



Conclusions on the overall framework for regulating Network Rail

Summary of comments and our response

January 2018

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1. Introduction

Purpose of the document

- 1.1 In our 2018 periodic review (PR18), we are making 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 (SO). We also want to make the fullest possible use of the expertise and interests of Network Rail's customers (principally passenger and freight train operators) and other key stakeholders (notably passenger representatives, funders and local transport decision-makers) in contributing to a successful railway.
- 1.2 In July 2017, we published our [consultation](#) on the overall framework for regulating Network Rail. This set out our high-level approach to regulating Network Rail both through PR18 and in control period 6 (CP6, likely to be 2019 to 2024). It discussed Network Rail and our determination (chapter 2); scorecards (chapter 3); Network Rail's engagement with stakeholders (chapter 4); our approach to monitoring and enforcement (chapter 5); and managing change to our PR18 settlements (chapter 6).
- 1.3 The main document was supported by two subsidiary documents on route requirements and scorecards; and possible measures of the System Operator's (SO's) performance. In addition, over the summer we published the design framework for regulating Network Rail, which summarises the policy positions outlined in the main consultation document, and indicates the current status of those policies.
- 1.4 This document discusses the main comments made by stakeholders on our consultation, together with our response. In addition to this document, we are publishing:
 - A letter that sets out our decisions on the overall framework and our next steps; and
 - an updated version of the design framework for regulating Network Rail, which sets out our concluded policy positions;
- 1.5 Further detail on the SO's and routes' outputs and scorecards will be published as part of our draft determination in June 2018.

Overview of stakeholders' comments

- 1.6 We received 37 responses to the overall framework consultation¹. They were from a wide range of stakeholders with 30 from industry participants and 7 from other stakeholders.
- 1.7 Responses were broadly positive and supportive of many aspects of the approaches proposed. There was considerable interest in both scorecards and stakeholder engagement. Most respondents were supportive of the approach outlined within our consultation and a large number of helpful suggestions were made on how these elements of the overall framework could be improved for PR18. Many respondents also shared their views on how we should carry out monitoring & enforcement over CP6 in the context of route-level devolution. There were relatively few comments in response to our questions on change control.
- 1.8 We would like to thank all those that responded. As this document forms a high level summary, it has not been possible to mention all of the issues raised or to reference all respondents. However, all views expressed have been carefully considered and factored into our ongoing policy development.

Structure of this document

- 1.9 This document provides a summary for each chapter in our consultation, the responses received and our response along with any updates since the consultation. This should be read in conjunction with our conclusions letter².
- 1.10 The numbering of each of the following chapters corresponds to the chapter numbers of our consultation:
- chapter 2 - Network Rail and our determination;
 - chapter 3 - scorecards;
 - chapter 4 - Network Rail's engagement with stakeholders;
 - chapter 5 - our approach to monitoring and enforcement; and
 - chapter 6 - managing change to our PR18 settlements.
- 1.11 A list of respondents is given in the appendix.

¹ We have published the consultation responses [here](#).

² Our conclusions on the overall framework for regulating Network Rail (letter). This can be downloaded [here](#).

2. Network Rail and our determination

2.1 Chapter 2 of the consultation discussed the legal status of Network Rail; the organisational structure of Network Rail; our regulation of the whole company; our PR18 determination; what Network Rail is expected to deliver; and acceptance and implementation of the determination. Reflecting the comments we received, we have structured this chapter as follows:

- geographic routes, the freight and national passenger operator route (FNPO) and system operator (SO);
- regulation of Network Rail's central other functions;
- ring-fenced funding for Scotland; and
- health and safety.

Geographic routes, FNPO and SO

What we said in the overall framework consultation

2.2 In our consultation, we described the status and structure of Network Rail in the context of ongoing devolution to the routes, and how we would regulate the company differently to reflect this devolution. In particular, we highlighted our intention to increasingly distinguish between the routes, the SO and the whole company. We explained the status and structure of our determination, and the settlements we intended to create for each of the routes and the SO.

2.3 We also outlined the process Network Rail would have to go through if it wished to reject our determination.

Summary of stakeholder views

2.4 Some freight stakeholders said that there was a lack of effective governance between the FNPO, the SO and the geographic routes, and that this caused concern, in particular with respect to the needs of national freight operators. Respondents argued for the need for a greater understanding of Network Rail's internal structure and its accountability and processes.

2.5 Some respondents raised specific concerns regarding the representation of metrics on the FNPO versus geographic routes' scorecards, while saying that scorecards alone were unlikely to be sufficient in ensuring that geographic routes took account of all operators. Scorecards are discussed in chapter 3.

2.6 Network Rail, RDG and an operator raised concerns about the focus on rivalry between the routes, noting that routes need to collaborate to deliver network

outcomes and a focus on rivalry could undermine this. Others were more supportive of the concept. A respondent recognised the potential benefits that could be achieved through increasing the use of route comparisons and expressed interest in what efficiency improvements might be anticipated from the devolution agenda.

- 2.7 The Department for Transport (DfT) sought an ambitious approach in order to maximise the benefits from route-based regulation. It strongly agreed that each of the strategic plans be signed off by the relevant director, to demonstrate their commitment and accountability for its successful delivery. Another commented on the need to ensure that routes had ownership of their strategic plans, and in particular that any changes made by Network Rail's corporate core are kept to a minimum to ensure meaningful route devolution.

Our response and updates since our consultation

- 2.8 We agree that Network Rail needs to clarify its arrangements regarding governance between the various parts of its organisation under a devolved approach and with separate settlements for the routes and the SO. Network Rail remains one organisation and it must ensure that it acts in a way that delivers the best outcomes across the network. We expect Network Rail to set out more detail on its plans on governance arrangements for CP6 shortly and for this to be an area that will require continued oversight throughout CP6.
- 2.9 Just as within other companies, we want routes to compete to be the best, as well as share best practice and cooperate when appropriate, in order to deliver the best outcomes for their customers and end users. As the railway is a network, cooperation and collaboration are particularly important. We would expect to take account of effective cooperation to achieve better outcomes for end users in our assessment of routes' performance.
- 2.10 We agree that it is important that each route managing director commits to and signs off its plan, and that it has ownership of these plans. This will form part of the final submission, on 9 February 2018. In addition, the responsible director for each of the other function's strategic plan will sign off those plans.

Regulation of Network Rail's other functions

What we said in our consultation

- 2.11 We said that we would continue to regulate Network Rail's functions other than the routes and SO as currently, including by scrutinising Network Rail's strategic plan submission, and through retaining the ability to take regulatory action against Network Rail if any part of the organisation is not meeting its licence requirements. In addition, in the role of customer, routes and the SO can challenge the quality of services provided by route support functions and their associated costs.

Summary of stakeholder views

- 2.12 A number of respondents expressed concern regarding parts of Network Rail other than the routes and the SO. They highlighted the need for a greater understanding of how other areas of Network Rail's business would be held to account effectively, in particular the technical authority (which is Network Rail's Safety, Technical and Engineering Directorate, STE), and Infrastructure Projects, including through strategic plans and scorecards.
- 2.13 A specific issue was how Network Rail's technical authority engaged with rolling stock leasing companies and financiers with respect to rolling stock authorisation.

