



## **Periodic review 2018:**

### **Network Rail network licence review**

Statutory consultation on proposed changes to Network Rail's network licence

December 2018

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# 1. Introduction

## Context

- 1.1 Following, and in connection with, our [2018 periodic review](#) (PR18) we propose to make changes to Network Rail's network licence. We intend the revised network licence to come into effect for the start of control period 6 (CP6)<sup>1</sup>. The current network licence is available [here](#). This document describes the proposed changes to the licence and our rationale for these changes.
- 1.2 PR18 is the process through which we have determined what Network Rail<sup>2</sup> should deliver in respect of its role in operating, maintaining, renewing and enhancing its network in CP6 and how the funding available should be best used to support this. This feeds through into the:
- service that passengers and freight customers receive and, together with taxpayers, ultimately pay for; and
  - charges that Network Rail's passenger, freight and charter train operator customers will pay for access to its track and stations during CP6.

Our PR18 final determination was published in October 2018 and is available [here](#).

- 1.3 In June 2018, we consulted on our policy approach to reviewing Network Rail's network licence. We published an additional consultation on the proposed drafting in July 2018 and published our response to the consultation as part of our PR18 final determination in October 2018. The proposed changes detailed within this statutory consultation reflect the issues we previously consulted on.
- 1.4 This document has been published as part of our statutory consultation on the licence changes, following the procedure for licence changes set out in section 12 of the Railways Act 1993. Under this procedure, we cannot make licence changes unless Network Rail accepts them. Network Rail's decision will be separate from its decision whether or not to accept the PR18 final determination. If Network Rail does not accept the licence changes we have to decide whether or not to refer the changes to the Competition and Markets Authority (CMA)

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<sup>1</sup> CP6 will run from 1 April 2019 to 31 March 2024.

<sup>2</sup> All references to Network Rail in this document are to Network Rail Infrastructure Limited.

under section 13 of the Railways Act 1993. The statutory consultation follows our conclusions from earlier consultations on the network licence, available [here](#).

### Next steps

- 1.5 Following consideration of any responses to this consultation and Network Rail's consent, we intend to make the proposed licence changes in order to underpin our regulation of Network Rail's business during CP6. We currently intend to bring the licence changes into effect from 1 April 2019.
- 1.6 We have already consulted on, and published, our Managing Change Policy, which would take effect under the proposed managing change condition. Before making the licence changes, we may decide to update some other documents which take effect under the licence conditions.
- 1.7 Any document under the licence (including all guidelines, arrangements, consents and other documents) which we do not update before introducing the new licence conditions would continue in effect unless stated otherwise, reading any references in them to the current licence conditions as references to the licence conditions as updated.

### Responding to the consultation

- 1.8 We welcome comments on this consultation (which is separate to our parallel consultation on access contracts) by 31 January 2019.

### Contact details

Should you wish to discuss this document during the statutory consultation period, please contact us at [NRLicencereview@orr.gov.uk](mailto:NRLicencereview@orr.gov.uk)

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Network Rail Licence Review – Statutory Consultation

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## 2. Summary

- 2.1 Network Rail operates under its network licence which requires it to comply with the conditions we set in the public interest. These licence conditions set out Network Rail's formal obligations and underpin how we hold Network Rail to account, through ORR's monitoring and compliance activities. We have statutory powers to take enforcement action if Network Rail breaches its licence conditions.
- 2.2 Network Rail's core obligations within the licence currently relate to securing the operation, maintenance, renewal and enhancement of the network in order to satisfy the reasonable requirements of its customers and funders. Additional requirements include information provision, stakeholder engagement and corporate matters.
- 2.3 Since the last review of the network licence for control period 5, Network Rail has significantly transformed its business in order to improve the way it meets the needs of railway users and funders of its network. We strongly support this ongoing transformation and culture change within the business, which includes a reorganisation around routes<sup>3</sup> and a system operator (SO). We consider these to be important changes to how Network Rail operates in the best interests of railway users and funders.
- 2.4 This document sets out our proposals to restructure the existing obligations within the network licence, and introduce a number of new obligations for the start of CP6, to reflect these significant changes. Elements of Network Rail's business structure may evolve during the control period, therefore further changes may be required to be made to the licence at a later date.
- 2.5 The substantive changes we propose to make to the licence for CP6 will mean that:
- the licence will clearly identify those obligations which apply to routes and the SO, and in future help to identify more clearly which management teams should be held to account when there is a breach of a licence condition;
  - the company will be required to maintain both the structure of its business and its governance arrangements in a manner which supports devolution,

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<sup>3</sup> The revised licence will refer to the business units set up to manage the devolved parts of Network Rail's network as "route businesses". For simplicity, in this document we refer to "routes" only.

including new requirements on how the company makes changes to its business (through our managing change process); and

- the licence will align with the PR18 outcomes and ORR's regulatory approach; and the licence will reflect the reclassification of Network Rail as a public sector arm's length government body.

2.6 We are also proposing a number of drafting changes to ensure that the network licence is fit for purpose in CP6. A number of specific changes are explained in annex A.

# 3. Rationale for changes to network licence

## Introduction

- 3.1. Network Rail operates, maintains, renews and enhances most of the mainline railway network in Great Britain. It was reclassified as a public sector arm's length government body in September 2014. Its sole member is the Secretary of State for Transport.
- 3.2. Network Rail operates under its network licence and is required to comply with the licence conditions. The licence conditions set out Network Rail's formal obligations and underpin how we hold it to account, through ORR's monitoring and compliance activities.

## Rationale

- 3.3. Network Rail is undertaking a process of transformation and culture change within its business, this includes reorganisation around routes and a distinct SO. Network Rail has also now moved fully into the public sector. These changes have prompted us to propose a significant shift in how we regulate the company, focussing our regulation on the routes and SO, while making more use of reputational incentives, including comparison between the routes. More detail on these changes to our regulatory approach are included in the [PR18 final determination overview](#).
- 3.4. To support the benefits that will flow from these changes, we are proposing to change the network licence in the following ways:
  - To include new obligations which require Network Rail to maintain its business structure, with routes and an SO responsible for certain functions within its role, and have governance arrangements to support that structure. This will allow us to regulate Network Rail against that structure more effectively and will facilitate our ability to compare performance. It also helps to protect the incentives we are putting in place at PR18 to encourage routes and the SO to improve and share best practice.
  - To restructure the existing obligations to better reflect the day-to-day responsibilities of the routes and the SO. This will improve clarity about the allocation of responsibilities across the business, and will enhance accountability of the management teams for meeting those obligations. It supports our ability to put in place effective reputational incentives to

improve performance and enables its teams to more readily understand which licence obligations are most relevant to them.

- To introduce additional requirements for managing changes that may take place during CP6, including requiring Network Rail to follow certain change processes. These proposals seek to protect the route and SO settlements that are being established through PR18, so that routes and the SO have clarity around what they are expected to deliver and the resources available to them.

- 3.5. We also propose a number of changes throughout the licence in order to ensure that the licence is fit for purpose in CP6. These include some changes to simplify the drafting, update certain outdated references and ensure a consistent and logical structure which is appropriate given the allocation of obligations to routes and the SO. This is intended to make the licence easier to understand and apply. This document broadly follows the proposed structure of the licence once the changes are made.
- 3.6. The above changes, alongside our regulatory approach for CP6, will allow us to regulate Network Rail more effectively, as well as allowing Network Rail and stakeholders to better understand how the licence obligations apply across the network business.

