



Enhancements in Control Period 6

Roles and responsibilities

Draft for comment

June 2018

Contents



Introduction	3
Background	5
England and Wales enhancements – roles and responsibilities	7
Scotland enhancements – roles and responsibilities	10

Introduction

- 1.1 Enhancements in Control Period 6 (CP6) will be treated differently to operations, maintenance and renewals expenditure in the Periodic Review 2018 (PR18). Both government departments responsible for funding the rail network (Department for Transport and Transport Scotland) are adopting a pipeline approach to commissioning enhancement programmes and projects following lessons learned from CP5.
- 1.2 We have set out our proposals on Network Rail's plans for the operation, maintenance and renewal of its network over CP6, in our PR18 draft determination. It is appropriate that we also propose our role for enhancements in CP6, in relation to that of Department for Transport (DfT), Transport Scotland and Network Rail.
- 1.3 This document focuses on our approach to enhancements that are funded by DfT and Transport Scotland and delivered by Network Rail. This document does not set out our approach to the following types of enhancements.
 - Enhancements funded by other government bodies, for example Welsh Government. Our role in enhancements funded by other government bodies is dependent on their specific requirements. For example, we could, if requested, provide advice on the efficient cost of delivery of a particular scheme or portfolio of work, or assist with reputational incentives on delivery through monitoring and reporting. We will work with other government bodies to understand their expectations for enhancements and we have started this process by making arrangements to engage with Welsh Government.
 - Third party funded enhancements, where we recently published our approach to facilitating third party investment in the rail network on our website¹.
 - Enhancements delivered by other parties. We will consider our role for rail enhancements delivered by other parties on a case-by-case basis, depending on the characteristics and arrangements for each scheme, in line with our duties and the requirements of Government funders. This is consistent with the approach we have adopted for Crossrail Ltd and High Speed 2.
- 1.4 As part of the periodic review process, we have set out our approach to managing changes to the settlements that we set in our final determination. We have also described our role in the enhancement change control process in this document. These two change processes will run in parallel where changes to enhancements have an impact on the PR18 settlements.

¹ ORR is open for business: Facilitating new investment in the rail network: <http://orr.gov.uk/news-and-media/orr-blog/2018/orr-is-open-for-business-facilitating-new-investment-in-the-rail-network>

- 1.5 We welcome comments on the approach set out in this document, which we will finalise in advance of CP6. Contact details for responding are summarised below, with details of how to respond set out in Appendix A.

Contact details for responding to this document

Lead Matt Wikeley

Email matt.wikeley@orr.gsi.gov.uk

Tel 020 7282 0113

Responses and engagement on this paper are requested by 31 August 2018.

Background

- 1.6 In the PR13 Final Determination, ORR set out the assumed funding available for Network Rail's enhancements portfolio in Great Britain. Regulated outputs were set at GRIP 3 (Option Selection) and GRIP 6 (Entry into Service) milestones. A significant proportion of the portfolio had not reached a level of maturity where there was a reasonable degree of cost certainty.
- 1.7 To mitigate this risk the ORR put in place the Enhancements Cost Adjustment Mechanism (ECAM) that allowed the assumed efficient cost for projects to be re-baselined at GRIP 3. The purpose of ECAM was to set the efficient baseline for the complete portfolio once all projects had been through ECAM.
- 1.8 Network Rail was reclassified as a public body during the Control Period. This limited its ability to borrow from the market to cover cost escalation in its business. The enhancements portfolio in England & Wales also came under significant cost pressures which resulted in three major reviews; Bowe², Hendy³, and Shaw⁴.
- 1.9 The Bowe Review made recommendations about the governance and assurance of the enhancement portfolio, and the roles of DfT and ORR. Significantly, the review recommended that DfT increase its scrutiny of work conducted by Network Rail for which it is the client, a role which some in industry had assumed the ORR was taking.
- 1.10 The Hendy Review was an affordability review of the enhancements portfolio contained within the EDP and it re-baselined all of the schemes. This included changes in scope, time, and cost across the portfolio. Some cash-funded schemes were given regulated output status at this time.
- 1.11 The Shaw Review looked at Network Rail's funding and its future shape. The review endorsed Network Rail's transformation objectives encouraging the business to devolve power to its geographic routes so that it could better align with the requirements of its customers and be held to account by them.
- 1.12 As result of these recommendations new governance was put in place by DfT and Network Rail to oversee the enhancements portfolio in CP5. This is set out in a Memorandum of Understanding between DfT and Network Rail⁵. Changes to outputs are now agreed by DfT having been discussed with Network Rail and its customers

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479560/bowe-review.pdf

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/494091/network-rails-investment-programme-the-hendy-report-consultation.pdf

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/510179/shaw-report-the-future-shape-and-financing-of-network-rail.pdf

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509545/mou-dft-network-rail-rail-enhancements.pdf

at programme delivery groups and programme boards. DfT has agreed it is now responsible for determining whether the cost is affordable and the best use of the funding available⁶.