Our response and updates since our consultation

- 2.14 Aside from the routes and the SO, we distinguish between two broad categories of Network Rail functions: (1) those that provide services to the routes and SO, and (2) other functions, including functions that set company policies and provide assurance to Network Rail's board regarding its legal obligations. These broadly correspond to the 'route support' and 'central support' categories set out in Network Rail's annual report³. With respect to the former, we want to see routes and / or the SO acting as informed customers of such services, with much greater ability to choose whether to take these, to provide them within the route, or to procure them directly from external suppliers. Where there is no real choice of supplier, we are asking Network Rail to develop governance arrangements that support the accountability of its services to the routes. These governance arrangements will also need to cover the relationship between the geographic routes and the FNPO.
- 2.15 Where there is insufficient customer pressure on the central services, and for those other functions that do not have a service role, we will regulate activities directly. We will take a proportionate approach, which we will set out in our PR18 determination, taking account of Network Rail's strategic plan submissions. Where needed, we are likely to impose additional requirements (beyond the current licence conditions), such as with respect to certain reporting requirements and engagement with stakeholders, to sharpen the incentives for such functions to improve.

Ring-fenced funding for Scotland

What we said in our consultation

- 2.16 We noted the need to apply some aspects of the overall framework differently in Scotland due to the different context and ring-fenced funding. Our determination would continue to distinguish between England & Wales and Scotland reflecting the different national funders and their separate HLOSs.

³ Network Rail annual report and accounts, 2017, page 5. This can be downloaded [here](#).

Summary of stakeholder views

2.17 Transport Scotland highlighted the devolution already in place for the Scotland route and their view that this needed to be further enhanced during CP6. Transport Scotland also asked for further details and clarity on how ORR will ensure the adequate ring-fencing of the settlement for Scotland.

Our response and updates since our consultation

2.18 There will continue to be a separate settlement for Scotland, and we will put in place appropriate ring-fencing and governance arrangements.

2.19 Another important issue is that the allocation of the costs of central support and route support functions to the routes and SO should be appropriate. We are commissioning a consultancy study to inform this allocation.

Health and safety

What we said in our consultation

2.20 We explained that our determination will reflect the importance of health and safety; complementing our wider role in monitoring and enforcing health and safety legislation. However, the reforms set out in the consultation were not principally motivated by health and safety and did not change our overall regulatory approach in this area.

Summary of stakeholder views

2.21 One respondent said that there was limited consideration of how the industry's ongoing drive for safety improvements would interact with the new route focused regulatory approach. It said that there needed to be a holistic view of health and safety performance across routes.

Our response and updates since our consultation

2.22 The health and safety of all who maintain, develop, operate and use the railway is crucial and we remain focused on promoting health and safety alongside the drive for improved operational performance and efficiency. Management of health and safety is the subject of a range of statutory requirements that arise from the Health and Safety at Work etc. Act 1974 (and secondary legislation) which enshrine the concept of continuous improvement. The proposed changes to the overall regulatory approach in PR18 are consistent with this and – through the use of health and safety measures on scorecards and engagement with customers – allow for some comparison of progress in health and safety management across the routes. We also note that the use of scorecards has supported collaboration of health and safety

outcomes, as illustrated by the inclusion of metrics in the FNPO scorecard that cover safety risks to operators' staff on Network Rail's infrastructure.

3. Scorecards

- 3.1 Chapter 3 of the overall framework consultation set out how Network Rail has introduced and is using scorecards across its organisation in CP5. We reflected on the effectiveness of our CP5 outputs framework, identifying some potential weaknesses. We then proposed how scorecards could be used in CP6 to support our regulation of Network Rail, taking account of how Network Rail intended to use these.
- 3.2 We asked stakeholders three questions with respect to scorecards, which this chapter is structured around, as follows:
- “do they agree with our proposed use of scorecards in CP6?” In this section we also consider points raised with respect to transparency;
 - “what should be included on scorecards to ensure they are balanced?”; in this section we also consider issues around consistent measures, stakeholders’ proposals for additional measures, and representation of freight measures on route scorecards; and
 - “do they agree with our proposal to specify a small number of measures and two regulatory minimum floors, in order to allow flexibility for Network Rail to focus on its customers’ needs?” in this section we consider issues around setting targets for CP6.

Our proposed use of scorecards

What we said in our consultation

- 3.3 In CP5 Network Rail has introduced scorecards to track delivery of key outputs by different parts of its business. It has been working to make these more aligned with the requirements of its customers. We proposed to use scorecards (in particular for the routes and the SO) as part of how we monitor Network Rail’s delivery of its outputs. We also said that scorecards should reflect the requirements of the two HLOSs.
- 3.4 We proposed that, if we were to use scorecards in our regulatory framework for CP6, we would have certain requirements for them. In particular that they should:
- be balanced;
 - support comparison between routes; and
 - capture requirements specified in the HLOSs, where appropriate.
- 3.5 We said that we expected the route and SO scorecards for CP6, submitted as part of the strategic plans, to be consistent with our expectations set out in our SBP

guidance⁴ and the three principles listed above. We also set our expectation that scorecards would be developed following stakeholder engagement.

- 3.6 We expected to review the scorecards submitted as part of the routes' strategic plans as part of our PR18 process, and that the scorecards we would include in our final determination would provide a description of the high-level outcomes that Network Rail is expected to deliver in CP6. This would provide a set of baselines with which to monitor the company's performance against the determination. We would report against these in our regular Network Rail Monitor publications and our reporting would put greater emphasis on those targets agreed with customers.
- 3.7 We said we would continue to monitor a wider set of information than was in the scorecards, and would also be likely to seek other qualitative information from Network Rail. This monitoring would also make use of route comparison.

Summary of stakeholder views

Use of scorecards

- 3.8 A large number of stakeholders supported our proposed use of scorecards in CP6. Stakeholders identified a range of issues around the exact role of scorecards, reflecting how they are used today. A number of responses emphasised the importance of stakeholder input in the development of scorecards and considered that the targets set must be challenging but realistic.
- 3.9 Some freight operators noted that scorecards would not cover all activities that Network Rail is required to carry out. It reiterated the importance of taking a broader approach to regulating Network Rail. This was a particular issue with respect to the SO's scorecard.
- 3.10 DfT emphasised the importance of scorecards appropriately reflecting both the England & Wales and Scotland HLOSs.
- 3.11 Transport Scotland said that the link between the scorecards and performance related pay was an important element of scorecards. It wanted its HLOS requirements linked to management pay.
- 3.12 For Scotland, a number of targets were have been included in the HLOS. For England and Wales, the HLOS specified that the "best way to deliver performance will be for Network Rail, through its devolved route structures, to work closely with train operators and representatives of the end users of the railway to determine appropriate metrics and stretching yet realistic target levels for each part of the

⁴Guidance on Network Rail's strategic business plans, February 2017. This can be downloaded [here](#).

network”. The England & Wales HLOS also asked ORR to “develop and implement regulatory Route-level performance targets reflecting this approach”.

- 3.13 Some passenger operators supported the use of scorecards but said that there needed to be more clarity on how these would be used to incentivise performance.