## **Status of Network Rail and the network licence**

- 3.7. There will continue to be a single network licence, and a single company (Network Rail Infrastructure Limited), which is the licence holder. Any legal obligations set out in the licence are imposed on the company alone. We will not separate the licence or require legal separation of routes or the SO.
- 3.8. Any enforcement action for breach of licence, taken using our statutory enforcement powers, would be taken against the company. However, we will be very clear in our regulatory reporting and in any enforcement action where we consider that a route or the SO has failed to comply with obligations which have been allocated to it. We may also take enforcement action if the company is failing to ensure that a business is able to meet obligations allocated to it in the licence. This will help to drive the positive behaviours we expect of the management of Network Rail, and those expected of its routes and SO.



## Changes to the network licence: allocation of obligations and cooperation

- 3.9. In this document where we have identified performance of an obligation as sitting with either the routes or the SO, we call this ‘allocating’ an obligation. Our overriding principle in allocating responsibilities under the licence is to provide clear accountability about what obligations the routes and the SO are responsible for. The allocation of an obligation to a route or the SO is not intended to allow other parts of Network Rail to ignore that obligation, but rather to focus accountability on a particular business. There are also some areas where we consider that routes and the SO should comply with an obligation, just as Network Rail is required to (for example responding to requests for information).
- 3.10. Where the licence says a business unit (e.g. the SO) shall do something, this means that Network Rail must ensure that the business unit does that thing. The activity cannot simply be delegated to another part of Network Rail, as this would undermine the principle of clear accountability in allocating responsibilities. Nevertheless, the business unit may have assistance from other business units.
- 3.11. While the changes to the licence are significant to meet the objectives of this review, we have not carried out a ‘root and branch’ review of all policies underpinning the network licence. The new proposed licence is the result of a review focused on particular areas to ensure that the conditions are fit for purpose for CP6. The licence is therefore not intended to provide an exhaustive list of all of the activities of the routes or the SO or provide extensive detail on processes. In allocating responsibility across route and the SO we have generally not sought to expand beyond the existing requirements upon Network Rail.
- 3.12. However, we have identified the need for a small number of new obligations to facilitate the allocation of responsibilities within the licence in a way which properly reflects responsibilities within Network Rail and these are explained further below.

## 4. Structure of Network Rail

### Summary

- 4.1. As our aim is for the network licence to better reflect Network Rail's structure, we are proposing a new section at the start of the licence to embed the key elements of this structure and the constitution of these separate businesses into the licence<sup>4</sup>.
  - 4.2. To further support these structural changes, the licence will also require Network Rail to maintain appropriate governance arrangements. This is consistent with the internal governance principles set out in our [PR18 final determination](#).
  - 4.3. In this section we explain the new obligations which would require Network Rail to maintain its structure in a particular way. We also explain key governance requirements in the licence that underpin the effective operation of that structure.
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### Geographic routes

- 4.4. We propose to require Network Rail to designate its network into separate route areas.
- 4.5. The licence will place a new requirement upon Network Rail to maintain businesses for each route which will:
  - take primary responsibility for the operation, maintenance, renewal, replacement, improvement, enhancement and development of the part of the network in its route area (and any stations where Network Rail has given such primary responsibility to the route)<sup>5</sup>; and
  - comply with the route-allocated obligations under the licence.

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<sup>4</sup> See proposed Conditions 2 - 4

<sup>5</sup> We are proposing two exceptions to this: i) the route is not required to take primary responsibility in areas where the SO will have primary responsibility to the extent there would otherwise be an overlap (to ensure clarity of responsibilities), and ii) the routes primary responsibilities do not include running the capacity allocation process, responsibility for which will be separately specified in the licence.

- 4.6. Recognising the longer-term nature of the network licence and the likelihood of changes to route boundaries, the licence will be silent upon exactly how many routes there are and it will not specify the current route geographical areas. However, in making any changes to the current route geographical areas Network Rail would be required to follow the managing change process explained in our [managing change policy](#). The licence will also give some flexibility to Network Rail around management of stations, but will ensure that routes are accountable where they are given the relevant responsibilities.
- 4.7. Unlike other Network Rail routes, there has been a significant degree of rail devolution to Scottish Ministers, and a separate Network Rail route for Scotland for many years. Following reclassification in 2014, a [Memorandum of Understanding](#) was agreed between the DfT and Scottish Ministers setting out the functions devolved to Scottish Ministers with regard to Network Rail.
- 4.8. Scottish Ministers are responsible for:
- setting a strategy for passenger and freight services in Scotland;
  - being the franchising authority; and
  - specifying and funding outputs for the railway in Scotland through a separate High Level Output Specification (HLOS).
- 4.9. Although the route obligations under the network licence will not differ for the Scotland route, Network Rail will have a new requirement to maintain a specific Scotland route (or routes) to reflect these differences.

## System Operator

- 4.10. We propose to place a new requirement upon Network Rail to maintain a business to fulfil the functions of the SO, being to:
- promote the coordinated and integrated operation of the network and development of the network (here including stations and light maintenance depots in which Network Rail has an interest);
  - take primary responsibility for:
    - establishing and maintaining long term plans;
    - establishing and maintaining the process for managing the allocation of capacity on the network;
    - providing advice in relation to capacity allocation;

- running the process for timetabling railway services (and timetabling other activities) on the network;
  - holding and controlling of information relating to the above processes; and
- comply with the SO allocated obligations under the licence.

## Freight and national passenger operators

- 4.11. There are no specific requirements within Network Rail's existing licence regarding freight and national passenger operators. Therefore Network Rail has set up a Freight and National Passenger Operator (FNPO) route to support these interests. Our June consultation did not propose a requirement for Network Rail to establish a specific route for these operators. Instead, we consulted on introducing an obligation upon Network Rail requiring it to put in place specific arrangements to ensure that the interests of freight and national passenger operators are properly considered.
- 4.12. We also said that freight and national passenger operators would continue to be protected under the licence through requirements placed upon Network Rail, its routes and the SO through the core duties, and in particular the proposed stakeholder engagement duty.
- 4.13. It is our view that it is appropriate that the licence provides strong protection for the interests of all operators, including freight and national passenger operators and their customers. There were differing views, in response to our consultation, on whether there should be a structural requirement for Network Rail to establish an FNPO route in the licence. Given this, our conclusion was that it is not appropriate to introduce such a requirement, but to ensure the licence places strong obligations on Network Rail to consider the interests of these operators and their customers, without being prescriptive in how this must be achieved.
- 4.14. We consider that the licence should include additional protection for the interests of freight and the interests of passenger operators in respect of services crossing more than one route. This is because we perceive there to be a risk that these interests might otherwise not be sufficiently protected under a geographic route structure, which fits closely with passenger services operating within a particular route area and might naturally lead to Network Rail favouring the interests of such operators. We propose to change the licence to:
- introduce a new obligation requiring Network Rail to ensure that the structure of its business and governance arrangements ensure that the

interests of freight and these national passenger operators are represented;

- supplement the general network management duty with an explicit requirement to take into account the interests of all classes of freight and passenger operator when operating, maintaining, renewing and enhancing the network;
- make express in the prohibition on undue discrimination (applicable to all activities contemplated under the licence) that this includes, in particular, ensuring that freight and these national passenger operators are not unduly discriminated against;
- make express the requirement on Network Rail to take into account the views of freight and these national passenger operators when it is undertaking planning; and
- make express the requirement on Network Rail to show how it will satisfy the reasonable requirements of freight and these national passenger operators when it is adopting asset management policies and criteria.

