

Office of Rail and Road submission to Williams Review 11 February 2019

This submission to the Williams Review summarises the role of regulation in the rail system and the functions of the Office of Rail and Road (ORR).

It also set out how ORR's role has changed over time. While decisions on the structure and funding of the rail industry are matters for government, rail regulation adapts regularly to a changing industry and the changing needs of customers and wider society.

The role of the Office of Rail and Road

We are the independent economic and health and safety regulator for the rail industry, protecting the interests of rail and road users and promoting safety, value for money and performance.

We act independently of the industry we regulate. We are accountable to Parliament, but independent of government.

This ensures that our decisions are taken transparently and independently of any outside interests and that they weigh the needs of different stakeholders in accordance with the duties set out by Parliament in legislation.

Health and Safety regulation

ORR is an important part of the framework for the management of health and safety risks across the whole rail industry. Our role is to make sure that the health and safety of everyone associated with the industry is protected. This is achieved by encouraging railway businesses to have excellent health and safety management and ensuring that they identify and assess risks properly, control them effectively and comply with the law. We take account of health and safety in all of our activities, as an integrated safety and economic regulator.

The regulatory framework for railway health and safety is based on the principles and duties of the Health and Safety at Work etc Act 1974, making those responsible for creating risks through their business activities responsible for the management and control of those risks.

ORR enforces compliance with the Health and Safety at Work etc Act and subordinate regulations for Britain's railways, ensures duty holders comply with processes which deliver system safety for the mainline railway and acts as Britain's National Safety Authority in Europe.

However, the interconnected nature of the whole system and the management of shared risks where organisational and operational boundaries interface is of specific importance for the management of railway safety. This is why railway businesses are subject to an explicit legal duty of cooperation with each other. ORR therefore works with rail industry duty holders, the Rail Accident Investigation Branch and the Rail Safety and Standards Board in carrying out our role.

This framework and ORR's role in it are set out in Annex A. The safety roles and responsibilities of the National Safety Authority and National Investigation Body, as well as Infrastructure Managers and Railway Undertakings, are in large part set out in EU Directives and transposed into UK legislation.

Economic regulation

The role of ORR as the independent economic regulator is:

- To ensure current users and funders of the network are not disadvantaged by Network Rail's monopoly power;
- To ensure access to the network is on a fair basis; and
- To protect the interests of future users and funders in an industry of long-lived assets.

We describe our day-to-day functions which derive from our roles below. A full explanation of our legal duties and how these apply to different infrastructure managers are attached as Annex B.

Our economic regulation is based upon the periodic process for setting funding for Network Rail. This process of allocating funding over a five-year period ensures Network Rail and the industry have sufficient certainty with which to plan over the period.

A single regulator for the rail industry

ORR brings together the economic and safety regulatory functions for the rail industry, as well as publishing many official statistics on the industry.

Bringing these functions together in a single body enables a sharing of expertise and best practice that might otherwise operate independently. For example, when authorising rail vehicles and infrastructure, ORR is able to make use of expertise in both its safety and engineering departments.

In addition, a holistic view can be taken of the strategic issues affecting the rail industry, in particular safety, performance and efficiency. It also enables the economic regulatory toolkit to be applied to our health and safety regulation, to ensure we are aware of the economic impact of our safety regulation and vice versa.

Functions of ORR

Our roles and duties provide the framework for our work to protect the interests of rail and road users and funders. We set out below our main functions and how we operate in practice.

Health and Safety

We carry out regular and often unannounced inspections to help prevent safety problems occurring and provide guidance and advice to the industry. In the event of a health and safety incident on the railways, we are responsible for investigating and, where appropriate, prosecuting those responsible for any breach of health and safety law. We also investigate health and safety related complaints.

We set out our view of the health and safety pressures the industry faces and the priorities for industry action. Where necessary we provide cross-industry leadership.

Oversight of core industry processes

We provide advice and make decisions on core industry processes on which the industry relies to provide a good service to passengers and freight customers:

- We ensure the passenger and freight train operating companies have fair access to the rail network and that best use is made of capacity. If a railway operator wants to access the railway network, they have to apply to us for a track/station/depot access agreement with Network Rail.
- We help ensure that operators are 'fit and proper' to run a railway. Through licensing, we promote effective and efficient working relationships between industry parties and we can hold individual operators to account, in the public interest.
- We authorise infrastructure and rolling stock to make sure they meet the required standards.
- We ensure the disposal of land that might have a future rail use is subject to a statutory public interest test. Network Rail must seek our consent for any disposal not covered by a general consent.
- We are the appeal body for timetabling, access and charging decisions.