Transparency

- 3.14 DfT made a number of points around transparency of scorecards. It considered that the use of scorecards should follow on from effective and meaningful engagement between Network Rail routes/SO and their customers. It also highlighted that scorecards must be transparent and published, and that they should be supported by commentary so that stakeholders could properly interpret them.
- 3.15 A number of other responses also identified issues in relation to transparency, including that scorecards should be put in context e.g. with commentary, annual reporting and consolidated plans.
- 3.16 Transparency was a theme raised by a number of bodies including the Welsh Government, Urban Transport Group and Essex County Council.

Our response and updates since our consultation

Use of scorecards

- 3.17 We consider that our proposed approach will fulfil the Scotland and England & Wales HLOSs. We will look to Network Rail’s updated strategic plan submissions in February 2018 to assess how well it has carried out these requirements.
- 3.18 We will continue with our proposal to use scorecards as part of our regulatory approach in CP6. As we said in our consultation, scorecards are just one element of how we will monitor Network Rail’s overall performance.

Transparency

- 3.19 We agree that scorecards must be transparent, and supplemented by other information that key stakeholders might reasonably request. Network Rail should come up with a plan for how it will make this information accessible and understandable to a wide range of stakeholders.
- 3.20 We consider that at minimum this will include clearly defining all measures and maintaining a consistent methodology for calculation of these measures across the routes and throughout the CP6. Where Network Rail wants to change the methodology for calculating a measure, it should do so via ex-ante engagement with key stakeholders, and maintain a transparent audit trail in documentation. Where it wants to change a measure that we have required, or which meets an HLOS requirement, it must only do this with our consent.

Balanced scorecards

What we said in our consultation

- 3.21 We said that scorecards should be balanced in order to reflect the broad range of outcomes that Network Rail is required to deliver. We said this includes current end-user interests but also that of the taxpayer and longer-term interests of future passengers and freight customers.
- 3.22 We also referred to our additional consultations in relation to our more detailed proposals for SO and route-level measures, both of which are found [here](#). Our text below largely refers to the route scorecards, with the SO being addressed via the summary of responses for our separate consultation, which can be found [here](#). The summary of responses for our route requirements and scorecards consultation can be found [here](#).

Summary of stakeholder views

- 3.23 A number of respondents gave views on what type of issues scorecards should reflect to in order to achieve balance. It was broadly recognised that it is not possible to capture all issues as quantitative measures. Network Rail noted that its scorecards needed to reflect the interests of a number of stakeholders.
- 3.24 There was general support for a limited degree of regulatory involvement with scorecards to retain and, where necessary, reinforce this focus. Siemens noted that as well as reflecting the interests of governmental funders, scorecards should also reflect the interests of financiers and investors in the railway in order to achieve the further necessary investment on the network. The Rail Industry Association (RIA) also suggested that the scorecards be used to address barriers to investment.

Consistent measures

- 3.25 Nine respondents explicitly supported our proposal to require a number of consistent measures on scorecards. A number of respondents agreed with our proposal that this should be a limited number to prevent shifting the focus away from customers. Freight and national operators in particular noted that consistent performance was needed across the routes and felt our proposed measures would support this.
- 3.26 Transport Scotland was concerned that use of consistent measures would distract from or conflict with the requirements of the Scotland HLOS.
- 3.27 DfT supported our proposals for consistent measures in key areas but felt this should be achieved while minimising the expansion of the overall number of measures.

3.28 Network Rail accepted the principle of having a small set of consistent measures. It had concerns regarding some of our consistent measures which it included in its response to our route requirements and scorecards consultation.

Proposals for additional measures

3.29 A number of respondents proposed additional measures on scorecards. Nearly 40 additional categories of measure were proposed by respondents (in response to the three questions that we asked about scorecards). For example:

- Transport Focus felt that ‘right time, all stations’ (also known as ‘on time’⁵) should be the consistent comparator of operating performance that is on all route scorecards, stating that this is the measure that passengers want;
- local transport authorities wanted measures that reflected how well Network Rail manages delivery of the milestones and/or costs of third party investment; and
- supplier organisations wanted measures that reflect Network Rail’s relationship with the supply industry.

3.30 There was most support for the following five types of measures:

- customer or stakeholder satisfaction measures were supported by six respondents;
- a journey time measure (for either passenger or freight services) was proposed by four respondents;
- measures reflecting various dimensions of performance across route boundaries (not just between Scotland and England, but also between other routes) were suggested by four respondents;
- some measures were proposed that reflected issues around Network Rail’s management of the network. For example these included its management of vegetation, the capability of the network, delivery of renewals budgets; and
- monitoring of third party milestones and/or costs, particularly with respect to delivery of enhancement projects, was supported by seven respondents.

3.31 There were a number of suggestions that scorecards should be locally focused, avoiding measures that are high level and aggregate (which may mask poor performance). Transport for London was concerned that measures should be

⁵ ‘On Time’ measures the percentage of passenger trains that arrive at each station within 0:59 seconds of when they are due. Early trains are included in this.

disaggregated by operator in order to prevent undue focus on dominant operators on a route.

Freight specific issues

3.32 Rail Freight Group was clear that geographic route scorecards should reflect all operators including freight. They were concerned that ORR's proposal only covered freight operational performance, meaning that other issues such as velocity would remain unaddressed outside the FNPO scorecard.

Our response and updates since our consultation

Consistent measures

3.33 We will confirm the selection and definition of routes consistent measures as part of our PR18 determination.

3.34 We consider that the route consistent measures should cover all geographic routes including Scotland to support route comparison. We do not consider that this will undermine any Scotland HLOS requirements.

3.35 For the consistent measure of routes' operational performance, our interest is on the extent to which each route has caused delay. This means that we will focus, in particular, on a metric that measures delay caused by Network Rail and attributes this to the route responsible for the initial cause (rather than where the delay is necessarily experienced), suitably normalised for traffic volumes. This is important so that each route is held to account for the consequences of its actions, irrespective of where the consequences are experienced.

3.36 We are also conscious of the importance of reporting information about passengers' and freight operators' experience on the network. Reflecting this, we expect to include information in the Network Rail Monitors, that reports performance in a way that reflects passengers' preferences, and we recognise that 'on time' is a key measure in this context.

3.37 We expect that other performance measures, including local measures and potentially the 'on time' measure, will continue to be reported on routes' scorecards.

Proposals for additional measures

3.38 We consider that a number of the proposals made for additional measures should be for Network Rail to consider, in the context of how it manages its relationship with its various stakeholders. As stated above, scorecards are just one tool for us to monitor Network Rail's performance in CP6. We recognise that many stakeholders will want scorecards to reflect their individual specific requirements and issues, but there is a limit to how much can be included on a route scorecard for it to continue to be a

useful tool for Network Rail and its stakeholders. We agree with DfT that we should minimise the number of additional measures we require.