4.15. We will retain important protections (already in place in the existing licence). This includes the general network management duty and the requirement, through the general stakeholder engagement duty, that Network Rail deals with all stakeholders (including operators and their customers) in ways appropriate to their reasonable requirements.

4.16. We also propose to continue to use our land disposal arrangements to require Network Rail to appropriately consult operators (as well as other interested parties) before applying to us for a disposal of land.

## **Governance conditions to underpin Network Rail's structure**

4.17. Consistent with the PR18 internal governance principles, Network Rail will be required to establish, maintain and comply with governance arrangements which enable each route and the SO to perform their functions effectively and efficiently, ensuring clear accountability across the business.

### **Duty of cooperation**

4.18. The different parts of Network Rail need to cooperate to fulfil their functions, even where accountability may sit with one business such as a route. We would expect all other parts of Network Rail, including central functions, to co-operate in an effective and responsive manner. To reflect this there will be a new

requirement on Network Rail to ensure that routes and the SO receive all necessary cooperation and assistance to enable obligations within the licence to be met. There will be a mirror obligation that the routes and the SO shall provide any cooperation and assistance to Network Rail (including any of its business units) as is reasonably required of them for the licence obligations to be met.

### **Responsible officers**

4.19. To promote good governance and clear accountability each route and the SO will be required to have an officer (or officers) appointed to manage and oversee the activities of that business. This role is currently performed by the route and SO managing directors within Network Rail who have day-to-day responsibility for running those businesses.

### **Choice over how goods and services are procured**

4.20. The proposed licence changes embed the presumption that the routes and the SO should have a choice over how goods and services are procured for them, (unless this is demonstrated to be sub-optimal). This is an important governance principle in our PR18 determination to support the ability to hold routes and the SO to account. The new licence will include an obligation to:

- enable the routes and the SO to choose how to procure the goods and services they need (including those provided by central functions); unless
- Network Rail can demonstrate this would be inconsistent with the licence (including the requirement of the general network management duty to act in an efficient and economical manner) or with another legal enactment.

4.21. In practice, we would not expect Network Rail to demonstrate such an inconsistency for existing commitments made by central functions. However, when Network Rail (including a route or the SO) wishes to exercise discretion to renew/extend an existing arrangement and/or change or make new arrangements, Network Rail would need to demonstrate that future goods and services are provided in line with the above requirement of the licence. This is intended to increase the transparency and accountability of the routes/SO, while also providing a mechanism for Network Rail to make decisions about goods and services centrally where, for example, scale economies mean that this is needed for the efficient operation of the network.

## Allocation and records of assets, personnel and services

- 4.22. To support clear accountability the licence will require Network Rail to allocate to each route and the SO the personnel and relevant assets that constitute these businesses<sup>6</sup>. There will then be a requirement to maintain appropriate, accurate and readily accessible records of relevant assets, personnel and the services which are allocated or otherwise provided to them in the performance of their functions.

## Managing change process

- 4.23. Our [managing change policy](#) sets out our position in respect of managing changes to the business during the control period. The licence will include a provision which will require the licence holder to comply with these requirements (whether taking effect before, during or after the relevant change is made). As set out in the managing change policy, Network Rail must comply with any direction which ORR gives for it to not make a particular change to its business or do so only if it complies with specified conditions.

## Sufficient resources

- 4.24. We will include in this section the existing duty to act in a manner calculated to secure sufficient resources for all parts of the business to be able to meet its obligations (existing licence condition 4.14). It will be updated to also require Network Rail to determine whether routes and the SO have sufficient resources to fulfil their functions. The obligation will also be allocated to the SO and individual routes themselves to act in a manner calculated to secure that they have sufficient resources to fulfil their functions and to ensure that the licence holder complies with its statutory duties.
- 4.25. The proposed licence drafting retains the approach in the current licence. It does not require Network Rail (or business units) to have sufficient resources, but to act in a manner calculated to secure sufficient resources. This is an important distinction to support clear accountability: we recognise there may be externally imposed constraints on Network Rail's or a business unit's resources, but expect that they will always try to secure sufficient resources. For example, routes may not freely offer up resources to other parts of the business if this would leave

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<sup>6</sup> Any relevant assets constituting the network in a route area (and those constituting any station which the route is given primary responsibility for, as above) will need to be allocated to the relevant route. Otherwise, Network Rail will need to allocate such personnel and assets as it considers are needed to ensure the licence obligations are met.

them with insufficient resources to deliver their obligations. This is an important principle which underpins accountability for those deliverables.

### **Commercially sensitive information**

- 4.26. To further the effective performance of the routes and SO, we will also require that Network Rail put in place arrangements to protect commercially sensitive information. This requires that any commercially sensitive information obtained by the SO or a route is treated appropriately and only disclosed to the extent needed for the conduct of business, or otherwise with the consent of the person to whom the information relates.



## 5. Core duties

### Summary

- 5.1. We are proposing to restructure the licence to create three core duties. These are drawn from the existing licence and are important because they set out broad outcomes which are fundamental to the role of Network Rail within the rail sector. They are relevant to the whole network business, including the routes and SO.
- 5.2. In order to ensure that the different businesses within Network Rail follow the strategic direction set by these conditions, the routes and the SO will have a responsibility for complying with these obligations to the greatest extent reasonably practicable in the performance of their functions, as well as Network Rail as a whole.
- 5.3. The three core duties<sup>7</sup> are:
- the general network management duty;
  - the stakeholder engagement duty; and
  - the passenger information duty.
- 5.4. In fulfilling the core duties, the licence also identifies specific obligations relating to network management, planning and information for passengers. A number of these obligations cover the core day-to-day responsibilities undertaken by the routes and the SO and we propose to allocate these responsibilities to them to provide clear accountability. We explain below the detail of how we propose to allocate responsibilities across the routes, SO, and those retained by Network Rail at a company level so that respective responsibilities are clear.

### Network management duty

- 5.5. The 'network management duty' sets out Network Rail's core obligations to secure the operation, maintenance, renewal and enhancement of the network (here including stations and light maintenance depots as above) in order to satisfy the reasonable requirements of its customers and funders. It covers both the quality and capability of the network and the facilitation of railway service performance. This duty is a particularly important existing obligation (in Condition 1.1 and 1.2 of the existing licence) and we propose to retain it, with a new

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<sup>7</sup> See proposed Condition 1

supplementary provision to make express reference to the protection of the interests of freight and all classes of passenger operator (as noted above).

## Stakeholder duty

- 5.6. Our vision for CP6 is that, over time, customers and other stakeholders can and should play a much more significant role in working closely with Network Rail's routes and SO to agree priorities and challenge performance. We consider that the stakeholder engagement duty represents a core function, particularly given the range of stakeholders Network Rail has and the increasing focus we are placing upon the quality of engagement during this control period. Hence in our proposal to raise the prominence of the existing stakeholder duty in the revised licence (Condition 8.1- 8.2 in the existing licence) and include it as one of three core duties.
- 5.7. We will make some changes to broaden the definition of stakeholder to reflect our broader objective. We will expand the substance of the duty to mirror our stakeholder engagement principles. We will also remove some specific obligations around stakeholder engagement which we no longer consider to be necessary given the importance we will place upon complying with the core stakeholder engagement duty.