Financial and economics

We are the independent economic regulator for the railway infrastructure in the UK, including Network Rail, High Speed 1, the UK side of the Channel Tunnel and the rail network in Northern Ireland. We have also recently started work on how the regulation of HS2 will work, with a statement on access rights.

Network Rail regulation involves establishing a framework as part of a periodic review and monitoring the outcome of that review. We have just concluded our Final Determination for Network Rail's plans for 2019 to 2024. We set out the new approach we have taken in respect of this role below.

We regularly monitor Network Rail's financial performance and efficiency, looking at historical data and leading indicators on likely future performance. In our most recent Monitor, published in November, we assessed Network Rail's preparation for delivering efficiently in CP6 and identified areas where further progress needed to be demonstrated.

Protecting passengers

We undertake a range of work to support better customer service, through regulation of the passenger-facing conditions in train operating companies' licences, including our significant work on passenger assistance, and enforcing consumer law. This work is in addition to our work on reducing the delays Network Rail causes to train services.

We monitor and report on the requirement for train operators to have complaints handling procedures, a disabled people's protection policy and to provide accurate information to passengers. We are investigating two train operating companies on whether the information provided to passengers around the May 2018 timetable change met the companies' licence requirements.

We enforce consumer law to prevent harm ‘to the collective interests’ of consumers. We recently worked with the Rail Delivery Group, the Competition and Markets Authority and Which? to rewrite part of the National Rail Conditions of Travel to make it clearer that passengers may have rights under consumer law, in addition to industry arrangements, when they are delayed.

Competition

We keep the provision of railway services under review, monitoring the competitive situation in markets across the GB railway sector to ensure they are working to the benefit of users and funders. We use our sector-specific powers alongside powers under competition law (as a designated competition authority) to intervene where required. Examples of our work include our ongoing market study into station ticket gates and ticket vending machines, and engaging with the European Commission to highlight the significant threat to competition in the UK signalling and rolling stock markets as a result of the proposed Siemens-Alstom merger, now prohibited by the Commission.

Independent analysis and advice

We provide advice to third party investors on charges for the use of infrastructure, on licences, safety and competition.

We advised the bidders and the Welsh government on the new vertically integrated franchise in Wales, meeting each bidder to answer questions on regulation and the legal framework and providing input to the government’s assessment of bids.

In the discussions which preceded the publication of the England & Wales and Scotland High Level Output Specifications in the PR18 process, we set out the case to governments for increased renewals expenditure on the network to deliver better asset sustainability.

Transparency

We publicly report on Network Rail’s delivery, for example in our twice-yearly Network Rail Monitor. This covers how Network Rail is delivering its obligations to its customers and funders, and highlights any areas of concern.

Our annual efficiency and finance assessment of Network Rail is intended to help customers, funders and other interested parties gain a better understanding of Network Rail’s financial performance compared with assumptions set out at the beginning of the Control Period.

Data on the performance of HS1 is published in our annual report on HS1 Ltd.

Each year we bring together our consumer work in a consumer report (‘Measuring Up’), showing how the rail industry is delivering for passengers. The report focuses on ticket retailing, passenger information, passenger assistance, and complaints and compensation.

We publish a wide range of cross industry statistics about railway performance, rail usage and health and safety to support performance evaluation, analysis and decision-making for the railway industry. Many of these are Official Statistics.¹ We also publish an annual rail

¹ We follow the Code of Practice for Official Statistics. Our statement on how we adhere to the code is here: <http://orr.gov.uk/statistics/code-of-practice>

industry financial report covering rail income and expenditure split by train operator and Network Rail route.

In the light of recent changes in responsibilities for oversight of enhancement projects in England & Wales we consulted on how to maintain transparency for the benefits of users and the supply chain.

Our work is informed by challenge from a consumer panel, a freight customer panel and an annual freight customer event.

The evolution of ORR's role

The roles of ORR have changed over time, through changes to formal duties in legislation or through evolution of how duties are interpreted and delivered.

There have also been a number of structural changes to oversight and regulation of the rail industry to which ORR has adapted. These include the merging of the rail safety functions from the Health and Safety Executive with the economic regulatory functions of the Office of Rail Regulation in 2006. ORR also took on some of the roles of the Strategic Rail Authority following its abolition.

More recently, ORR has taken on the oversight of disabled people's protection policies from the Department for Transport, which has enabled us to help make the railways more accessible for all (see below). We have also taken on responsibility for monitoring Highways England, becoming the Office of Rail and Road. Our road and rail teams work closely together to share best practice, particularly in areas such as asset management and efficiency.

We have also sought to improve how we regulate to reflect the changes in the industry. In making these changes, we seek the views of stakeholders by consulting on our approaches.