- 3.39 The number of alternative measures proposed for the scorecards, in particular by stakeholders that are not train operators, highlights that Network Rail must focus on how it engages with these wider stakeholders. Network Rail should consider what regular reporting it provides to stakeholders about issues that are important to them, particularly in relation to investment on the network.
- 3.40 We note that Network Rail intends to include measures of operating performance for each operator on its routes' scorecards. This should reduce the risk of certain operators dominating Network Rail's focus. The network licence also requires Network Rail to protect against undue discrimination and, as currently, any operator can highlight issues to us.
- 3.41 To manage the number of measures on scorecards, we understand that Network Rail is considering introducing a separate 'comparability scorecard', which would be a focus for comparing routes. We will consider this as and when Network Rail sets out a specific proposal.
- 3.42 We understand that Network Rail intends to keep the measures for which there is a minimum regulatory floor remaining on each route's main scorecard, and we support this.
- 3.43 Subject to our review of the SBP, we may choose to make some further requirements of Network Rail for matters that cannot be appropriately reflected on scorecards. Additionally, Network Rail remains subject to its network licence which includes requirements around its treatment of wider stakeholders. We will continue to require Network Rail to share some of its management data with us which we will also use as part of our assessment of how well each route is performing.
- 3.44 Network Rail has told us it is looking at how it measures satisfaction of its stakeholders and customers and we will review its proposals in this area.
- 3.45 Our Route Requirements and Scorecards consultation put forward the potential for a third party investment measure, and we think that a measure of this kind is something that Network Rail should be monitoring and providing to third parties.
- 3.46 We expect Network Rail to review how it manages its relationships with different types of stakeholder and how it provides appropriate information and transparency on its activities in these areas.

Minimum regulatory floors

What we said in our consultation

- 3.47 We considered that in a limited number of cases it would be helpful to codify some aspects of the relationship between particular outcomes and how ORR would respond in terms of enforcing against Network Rail's licence.
- 3.48 As such we proposed to set 'minimum regulatory floors' to reflect performance that is worse than the assumed trajectories in our PR18 determination. If the regulatory minimum floor were breached, we would be likely to undertake a formal investigation for licence breach.
- 3.49 We said we saw merit in setting a floor for operational performance (for passenger operators and possibly freight) and for network sustainability.

Summary of stakeholder views

- 3.50 Responses in this area tended to focus more on the proposed operational performance floor rather than on the network sustainability measure.
- 3.51 Eight responses explicitly supported our proposal to set minimum requirements for Network Rail. Such responses, in particular DfT's response, highlighted that scorecards should be developed through meaningful engagement with Network Rail's customers.
- 3.52 Seven responses raised varying degrees of concern that Network Rail is not incentivised to agree stretching targets with its customers. It was suggested that linking the scorecard to either Network Rail's management incentive plan and/or to its regulatory requirements would exacerbate this problem. Transport for London was concerned that our approach was "unduly relaxed" and that ORR should be more involved in setting targets. One response suggested that while it supported ORR's focus on strengthening the customer-Network Rail relationship, the most effective way to do this would be to step in to set targets for operators.
- 3.53 Six respondents felt that ORR should set targets as a matter of principle. One response noted that minimum floors provided a useful backstop if Network Rail's customers cannot negotiate acceptable targets, but that they felt it was more effective for ORR to set targets for operators. For two operators, these concerns appeared to be linked also to a mistaken impression that ORR was proposing to link the level of the regulatory minimum floor to Schedule 8 benchmarks. Some operators felt that ORR should set an expected level of performance commensurate with the funding received.
- 3.54 RDG and Network Rail felt that the floor should be set at a level which indicates systemic failure. Network Rail also felt that the regulatory floor should only be for

measures for which Network Rail has sole accountability and at a level which indicates systemic failure and unacceptable performance to end users.

Our response and updates since our consultation

- 3.55 We expect to set a minimum regulatory floor for both operational performance and network sustainability. We propose to set operational performance floors for both passenger and freight markets, and for the latter for both the FNPO and geographic route scorecards. Further detail on this is set out in our summary of responses to our consultation on route requirements and scorecards [here](#).
- 3.56 The use of a minimum regulatory floor is an important way to support an increase in the routes' focus on customers; by providing some guidance on the levels of performance that would be likely to trigger a detailed investigation by ORR. This allows customers and routes to play a much larger role, and establish more-normal customer-supplier relationships, when performance is better than this (accepting that where engagement is not effective ORR could still choose to intervene when performance is better than the minimum regulatory floor).
- 3.57 Reflecting this, for operational performance we consider that our approach as consulted would best support the targets agreed through robust, meaningful and effective Network Rail-customer discussions. We will pursue this further through the National Task Force.
- 3.58 Network Rail's schedule 8 benchmarks will be set on the basis of the expected performance of Network Rail in CP6 (consistent with our approach for previous control periods). They will not be calibrated on the basis of the regulatory minimum floor. It is industry's role to recalibrate the benchmarks and the exact methodology will vary across passenger and freight regimes.

4. Network Rail's engagement with stakeholders

4.1 Reflecting the key policy areas we addressed in the overall framework consultation document, this chapter discusses the following areas:

- the role of Network Rail's stakeholders;
- our expectations for how Network Rail should engage; and
- assessing routes' and SO's engagement with stakeholders.

4.2 For each area, we set out a brief summary of what we said in our consultation; what stakeholders' views were in response; and our further views.

The role of Network Rail's stakeholders

What we said in our consultation

4.3 In our consultation, we said that we want to ensure that Network Rail customers and other key stakeholders are able to engage with Network Rail routes and the SO to influence what Network Rail delivers so that it better meets their individual requirements. However, we also noted that there are some complications in ensuring this happens (e.g. that Network Rail is a monopoly supplier and that Network Rail's stakeholders have different interests, capabilities and resources that impact their potential contribution in supporting Network Rail's effective delivery).

Summary of stakeholder views

4.4 Most responses⁶ to our consultation touched on stakeholder engagement. Of these, all were broadly supportive of stakeholders being involved in influencing what the routes/the SO should commit to delivering. They suggested that engagement with stakeholders should be used to communicate priorities and alternative perspectives to Network Rail, to provide oversight of Network Rail's delivery, to input into the way Network Rail maintains and renews the network and to help ensure Network Rail's priorities are aligned with local priorities.

Our response and updates since our consultation

4.5 We welcome the fact that stakeholders recognised the strong role they can play in supporting Network Rail in delivering its priorities for stakeholders. We are keen that the framework in which Network Rail and its stakeholders operate in over CP6 makes the most effective use of stakeholders' role.

⁶ 31 of 37 respondents explicitly touched on stakeholder engagement.

Our expectations for how Network Rail should engage

What we said in our consultation

- 4.6 In our consultation, we set out some minimum requirements and certain principles for Network Rail's stakeholder engagement over CP6. We said we expected Network Rail to follow these.
- 4.7 The minimum requirements for Network Rail's stakeholder engagement set out in our consultation consisted of:
- having a CP6 strategic plan that takes account of stakeholders' priorities;
 - developing scorecards with stakeholders;
 - making use of annual business plans and action plans; and
 - having face-to-face discussions on a bilateral and multi-lateral level.
- 4.8 The principles of stakeholder engagement set out in our consultation were that the route/SO engagement is effective, inclusive, well-governed, and transparent.