## Definition of stakeholder

- 5.8. The current definition of stakeholder within this condition provides a detailed description of individual types of stakeholder. To make this core duty fit for purpose, both in the context of route devolution and our broader vision for stakeholder engagement, we propose to change this to a new, shorter but broader definition which would cover:
- any person with which Network Rail has (now or in the future) a significant relationship;
  - any person who may be impacted by the activities of Network Rail; and
  - any person who has expressed a serious interest in providing railway services, facility or network.
- 5.9. This would include individuals (for example passengers or line-side neighbours), customers (and owning groups), national funders, local funding bodies, investors, freight end users, passenger representative bodies, companies that form part of the supply chain, regulatory authorities and local government agencies and authorities.

- 5.10. Therefore although it would remove explicit reference to some stakeholders, the protections afforded by the licence would not change for these stakeholders as the broader definition would capture them and our expectations of Network Rail's performance in this respect will be a key consideration during CP6. It also has the benefit of being more flexible to change. For example, the list currently includes Transport for London but does not include Transport for Wales.
- 5.11. In the interests of clarity, we expect that Network Rail, in complying with this licence condition, will consider that stakeholders include, but are not restricted to:
- passengers, and their representative groups
  - freight customers
  - all operators (including passenger, freight, open access, charter and prospective operators)
  - line-side neighbours
  - current and potential and national and local funders
  - sub-national and statutory transport bodies, including (but not exhaustively) Transport for London, Transport for Wales and Transport for the North.

### **Expectations for stakeholder engagement**

- 5.12. In addition to updating the definition of stakeholders, we will require Network Rail to adhere to the broad principles for good stakeholder engagement that we set out in our PR18 final determination (that engagement should be effective, inclusive, well-governed and transparent), and we have reflected these principles in the revised licence. This is important to support our vision for the role of stakeholders in CP6.
- 5.13. The revised licence condition sets out our broad expectations for stakeholder engagement but is not prescriptive, recognising that Network Rail's stakeholders have different interests, needs and capabilities. This is particularly important as it also provides routes and the SO with sufficient flexibility to tailor how they engage with their different stakeholders to enable different and innovative approaches to develop over CP6.

### **Removal of specific requirements**

- 5.14. We will remove the conditions specifically requiring cooperation with the Mayor of London, Transport for London and passenger representatives, on the basis that the more general protections afforded by the licence would continue to provide strong protection, with no material change for these 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 do not believe that listing a small number of specific cases the licence is appropriate or helpful.

## Passenger information duty

- 5.15. We consider that the duty to provide appropriate information on train movements so that train operators can meet their information obligations to passengers (and the duty to cooperate with train operators in this regard) represents a core function which Network Rail delivers to train operators and, ultimately, end users of the railway network.
- 5.16. In addition to this core duty, we propose that the SO will have the following specific existing licence requirements allocated to it:
- to use reasonable endeavours to promptly resolve timetabling disputes;
  - to procure the publication of a national timetable of railway passenger services;
  - to establish and maintain efficient and effective processes for making changes to the national timetable; and
  - to grant access to information which Network Rail holds on the planned movement of trains on the licence holder's network to enquiry service providers.

## 6. Network management responsibilities

- 6.1. As set out above, the 'network management duty' is a particularly important existing obligation in the licence, and we propose to retain it.
- 6.2. A number of further existing network management obligations (in Part A of the current licence) cover the core day-to-day responsibilities undertaken by the routes and the SO. We explain below how we will allocate these to the routes and the SO, and which obligations will be retained by Network Rail at a company level, reflecting those day—to-day responsibilities. We will group the obligations into Network Rail, route, and SO conditions that will set out specific obligations to be complied with.

### Network wide responsibilities (proposed Condition 5)

#### Planning

- 6.3. We propose that Network Rail will continue to have 'network wide' planning functions within the revised licence as it does currently, but we propose a new obligation that its planning would need to be informed by the planning carried out by the routes and the SO. Therefore the 'network wide' planning will consist of:
  - planning which covers the short, medium and long term, to meet reasonably foreseeable future demand for railway services;
  - consulting railway service providers (including, as noted above, a new express reference to freight and passenger operators with services crossing route areas) and funders; and
  - preparation of network wide plans, including a 'Delivery Plan', with a new obligation to take into account the contents of route and SO plans and consult with routes and the SO.

#### Long term plans

- 6.4. Network Rail will continue to be required to have due regard to the long term plans (which will be established and maintained by the SO, see below).

#### Asset management policies and criteria

- 6.5. Network Rail (currently through its Safety, Technical & Engineering Authority) develops central asset policies, as well as providing route and project specific advice. There is an existing condition within the licence which requires policies

and criteria to be developed in respect of operating, maintaining, renewing and enhancing its relevant assets<sup>8</sup>.

- 6.6. We consider this to be a legitimate ‘central function’ with the routes and the SO engaged and inputting into the development of those policies. Therefore we will build upon the existing licence condition to reflect this by requiring consultation with the routes and the SO. Network Rail would also continue to be required to comply with these policies and criteria once developed.
- 6.7. In addition to this, Network Rail would be required to maintain appropriate information about relevant assets which have not been allocated to a route, including information about their condition, capability and capacity; and we will add a new obligation for it to maintain appropriate collated information about assets on a network-wide basis. This is to ensure clarity over responsibility for certain assets and to ensure that there continues to be appropriate records over the whole network.

### **Capacity allocation**

- 6.8. In respect of capacity allocation (see below for further explanation), there will be a new responsibility upon Network Rail at a company level to ensure there are no gaps in accountability. These obligations include:
- ensuring the capacity allocation process is adhered to (in line with the general network management duty); and
  - nominating an officer who has responsibility for ensuring the capacity allocation process is followed.
- 6.9. There will also be a new requirement on Network Rail at a company level to ensure that decisions on capacity allocation are made in a transparent and impartial manner.

## **Route network responsibilities (proposed Condition 6)**

### **Route planning**

- 6.10. Through their responsibility for the day-to-day operation and management of the railway, the routes take responsibility for a number of network management requirements which exist within the licence. Therefore, in addition to the general

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<sup>8</sup> We propose to make some changes to this definition to exclude certain assets which have no particular role in the operation of the railway, to ensure that an unnecessary burden is not placed on Network Rail.

network management duty which would apply, we will allocate the current planning conditions to routes in the performance of their functions.

- 6.11. This will include an obligation to prepare and publish plans in respect of its route (including a delivery plan) and in doing so, consult relevant railway service providers and funders. The route delivery plans are critically important for informing the network-wide planning process.

### **Long term plans**

- 6.12. To further ensure consistency across the network, the routes will also be required to due regard to long term plans.

### **Asset management policies and criteria**

- 6.13. The routes will be required to apply the policies and criteria developed by Network Rail.
- 6.14. Routes will also be required to maintain appropriate information about assets allocated to them, including information about their condition, capability and capacity.

