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Dear Andy

ORR opinion (under our Managing Change Policy) on Network Rail’s revisions to its regional freight performance metric (FDM-R) and trajectories

Thank you for your letter dated 17 July 2020 outlining the impact that the improvement to the accuracy of the regional train mileage data used to calculate the Consistent Region Measure – Passenger Performance (CRM-P) has on the Freight Delivery Metric at a regional level (FDM-R).

ORR recognises that changes can occur during the control period, which may impact on region and/or SO accountability and funding. Therefore, we developed our Managing Change Policy¹ to ensure any changes relative to region or SO settlements, set in ORR’s Final Determination², are managed appropriately. This balances the need for Network Rail to respond flexibly to changing circumstances and providing greater certainty to the regions and SO (and their customers and funders) whilst ensuring accountability for the delivery of CP6 commitments. Our policy also supports us in comparing regions’ performance.

Network Rail is required, under its Network Licence³, to comply with the Managing Change Policy. If we consider it has not done so, we may consider the appropriate regulatory intervention. In this case, Network Rail did not identify that the changes to train mileage and location data impacting CRM-P would also impact FDM-R, or that the changes to FDM-R would be subject to ORR’s Managing Change policy, until this was identified by my team. This is disappointing and I expect Network Rail to engage with ORR on how it will address these shortcomings. But I also note that Network Rail has engaged with us effectively since this was flagged.

¹ https://orr.gov.uk/data/assets/pdf_file/0008/39329/pr18-managing-change-policy.pdf

² <https://orr.gov.uk/rail/economic-regulation/regulation-of-network-rail/price-controls/periodic-review-2018/publications/final-determination>

³ Condition 4 ‘Managing Change’ https://orr.gov.uk/data/assets/pdf_file/0012/3063/netwrk_licence.pdf

As noted in your letter, this change is classed as a Level III Relevant Change under ORR’s Managing Change Policy and requires an ORR opinion, which is set out in this letter.

Impact of the change

The proposal impacts baseline trajectories and the regulatory floors for the entirety of CP6, and you propose to restate these. We are content with the change and restatement of the trajectories and floors. We are also content for the 2019-20 FDM-R outturn to be restated and agree with your proposal to set this out in Network Rail’s 2021 Annual Return. The restatement of the 2019-20 performance as well as the trajectories and the regulatory minimum floors for CP6 will ensure consistency of reporting.

The revised FDM-R baselines for CP6 are:

	2019-20	2020-21	2021-22	2022-23	2023-24
Eastern	94.1%	94.1%	94.1%	94.1%	94.1%
North West & Central	94.8%	94.8%	94.8%	94.8%	94.8%
Southern	92.0%	92.0%	92.0%	92.0%	92.0%
Wales & Western	93.5%	93.5%	93.5%	93.5%	93.5%

The revised FDM-R regulatory floors for CP6 are:

	2019-20	2020-21	2021-22	2022-23	2023-24
Eastern	92.6%	92.6%	92.6%	92.6%	92.6%
North West & Central	93.5%	93.5%	93.5%	93.5%	93.5%
Southern	89.9%	89.9%	89.9%	89.9%	89.9%
Wales & Western	91.9%	91.9%	91.9%	91.9%	91.9%

We note that Network Rail will be reflecting these revised trajectories in the target ranges for its future annual scorecards. We understand that changes to the 2020-21 scorecards are not currently proposed, but note that Network Rail is anticipating that the year’s trajectories may need to be amended to reflect changed plans in light of Covid-19.

We note that the national measure, Freight Delivery Metric (FDM) is not impacted by these changes.

We also note that the changes will result in an improvement in North West & Central’s FDM-R outturn of 0.1 percentage points in 2019-20, and changes to the baseline trajectories and regulatory minimum floors for Eastern, North West & Central, Southern and Wales & Western for each year of CP6.

	pp change to FDM-R 2019-20 outturn	pp change to baseline trajectory (19 June 2019 letter) for CP6	pp change to regulatory floor (19 June 2019 letter) for CP6
Eastern	-	+0.1	+0.1

North West & Central	+0.1	+0.2	-
Scotland	-	-	-
Southern	-	-0.8	-0.1
Wales & Western	-	+0.1	-

Following discussions at our working level analytical meetings on the revised train count data and ORR's review of the associated outputs, we are content with all the revised CP6 figures presented in your letter. We also agree that the original level of challenge set in ORR's Final Determination remains for the Eastern, North West & Central, Southern and Wales & Western regions despite the revisions to the FDM-R trajectories and floors.

Impact on Scotland

We note that no changes are proposed for Scotland, and that the trajectory remains one of "staged improvements" reflecting the Scottish HLOS and the end of control period target of 94.5% as set out in the PR18 settlement. We note that the application of revised train count data baseline would result in a higher trajectory and floor for Scotland. We understand that you are continuing discussions with Transport Scotland and the Scotland region about this issue.

The relationship between FDM-R and FDM may be weakened by the gap between the 94.5% trajectory in our PR18 final determination and the one which would result from this change; there may be a small risk that FDM-R trajectories could be met, but national FDM is not. We understand that you are planning to use the revised trajectories as the target in your scorecards, including for Scotland, and expect that this will help to manage this risk. We note that the FDM-R scorecard target for Scotland will be 95.5% with a lower taper of 94.4%.

Stakeholder engagement

As set out in our Managing Change Policy, we expect Network Rail to engage with its stakeholders about changes relative to its settlement. This approach should be consistent with the principles of good stakeholder engagement⁴.

We note that you have engaged with the regions about this change, and that they are content with the proposed changes. As noted in your letter, should any stakeholders raise any concerns with this change, please inform ORR as soon as possible. We also note that you are currently engaging with Transport Scotland and Scotland region, and have decided to continue to use the HLOS trajectories and floors for Scotland. Should this position change following your discussions, please inform ORR as early as possible.

Timings of change

⁴ The engagement should be effective, inclusive, well governed and transparent (p10)
https://orr.gov.uk/_data/assets/pdf_file/0008/39329/pr18-managing-change-policy.pdf

We note the timings set out in your letter, with the revised FDM-R measure being reported from 14 August 2020 (Period 4) against the revised baseline trajectories and regulatory floors for CP6. We also note your intention to restate the outturn FDM-R performance for 2019-20 in your 2021 Annual Return.

ORR opinion and holding to account

ORR's opinion is that it is appropriate for us to agree to this Level III Relevant Change to revise the calculation of FDM-R, restate the FDM-R outturn for 2019-20 and to revise the FDM-R baseline trajectories and regulatory minimum floors for Eastern, North West & Central, Southern and Wales & Western regions for all of the years of CP6. We note that the Scotland trajectory and floor will remain aligned to the Scottish HLOS.

We will continue to hold Network Rail to account for the delivery of the committed levels of performance in CP6 and from 14 August 2020 this will be based on the revised CP6 FDM-R data (as set out in your letter). However, we recognise that further changes to the FDM-R trajectories (from 2020-21 onwards) may follow based on the impact of Covid-19.

Lastly, we expect Network Rail to continue its ongoing engagement with ORR and to keep us updated on any potential future impact and/or changes as early as possible. We also expect any changes to be reflected accordingly in Network Rail's Delivery Plan Update.

Yours sincerely



Graham Richards