These changes have shown that regulation has proved to be flexible. The structure of the rail industry has changed in many places since privatisation in 1993 and our regulation has adapted as a consequence. For example, our recent Periodic Review has set out a revised approach to how we will regulate Network Rail to take account of its reclassification as a public sector body and its continuing devolution to its routes (see below).

Regulation has been able to facilitate new approaches without requiring new legislation. This includes our recent consultation on making it a requirement of their licence that train operating companies be a member of the new rail ombudsman. This will provide assurance for all passengers that their complaint will always have independent scrutiny if they want this.

Adapting our approach to regulating Network Rail: Periodic Review 2018

In our recently concluded Periodic Review we have made significant changes to how we regulate Network Rail, with a greater focus on route-level regulation and a targeted approach to regulating the System Operator. We want customers and stakeholders to play a more significant role in working closely with Network Rail's routes to agree priorities and challenge performance.

The devolution of Network Rail to eight geographical routes will also enable us as regulator to make comparisons between route management teams carrying out comparable activities in different parts of the country. We will identify best practice and share it between the routes generating a sense of competition between routes.

We have also changed our approach to monitoring Network Rail's efficiency and are focusing on Network Rail's preparedness for CP6 to help ensure it gets off to a good start to the Control Period.

Improving regulation

The process of evolution is continuing across ORR, not solely through the periodic review process. In this submission we highlight three areas as examples of where we are changing our approach to regulation to reflect the changing realities of the industry and passenger expectations, but we are constantly looking to update and improve our approaches for the benefit of passengers and freight customers.

Improving passenger information

Our recent work on the May 2018 timetable disruption highlighted significant concerns regarding the quality of information provided to passengers when things go wrong, to enable them to plan and make journeys with a reasonable degree of assurance.

Despite the industry's increased focus on this area over recent years, passengers often remain dissatisfied with how the rail industry performs, particularly as their expectations are often set or exceeded by experiences in other sectors. This can often be an issue when train services are disrupted due to planned or unplanned engineering work, weather conditions and other incidents.

We have commissioned new work, working with the industry, on what currently works in the interests of passengers, what is not working and why. This should enable us to provide feedback to the industry but also develop proposals for how we can advance our regulation and proposals for improvement across the industry.

Making the railway more accessible for all

We have published proposals to significantly revise guidance for train and station operators to make the railway more accessible for all.

Our new research, with input from disability groups, industry experts and key stakeholders found that the industry systems and processes too often undermine the ability of staff to deliver assisted travel with the consistency that passengers expect.

We have therefore proposed a number of measures aimed at increasing the reliability of assistance, providing compensation to passengers who do not receive the assistance they have booked, standardising information passengers receive and improving train and station operators' staff training.

Approach to holding Network Rail to account

We have recently published our proposals on how we will hold Network Rail to account in CP6 for the benefit of passengers and other railway users.

The proposed policy will introduce new regulatory tools including holding ORR Hearings and requiring Network Rail to put in place formal improvement plans at an earlier stage than currently. The proposals would introduce new options for enforcement, including imposing financial sanctions on routes (or system operator) that can affect Network Rail management bonuses and a new approach to financial penalties (fines) that allows ORR to scale penalties so as to be capable of being funded by management bonuses. Both approaches avoid diverting funding from the operational railway while making a difference where it matters.

ORR continued engagement with the Rail Review

We look forward to continuing to engage with the Review and providing advice or assistance as required as the Review progresses.

Annex A: Safety framework

Office of Rail and Road (ORR)	Railway industry duty holders
<ul style="list-style-type: none"> • Enforces compliance with Health and Safety at Work Act and subordinate regulations for Britain’s railways by: <ul style="list-style-type: none"> ○ setting railway-specific policy; ○ producing guidance; ○ inspection, audit and investigation of risk controls; ○ driving improvement through advice and formal enforcement; ○ assessing and authorising safety certificates and authorisations; and ○ ensuring appropriate research is carried out. • Ensures duty holders comply with processes which deliver system safety for the mainline railway. • Acts as Britain’s National Safety Authority in Europe. 	<ul style="list-style-type: none"> • Have legal duties to manage risk so far as reasonably practicable by: <ul style="list-style-type: none"> ○ conducting suitable and sufficient risk assessments; ○ implementing control measures within a Safety Management System (SMS) through setting safe systems of work, instruction, training, supervision, monitoring and review of the effectiveness of their controls; and ○ co-operating with other operators and parties. • Licence conditions require railway group members (but only on the mainline) to join RSSB. Others, such as suppliers, can join voluntarily by agreement.
Rail Safety and Standards Board (RSSB)	Rail Accident Investigation Branch (RAIB)
<ul style="list-style-type: none"> • Scope is the mainline railway. • Manages railway group standards for interfaces (operational/performance benefits as well as safety). • Supports the industry in securing health and safety by: <ul style="list-style-type: none"> ○ data gathering, analysis and risk modelling; ○ managing the industry research, development and innovation programmes; ○ encouraging and facilitating cooperation; and ○ providing technical expertise. 	<ul style="list-style-type: none"> • The independent investigation body for accident and incidents on the railways. • Issue reports making recommendations aimed at preventing a recurrence. • Do not apportion blame or liability and have no enforcement powers. • Can issue urgent safety advice to industry where they identify a shortcoming they consider needs addressing without delay.

