



Draft design for our approach to regulating Network Rail in CP6

August 2018

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Purpose of the document

Version 3: This design framework has been updated to be consistent with our June 2018 draft determination. References to the January 2018 version of the design framework (version 2) have been included for transparency and consistency.

Purpose

This document sets out our approach to regulating Network Rail in control period 6 (CP6, which will run from 1 April 2019 to 31 March 2024), as we have consulted on it in the draft determination. Its purpose is as a tool to express our proposed framework for regulating Network Rail in a succinct way.

Scope

This document does not capture all of the detail about how we will regulate Network Rail in CP6. This is set out in the relevant consultation and conclusions documents, all of which are available on our [PR18 webpage](#).

It also does not cover the entire scope of policy development in the 2018 periodic review (PR18). For example, it makes no substantial reference to the charges and incentives contained within track access contracts or the financial framework for Network Rail, both of which we have consulted on separately.

Furthermore, this document does not include the reasons behind each of the policy positions. Instead, it focuses on setting out, in one place, the key aspects of our approach to provide a clear explanation of how we will regulate Network Rail in CP6.

Using this document

In the columns for each item, we signpost the relevant section in our [draft determination overview document](#) from June 2018. A small number of points were not raised in that document, and where this is the case we have referenced the appropriate document instead.

We have also included references back to the previous version of our [design framework](#) document from January 2018 (version 2), in order to show the evolution in our position in a transparent way. There are some less material points from the previous version that we have not referenced here. Also, there are some areas of our monitoring and enforcement approach that we have not included here as we will consult on our economic enforcement policy in November 2018.

There are a limited number of points where the draft determination represents the first time we are consulting on an issue - we have marked these in italics in the tables.

Version control

ID	Date	Comment
1.0	15/08/2017	First publication reflecting the contents of the consultation on the overall framework for regulating Network Rail.
2.0	25/01/2018	Second publication reflecting the conclusions of the consultation on the overall framework for regulating Network Rail.
3.0	13/08/2018	Third publication, remodelled to provide a clear read across to the draft determination overview document. In order to retain traceability back to our policy development, we have included references to corresponding statements of our policy from the second version of this design framework.

1. The structure of our determination

ID	Policy position	Reference in draft determination overview document	Reference in design framework version 2
1.1	In CP6, Network Rail will be regulated as a single company with a single licence, but with a greater focus at route and System Operator (SO) level.	3.3	2.1
1.2	The determination will include a settlement for each geographic route, the Freight and National Passenger Operator (FNPO) and the System Operator (SO).	1.9	2.2
1.3	The route and SO settlements will set out revenue requirements for each of the routes and the SO will receive in respect of what they are expected to deliver for their customers and funders. The settlements include funding to manage risk, both within the route/the SO and across Network Rail.	3.35	2.5
1.4	The settlement for Scotland is ring-fenced.	3.35	2.3
1.5	<i>Where Network Rail allows routes/the SO to act as informed customers, we will reflect this in the way we regulate the central functions by, for example, giving space to the routes/the SO to scrutinise the central function's performance and to challenge them, where necessary.</i>	3.28	NEW

2. Performance against scorecards and other requirements

ID	Policy position	Reference in draft determination overview document	Reference in design framework version 2
2.1	<p>We will make greater use of scorecards in monitoring Network Rail where scorecards:</p> <ul style="list-style-type: none"> • Contain a balanced set of measures; • Enable route comparison; and • Reflect the requirements in the governments' High Level Output Specifications (HLOSs). 	3.9	3.4
2.2	<p>In securing the agreement of their customers to the targets in their scorecards, we expect routes to:</p> <ul style="list-style-type: none"> • Do this in a timely, clear and consistent manner; • Work with other routes to ensure cross-boundary issues are addressed; • Obtain agreement at an appropriate level of seniority with the operator in question; and • Keep a clear and appropriate record of what has been agreed and when. 	1.18 in scorecards and requirements supplementary document	3.13 and 3.15
2.3	<p>The SO should also engage with its customers and stakeholders regarding its scorecards, including through its Advisory Board.</p>	77 in our draft settlement for the system operator	3.13 and 3.15
2.4	<p>Network Rail has committed to publishing its SO, route and comparison scorecards quarterly.</p>	5.8	3.11 and 3.12
2.5	<p>To support comparison between geographic routes, we are requiring Network Rail to report consistent measures of the route's contribution to passenger and freight train performance, and network sustainability on the geographic route scorecards.</p> <p>We have agreed that Network Rail will report a set of end-user focussed measures on its new route comparison scorecard (which will show the performance of all the routes against a number of consistent measures, on a single page).</p>	3.41 and 5.7	3.5