### **Route role in capacity allocation**

- 6.15. Routes have an important role in developing proposals for future use of capacity at a local level with train operators. Routes' responsibilities will include the following new obligations:
- complying with their role in the capacity allocation process;
  - providing high quality inputs to that process (such as information and advice) which is important to ensure effective decisions; and
  - promptly responding to requests for advice on the allocation of capacity promptly (and ensuring advice is given with appropriate expertise in an impartial manner).
- 6.16. Because of their important role in developing proposals for future use, we will also allocated the existing obligation to co-operate with any potential provider or potential funder to identify ways to meet capacity requirements. We consider that franchising authorities may also have such requirements and will update the drafting to include a reference to franchising authorities.

## SO network responsibilities (proposed Condition 7)

### Long term and SO planning

- 6.17. One of the main functions of the SO is to provide a long-term planning function for the network (here including stations and light maintenance depots as above). The licence defines the long-term planning objective as the “effective and efficient use and development of the capacity available on the network, consistent with the funding that is, or may become, available during the period of the long term plans and with the licence”.
- 6.18. Therefore, in addition to the general network management duty which will apply, the SO will be responsible for:
- *Long term plans* - establishing and maintaining long term plans to promote the long term planning objective (and subsequently have due regard to the long term plans); and
  - *SO level planning* – preparing and publish plans (including a delivery plan) in respect of the performance of the SO’s functions.

### Asset management policies and criteria

- 6.19. The SO will be required to apply the policies and criteria developed by Network Rail, although we will make clear that does not prevent the SO from proposing changes to policies and criteria in a long term plan.

### Timetable planning

- 6.20. The development and production of the network timetable is recognised as another of the key functions of the SO. The current licence sets out the broad requirements around timetable planning which will be allocated to the SO. It will require the SO to run an efficient and effective process, reflecting best practice, for establishing a timetable, and any changes to it. The SO will also be required to initiate changes to industry processes where appropriate.

### SO role in capacity allocation

- 6.21. The allocation of capacity and the process for reaching a decision involves critical input from the SO, routes, other parts of Network Rail and external parties, in particular train operators. A dedicated panel within Network Rail agrees allocation of capacity. If a train operator cannot reach agreement with Network Rail, it can submit an application to ORR asking it to direct Network Rail to enter into the new contract or to amend its existing contract.



- 6.22. Given the various roles and the importance of having a capacity allocation process which is fit for purpose, we propose to introduce new obligations in the licence to allocate responsibilities to routes and the SO, as well as requiring Network Rail to ensure there are no gaps in accountability and that processes are complied with.
- 6.23. A key role for the SO is the ownership of the framework under which the capacity allocation is managed and this supports the routes and train operators' input at a local level. The SO also plays a central role in the assessment of the system-wide impact that allocation of capacity could have on the whole network performance.
- 6.24. We expect the SO to take accountability for setting a capacity allocation process that is fit for purpose and we will include a new licence obligation upon the SO to reflect this.
- 6.25. Whilst we want to ensure clear accountability for capacity allocation, we do not wish to impose a new business model on Network Rail or mitigate against the proper involvement of routes in the capacity allocation process. We also wish to allow for evolution in the way capacity allocation decisions are taken, to reflect learning from experience. Therefore, the SO's responsibilities will include:
- designing an efficient and effective capacity allocation process (reflecting best practice) and keeping this process under review;
  - (along with routes) complying with its role in the capacity allocation process;
  - providing high quality inputs to that process (such as information and advice) which is important to ensure effective decisions; and
  - promptly responding to requests for advice on the allocation of capacity (and ensuring advice is given with appropriate expertise and in an impartial manner).
- 6.26. The existing licence condition to co-operate with any potential provider or potential funder to identify capacity (updated to include franchising authorities) will also be allocated to the SO.
- 6.27. We will not explicitly set out all of the inputs from other parties, but note the co-operation condition we propose in the 'Structure of Network Rail' section above. This would place a requirement upon both the routes to assist and cooperate, and on Network Rail to ensure the SO gets the assistance it needs.

## Independent-mindedness of decision-making

- 6.28. We consider that there are a number of particular decisions being undertaken where Network Rail and its business units should be required to act, in the best interests of the system as a whole, neither unjustifiably favouring routes nor train operators in the way in which it fulfils its functions. These include long term planning, timetabling and capacity allocation.
- 6.29. To reflect our vision for an independently-minded SO, which has a significant role in these activities, we will require Network Rail to establish, maintain and comply with governance arrangements which enable the SO to perform its functions impartially, effectively and efficiently.
- 6.30. We also propose to introduce new requirements in the network management responsibilities to reflect this in relation to a number of activities. In particular:
- Network Rail will be required to ensure that capacity allocation decisions are made impartially, transparently and by persons with appropriate expertise.
  - The routes will be required to give any advice on capacity allocation on its part of the network impartially, transparently and by persons with appropriate expertise.
  - The SO will be required to give any advice on capacity allocation impartially, transparently and by persons with appropriate expertise.
  - The SO will be required to secure that timetabling decisions and decisions around long term plans are made impartially, transparently and by persons with appropriate expertise.
- 6.31. In each case, acting impartially means that there must be no from undue discrimination between different parts of Network Rail (such as different routes) or against external stakeholders:

## 7. Information requirements

### Summary

- 7.1. Our ability to obtain high quality information from Network Rail is important for effective regulation; especially as our monitoring and enforcement activities rely on having reliable access to such information. Without it we would not be able to effectively protect the interests of customers and funders. For example, Network Rail's regulatory accounts are the primary source of information about its regulatory financial position.
- 7.2. Part D of the current licence contains a number of obligations around the provision of information to ORR: including requiring Network Rail to respond to general information requests; the provision of regulatory financial statements and annual/periodic returns; and requiring cooperation with any Reporters (third parties appointed to undertake additional scrutiny of Network Rail's activities)<sup>9</sup>. We are proposing a number of changes to these conditions.

### Information for ORR

- 7.3. Information requests will often relate to the routes and the SO. In addition to a requirement for Network Rail as a whole to respond to requests for information, we propose that the licence condition should enable ORR to direct information requests to a route or the SO and for it to then be responsible for compliance with those requests.
- 7.4. Similarly, we consider that accountability would be strengthened if the route/SO Managing Director (as responsible officer) are required to confirm to the regulator the accuracy and completeness of information provided in relation to the route/SO or its functions (or provide reasons why it cannot confirm this) in circumstances where we consider this to be appropriate. However, this would not be an automatic requirement.

### Regulatory accounts

- 7.5. This condition requires Network Rail to prepare regulatory financial statements and accounting records, to prepare a specified statement certifying the sufficiency

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<sup>9</sup> See proposed Conditions 8 to 11

of its resources (approved by a resolution of the Board) and to appoint an auditor to prepare particular reports.

- 7.6. We propose that, before it makes a statement certifying its resources, Network Rail must consult routes and the SO on the statement to be made and the reasons for it. Routes and the SO will be required to engage with that consultation and evidence how views expressed by these business units have been taken into account. This will ensure that the views of route and SO management teams properly feed in to the statement which is provided to ORR about Network Rail's resources.
- 7.7. We propose that the route/SO MD (as responsible officer) may also be required to confirm to the regulator the accuracy and completeness of financial statements and accompanying information relating to their business unit (or provide reasons why it cannot confirm this) in circumstances where we consider this to be appropriate.
- 7.8. The current licence condition requires the financial statements and other documents prepared under the condition must be provided to ORR by 1 July following the financial year, unless we approve a later date. It has not been possible for Network Rail to provide financial statements to ORR by this date for the last two years, and we have formally consented to a later date to reflect factors outside Network Rail's control. While we wish to retain the principle that statements should normally be provided by 1 July, we propose that this date shall apply unless ORR otherwise agrees. This will allow alternative arrangements for Network Rail to provide financial statements in appropriate cases. This will provide appropriate flexibility.

