Performance Indicators¹⁷.

- 4.20 We have reordered and used plainer English in some parts of the licence where this improves clarity.

Finally, we asked whether consultees had any other suggestions for improving the clarity or effectiveness of the licence.

- 4.21 Network Rail suggested a number of drafting changes to clarify obligations which we have incorporated into our proposals.

¹⁷ See ORR's sustainable development and environmental duties: conclusions. April 2007. This can be found at <http://www.rail-reg.gov.uk/upload/pdf/324.pdf>

Annex A Summary of current licence conditions and proposed changes

Current licence condition		New condition number and main changes proposed	
1	Insurance	20	No other changes proposed.
2	Claims allocation and handling	21	No other changes proposed.
3	Not used	-	-
4	Not used	-	-
5	RPC and LTUC	8	The definition of stakeholders in the new condition is extended to include passenger representatives. The detailed obligation to attend meetings and provide information is replaced by a wider obligation to cooperate with passenger representatives.
6	Safety and standards	22	No significant changes proposed.
7	Stewardship of the network	1	<p>The purpose and general duty now form the core of a new condition 1. We have clarified that the condition applies to potential service providers and funders.</p> <p>In the general duty, the reference to taking “such steps as are necessary or expedient” has been deleted to reflect better our approach to enforcement of the condition.</p> <p>Detailed arrangements concerning criteria, RUSs, and business planning have been replaced with a new obligation to carry out effective planning in consultation with stakeholders, to meet the general duty in the short, medium and long term. Provision is made for specific documents to be prepared, including a delivery plan, RUSs and any other documents we require. There is a new general provision for detailed requirements to be set out in notices/guidelines as appropriate.</p> <p>We have introduced new arrangements for planning which focus on both a delivery plan for a control period and longer term strategic planning.</p> <p>We have included a new high level asset management obligation with a specific requirement for the licence holder to have fit for purpose asset information.</p> <p>A new high level obligation to cooperate to help find paths on the network to meet reasonable requirements has been included. This will help reduce obstacles experienced by open access operators.</p> <p>We have also included a more general obligation to run an efficient and effective timetabling process (see also below under timetabling).</p>
8	Environment	23	No significant changes proposed.

Current licence condition		New condition number and main changes proposed	
9	Timetabling	1 2	<p>The obligations have been redrafted and split between two new conditions.</p> <p>A clearer high-level obligation to run an efficient and effective timetabling process that reflects best practice and allows service providers and other participants in the timetabling process to plan their businesses with reasonable assurance. This replaces conditions 9.1 to 9.3 in the current licence.</p> <p>A new general duty to provide access to timetable information to enable passengers to plan their journeys. The current obligation to publish a timetable is retained. The obligation to provide information to enquiry bureaux is extended to all enquiry services. Network Rail's role in getting information to customers (via train operators) about short-term disruption is emphasised, with specific reference to T-12 timescales. The drafting acknowledges there will sometimes be good reasons why this will not be possible.</p>
10	Non-discrimination	9	No changes proposed.
11	Prohibition of cross-subsidy	6	No changes proposed.
12	Ring-fencing and accounting records	4	The main changes relate to (a) taking appropriate account of Network Rail's corporate status and relationship with government (for example changes to the mechanics of the indebtedness part of the financial ring-fence condition and how the Government is referred to, in particular in the definition of a cross-default obligation) and (b) updating the financial ring-fence to reflect best practice, for example by re-defining the de minimis threshold and sufficiency of resources statement.
13	Restriction on interests in train operating and rolling stock companies	5	No significant changes proposed.
14	Cooperation with the Mayor of London and TfL	8	The new condition 8 is extended to include the Mayor of London and TfL. Explicit reference to Network Rail's obligation to cooperate with the Mayor and TfL is retained, for the purpose of ensuring efficient service provision and coordinating anticipated investments.
15	Provision of information to ORR	10 12 17	<p>The condition has been split between general arrangements for providing information to ORR and those dealing with the annual return. No changes proposed.</p> <p>The detailed list of examples of what shall be in the annual return has been deleted for clarity. The existing requirement for two years notice to be given of changes to statistical data required has been amended to allow the licence holder and ORR to agree changes without 2 years notice.</p> <p>We have adjusted the requirements on the publication of some financial information, so that Network Rail will not need to publish information that we agree is inappropriate.</p>
16	Not used.	-	-
17	Payment of fees	18	No changes proposed.
18	Restriction on use of certain information	14	No changes proposed.