ID	Policy position	Reference in draft determination overview document	Reference in design framework version 2
2.6	We have set other requirements, including qualitative requirements, for instance to secure an output specified in an HLOS or to promote transparency – for example there will be a Scotland HLOS tracker to record delivery against the Scottish HLOS requirements.	2.14 & 3.13	3.9 & 3.5
2.7	We will monitor and report on the SO's performance using its suite of scorecards. The SO will produce and publish an annual narrative report to explain those elements of its performance which do not lend themselves to reporting on the scorecard. The SO's Advisory Board will approve the contents of this report.	3.44, 3.45 and 3.46	3.2 and 3.1 and some new material

3. Quality of routes/the SO's stakeholder engagement

ID	Policy position	Reference in draft determination overview document	Reference in design framework version 2
3.1	We will not be prescriptive about how the routes/SO (or other business units) engage with stakeholders. Rather, we expect them to follow the broad principles of good stakeholder engagement, namely that the engagement should be effective, inclusive, well governed, and transparent.	3.16	4.6 and 4.3
3.2	At a minimum, we expect each route and the SO to: <ul style="list-style-type: none"> • engage with stakeholders in the annual business planning process; • develop and agree scorecards with their passenger and freight operator customers, and Transport Scotland in the case of Scottish HLOS requirements; and • ensure there is scope for bilateral and multilateral engagement. 	3.17	4.5 & 3.13
3.3	To incentivise the routes/SO to improve stakeholder engagement in CP6, we will undertake an assessment of the quality of the engagement on an annual basis.	3.24	4.7
3.4	<i>We welcome closer working between routes/SO and their customers, but for us to rely on a stakeholder forum (e.g. a 'railway/supervisory board') in the way we monitor performance, it would need to:</i> <ul style="list-style-type: none"> • <i>discuss performance and, where necessary, challenge it;</i> • <i>identify causes of any under-performance relative to targets, and recognise factors supporting out-performance;</i> • <i>agree practical action plans to remedy issues;</i> • <i>provide an appropriate level of information in the public domain; and</i> • <i>hold the routes/SO to account in an effective manner.</i> 	3.20 and 3.21	NEW

4. Financial performance and cost efficiency

ID	Policy position	Reference in draft determination overview document	Reference in design framework version 2
4.1	<p>Network Rail will account for income and expenditure in ways that maintain a clear picture of each route's/SO's performance. This means that:</p> <ul style="list-style-type: none"> Charges income and funding from governments will be recognised at route and SO level; Expenditure will be recorded at route and SO level, including expenditure on services procured from other parts of Network Rail; and The FNPO route will provide funding to geographic routes. 	3.36	2.3 (with more detail throughout chapter 2) in our second consultation on the financial framework
4.2	<p>We will focus on two particular measures for the routes/SO in CP6:</p> <ul style="list-style-type: none"> Efficiency, which compares expenditure on core business activities to the value of outputs on a like-for-like basis over time; and Financial performance measure (FPM), which compares income and expenditure against the financial assumptions underpinning the routes/SO's CP6 funding. 	3.37	1.1 in our approach to assessing Network Rail's efficiency
4.3	<p>Our approach for assessing efficiency will:</p> <ul style="list-style-type: none"> Put greater emphasis on reviewing and reporting on how routes have delivered efficiency improvements; Include an assessment of cost drivers, unit costs and productivity measures over time and across routes; Make greater use of information from our safety role; and Provide a forward-looking view of the efficiencies that Network Rail is likely to achieve across CP6 as part of our annual reporting. 	3.38	1.3 in our approach to assessing Network Rail's efficiency