## **Periodic and annual returns**

- 7.9. This condition requires Network Rail to prepare annual and periodic returns and to provide these to ORR. We agree with Network Rail that it should have clarity on data requirements prior to the start of the data collection period, and propose to change the licence condition to reflect this. ORR will consult on its proposals for a periodic or annual return at least five months before, and then confirm the requirements at least three months before, the start of the relevant period or year. This does not affect ORR's ability to request additional information in appropriate cases, under the 'Information for ORR' condition.
- 7.10. As above, we propose to add in that ORR can also require a route/SO MD (as responsible officer) to confirm the accuracy and completeness of information in a periodic or annual return which relates to their business unit.

## Reporters

- 7.11. This condition requires Network Rail to engage an independent reporter at ORR's request to conduct a review and report on a specified matter. We agreed with Network Rail's position that it is desirable to simplify the existing licence condition by removing detailed provisions on the categories of reporter investigations and replacing them with a more general provision. We propose that a Reporter's review may now cover any matter which we reasonably require for the purpose of carrying out our functions under Part 1 of the Railways Act 1993. (This matches the scope of Reporter inquiries with the scope of information requests.)
- 7.12. To give Network Rail certainty on the process for appointing a Reporter, we propose to make a change so that Reporters need to be appointed in accordance with ORR's Reporter Guidelines.
- 7.13. We propose that routes and the SO will be required to cooperate with any Reporter carrying out a review.

## 8. Industry obligations

- 8.1. A number of current conditions in Part F of the licence cover industry obligations, these include safety and standards, and requirements around environmental policies.
- 8.2. In order to ensure that the different businesses within Network Rail are accountable for ensuring that compliance is achieved, there are a number of obligations where we propose that the SO and the routes will be responsible for compliance (as well as Network Rail at a company level) and we propose to group these together<sup>10</sup>.

### Safety and standards

- 8.3. This condition requires Network Rail to be a member of Rail Safety and Standards Board (RSSB) and to comply with the Railway Group Standards Code. We have developed a proposal to change this licence condition in collaboration with RSSB's Industry Standards Coordination Committee. We propose to revise this condition, with the intention of:
- reflecting the development of the railway technical standards regime since this condition was first put into place;
  - clarifying the status of Rail Industry Standards as accepted best practice; and
  - more accurately reflecting the licence holder's safety management duties to identify and apply a broader range of relevant technical and operational standards than just Railway Group Standards.
- 8.4. We therefore propose to modify the licence condition to:
- continue to require Network Rail to be a member of RSSB, but reflect that it may discontinue membership with ORR's approval (thereby mirroring a provision in the RSSB constitution);
  - continue to require Network Rail to comply with Railway Group Standards that are relevant to its activities; and
  - require Network Rail to comply with applicable Rail Industry Standards or to consult with affected parties (for example train operators) where it

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<sup>10</sup> See proposed Conditions 12 to 15

proposes to deviate from a Rail Industry Standard (in full or in part) and to deploy equally effective means of achieving its purpose.

- 8.5. We propose that routes and the SO will, in the performance of their functions, be required to comply with the Railway Group Standards Code, the standards which Network Rail must comply with and any equally effective means of achieving a standards' purpose (where one has been adopted).

### **Environment**

- 8.6. This condition requires Network Rail to have and maintain an environmental policy and operational objectives and management arrangements to give effect to it. We are not proposing any substantive changes to this condition, but we propose that routes and the SO will, in the performance of their functions, be required to have regard to Network Rail's environmental policy and operational objectives, and use reasonable endeavours to operate the management arrangements effectively.

### **Rail Delivery Group**

- 8.7. This condition requires Network Rail to remain a member of the Rail Delivery Group (RDG) and comply with its obligations under the RDG articles. We propose that routes and the SO will, in the performance of their functions, be required to comply with those obligations.

### **Information on stakeholder dealings**

- 8.8. We propose that the existing obligation on Network Rail to publish information on how it will comply with its stakeholder engagement duty should continue and propose to group it with industry obligations.

## 9. Restrictions on activities

- 9.1. A number of existing conditions contain prohibitions on particular activities (in particular in Part B of the existing licence). These cover financial ring-fencing, land disposals, interests in railway vehicles, cross-subsidy, non-discrimination and restricted use of protected information<sup>11</sup>.
- 9.2. Our proposals are based on the premise that it is important and clear that any part of Network Rail's business could breach the licence condition (even if the subject matter of the condition is more relevant to some business units). Therefore, other than in specific cases, we propose that routes and the SO will be responsible for complying with these conditions in the performance of their functions. These obligations include the following:
- the routes and SO must not conduct any business or activity other than business which is permitted under the financial ring-fence condition of the licence;
  - the routes and SO must not, through their involvement in a disposal of land, cause Network Rail to dispose of land in breach of the land disposal condition of the licence;
  - the routes and SO shall not cause Network Rail to hold an interest in railway vehicles in breach of the condition regulating such interests;
  - the routes and SO shall not, through their involvement in an unfair cross-subsidy, cause Network Rail to breach the condition regulating cross-subsidies;
  - the routes and SO shall not cause Network Rail to breach the condition on non-discrimination; and
  - the routes and SO shall not disclose "Protected Information" other than where this is permitted under the relevant licence condition and, where the SO or a route discloses such information, it must comply with the requirements relevant to such a disclosure.
- 9.3. Below, we explain the other proposed substantive changes to the licence conditions in this part of the revised licence. More details about specific changes are provided in annex A.

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<sup>11</sup> See proposed Conditions 16 to 22



## Financial ring fence

- 9.4. This condition sets out detailed provisions on the financial ring-fence around Network Rail's activities. The main change we are proposing to this condition is to remove the requirement on Network Rail to maintain an issuer credit rating, on the basis that this is no longer relevant given Network Rail's status as an arms' length public body. (We are proposing to move existing obligations around the giving of regulatory undertakings to the corporate obligations part of the licence (see below)).

## Land disposal

- 9.5. This condition regulates disposals of land by Network Rail and requires ORR to consent to disposals (some of which are covered under a general consent). We propose to change this condition to require that before a disposal of land may be made (other than where required by law) the relevant geographic route and the SO must have been consulted on the disposal and not have objected. This supports direct route and SO accountability relating to the management of land.
- 9.6. We also propose to delete the current provision referring to compensation for land disposals. We consider this to be a statement of ORR policy, which is unnecessary to be set out in the licence.

## Unfair discrimination

- 9.7. This condition sets out a prohibition on Network Rail unduly discriminating between persons or classes or descriptions of person. We propose to remove the wording that would permit Network Rail to unduly discriminate with ORR's consent. This change is because we do not consider that ORR would consent to unduly discriminatory conduct. As noted above, we also propose to add an express reference to ensuring that there is no undue discrimination against freight operators and passenger operators in respect of cross route services.