Summary of stakeholder views

- 4.9 Most respondents were largely supportive of our proposed minimum requirements and principles for Network Rail's stakeholder engagement. They agreed that we should not be too prescriptive in determining how Network Rail should engage with stakeholders.
- 4.10 Several respondents, including Network Rail and RDG, said that ORR should not specify how Network Rail engages with stakeholders and that the routes and the SO were better placed to determine how best to engage with their relevant stakeholders.
- 4.11 Some stakeholders also suggested other principles of good stakeholder engagement, including that it should be flexible; regular/prompt (i.e. before a decision is taken so there can be adequate engagement); and in an easy-to-understand format (for example, using non-technical language).
- 4.12 A number of respondents proposed particular requirements with regards to engagement with respect to scorecards, including publication of scorecards and supporting information to support their interpretation. This is discussed further in chapter 3.
- 4.13 Several respondents asserted that the requirement for routes/the SO to have face-to-face discussions with stakeholders on a bilateral and multilateral level was too prescriptive and unnecessary as a requirement, for example because in some cases an email exchange would be sufficient. These respondents and RDG said that the

routes/the SO were best placed to determine the most effective means of engagement with stakeholders.

- 4.14 Some of the recent workshops held by Network Rail's routes and the SO in the development of the strategic plans for CP6 were highlighted as particularly effective. Some respondents suggested this should inform how Network Rail engages with stakeholders in CP6.
- 4.15 Transport Focus, while broadly supportive of our proposed principles and minimum requirements, said that we should go further in specifying how Network Rail should engage with stakeholders. It suggested that requirements to engage with passengers should be strengthened, including with a particular focus on meeting the needs of vulnerable passengers. DfT agreed that Network Rail should be engaging with passengers through representative passenger groups. However, some passenger operators suggested that they were best placed to assess, act on and/or escalate passenger requirements or concerns.
- 4.16 Several respondents, particularly stakeholders involved in multiple geographical routes and/or the FNPO, stressed the need for there to be the ability to engage with "one Network Rail". They were concerned that the devolution to routes and the FNPO may make engagement with Network Rail more time consuming and less effective if stakeholders need to engage across multiple routes. Suggestions for how this might be managed included:
- allocating a Network Rail contact to each stakeholder with sufficient authority to answer enquires and drive actions within Network Rail;
 - developing an alternative to the lead route when liaising with Network Rail for stakeholders that may not easily fit within a route, such as London operators that travel across multiple routes;
 - Network Rail developing a clear process on how the routes, the SO and other parts work together to engage with stakeholders effectively; and
 - requiring Network Rail to sit on relevant local committees.
- 4.17 Many respondents (including Network Rail) said that the Route Supervisory Boards (RSBs) could be a good mechanism for Network Rail engagement, including with passenger representative groups. However, there were varying views about the purpose and remit of the RSBs; for example, some respondents wanted the RSBs to widen their membership or to meet in public.
- 4.18 Transport Focus welcomed its inclusion on the pilot board and the invitation to sit on two other RSBs. It said RSBs should include a passenger representative to aid engagement between Network Rail and its end users. A freight operator wanted

RSBs (or industry freight joint boards) to engage on longer-term considerations so that Network Rail can understand the growing needs of freight on the network and cater for franchise expansion over CP6.

- 4.19 Network Rail said that it will issue high-level guidance to routes and the SO about how they should engage with their stakeholders. It said that this guidance will incorporate ORR's minimum requirements and principles, and that routes and the SO will be encouraged to develop their own engagement relevant to their stakeholders' needs.
- 4.20 Network Rail also said that its stakeholder engagement process will be embedded into its continuous planning process. It stated that it would establish clear lines of internal escalation beyond route teams if stakeholders did not consider that engagement had met the minimum requirements. It said that Network Rail (rather than ORR, for example) should have the primary accountability for resolution of issues with its customers and stakeholders.

Our response and updates since our consultation

- 4.21 We welcome stakeholders' support of our minimum requirements and high-level principles set out in our consultation.
- 4.22 We agree with stakeholders' concerns regarding the minimum requirement for face-to-face discussions on a bilateral and multilateral level. We are therefore amending this requirement to be less prescriptive;
- 4.23 Subject to this change, and taking account of the comments we have received, we will not make other changes to the minimum requirements for or principles of stakeholder engagement.
- 4.24 We consider that the RSBs could be an important mechanism for engagement between Network Rail and stakeholders. We expect Network Rail routes and the SO to set out their thinking on whether and how they will use RSBs in engaging with stakeholders. This will help inform discussions between the routes/SO and their stakeholders about the extent to which additional mechanisms of engagement is required.
- 4.25 We welcome Network Rail's commitment to issuing high-level guidance for stakeholder engagement to the routes/SO. This should also set out clearly how operators that run on several routes can engage with Network Rail effectively.
- 4.26 Given that stakeholder engagement is central to our regulatory approach, if we find this guidance or routes' progress is insufficient, we will consider more detailed regulation in this area.

Assessing routes' and SO's engagement with stakeholders

What we said in our consultation

- 4.27 As discussed in our consultation document, we will assess and grade the extent to which the routes and the SO's strategic plans for CP6 reflect engagement with stakeholders, including how they take account of different stakeholders' priorities.
- 4.28 We also said that we want to see a regular assessment of the routes' and the SO's effectiveness at engaging with their stakeholders during CP6, reflecting the fact that understanding how well Network Rail's routes and the SO are engaging with stakeholders will inform our approach to monitoring Network Rail, including in escalating performance issues.
- 4.29 With respect to who is best-placed to undertake a regular assessment over CP6, we said that, in principle, Network Rail, the corporate core, could take on the role of collecting information on and assessing the relative quality of the routes'/the SO's engagement, similar to its role in other areas. We also said that we could carry out the assessment. Independent input could be used to help us to understand the quality of stakeholder engagement.

Summary of stakeholder views

- 4.30 There was widespread support for assessing the quality of stakeholder engagement over CP6.
- 4.31 With respect to how the assessment should be undertaken, only a few respondents said that this should be done quantitatively, suggesting that this should be done either indirectly through measured rail outputs, e.g. on the scorecards, or by adopting a set of quantitative proxies for engagement, including the level of representation at a meeting and the nature of agreed action items.
- 4.32 Many respondents suggested that stakeholder feedback be gathered as part of the assessment process. Some operators said that they should be asked to rate how well Network Rail has engaged with them. One response suggested drawing on the approach of 'health check surveys' between operators and Network Rail in an alliance to include other stakeholders and using these to assess stakeholder engagement.
- 4.33 With respect to who should undertake the assessment, several respondents (including DfT) argued that ORR would be best placed to assess stakeholder engagement. Others suggested that an independent third party (possibly commissioned by ORR) should do the assessment.

- 4.34 Network Rail said that routes and the SO are best placed to assess the quality of stakeholder engagement within a national framework, the results of which it would then report to ORR. Another stakeholder suggested that Network Rail could play a role in gathering and analysing stakeholder feedback, but that the overall assessment of stakeholder engagement should remain part of ORR's regulatory oversight role.
- 4.35 Stakeholders also noted that any assessment of stakeholder engagement quality is closely related to how we monitor Network Rail's ongoing performance with respect to stakeholder engagement, and how we would take enforcement action, where necessary. This is discussed further in Chapter 5.