Annex B: Application of ORR's economic regulatory functions to different infrastructure managers

Overview

The table below shows the different ways in which we currently perform our economic regulatory functions in relation to each different infrastructure manager (IM) in the UK. This table does not address our safety functions.

At first glance the table appears to show many differences in approach, but in reality this is not the case. There are however important historical reasons for the actual differences that exist.

There are a number of areas shown in the table where we do not and will not undertake a regulatory function. This is generally either due to the operation of an exemption, due to there being no EU or domestic law obligation for this function to be undertaken in relation to the IM, or due to an optional part of EU legislation which has not been applied in the same way across all IMs.

Unless otherwise indicated by a footnote, where we do not undertake a function, there is no EU or domestic law obligation for any other entity to undertake that function.

Directive 2012/34/EU (the Recast) and its predecessor legislation set out the minimum level of economic regulation that we must currently undertake under EU law in respect of an IM. There are however older regimes which set out additional obligations, which are explained further below.

The Recast was implemented in England, Wales and Scotland (GB) by the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the Regulations) and in Northern Ireland (NI) by the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016 (the NI Regulations). The Regulations and the NI Regulations will remain in place in the short term when the UK exits the EU. The longer term applicability of the Regulations and the NI Regulations is however, unknown.

Network Rail Infrastructure Limited (Network Rail)

Network Rail is the IM in respect of the majority of the railway infrastructure in GB. This is often referred to as the "Classic Network".

The regime in place for Network Rail was established under the Railways Act 1993 (the Railways Act). The Railways Act predates the EU legislation in this area and contains domestic regulatory constructs such as the periodic review. The Railways Act regime includes many concepts that were subsequently contained in the EU legislation. Where those obligations overlapped, regulation remained pursuant to the Railways Act. Where there were no overlapping obligations, the EU legislation acted as a supplement to the Railways Act regime.

Eurotunnel

Eurotunnel is the trading name of the private companies France Manche SA and The Channel Tunnel Group Limited, which are the concessionaires in respect of the Channel Tunnel and which jointly fulfil the role of IM in respect of the Channel Tunnel.

The regime in place for Eurotunnel equally predates EU law in this area. However, given the UK-French nature of the infrastructure, instead of the Railways Act a treaty between the UK and French governments and a concession agreement between the two governments and Eurotunnel set out key parts of the regulatory regime. The Inter-Governmental Commission (IGC) was established under this regime to supervise, in the name and on behalf of the two governments, all matters concerning the construction and operation of the Channel Tunnel.

As EU law developed in the transport sector, the IGC was designated as the economic regulator in respect of the Channel Tunnel for the purposes of EU law. Under these arrangements, the IGC exercised economic regulatory functions in respect of the Channel Tunnel in parallel to ORR's functions in respect of the rest of the GB rail networks.

The Recast established the requirement that there be a single economic regulator in each Member State. As a result, the UK and France had to transfer economic regulatory functions from the IGC to their respective national rail regulator. This transfer occurred on 2 June 2016. From that point, the regulation of Eurotunnel has been more consistent with that of other IMs.

HS1 Limited (HS1 Ltd)

HS1 Ltd is the IM in respect of the High Speed 1 railway infrastructure consisting of track, four stations and associated infrastructure, which runs from the Channel Tunnel to St Pancras International Station ("HS1").

The regime in place for HS1 Ltd stems from the fact that it was not initially going to be regulated by ORR. The regulatory regime was originally primarily set out in the concession agreement between HS1 Ltd and the Secretary of State. Despite regulation being by way of agreement, the agreement itself replicated large parts of the Railways Act regime for Network Rail. As a result, domestic regulatory constructs such as the periodic review also apply to HS1 Ltd, albeit in a simplified form.

Despite the original intention, it was however necessary to bring HS1 Ltd within the scope of legislation. Since the Railways Act did not apply, HS1 Ltd fell to be regulated in accordance with the concession agreement, as supplemented by the provisions of EU legislation implemented by the Regulations.