## 10. Corporate matters

- 10.1. There are a number of existing licence conditions which place obligations upon Network Rail that are 'corporate' in nature and where there may be no particular role for the routes or the SO. These conditions (taken from Parts B, E and F of the existing licence) include corporate governance, incentive schemes, fees, specific insurance requirements, claims allocation and handling and regulatory undertakings<sup>12</sup>.
- 10.2. Below, we explain the substantive changes we are proposing to make to these licence conditions. More details about specific changes are provided in annex A.

### Incentives Schemes

- 10.3. We propose to update the management incentives condition to reflect the status and structure of Network Rail following reclassification, including the government's role in overseeing remuneration in the public sector. To support effective incentives and promote transparency, we propose to change the licence condition to:
- make it optional for Network Rail to have financial incentive schemes: we consider this decision is for Network Rail's management, its board and the Department for Transport in its capacity as Network Rail's shareholder. On the same basis, we will remove the requirement that Network Rail must take into account ORR's views in decisions on applying management incentives;
  - simplify the requirements by covering any financial incentive scheme for directors or employees, and not referring to specific schemes – this will cover schemes for Network Rail and its subsidiaries to ensure relevant personnel are caught;
  - clarify that the intent of any financial incentive schemes should be to align incentives with the interests of Network Rail's customers and end-users (both passengers and freight) in a manner consistent with the network management duty;
  - require Network Rail to act transparently by publishing how any such scheme is designed and applied, to provide visibility of the incentives to customers/user groups; and

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<sup>12</sup> See proposed Conditions 22 to 27

- remove ORR's potentially more intrusive roles such as setting specific objectives; approving changes to scheme design and writing to Network Rail with specific views on how the scheme(s) should be applied, in order to recognise the role of government, as shareholder, in overseeing remuneration policy.

### **Regulatory undertakings**

- 10.4. We propose that the regulatory undertakings (which are currently required under the financial ring-fence condition) should sit within this section of the revised licence.
- 10.5. We propose that Network Rail should no longer be required to obtain undertakings from its 'ultimate holding company'. This is on the basis that the control of Network Rail is clearly understood, as it is a public body with the Secretary of State as shareholder.

## 11. Proposal to remove conditions

- 11.1. There are two conditions in the current licence which we propose to remove in their entirety.

### Financial Indebtedness

- 11.2. The licence condition providing limits on Network Rail's financial indebtedness. These provisions were not drafted to regulate a company which is classified as a public sector arm's length government body and it is proposed that these are removed.
- 11.3. This licence condition also provides for the payment by Network Rail to the Secretary of State of a fee in respect of the state financial indemnity. The Secretary of State has confirmed to us that there is no longer a need for this payment to be a requirement of the licence and we agree that it should be removed.

### Change of control

- 11.4. It is proposed that the obligation to notify the Secretary of State and ORR on a change of control should be removed on the basis that it is unnecessary. As shareholder of Network Rail, the Secretary of State would already be aware of any change and we consider that ORR would also be informed.

## Annex A

### Reference table - location of conditions from current licence

The proposed licence changes to Parts II and III of Network Rail's network licence include changes to the wording and structure of provisions to make the licence more consistent, readable and user-friendly and to simplify the drafting in some places. It also includes the removal of some provisions which are considered to be unnecessary to retain in the licence.

In line with this, the table below shows where provisions in the current licence have been moved or deleted in the new licence. As well as setting out the condition references, the table provides some explanation for drafting changes where we consider it may be helpful to inform consultees.

The table below should be read in conjunction with the policy explanation in the main body of this document which sets out the reasoning behind our proposed allocation of current licence obligations to the routes and the SO and the new provisions which we are proposing to introduce. N.B. the table below does not cover the new provisions we are proposing, including:

- the structure of Network Rail (proposed Condition 2),
- managing changes (proposed Condition 4 of the licence)
- requirements around the capacity allocation process (in proposed Conditions 5 – 7)
- requirements around independent-mindedness of decision making and advice on capacity allocation, timetabling and long term planning (in proposed Conditions 5 – 7).

## **Part II – Interpretation**

<b>Current paragraph</b>	<b>Proposed paragraph</b>	<b>Further explanation of changes</b>
<b>Definitions</b>		
<b>1</b>	1	<p>Provisions setting out the meaning of defined terms moved from Part III to Part II for ease of reference (other than where it is clearer for the term to remain in the licence condition.</p> <p>Defined terms capitalised to make them easier to identify and otherwise given a consistent format.</p> <p>Redundant defined terms removed and a number of new defined terms added for clarity and in line with new conditions we are proposing to introduce.</p>
<b>Rules of Interpretation</b>		
<b>2</b>	4	-
<b>3</b>	5	-
<b>4</b>	10	Reference to Route Business and SO added.
<b>5</b>	11	-
<b>6</b>	14	Drafting split into separate paragraphs for readability.
<b>7</b>	13	-
<b>8</b>	16	-
<b>9</b>	2	-
<b>10</b>	3	-

## Part III – Licence Conditions

Current licence condition	Proposed licence condition	Further explanation of changes
<b>Network management</b>		
1.1	1.1, 1.2	Network management purpose separated into two provisions to make it easier to read.
1.2	1.3, 1.4, 1.9	Allocation to routes and the SO in respect of their functions. See Chapter 4 above on the added supplementary provision relating to taking into account the interests of all classes of operator.
1.3	Part II, 6	Interpretation of general/specific requirements moved to Part II ( <i>Interpretation</i> ) and simplified for readability.
1.4	5.1, 6.1, 7.1	Allocation to routes and the SO in respect of their functions.
1.5	5.2(a), 6.2(a), 7.2(a), 7.5(b)	Allocation to routes and the SO in respect of their functions. See Chapter 6 above on the change requiring the licence holder to consult routes and the SO in planning.
1.6	Part II, 1 5.2, 6.2, 7.2, 7.5	Reference to ' <i>route utilisation strategies</i> ' removed on the basis that these are no longer relevant to be included in the licence. Allocation to routes and the SO in respect of their functions. Some detail moved to new definition of ' <i>Network Planning Documents</i> ' for readability and to avoid duplication.
1.7	Deleted	The reference to all documents being on a network-wide basis is inconsistent with the responsibilities of routes to prepare documents for the part of the Network in their Route Area. The documents must still meet any requirements set by ORR relating to their scope.
1.8	Part II, 1 5.2, 5.3, 6.2, 6.3, 7.2, 7.3, 7.5, 7.6	Allocation to routes and the SO in respect of their functions. Some detail moved to new definition of ' <i>Planning Document Requirements and Guidelines</i> ' for readability and to avoid duplication.

