

19 March 2019

Dear Stakeholders

## **Changes to Network Rail's network licence: ORR's response to the statutory consultation**

Following our statutory consultation on 20 December 2018 on proposals to modify Network Rail's network licence (the "licence"), we have decided to modify the licence as proposed, bringing the changes into effect on 1 April 2019. I attach the Notice of Modification we have sent to Network Rail.

The statutory consultation followed consultations in June and July 2018 on proposals to modify the licence. In October 2018 we published our consultation conclusions alongside our PR18 final determination. Full details of our proposed changes, and policy rationale, are set out in the statutory consultation.<sup>1</sup>

We received three responses to the statutory consultation, including Network Rail's written consent to the proposed licence modifications, and have considered the points raised in these responses, taking account where relevant of the previous 24 responses we received on similar issues. Thank you for all your contributions to our consultations.

We have also considered the implications of Network Rail's February 2019 announcement of its intention to make changes in how it structures and operates its business, including increasing the number of routes, introducing regions and changing accountabilities for various activities. Network Rail has indicated that the changes are planned to be implemented in a series of phases, with the whole programme of changes currently scheduled to complete by the end of 2020.

Our view is that the principles of embedding the role and accountabilities of routes and the system operator remain equally relevant in light of Network Rail's proposals. We have also allowed some flexibility in the revised licence conditions, for example, in the number of routes permitted. As Network Rail confirms the full details of its proposals we will work with it to understand all the implications from both a licence and managing

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<sup>1</sup> Our previous consultations on the Network Rail licence are available at:

<https://orr.gov.uk/rail/consultations/pr18-consultations/statutory-consultation-on-proposed-changes-to-network-rails-network-licence>



change policy perspective, and will consider the case for further changes and clarifications as needed.

Nonetheless, it is our strong view that in order to hold Network Rail to account effectively, it is necessary to have a licence that is fit for purpose for the start of CP6, reflecting the important roles of both routes and the system operator, and it is therefore appropriate to implement the proposed changes.

Our response to specific issues raised in responses to the statutory consultation is appended.

A handwritten signature in black ink, appearing to read 'John Larkinson'.

**John Larkinson**  
**Chief Executive**



## **Appendix: Issues raised during statutory consultation**

We received responses to the statutory consultation from Network Rail, Transport for London and Midlands Connect. The responses are being made available on our website.

A summary of the key points raised and our responses are detailed below (we have not detailed issues that did not directly relate to the proposed licence modifications). Our response also takes into account the 24 responses received to earlier consultations, many of which provided views on similar issues. Therefore, this response should be read in conjunction with the [conclusions](#) document to our consultations published on 31 October 2018.

### ***Network Rail's consent to proposed changes***

Under section 12 of the Railways Act 1993, we may only modify the licence where Network Rail<sup>2</sup> has consented. In its response, Network Rail consented to the proposed changes.

### ***Stakeholder engagement and removal of condition (currently licence condition 8.4) relating to cooperation with Mayor of London and TfL***

Both TfL and Midlands Connect raised points in relation to requirements on Network Rail to engage or cooperate with stakeholders:

- TfL stated that the proposal to remove the current licence condition (expressly requiring Network Rail to cooperate with the Mayor of London and TfL for specified purposes) was unreasonable and argued that the current condition should be strengthened, to cover Network Rail's working relationship with the small number of transport authorities which have a role equivalent to TfL.
- TfL considered that establishing a breach under the updated stakeholder engagement duty (which would remain a means of regulating Network Rail's cooperation) may prove difficult, other than in extreme cases.
- If the condition is removed TfL suggests that we develop a more detailed statement that sits behind the stakeholder engagement duty explaining what is expected of Network Rail's dealings with TfL and others.
- Midlands Connect asked for a single definition of 'stakeholder' throughout the licence, noting that a number of obligations relating to network management

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<sup>2</sup> Network Rail Infrastructure Limited

(including proposed licence conditions 5.2, 6.2 and 7.2) make requirements to engage with specific entities (funders and railway operators).

- Midlands Connect stated that ORR should issue guidance alongside the stakeholder engagement duty explaining the types of stakeholders we would expect to fall within the definition of stakeholder.
- Midlands Connect also requested clarification in the licence of how Network Rail's business units are expected to engage stakeholders for their respective business planning obligations.

In the conclusions document to our consultations published on 31 October 2018, we considered very similar issues and concluded that our stakeholder engagement duty will provide direct protection for all relevant stakeholders. Given the broad range of stakeholders which Network Rail has and the broad range of scenarios in which it must engage with them, we did not agree that listing a small number of specific cases in this condition is appropriate or helpful. We remain of this view. We also do not agree that the changes to the conditions will make it harder to enforce Network Rail's stakeholder engagement obligations.

The licence modifications do provide a single definition of stakeholder (Part I), however Midlands Connect is correct in identifying that there are a small number of specific licence conditions related to planning which still require Network Rail to specifically engage with funders and railway operators. However, the stakeholder engagement duty works in conjunction with these specific requirements and requires that Network Rail treats *all* stakeholders in ways appropriate to their reasonable requirements, taking into account relevant circumstances. We conclude that, taking these licence obligations as a whole, the planning consultation requirements to engage with funders and railway operators remain fit for purpose and that they should not be broadened or made more specific.

In respect of TfL's and Midland Connect's general concerns, we are happy to confirm that we regard all statutory transport bodies as important stakeholders of Network Rail, and that the new condition obliges Network Rail to treat them in ways appropriate to their reasonable requirements, and in line with our principles on stakeholder engagement. We will include some additional guidance on the definition of stakeholders through our Holding to Account policy for Network Rail and this will also make clear that we consider statutory transport bodies to be important stakeholders.

### ***Safety and standards condition***

TfL stated that key stakeholders should be consulted if Network Rail requested permission to terminate its RSSB membership. TfL was concerned that termination of



RSSB membership by Network Rail would reduce competition and lead it to incur considerable cost.

We consulted on our reasons for updating this condition in July 2018. This included continuing to require Network Rail to be a member of RSSB, but allowing it to discontinue its membership with ORR's approval (as set out in the RSSB constitution). Should Network Rail make a request to ORR for approval, we will consider the request taking into account all relevant circumstances. We may consider it appropriate to consult stakeholders before making a decision.

### ***Information requests***

Network Rail's response stated that it wishes to understand more about the scenarios where ORR would require confirmation of the accuracy or completeness of information given to us in response to an information request from a Route Business Managing Director / SO Managing Director.

We mentioned, in our initial consultation review of the licence in June 2018, that we consider that accountability would be strengthened if the route/SO Managing Director could be required to confirm accuracy and completeness of information provided to the regulator by Network Rail in circumstances where we consider this to be appropriate. We also made clear that we would not expect this as an automatic requirement.

Whilst we do not consider it appropriate to set out the specific circumstances within the licence, we are engaging with Network Rail to clarify when we are likely to require such confirmation.