Translink

Translink is the trading name used by any one or more of the companies under the ultimate ownership of the Northern Ireland Transport Holding Company which comprises (among others) the IM in respect of the rail network in NI.

The regime in place for Translink, operated in parallel to the regime in GB until the NI Regulations came into force. Although the regime in NI was also based on the same predecessor legislation to the Recast, the Department for Infrastructure Northern Ireland (DFINI) exercised economic regulatory functions in NI rather than ORR. As a result of the Recast requirement that there be a single economic regulator in each Member State, DFINI had to transfer economic regulatory functions from itself to ORR. This transfer took effect on 23 January 2017 when the NI Regulations came into force. The regulation of Translink is now largely consistent with that of the IMs in GB.

Other IMs

For the remaining IMs, EU legislation (rather than the Railways Act) continues (for the time being) to form the backbone of their regulatory framework. The framework is likely to be augmented with parts of the Railways Act regime, but the extent of this is still to be decided.

At the date of this note, the other IMs are:

- a. Heathrow Airports Limited (HAL), the IM in respect of the Heathrow Spur, which is the 8.6km stretch of railway infrastructure linking Heathrow Airport to the Great Western Main Line;
- b. Rail for London (Infrastructure) Limited (RfL(I)), the IM in respect of the Crossrail Central Operating Section (CCOS), which is the largely tunnelled under London section of the Crossrail route (and associated infrastructure) running from Portobello Junction (in the West) to the Pudding Lane Junction (in the North East and to Abbey Wood Sidings (in the South East); and

- c. HS2 Ltd, the IM in respect of the yet to be constructed HS2 network.
- d. From September 2019, ownership and responsibility of the Cardiff Core Valley Lines (CVL) will transfer from Network Rail to Transport for Wales (TfW). Operation (including maintenance and renewal) of these lines will be provided by the Keolis Amey Infranco under contract to TfW.

Highways England

Highways England Company Limited (Highways England) is the strategic highways company for the purposes of the Infrastructure Act 2015. It is responsible for maintaining, renewing, operating and improving the strategic road network (the motorways and main "A" roads in England).

Key:

Exemption/exclusion: 

Other entity responsible: 

No entity responsible: 

ORR function	Network Rail	HS1 Ltd	Eurotunnel	HAL	RfL(I)	HS2 Ltd	Wales (prospective)	Translink (Northern Ireland)	Highways England (Roads)
	Railways Act								
<i>Section 4 duties</i>	Yes	Yes ⁱ	Yes ⁱⁱ	Yes ⁱⁱⁱ	Yes ^{iv}	Yes ^v	Yes	Yes ^{vi}	Yes ^{vii}
<i>Licensing regime (sections 6-11)</i>	Yes	No ^{viii}	No ^{ix}	No ^x (until 2028)	No ^{xi}	Yes ^{xii}	TBC	No	No ^{xiii}
<i>Access regime (sections 17-22)</i>	Yes	No ^{xiv}	No ^{xv}	No ^{xvi} (until 2028)	Yes	Yes	TBC	No	No
<i>Orders to secure compliance with a licence condition (sections 55-57F)</i>	Yes	No	No	No	No	Yes	TBC	No	Yes ^{xvii}
<i>Duty to investigate licence breaches (section 68)</i>	Yes	No	No	No	No	Yes	TBC	No	No
<i>Duty of licence holder to provide information (section 80)</i>	Yes	Yes ^{xviii}	Yes ^{xix}	Yes ^{xx}	Yes ^{xxi}	Yes ^{xxii}	Yes	Yes ^{xxiii}	No
<i>Access charges review – periodic review (Schedule 4A)</i>	Yes	No ^{xxiv}	No ^{xxv}	No ^{xxvi}	No ^{xxvii}	TBC ^{xxviii}	TBC	No ^{xxix}	No
	Regulations / NI Regulations								
<i>Limit access rights on services covered by one or more public service</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No

contracts (regulation 5(6) / NI regulation 4(7))									
Stipulate time limits for responding to requests for access to, and supply of, services (regulation 6(3) / NI regulation 5(3))	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Request confirmation that business plan has been produced (regulation 12(6) / NI regulation 12(6))	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Determine whether charging body, allocation body or service provider must provide IM with more information for network statement (regulation 13(14) / NI regulation 13(14))	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Establish charging framework and charging rules (regulation 14(1) / NI regulation 14(1))	Yes	No ^{xxx}	No ^{xxxi}	Yes	Yes	Yes	TBC	No ^{xxxii}	No
Ensure balance of IM accounts (regulation 15(1) / NI regulation 15(1))	Yes	No ^{xxxiii}	Yes	Yes	Yes	Yes	TBC	No ^{xxxiv}	No
Provide IMs with incentives to reduce costs of provision of railway infrastructure and level of access	Yes	Yes ^{xxxv}	Yes	Yes	Yes	Yes	Yes	No ^{xxxvi}	No