Our response and updates since our consultation

- 4.36 We agree with the view expressed by stakeholders that it will be important to assess, on a regular basis, how well Network Rail's routes and the SO engage with their stakeholders throughout CP6.
- 4.37 We consider that we are best-placed to lead this assessment (at least in the early years of CP6), with considerable input from both Network Rail centre and route/SO's customers.
- 4.38 With respect to how we will undertake this assessment, we will use our experience of assessing and grading the extent to which the routes and SO's CP6 strategic plans reflected engagement with stakeholders before determining how this should work over CP6.
- 4.39 At this stage, however, we expect that our assessment will be primarily qualitative, and will focus on the extent to which engagement has been consistent with our principles of effective stakeholder engagement (which are that engagement should be effective, inclusive, well governed and transparent). We expect that it will be heavily informed by stakeholder feedback (e.g. via a stakeholder questionnaire and/or from RSBs, where applicable), information obtained from the routes/the SO and/or Network Rail centre and input from third parties (e.g. to secure comparisons with other sectors).

5. Our approach to monitoring and enforcement

5.1 In the overall framework consultation we set out our proposed approach to monitoring and enforcement in CP6, focusing on the following key areas:

- **strengthening incentives for effective delivery**, to reflect Network Rail's public sector status and devolved business structure;
- **monitoring performance**, supporting strong reputational incentives; recognising good performance and best practice as well as identifying any areas of weak performance, where we may need to take further action; and
- **taking action where we have concerns**, consulting on the range of regulatory approaches we could use in different circumstances.

5.2 This chapter follows that structure. For each area, we set out a brief summary of what we said in our consultation; what stakeholders' views were in response; and our further views.

Strengthening incentives for effective delivery

What we said in our consultation

5.3 In our consultation we explained that in CP6 we want to ensure there is a balanced set of incentives on Network Rail that reflects its business structure and public sector status, and provides clear benefits for good performance and clear costs for underperformance. We consulted on introducing a number of new potential incentives, including:

- reputational;
- procedural; and
- management.

5.4 Reflecting our overall approach to PR18, we particularly wanted to use comparisons across routes/the SO to recognise and incentivise good performance; to drive improvements; and to inform our approach to intervening and enforcing, where necessary.

Summary of stakeholder views

5.5 The majority of responses welcomed the customer-focussed approach set out in our consultation document. This is also discussed in chapter 4.

5.6 We noted that there was general support for our proposed structured use of regulatory reputational incentives to hold Network Rail to account. Respondents were

particularly interested in how incentives related deliverables at route and SO level; scorecards; outputs and performance related pay. Consumer representatives such as London TravelWatch supported greater use of public meetings and forums to hold Network Rail to account.

5.7 In light of Network Rail's public status, there was also common support for the need for a range of incentives and regulatory tools to hold Network Rail to account effectively and for our continued approach to use financial enforcement penalties as a 'last resort'.

5.8 A number of respondents also welcomed the articulation in our consultation document of our likely escalation approach, particularly where performance is worse than expectations or unacceptable.

Our response and updates since our consultation

5.9 We confirm our intention to establish a balanced set of incentives on Network Rail that reflects its business structure and public sector status, and provides clear benefits for good performance and clear costs for underperformance. These incentives will include existing and potentially new incentives in the form of reputational, procedural, financial and management incentives. We will consult on specific incentives as part of the update of our economic enforcement policy.

Monitoring performance

What we said in our consultation

5.10 In CP6 we want to support comparisons between routes (and the SO, to the extent possible) in our monitoring, to target our scrutiny appropriately and to strengthen reputational incentives and the sense of rivalry for routes to perform well relative to their peers. We proposed to:

- focus on monitoring, incentives and enforcement at route and SO level to a greater extent (noting that formal enforcement action is legally taken at whole company level);
- use our routine publications to compare the performance of different business units, primarily as reflected on scorecards, in order to strengthen reputational incentives and help prioritise our monitoring; and
- continue to take into account a wide range of information (particularly scorecards, but also, for example, business plans and action plans) in forming our judgements on whether Network Rail is doing everything reasonably practicable to fulfil its licence obligations.

- 5.11 We would seek to build a robust evidence base over CP6 that would allow us and others to compare the relative performance of different business units and understand the potential for further efficiencies. Our approach to monitoring and enforcement would be subject to how effectively Network Rail routes and the SO engage with their stakeholders, especially in addressing areas of poor performance.
- 5.12 Where there are strong mechanisms for customers and other stakeholders to work with Network Rail to agree and deliver appropriate action, we proposed to give the space for these mechanisms to be used, supporting the relationship between Network Rail and its customers.

Summary of stakeholder views

- 5.13 In general, our proposals for greater transparency, data and reporting were seen as positive by stakeholders. Stakeholders had a mix of views on what key documents should be published, but a number specified scorecards, the Network Rail Monitors, and the annual efficiency report.
- 5.14 There was interest, particularly from local authority and third party responses, in greater disaggregated route data; this could be helpful to identify local performance issues.
- 5.15 Network Rail and other consultees including DfT raised points about the importance of a balance in reporting both positive and negative performance. There should be a balance between routes collaborating and competing, so that good practice can be shared across the network. Network Rail said that comparing routes on the basis of nominal indicators could be problematic. Instead a range of comparisons should be reported – including absolute, relative, and divergence from target to provide a better reflection of overall performance.
- 5.16 Network Rail suggested that it and ORR should agree, within an updated data protocol, circumstances and procedures to review the level of risk associated with escalated issues.

Our response and updates since our consultation

- 5.17 We are continuing to develop our reporting framework to support the route regulatory approach for CP6 and consider how we can develop our reporting tools, such as the Network Rail Monitor, to best reflect the comparative approach in CP6.
- 5.18 We are preparing an analytical framework to facilitate comparisons between routes / the SO, including where we have identified good practice as well as where we have concerns.

Escalation and taking action

What we said in our consultation

5.19 We would wish to signal the types of responses we would be likely to consider in different performance situations, giving a clear message to Network Rail and its stakeholders about how we might escalate performance issues using an incremental approach to reflect Network Rail’s progress in addressing the issues.

5.20 In practice, however, we would reserve our discretion to take into account the specifics of each situation, including the views of relevant stakeholders.

5.21 In our consultation, we set out an illustrative example in Table 5.1. This is replicated below.

Table 5.1: Our proposed approach to monitoring and escalation of our consultation

Description of performance	Route / SO is engaging effectively with its stakeholders	Route / SO is not engaging effectively with its stakeholders
<p>Performance exceeding or in line with expectations <i>For example, performance is in line with or exceeds expectations in scorecards and ORR wider monitoring does not indicate any serious concerns</i></p>	<p>Routine publications compare relative performance (against targets and over time) of routes/SO and highlight good/best practice (e.g. Network Rail Monitors; publication of route-level regulatory accounts)</p>	
	<p>ORR targeted monitoring in areas where local stakeholders do not have the interest/capability to engage with Network Rail</p>	
	<p>Assessment of stakeholder engagement compares performance of routes/SO and highlights good/best practice and any routes that are not engaging effectively</p>	
	<p>ORR routine engagement with route/SO and stakeholders</p>	<p>ORR increased engagement with stakeholders</p> <p>ORR role in providing appropriate (additional) information to stakeholders to support reasonable engagement</p>
<p>Performance is below expectations</p> <p><i>For example, performance against scorecards is below expectations (or there is a very clear trend in this direction); or wider monitoring indicates concerns about Network Rail’s ability to deliver on expectations.</i></p>	<p>ORR monitors progress of Network Rail / stakeholder discussions, including their actions and consequential impact on route/SO performance.</p>	<p>Increased ORR scrutiny – increased monitoring; informal investigations.</p> <p>Public reporting of some aspects of the regulatory escalator</p> <p>Increased requirements on Network Rail reporting to stakeholders about how it is addressing relevant issues</p>
<p>Unacceptable performance</p> <p><i>Performance is well below expectations in scorecards (e.g. in breach of a regulatory minimum floor); or performance ‘below expectations’ has not been addressed within a reasonable time period</i></p>	<p>Likely to result in a formal investigation, potentially leading to further formal actions (e.g. sanctions on route/SO-level accounts, requirement to establish cross-industry improvement boards, formal industry meetings, notification to Secretary of State, Scottish Ministers or parliamentary committee, enforcement order, financial penalty)</p>	