Current licence condition		New condition number and main changes proposed	
19	Change of control	19	No changes proposed.
20	Systems code	-	A sunset clause has been added so this condition will cease to have effect in on 31 March 2010 (or at such other time as ORR may determine).
21	Not used.	-	-
22	Regulatory accounts	11	See condition 12.
23	Appointment and role of reporters	13	The condition has been redrafted to improve clarity. Detailed examples of what may be covered by guidelines have been deleted.
24	Asset register	1	Specific condition removed. Condition 1 now contains a high-level obligation to develop and apply asset management policies and criteria, to make appropriate information about the policies and criteria available to stakeholders and to maintain appropriate, accurate and accessible asset information.
25	Dependent persons	8	Reorganised and strengthened as a more purposive obligation to treat a wider range of stakeholders appropriately, given their particular requirements, and to publish how this will be done. We will step back from detailed approval of any code of practice, but would retain the power to direct Network Rail to review and revise arrangements if they prove inadequate. This is consistent with the way the network statement works, where we have an appeal function. The condition has specific references to RPC/LTUC and Mayor of London/TfL given their special needs. The list of stakeholders is extended to include current (rather than just prospective) service providers and funders. The exception for contractual matters is retained.
26	Disposal of land	7	No changes proposed.
27	Corporate governance	15	No changes proposed at this time.
28	Management incentive plan	16	The condition has been reordered for clarity. References to licence conditions 7 and 25 and to enforcement orders have been replaced by a general reference to compliance with the licence. Other changes designed to improve transparency are: to clarify the criteria are to be considered both when formulating and applying incentives schemes; and a new obligation on Network Rail to explain how it has balanced all the factors considered when setting bonuses.
29	Level of financial indebtedness	3	We have included a requirement to pay a FIM fee.

Annex B Statutory notice & link to licence with proposed modifications

Notice of proposals to modify Network Rail Infrastructure Limited's network licence

ORR hereby gives notice under section 12(2) of the Railways Act 1993 of proposals to modify Network Rail Infrastructure Limited's network licence. The purpose of these modifications is to ensure that the licence is clear, up-to date and fit for purpose. Modifications are therefore proposed to all conditions in the licence.

A detailed explanation of the proposed modifications, the effects of those modifications and our reasons for proposing them is set out in our 19 December document "Review of the network licence: statutory notice of proposed modifications", to which this notice is annexed. A version of the licence incorporating all of the proposed changes is available on our website at http://www.rail-reg.gov.uk/upload/pdf/nr-netlic_proprev_191208.pdf.

The modifications will have the effect of:

- retaining the current network stewardship obligation at the heart of the licence and to extend the purposive approach to other parts of the licence;
- strengthening that obligation to emphasise Network Rail's planning, capacity allocation and asset management roles, and to clarify Network Rail's role in running an efficient and effective industry timetabling process;
- strengthening the current "dependent persons" condition to give Network Rail a more purposive obligation to treat a wider range of stakeholders appropriately;
- increasing the transparency of Network Rail's management incentive arrangements;
- ensuring the financial conditions are suitable for the company going forward and provide adequate protections against importing undue risk into the core regulated business; and
- making the licence clearer and more coherent.

Please send any comments about the proposed modifications by 5 February 2009 to: abigail.grenfell@orr.gsi.gov.uk

**Abigail Grenfell
Office of Rail Regulation
One Kemble Street
London, WC2 4AN**