5. Enforcement policy and reputational tools (including regulatory minimum floors)

ID	Policy position	Reference in draft determination overview document	Reference in design framework version 2
5.1	We will be updating our monitoring and enforcement policies to reflect the importance of reputational incentives and to focus our monitoring and reporting on the performance of routes and the SO.	3.52	5.1 and 5.2
5.2	We will continue our current approach of acting in a way that is: <ul style="list-style-type: none"> • risk based; and • proportionate to the scale of the issue. 	3.53	5.6
5.3	We have identified a number of improvements to the way in which we can hold the company to account including: <ul style="list-style-type: none"> • increasing focus on our engagement with the route and SO management teams; • ORR hearings between the route/SO and affected parties; and/or • using regulatory sanctions at a route/SO level which would affect the financial measures of that business unit, but not reduce the actual financial resources available. 	3.54 and 3.55	5.9
5.4	For CP6, we would expect Network Rail’s internal governance arrangements to meet the following principles: <ul style="list-style-type: none"> • routes/the SO have enough information to understand the central functions’ performance; • routes/the SO have a choice as to whether they procure services from a central function, or provide it themselves or externally, where this would be appropriate; and • where routes/the SO are not free to choose how they are supplied, they are able to hold central functions to account. We will continue to work with Network Rail in the development of these internal governance arrangements	3.31	NEW

ID	Policy position	Reference in draft determination overview document	Reference in design framework version 2
5.5	Where Network Rail allows routes/the SO to act as informed customers, we will reflect this in the way we regulate the central functions by, for example, giving space to the routes/the SO to scrutinise the central function's performance and to challenge them. Where we have concerns about a central function's activities – and/or we are not confident that the governance arrangements provide sufficient assurances that routes/the SO can influence and exert pressure on the central functions – we will adapt our approach accordingly. This could involve focusing our monitoring and reporting activity on a central function's performance, and considering its performance against its scorecard and whether there is evidence to justify enforcement activity	3.28 and 3.29	NEW
5.6	We will monitor and report on how well each route and the SO performs against its targets, using Network Rail's scorecards and other management information. We will make greater use of comparison between routes.	3.40	5.1
5.7	We will place particular weight on how the routes/the SO performs against any targets that have been agreed with customers.	3.11	NEW
5.8	Where a route/SO out-performs against a customer-agreed target, we would be likely to recognise this in our monitoring and reporting. Where a route/SO under-performs against a customer-agreed target, we would likely consider what plans were in place to address this underperformance before taking additional steps.	3.12	5.7
5.9	We will also compare Network Rail's performance at route/SO level against the baseline expectations included in the final determination of what Network Rail and its routes/SO should deliver (based on our assessment of the scorecards NR set out in its SBP), and also against how well other routes have performed against these expectations.	3.42	3.10

ID	Policy position	Reference in draft determination overview document	Reference in design framework version 2
5.10	A regulatory minimum floor is the point at which we would be highly likely to consider a formal investigation into whether or not Network Rail had breached its licence, and is set at a level of performance which we currently expect to consider unacceptable.	3.56	3.7 and 3.6
5.11	<p>We have set a regulatory minimum floor for three consistent route measures:</p> <ul style="list-style-type: none"> • Consistent Route Measure – Passenger performance (CRM-P); • Freight Delivery Metric- Route (FDM-R); and • Composite Sustainability Index (CSI). 	3.57	3.8
5.12	It is for ORR to set the regulatory minimum floor, which we are doing as part of PR18. We do not expect there to be any changes to this floor once set for CP6, but it might be necessary following, for example, enforcement action for poor performance – this would link to the managing change process.	1.30 in scorecards and requirements supplementary document	3.16
5.13	We will take account of the quality of the routes'/the SO's stakeholder engagement in how we monitor routes' overall performance. We will likely focus more on routes that are engaging less effectively. We will take account of the quality of stakeholder engagement in determining whether and how we take action if we have concerns about performance.	3.18	5.4, 5.5 and 5.8