<i>charges (15(7) / NI regulation 15(3))</i>									
<i>Control criteria for failure to use paths (regulation 17(3)(b)/ NI regulation 18(3)(b))</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
<i>Establish framework for capacity allocation (regulation 19(1) / NI regulation 19(1))</i>	Yes	No ^{xxxvii}	No ^{xxxviii}	Yes	Yes	Yes	Yes	Yes	No
<i>Provide copies of information received in support of an application for an international passenger service (regulation 19(8) / NI regulation 19(14))</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
<i>Approval of framework agreements (regulation 21(15))</i>	Yes	Yes	No	No	No	No	TBC	No	No
<i>Prior approval required to continue to levy scarcity charge (regulation 28(6) / NI regulation 28(6))</i>	Yes	No ^{xxxix}	Yes	Yes	Yes	Yes	TBC	Yes	No
<i>Ensure compliancy of charges (regulation 31(2) / NI regulation 31(2))</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
<i>Supervise negotiations about the level of railway infrastructure charges (regulation 31(3) / NI regulation 31 (3))</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
<i>Appeals (regulation 32 / NI regulation 32)</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
<i>Determine whether principal purpose of a service is to carry passengers between stations located in different Member States (regulation 33 / NI regulation 33))</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No

Monitor competitive situation in the rail services markets (regulation 34(1) NI regulation 34(1))	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Control network statements and check no discriminatory clauses and no discretionary powers (regulation 34(2) NI regulation 34(2))	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Issue directions to correct discrimination, distortions or undesirable developments in rail services markets (regulation 34(3) / NI regulation 34(3))	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Cooperate with the safety authority for the Channel Tunnel under the Railways (Interoperability) Regulations 2011 (regulation 34(5))	Yes ^{xi}	Yes ^{xli}	Yes ^{xlii}	Yes ^{xliii}	Yes ^{xliv}	Yes ^{xlv}	Yes	No	No
Consult representatives of users of the rail freight and passenger transport services at least every two years (regulation 34(8) / NI regulation 34(5))	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Cooperate with DFINI as the safety authority in NI regulation (NI regulation 34(8))	No	No	No	No	No	No	No	Yes	No
Carry out audits to verify compliance with accounting separation provisions (regulation 35 / NI regulation 35)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Power to request information (regulation 36 / NI regulation 36)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Cooperate with rail regulatory bodies of other Member States (regulation 37 / NI regulation 37)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No

<i>Impose penalties for contravention of decisions, directions and notices (regulation 38 / NI regulation 38)</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
<i>Enforce obligation to comply through civil proceedings (regulation 41 / NI regulation 54)</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
<i>Institute proceedings in respect of unlicensed provision of international services (Railway (Licensing of Railway Undertakings) Regulations 2005, regulation 5(3) / NI regulation 43(3))</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
<i>Institute proceedings in respect of operations without a statement of national regulatory provisions (Railway (Licensing of Railway Undertakings) Regulations 2005, regulation 9(4) / NI regulation 48(4))</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No ^{xlvi}	No
<i>Approve mark-ups (schedule 3, paragraph 2(1) / NI schedule 2, paragraph 2(1))</i>	Yes	No ^{xlvii}	Yes	Yes	Yes	Yes	TBC	No ^{xlviii}	No
<i>Control list of market segments published by IM (schedule 3, paragraph 2(9) / NI schedule 2, paragraph 2(8))</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Other legal obligations									
<i>Non-Railways Act periodic review</i>	No	Yes ^{xlix}	No	No	TBC	TBC	TBC	No	No ^l
<i>Overriding duty to exercise regulatory functions ...as not to impede the performance of any development agreement (Channel Tunnel Rail Link Act 1996, section 21)</i>	Yes ^{li}	Yes ^{lii}	Yes ^{liii}	Yes ^{liv}	Yes ^{lv}	Yes ^{lvi}	Yes ^{lvii}	No ^{lviii}	No