Summary of stakeholder views

- 5.22 A wide range of stakeholders welcomed our assurance that a move towards a greater customer focused approach would not mean ORR would be ‘stepping back’ from regulation. Many responses acknowledged the need for ORR as the ultimate monitor and enforcer in holding Network Rail to account. However, there was support for greater engagement and forums for customers and stakeholders to challenge and work with Network Rail.
- 5.23 There was also interest from some responses as to what role and engagement customers and stakeholders could have in considering the appropriate action where there was poor performance.
- 5.24 In general, stakeholders broadly supported our example approaches set out in our consultation table 5.1 (above); particularly where performance is worse than expectations or unacceptable. We also note some criticism raised in a few responses with respect to the timeliness and effectiveness of ORR’s enforcement actions in previous control periods.
- 5.25 Several respondents stated that there needed to be clear information about the escalation process for raising concerns about poor or insufficient stakeholder engagement. DfT and Transport Focus both said that ORR should exercise regulatory oversight of Network Rail’s stakeholder engagement. Transport Focus saw ORR’s role as one that enforces the behaviour of Network Rail. DfT suggested that performance with respect to stakeholder engagement should be reported in the Network Rail Monitors. Another respondent advocated a light touch approach, suggesting stakeholder engagement did not need to be continually monitored.
- 5.26 Some responses were concerned about focusing on reasonable requirements and not an overarching licence condition with Network Rail just doing enough to achieve thresholds, rather than delivering the targets. Some responses questioned whether the regulatory approach of focusing on reputation may be too soft and may lead to an ‘excuse’ culture.
- 5.27 Many responses sought assurances that there would be consequences if performance became worse than expectations, or if Network Rail did not set itself challenging enough targets. In particular, in the event that escalation and reputational incentives were not effective, they were keen for ORR to take enforcement action at the appropriate level of Network Rail’s business.

Our response and updates since our consultation

- 5.28 We agree with respondents who have said their preference is for Network Rail and its stakeholders to resolve issues at a route/SO level in the first instance. This is because Network Rail’s customers and wider stakeholders are often better placed to

engage with and challenge Network Rail about its day-to-day decisions in running the network.

- 5.29 Setting scorecard targets and stakeholder engagement are discussed in chapters 3 and 4 of this document.
- 5.30 We will continue in our current role, including through monitoring and taking proportionate actions, in order to improve outcomes for passengers and freight customers. As a general principle, any formal action would be informed (as currently) by good practice regulatory principles: proportionality; targeting; consistency; transparency; and accountability. The focus of our PR18 reforms is to improve how this works, rather than in any way reducing the regulation we undertake.
- 5.31 We note that there is a need to provide more information about the interaction of scorecards, the potential role of reasonable requirements and the implications for licence enforcement. The responses received highlight the need for further clarity on scorecards in practice, what 'customer reasonable requirements' may mean and how the framework will incentivise and drive performance. We will seek to provide further clarity on this as part of our consultation to update our economic enforcement policy for CP6.
- 5.32 In CP6 our key tool for enforcement will continue to be Network Rail's network licence. We recognise we will need to provide greater clarity of how this will work in practice, in view of the greater emphasis in PR18 on route-level regulation and the SO.
- 5.33 We will be working with Network Rail over the coming months to review its network licence and to consider whether to restructure its obligations for CP6 to better reflect the separation of functions between its routes, the SO and other functions (with all obligations still being owed by Network Rail as a company). The review will also consider reforming the drafting of licence obligations more generally to ensure they are clear, up to date and fit for purpose and reflect any necessary changes in PR18.
- 5.34 We will be reviewing key policies, such as our economic enforcement policy, on a similar timescale to make sure that the regulatory framework as a whole is clear, practical, fit for purpose and reflective of the approach in PR18.
- 5.35 We intend to publish our decision on restructuring the licence obligations and consult on proposals for the various documents described above over the coming months with the aim of implementing any changes at the start of CP6.

6. Managing change to our PR18 settlements

6.1 This chapter is structured as follows:

- changes during CP6;
- a process for managing change;
- treatment of financial changes; and
- adjustment of baselines.

6.2 For each area, we set out a brief summary of what we said in our consultation; what stakeholders' views were in response; and our further views.

Changes during CP6

What we said in the overall framework consultation

6.3 In our consultation, we noted that Network Rail requires flexibility to react to changing circumstances, share risks across the business and introduce improvements. However, potential changes in CP6 may weaken the routes/SO's ability to plan, as well as undermining accountability and the ability to compare performance across routes, undermining the benefits of our regulatory approach. We are therefore considering developing potential controls around such changes.

6.4 We identified relevant changes to consider including organisational changes to the role of the SO and/or routes; route boundary changes; and changes to funding levels of individual routes/the SO.

6.5 We recognised that enhancements would present a key driver of change although they were outside the scope of our consultation.

Summary of stakeholder views

6.6 While all those who commented understood the rationale for managing change and broadly welcomed a change control process, there were differing views with respect to how much control should be exercised.

6.7 Some respondents argued that changes should only be made in exceptional circumstances in order to protect accountability.

6.8 Other respondents welcomed a more flexible approach that would allow opportunities (for example that necessitated a route boundary change) to take place mid-way through CP6.

- 6.9 Network Rail said that it required a substantial degree of flexibility in order to be able to manage risk effectively, make the changes necessary to improve the business and to be able to respond to changes that arise outside the organisation, for example, franchise change or faster than anticipated growth in passenger numbers.
- 6.10 There was limited comment on what specific type of changes should be subject to a control process. However, one respondent suggested that the sale or transfer by Network Rail of assets involved in the provision of services to Network Rail's customers should be considered as changes requiring the submission of a change business case.

Our response and updates since our consultation

- 6.11 We welcome the widespread agreement that a change control process is required for CP6 in order to protect the integrity of the settlements under route-level regulation.
- 6.12 We acknowledge that Network Rail needs to be able to introduce improvements and adapt to changing circumstances.
- 6.13 As most stakeholders agreed with our proposed approach in this area we have not made substantive changes. A robust process for managing change is required to maintain our ability to assess the performance of routes to incentivise good performance and to ensure that routes and wider industry stakeholders are able to plan effectively.
- 6.14 We note the comment made by a respondent regarding the need to consider the impact of the sale or transfer of assets by Network Rail. We will consider the inclusion of this change type within the managing change framework.