- 1.13 ORR currently approves changes to the EDP and requires Network Rail to provide evidence that it has consulted stakeholders and has taken any views expressed into account when making recommendations to the DfT.
- 1.14 The ORR publicly reports on Network Rail's performance against its regulated outputs (sometimes referred to as regulated milestones) in the Network Rail Monitor.
- 1.15 We have discussed options for our role in CP6 enhancements with DfT and Transport Scotland and Network Rail over recent months. Following these discussions, we have set out in this document our roles and responsibilities for enhancements during CP6.

⁶ Letter B Kelly to J Whittington http://orr.gov.uk/_data/assets/pdf_file/0020/27551/cp5-enhancements-correspondence-2016-12-14.pdf : Letter J Whittington to B Kelly http://orr.gov.uk/_data/assets/pdf_file/0019/27550/cp5-enhancements-correspondence-2016-12-12.pdf

England & Wales enhancements – roles and responsibilities

1.16 Overall objective of ORR's role: To incentivise Network Rail to effectively deliver its obligations for the CP6 enhancements portfolio, consistent with the DfT/Network Rail Memorandum of Understanding regarding enhancements, and to support and challenge Network Rail in building its capability.

1.17 The **role of the DfT**, working directly with Network Rail, is to:

- agree a plan for taking forward enhancements, including agreeing milestones with Network Rail;
- hold Network Rail to account in a client/delivery agent relationship, working closely with Network Rail through the project/programme boards;
- work with Network Rail to gain assurance on individual projects;
- establish a funding baseline and agree management of this (including provisions for risk and efficiency) with Network Rail; and
- monitor future performance against the agreed baseline (which will be subject to change control during the control period). This baseline would be used by the ORR for the purpose of any addition to the regulated asset base (if applicable) and commentary on financial performance.

1.18 **ORR's role** on the enhancements portfolio funded by DfT is to:

- monitor Network Rail's delivery of enhancements, to enable a holistic view of Network Rail's performance across operations, maintenance, renewals and enhancements;
- provide public accountability and reputational incentive through independent reporting in the Network Rail Monitor on Network Rail's progress on delivering enhancements and highlighting any reasons for changes to its baseline;
- support the DfT's client role by providing an understanding of Network Rail's broader capability to deliver across its business and taking steps to address capability issues; but
- not to monitor the cost efficiency of enhancement projects or take action in relation to specific milestones, which will not be regulated outputs (albeit milestone performance, and lessons learnt from a particular milestone, may be a relevant input into identifying broader capability issues and to inform the public commentary).

1.19 Network Rail will publish a document to provide transparency to its funders and customers on its obligations for enhancement projects, the purpose of which will be to:

- allow railway undertakings to plan their businesses with a reasonable degree of assurance (fulfilling licence condition); and to
- provide transparency on enhancement commitments which should incentivise Network Rail to deliver a high level of performance and inform public and parliamentary debate around this performance.

1.20 The contents, extent and format of this document will be part of further discussion with Network Rail and DfT.

1.21 This public document will contain:

- schemes which are post-Final Investment Decision (as per the DfT Rail Network Enhancements Pipeline);
- milestones describing Network Rail's obligations to its funders and customers (for various key outputs if applicable); and
- a brief description of schemes including their strategic fit with details of Network Rail's obligations to its customers, including what Network Rail is delivering and how it contributes to a service output.

1.22 When a change is required to the published baseline of Network Rail's obligations for enhancements:

- the change is agreed between Network Rail and its client through the joint Governance (joint Project/ Programme Boards and joint Portfolio Board), involving broader, affected stakeholders;
- ORR will consider if the change arises from a capability issue and report on this as appropriate in the Network Rail Monitor;
- ORR will determine if the milestone should be considered as missed or revised, for the purpose of reporting on Network Rail's performance, in-line with existing criteria;
- ORR's specific role in change control will be to provide process assurance for Network Rail's customers and funders (i.e. that a reasonable process is in place and has been followed), but not to sign off any change;

- ORR will note changes impacting materially on the PR18 settlement, which will in parallel be subject to a separate change control policy as set out in our working paper⁷ and conclusions document⁸ on this subject.

⁷ ORR working paper 8: managing change affecting the PR18 settlements:

http://orr.gov.uk/_data/assets/pdf_file/0007/27349/working-paper-8-managing-change-affecting-the-pr18-settlements.pdf

⁸ ORR conclusions on managing change affecting the PR18 settlements:

http://orr.gov.uk/_data/assets/pdf_file/0009/27855/pr18-conclusions-to-working-paper-8-on-managing-change.pdf

Scotland enhancements – roles and responsibilities

1.23 Overall objective of ORR's role: To incentivise Network Rail to effectively deliver its obligations for the CP6 enhancements portfolio, consistent with the principles agreed between Transport Scotland and Network Rail, drive efficiency, and to support and challenge Network Rail in building further capability.