6. Changes to Network Rail's licence

ID	Policy position	Reference in draft determination overview document	Reference in design framework version 2
6.1	<p>We are proposing to restructure the existing obligations within the network licence to better reflect the separation of functions between the route businesses, the SO and its other functions (with all obligations still being owned by Network Rail as a company). We are also proposing some changes and new obligations to ensure the licence obligations are clear, up to date and fit for purpose and reflect any necessary changes in PR18. The changes we make will mean that:</p> <ul style="list-style-type: none"> • the licence will clearly identify those obligations which apply to route businesses and the SO; • the company will be required to maintain the structure of its business and its governance arrangements in a manner which supports devolution; • the licence is aligned with our overall framework for regulating Network Rail (such as our governance requirements); and • the licence reflects reclassification of Network Rail and the change in funding arrangements. 	<p>3.61 and 3.62</p> <p>See our review of Network Rail's network licence for more detail</p>	<p>5.10, 5.11 and some new material</p>

7. Managing changes within CP6

ID	Policy position	Reference in draft determination overview document	Reference in design framework version 2
7.1	<p>The objective of the managing change process is to achieve an appropriate balance between:</p> <ul style="list-style-type: none"> • The benefits of Network Rail being able to respond flexibly to changing circumstances; and • The benefits of the settlements in providing assurance to the routes/SO of their funding and responsibilities, and allowing us to hold routes/SO to account and make comparisons. 	3.66	6.1
7.2	<p><i>The formal managing change process focusses on changes that originate outside of a route/SO, rather than changes initiated by the routes/SO themselves, which are outside the scope of our process.</i></p>	3.67	NEW
7.3	<p>Changes within the scope of the process might include:</p> <ul style="list-style-type: none"> • Substantial organisational changes, in particular the shift of responsibilities of the routes/SO; • Route boundary changes; • Reductions in funding for individual routes/SO; and • Changes to what a route is expected to deliver, for example as a result of an enhancement. 	3.68	6.2 and 6.3
7.4	<p>We distinguish levels of change depending on the size of the impact:</p> <ul style="list-style-type: none"> • Level I – changes relative to our PR18 settlements; • Level II – material changes relative to our PR18 settlements; and • Level III – fundamental changes relative to our PR18 settlements. 	3.69	6.4
7.5	<p>Our approach will vary according to the level of the change:</p> <ul style="list-style-type: none"> • All changes – structured reporting requirements; • Level II and III – Assurance and/or requirements regarding wider transparency and governance; and • Level III – publishing our formal opinion on the proposed change. 	3.70 and Table 3.1	6.4

ID	Policy position	Reference in draft determination overview document	Reference in design framework version 2
7.6	We propose to amend Network Rail's licence to require Network Rail to comply with the managing change process which we will set out, and to prevent changes in cases where the necessary managing change process has not been appropriately completed.	3.71	6.5
7.7	Under the managing change process, we may prevent Network Rail from making a narrow set of 'exceptional' Level III changes. We are likely to judge a change as 'exceptional' when there is no reasonable means available to mitigate the impact of the change on our ability to use comparisons between the performance of the routes in a way that provides incentives on Network Rail to improve.	3.71 and 3.72	6.5
7.8	A material change to the availability or calculation of the consistent route measures provided to ORR could fundamentally affect our ability to compare performance. Consistent with our overall approach, we would therefore require Network Rail to submit to us the case for making the proposed change (so-called 'Level III' change control), and could prevent it from making these changes if we judge it to be an 'exceptional change'.	1.29 in scorecards and requirements supplementary document	3.14
7.9	PR18 baselines will be changed only on rare occasions where a Level III change has fundamentally undermined the settlement(s). We will continue to refer back to the original PR18 baselines in our monitoring where it provides a meaningful reference point in order to support discipline and transparency.	6.17 in Working Paper 8 conclusions	6.6
7.10	If there is a material change in circumstances that affects large parts of the company, Network Rail can apply for a re-opener of the determination as a whole.	5.14 in Working Paper 8 conclusions	6.7



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