A process for managing change

What we said in our consultation

- 6.15 We identified potential changes to consider, the principles that should shape a change control process, and how changes could be categorised based on the size of their impact on customers and end-users. Our proposed approach for considering medium and large changes was outlined in a flow chart which specified the envisaged process.
- 6.16 We would expect small changes to be dealt with, as now, in aggregate. This would probably be through annual reporting arrangements and presentation of information before and after the aggregated changes to support inter-year comparisons.
- 6.17 For medium changes we would expect Network Rail to engage with us and other stakeholders ahead of a decision on a change taking place (including providing information on the scale, effect and value for money). This would give us, and others,

an opportunity to consider the impact of the potential change and discuss any concerns with Network Rail.

6.18 For large changes, we would expect Network Rail to more formally involve us in the discussions and provide us with a business case assessment of the impact of the change ahead of any decision being made. This would give us an opportunity to consider the impact of the potential change and provide a formal opinion to Network Rail.

Summary of stakeholder views

6.19 Respondents generally agreed that the proposed managing change process looked sensible and there was support for the underlying principles of proportionality, consistency and transparency.

6.20 The requirement for stakeholders to be consulted as part of the change control process was widely supported. While stakeholders acknowledged that engagement should be proportionate, there was a strong preference for stakeholders to be consulted rather than informed about a change.

6.21 Multiple respondents specified that such changes should be supported by a business case, where appropriate, to assess the impact of the change ahead of any decision being made.

6.22 While most respondents indicated that a categorisation of changes by size was sensible, there were requests for more information to be provided including further definition of what would constitute a medium and large change. Network Rail also noted that ORR's regulatory framework should not create an unnecessary regulatory burden and limit its ability to adapt quickly to changing circumstances.

Our response and updates since our consultation

6.23 We note the broad agreement on the importance of effective but proportional stakeholder engagement.

6.24 For larger changes, it will be important for Network Rail to complete a business case, setting out the expected effect of a change.

6.25 We agree that further detail is needed on the mechanics of the managing change process, especially with respect to the categorisation of changes. We will publish a working paper covering these issues which will provide further information on this.

6.26 A particular issue we are considering is the extent to which we should intervene in respect of 'large changes' (i.e. changes that fundamentally undermine our PR18 settlement) where it is consistent with our statutory duties to do so. We will consider this further in the working paper.

Treatment of financial changes

What we said in our consultation

- 6.27 The PR18 determination will include the financial settlements for routes in CP6. With the exception of Scotland, these will not be ring-fenced. We want to use these route-level and SO financial settlements to monitor and compare performance, and to hold the routes accountable for expenditure levels, efficiency, and the delivery of reasonable requirements and the requirements of the licence.
- 6.28 We want to ensure that we can identify out-performance and under-performance of routes, and the SO. The change control process related to financial changes will reflect the scale and timing of route budget changes.

Summary of stakeholder views

- 6.29 Financial change received the most interest of all of the types of change identified.
- 6.30 It was broadly acknowledged that some flexibility for Network Rail to reallocate funds across routes was necessary to manage risk. One respondent noted that this may be necessary to redress a failing situation in a way that is consistent with the overall management of the network.
- 6.31 However, there was concern expressed regarding a potential loss of accountability if financial resources can too readily be reallocated between routes. One respondent noted the danger of perverse incentives if well performing routes 'lose money' to support poorly performing routes, and another said that there was a risk that the reallocation of funds may impact upon the delivery assumptions underpinning third-party funded projects.
- 6.32 DfT put forward their view strongly that there should be a clearly articulated presumption against changes to routes' funding, except in exceptional circumstances, with any changes restricted to what is absolutely necessary to manage risk where appropriate, and then implemented following a transparent change control process, with significant stakeholder (including funder) engagement.

Our response and updates since our consultation

- 6.33 The financial framework for PR18 is yet to be finalised, and we are still developing our policy thinking with respect to how financial changes will be treated within the managing change process and how budget reallocations should be categorised.
- 6.34 We agree that there may be good reasons for changing a route's budget during CP6. Even if expenditure forecasts are well founded and residual risks are well managed, Network Rail might need to access financial reserves if it experiences cost shocks

during CP6. The reallocation of budgets could help to maintain network coherence, manage risk and exploit opportunities.

6.35 However, in line with broader changes, it is important that the benefits of such transfers outweigh the costs and that resource reallocations do not undermine route-level business and risk management approaches, incentive mechanisms, and financial performance assessments. The views of the relevant funders, in particular, are noted on this issue.

Adjustment of baselines

What we said in our consultation

6.36 We noted that Network Rail currently updates its scorecards annually and that there may be good reasons for updating the targets, e.g. to reflect changing customer requirements (including a new franchise), Network Rail's capability and other external events.

6.37 Routes/the SO should make changes to scorecard targets with appropriate stakeholder engagement, in a process similar to that set out in our guidance with respect to the strategic plan scorecards. For us to place weight on the revised target in our monitoring, we need to be assured that the change was justified.

6.38 We said that we do not expect to change the regulatory minimum floor during CP6, unless there is a material reason to do so.

6.39 Network Rail should not change the methodology for calculating any measure, or reporting on particular measures, without having a case for doing so and going through a transparent process with its customers and ourselves.

Summary of stakeholder views

6.40 There were differing views on the adjustment of baselines.

6.41 One respondent said that the routes and SO should continually be challenged over the efficiency and value of their delivery processes and proposals. Network Rail should seek to respond to changes in customer priorities and changes to circumstances which will necessitate updated scorecard measures.

6.42 Network Rail said that it considered it sensible to restrict updates to baselines to annually as part of reporting cycles.

6.43 Others expressed concern that changing performance targets might weaken accountability. By reviewing and updating targets annually, rather than setting a long-term trajectory, Network Rail could reduce the target the following year if the target no longer looked achievable.

Our response and updates since our consultation

- 6.44 We note the different stakeholder views that there was a need to both assess the performance of Network Rail relative to the five year trajectories of the PR18 settlements, and also to adjust targets to respond to changing circumstances and customer priorities.
- 6.45 Network Rail plans to update customer-agreed scorecard measures annually. We see the way that ORR adopts baselines as part of its monitoring and enforcement as an important constraint on the deviation of targets from those outlined in the settlement(s).
- 6.46 We have made some minor changes to improve the clarity of our guidance on this area. Further information will be provided within the upcoming managing change working paper.

Appendix: Respondents to our consultation on the overall framework

Respondents	
Abellio Group	MTR Crossrail
Arriva UK Trains Ltd	Network Rail
Bootham Network Solutions Limited	North East Combined Authority
Chartered Institute of Logistics and Transport	Peninsula Rail Task Force
Crewe-Stoke-Derby Stakeholder Board	Rail Delivery Group (RDG)
DB Cargo (UK) Limited	Rail Freight Group (RFG)
Department for Transport (DfT)	Rail North
Essex County Council	Rail Industry Association (RIA)
Eversholt Rail	Really Good Ideas
FirstGroup	SEStran
Freight Transport Association	Siemens Rail Automation
Gatwick Airport Limited	Stagecoach and Virgin Trains
GB Railfreight	Transport Focus
Go Ahead Group	Transport for Greater Manchester
Heritage Railway Association	Transport for London (TfL)
Historic England	Transport Scotland
IOSH	Urban Transport Group (UTG)
London Travelwatch	Welsh Government
Merseytravel	



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