1.24 The role of **Transport Scotland**, working closely with Network Rail, is to:

- agree a plan for taking forward enhancements, including agreeing milestones with Network Rail;
- hold Network Rail to account in a client/deliverer relationship, working closely with Network Rail through project/programme and portfolio boards;
- work with Network Rail to gain assurance on individual projects from a client perspective; and
- establish a funding baseline and agree management of this (including provisions for risk).

1.25 **ORR's** role is to:

- designate milestones that have been agreed between Transport Scotland and Network Rail as formal regulatory requirements and hold Network Rail to account for the efficient delivery of those milestones;
- provide public accountability on the Network Rail enhancements portfolio. To use the Network Rail Monitor to independently report on overall Network Rail progress on enhancements and to provide a commentary on the Transport Scotland / Network Rail agreed plan, highlighting reasons for changes. This should support effective delivery by providing reputational incentives;
- to provide advice to Transport Scotland (as requested) on the efficient cost and scope of delivering a specified output at investment decision points to incentivise Network Rail to deliver efficiently. This baseline will be used by ORR for the purpose of addition to the Regulatory Asset Base (RAB), if applicable in the future, and commentary on financial performance;
- support the effective delivery of the portfolio in Scotland by providing an understanding of Network Rail's broader capability to deliver across its business and taking steps to address capability issues; and
- monitor Network Rail's delivery of enhancements, to enable a holistic view of Network Rail's performance across operations, maintenance, renewals and enhancements.

1.26 The purpose of the Scotland EDP will be to:

- allow railway undertakings to plan their businesses with a reasonable degree of assurance (fulfilling licence condition); and
- provide transparency on enhancements commitments which should incentivise Network Rail to deliver a high level of performance and inform public and parliamentary debate around this performance.

1.27 The Scotland EDP should contain:

- schemes which are committed for delivery only;
- agreed milestones between Transport Scotland and Network Rail (for example Entry into Service, Working Timetable to enable benefit realisation), including those specifying when Network Rail's obligations to its funders and customers will be delivered;
- a brief description of schemes including their strategic fit with details of Network Rail's obligations to its customers, including what Network Rail is delivering and how it contributes to a service output; and
- changes to the EDP will be subject to the Change Control process described below.

1.28 When a change is required to the baseline of the agreed Scotland EDP:

- the change is agreed between Network Rail and its client through the joint governance (joint Project/Programme Boards and joint Portfolio Board), involving broader, affected stakeholders;
- ORR will consider if the change arises from a capability issue and report on this as appropriate in the Network Rail Monitor;
- ORR will determine if the milestone should be reported as missed or revised, for the purpose of reporting on Network Rail's performance, in-line with our current criteria;
- ORR's specific role in change control will be to provide process assurance (i.e. that a reasonable process is in place and has been followed) to Network Rail's customers and funders, but not to sign off the change. ORR will provide advice if requested on the efficient cost of a change; and

- ORR will note changes impacting materially on our PR18 settlement which will in parallel be subject to a separate change control policy as set out in our working paper⁹ and conclusions document on this subject¹⁰.

1.29 A separate document will be produced to describe Network Rail's obligations for schemes in the pipeline but not committed for delivery by the Scottish Government, including:

- brief description of schemes including their strategic fit with details of what Network Rail is delivering and how it might contribute to a future service output;
- milestones describing Network Rail's obligations agreed with, and funded, by Transport Scotland; and
- changes to this document will be subject to the Change Control process described above.

⁹ PR18 working paper 8: managing change affecting the PR18 settlements:

http://orr.gov.uk/_data/assets/pdf_file/0007/27349/working-paper-8-managing-change-affecting-the-pr18-settlements.pdf

¹⁰ ORR conclusions on managing change affecting the PR18 settlements:

http://orr.gov.uk/_data/assets/pdf_file/0009/27855/pr18-conclusions-to-working-paper-8-on-managing-change.pdf

Appendix A: How to respond to this document

We welcome comments on this draft document, by 31 August 2018. Please submit your responses, in electronic form, to matt.wikeley@orr.gsi.gov.uk.

We plan to publish all comments on this document on our website. Accordingly, when sending documents to us, we would prefer that you send your correspondence to us in Microsoft Word format or Open Document Format. This allows us to apply web standards to content on our website. If you do email us a PDF document, where possible please:

- create it from an electronic word processed file rather than sending us a
- scanned copy of your response; and
- ensure that the PDF's security method is set to "no security" in the document properties.

Should you wish any information that you provide, including personal data, to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the General Data Protection Regulation (GDPR,) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

Any personal data you provide to us will be used for the purposes of commenting on this document will be handled in accordance with our [privacy notice](#) which sets out how we comply with the General Data Protection Regulation and Data Protection Act 2018.

Consent

In commenting on this document you consent to us:

- handling your personal data for the purposes of this consultation;
- publishing your response on our website (unless you have indicated to us that you wish for your response to be treated as confidential as set out above).

Your consent to either of the above can be withdrawn at any time. Further information about how we handle your personal data and your rights is set out in our [privacy notice](#).



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