<i>Duty to facilitate construction of Crossrail (Crossrail Act 2008, section 22)</i>	Yes ^{lix}	Yes ^{lx}	Yes ^{lxi}	Yes ^{lxii}	Yes ^{lxiii}	Yes ^{lxiv}	Yes ^{lxv}	No ^{lxvi}	No
<i>Duty to facilitate construction of HS2 (High Speed Rail (London - West Midlands) Act, section 39)</i>	Yes ^{lxvii}	Yes ^{lxviii}	Yes ^{lxix}	Yes ^{lxx}	Yes ^{lxxi}	Yes ^{lxxii}	Yes ^{lxxiii}	No ^{lxxiv}	No
<i>Duty to assist and advise national authorities (Railways Act 2005, section 51)</i>	Yes ^{lxxv}	Yes ^{lxxvi}	Yes ^{lxxvii}	Yes ^{lxxviii}	Yes ^{lxxix}	Yes ^{lxxx}	Yes ^{lxxxi}	No ^{lxxxii}	No
Additional dispute resolution / enforcement powers as regulatory body not included in the Regulations / NI Regulations									
<i>Financial penalties</i>	Yes ^{lxxxiii}	No	No	No	No	No	TBC	No	Yes ^{lxxxiv}
<i>Civil proceedings</i>	Yes	Yes	No ^{lxxxv}	No ^{lxxxvi}	No ^{lxxxvii}	No ^{lxxxviii}	TBC	No ^{lxxxix}	No
<i>Appointing an arbitrator or acting as an arbitrator after relevant parties have failed to make an appointment</i>	No	No	No	No	Yes ^{xc}	Yes ^{xc}	TBC	No	No
Competition and consumer legislation									
<i>Exercise of competition functions under Competition Act 1998</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No ^{xcii}	No
<i>Exercise of consumer functions under part 8 of the Enterprise Act 2002</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No ^{xciii}	No

ⁱ Our Section 4 duties are a domestic law construct which have been applied to our EU derived functions by regulation 31(1) of the Regulations

ⁱⁱ As above

ⁱⁱⁱ As above

^{iv} As above

^v As above

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- ^{vi} An abridged list of our Section 4 duties is included in regulation 31(1) of the NI Regulations
- ^{vii} An abridged/alternative list of general duties is included in Section 23 of the Infrastructure Act 2015
- ^{viii} Excluded by section 16 of the Channel Tunnel Rail Link Act 1996
- ^{ix} Excluded by Article 4 of the Railways (Class and Miscellaneous Exemptions) Order 1994
- ^x Excluded by Article 2 of the Railways (Heathrow Express) Exemptions Order 1994 for thirty years from the start of railway passenger services (i.e. 1998)
- ^{xi} Subject to consultation
- ^{xii} The licencing regime is intended to apply once HS2 is ready for commercial use
- ^{xiii} Section 13 of the Infrastructure Act 2015 provides that the Secretary of State (SoS) may give guidance and directions as to the manner in which Highways England is to carry out its activities. DfT has chosen to do this via a “licence.”
- ^{xiv} Excluded by section 17 of the Channel Tunnel Rail Link Act 1996
- ^{xv} Excluded by Article 5 of the Railways (Class and Miscellaneous Exemptions) Order 1994
- ^{xvi} Excluded by Article 3 of the Railways (Heathrow Express) Exemptions Order 1994 for thirty years from the start of railway passenger services (i.e. 1998)
- ^{xvii} Section 11 of the Infrastructure Act 2015 provides ORR with the power to take enforcement action for breaching a RIS requirement or compliance with guidance/directions from the SoS.
- ^{xviii} Section 80 of the Railways Act has been applied to our EU derived functions by regulation 36 of the Regulations
- ^{xix} As above
- ^{xx} As above
- ^{xxi} As above
- ^{xxii} As above
- ^{xxiii} The provisions of Section 80 of the Railways Act have been largely been reflected in regulation 36 of the NI Regulations.
- ^{xxiv} Schedule 4A of the Railways Act only applies in relation to access agreements (approved under the Railways Act) where certain conditions are met (currently only specified in agreements with Network Rail)
- ^{xxv} As above
- ^{xxvi} As above
- ^{xxvii} As above
- ^{xxviii} This will depend on the eventual funding arrangements for HS2
- ^{xxix} Schedule 4A of the Railways Act only applies in relation to access agreements (approved under the Railways Act) where certain conditions are met (currently only specified in agreements with Network Rail)
- ^{xxx} The Secretary of State establishes charging framework and HS1 establishes the specific charging rules pursuant to regulation 14(4) of the Regulations
- ^{xxxi} The IGC established the charging framework pursuant to the IGC’s bi-national regulation of 23 March 2015 and Eurotunnel establishes the specific charging rules pursuant to regulation 14(5) of the Regulations
- ^{xxxii} DFINI establishes charging framework and the IM establishes the specific charging rules pursuant to regulation 14(2) of the NI Regulations
- ^{xxxiii} SoS ensures balance of IM accounts through the HS1 Concession Agreement pursuant to regulation 15(3) of the Regulations
- ^{xxxiv} DFINI ensures balance of IM accounts pursuant to regulation 15(1) of the NI Regulations
- ^{xxxv} ORR must exercise its rights and responsibilities under the HS1 Concession Agreement pursuant to regulation 15(8)(a) of the Regulations

^{xxxvi} No entity is specified, but we interpret regulation 15(3) to mean that DFINI provides incentives pursuant to regulation 15(4) of the NI Regulations (assuming that the reference in paragraph (2) in regulation 15(4) of the NI Regulations is a typo and should be a reference to paragraph (3))

^{xxxvii} SoS establishes framework for capacity allocation pursuant to regulation 19(1) of the Regulations

^{xxxviii} To the extent that the Channel Tunnel is included in a freight corridor established under regulation (EU) No 913/2010, this will be defined by the executive board of that corridor

^{xxxix} The EU legislation provides that regulatory bodies should approve the continued levy of a scarcity charge. However, the Secretary of State approves the continued levy of scarcity charge pursuant to regulation 28(6) of the Regulations

^{xl} This is most relevant to our functions in relation to the Channel Tunnel, but applies to all GB IMs by virtue of the fact that it is included in the Regulations

^{xli} As above

^{xlii} As above

^{xliii} As above

^{xliv} As above

^{xlv} As above

^{xlvi} DFINI is responsible for instituting proceedings for an offence under this section

^{xlvii} SoS responsible for the approval of mark-ups in relation to HS1

^{xlviii} DFINI responsible for the approval of mark-ups in NI

^{xlix} The HS1 periodic review is performed in accordance with Schedule 10 of the HS1 Concession Agreement

^l Section 3 states that the SoS can at any time set another RIS or vary a strategy already set. Schedule 2 sets out the process to be followed for setting or varying the RIS. ORR only has an advisory/monitoring role in relation to this process

^{li} This is most relevant to our functions in relation to the HS1 network, but applies to all GB IMs by virtue of the fact that it is deemed to be a Section 4 duty

^{lii} As above

^{liii} As above

^{liv} As above

^{lv} As above

^{lvi} As above

^{lvii} As above

^{lviii} Not included in the abridged list of our Section 4 duties is included in regulation 31(1) of the NI Regulations

^{lix} This is most relevant to our functions in relation to the CCOS, but applies to all GB IMs by virtue of the fact that it is deemed to be a Section 4 duty

^{lx} As above

^{lxi} As above

^{lxii} As above

^{lxiii} As above

^{lxiv} As above

^{lxv} As above

^{lxvi} Not included in the abridged list of our Section 4 duties is included in regulation 31(1) of the NI Regulations

^{lxvii} This is most relevant to our functions in relation to the HS2 network, but applies to all GB IMs by virtue of the fact that it is deemed to be a Section 4 duty

lxviii As above

lxix As above

lxx As above

lxxi As above

lxxii As above

lxxiii As above

lxxiv Not included in the abridged list of our Section 4 duties is included in regulation 31(1) of the NI Regulations

lxxv The duty to advise national authorities only applies to the Secretary of State, the Scottish Ministers and the National Assembly for Wales

lxxvi As above

lxxvii As above

lxxviii As above

lxxix As above

lxxx As above

lxxxi As above

lxxxii As above

lxxxiii This applies by virtue of the licence enforcement provisions in Section 57A of the Railways Act

lxxxiv Section 11 of the Infrastructure Act 2015 provides ORR with the power to impose a fine for contravening or a contravention of their compliance with the RIS or directions/guidance.

lxxxv Only breach of certain provisions of the Railways Act and the HS1 Concession Agreement carry additional civil penalties

lxxxvi As above

lxxxvii As above

lxxxviii As above

lxxxix As above

xc Under section 54 of the Crossrail Act 2008, in default of agreement between the parties as to who in the circumstances should be the arbitrator, the arbitrator is to be appointed on the application of either party, after notice to the other, by the ORR. ORR may under subsection appoint a member or employee of ORR as the arbitrator

xci Under section 64 of the High Speed Rail (London - West Midlands) Act 2017, in default of agreement between the parties as to who in the circumstances should be the arbitrator, the arbitrator is to be appointed on the application of either party, after notice to the other, by the ORR. ORR may under subsection appoint a member or employee of ORR as the arbitrator

xcii ORR's concurrent powers as a sectoral regulator do not extend to Northern Ireland

xciii Functions likely exercisable by the Department of Enterprise, Trade and Investment in Northern Ireland