Current licence condition	Proposed licence condition	Further explanation of changes
1.9	Deleted	Deleted on the basis that it is unnecessary to include in the licence.
1.10	Part II, 1 5.2, 6.2, 7.2	Allocation to routes and the SO in respect of their functions. Some detail moved to new definition of ' <i>Delivery Plan</i> ' for readability and to avoid duplication.
1.11	Part II, 1	Moved to new definition of ' <i>Delivery Plan</i> ' for readability and to avoid duplication.
1.12	Part II, 1	Moved to new definitions of ' <i>Delivery Plan</i> ' and ' <i>Planning Document Requirements and Guidelines</i> '.
1.13	5.4, 6.4, 7.4	-
1.14	7.5	Allocated to the SO. See Chapter 6 above.
1.15	Part II, 1	New definition of ' <i>Long Term Planning Objective</i> '.
1.16	5.9, 6.5, 7.7	Allocation to routes and the SO in respect of their functions.
1.17	7.5	Allocated to the SO. See Chapter 6 above.
1.18	6.11, 7.11	Allocation to routes and the SO in respect of their functions. See Chapter 6 above.
1.19(a)	5.5(a)	For explanation of additions, see Chapter 6 above.
1.19(b)	5.6, 6.6, 7.8	Allocation to routes and the SO in respect of their functions. For the SO, exception added to make clear that the SO is not in breach of the requirement if it proposes changes to policies/criteria as part of a Long Term Plan.
1.19(c)	5.5(d)	-
1.20	5.7, 5.8, 6.7, 6.8	Allocated to the routes.
1.21	Deleted	The provision is unnecessary. Excluded Assets are captured within the definitions provisions in Part II (Interpretation), in the definition of ' <i>Relevant Assets</i> '.
1.22	5.5(b)	-



Current licence condition	Proposed licence condition	Further explanation of changes
1.23	7.12	Allocated to the SO. See Chapter 6 above.
1.24	Part II, 1	Provisions setting out the meaning of defined terms moved from Part III to Part II for ease of reference. The definition of 'Network' is changed to more specifically set out where this include rights over stations and light maintenance depots for readability. The definition of 'Relevant Assets' is changed – see Chapter 6 above.
<b>Information for passengers</b>		
2.1	1.5	Moved to become Core Duty. See Chapter 5 above.
2.2	1.6, 1.9	Moved to become Core Duty. See Chapter 5 above.
2.3	Part II, 6	Interpretation of general/specific requirements moved to Part II ( <i>Interpretation</i> ) and simplified.
2.4	1.5, 1.6	Merged with current Condition 2.1 and 2.2 as part of this Core Duty for simplicity (given significant overlap). See Chapter 5 above.
2.5(a)	7.15	Allocated to the SO. See Chapter 5 above.
2.5(b)	7.14	Allocated to the SO. See Chapter 5 above.
2.6	7.16	Allocated to the SO. See Chapter 5 above.
2.7	Part II, 1, 7.17	New definition of 'Relevant Timetable Changes' for readability.
2.8	7.18(a)	Reworded to make clear that it is setting out circumstances where there will be no breach.
2.9	7.18(b)	Reworded to make clear that it is setting out circumstances where there will be no breach.
2.10	7.19, 7.20, 7.21	Drafting split into separate paragraphs for readability.
<b>Financial indebtedness</b>		
3	Deleted	See Chapter 11 above.

Current licence condition	Proposed licence condition	Further explanation of changes
<b>Financial ring-fence</b>		
<b>4.1</b>	Part II, 1, 16.1, 16.12	Allocation to routes and the SO. New definition of “ <i>De Minimis</i> Business” to simplify the drafting and remove duplication.
<b>4.2</b>	27.5	All provisions requiring undertakings to be procured have been moved to a separate condition in Condition 27 (following the other corporate conditions) and grouped to make the licence more user-friendly.
<b>4.3</b>	16.2, 27.1	Undertakings moved to a separate condition
<b>4.4</b>	Part II, 1	Moved to become a defined term of ‘ <i>Undertaking</i> ’ to make the licence more user-friendly and simplified.
<b>4.5</b>	27.4	-
<b>4.6</b>	Deleted	Deleted on the basis that it is unnecessary detail to be set out in licence conditions.
<b>4.7</b>	16.3	Drafting split into separate paragraphs for readability.
<b>4.8, 4.9(e)</b>	16.4	Merged for readability.
<b>4.9 (a) - (c)</b>	Part II, 1	Provisions setting out the meaning of defined terms moved from Part III to Part II for ease of reference Definitions for “Investment Turnover Limit” and “Indexed Investment Limit” changed so that amounts are rebaselined to October 2018 (in line with current Retail Price Index (RPI) indexation set out in the licence) and thereafter indexed by reference to the Consumer Price Index (CPI). This change is in line with our approach to indexation for PR18.
<b>4.9(d)</b>	16.5	Drafting split into further separate paragraphs for readability.
<b>4.10</b>	16.6	Reworded to make the provision simpler.
<b>4.11</b>	16.7, 27.2	Undertakings moved to a separate condition. Lengthy paragraph split for readability.
<b>4.12</b>	16.7, 27.2	-
<b>4.13</b>	16.8, 27.3	Undertakings moved to a separate condition. References to land disposal condition moved for readability.

Current licence condition	Proposed licence condition	Further explanation of changes
		References to 'advance corporation tax' deleted as out of date.
4.14	3	Allocation to routes and the SO in respect of their functions (with minor adjustments). See Chapter 4 above.
4.15	Deleted	See Chapter 9 above.
4.16-4.23	Deleted	See Chapter 10 above.
4.24	27.6	-
4.25	Deleted	We do not consider that it will be necessary to specify a form of undertaking.
4.26	27.8	Provision added to make more readable the requirement to maintain undertakings over time.
4.27	Deleted	See Chapter 10 above.
4.28	27.9	Drafting split into different paragraphs for readability.
4.29	16.9	Changed to state expressly that the obligation is imposed on the licence holder.
4.30	16.10	-
4.31	16.11	-
4.32	Part II, 1, 27.10	Provisions setting out the meaning of defined terms moved from Part III to Part II for ease of reference. Definition of ' <i>Information</i> ' retained in Condition 27 as specific to that condition. Redundant definitions removed.
<b>Interests in railway vehicles</b>		
5.1	18.1, 18.2	Allocation to routes and the SO.
5.2	18.3	-
5.3	18.4	Drafting split into different paragraphs for readability. Overlap between 5.2 and 5.3 removed.
5.4	18.1	Exceptions made more prominent to make the condition more user-friendly.

Current licence condition	Proposed licence condition	Further explanation of changes
<b>Prohibition of cross subsidy</b>		
6.1	19.1, 19.6	Allocation to routes and the SO. See Chapter 9 above.
6.2	19.3-19.5	Lengthy paragraph split into different provisions for readability.
6.3-6.5	19.2	Exceptions moved into a single list for readability.
<b>Land disposal</b>		
7.1	17.1, 17.6	Allocation to routes and the SO. Addition relating to Route Business and SO consultation – see Chapter 9 above. Drafting simplified.
7.2	17.1	-
7.3	17.2-17.3	Timing requirements for the notice set out more expressly to make the condition more readable.
7.4	17.4	-
7.5	17.5	Changed to state expressly where ORR's consent is deemed to have been given, to make the provision more readable.
7.6	Deleted	See Chapter 9 above.
7.7	Part II, 1	-
<b>Stakeholder relationships</b>		
8.1	1.7	-
8.2	1.8, 1.9	Includes strengthened stakeholder engagement duty – See Chapter 5 above.
8.3	Part II, 6	Interpretation of general/specific requirements moved to Part II ( <i>Interpretation</i> ) and simplified.
8.4	Deleted	See Chapter 5 above.
8.5	Deleted	See Chapter 5 above.

Current licence condition	Proposed licence condition	Further explanation of changes
8.6	12.1	Change to clarify revision of information required to facilitate efficient and effective dealings. Compliance with Stakeholder Engagement Duty is required on an ongoing basis by other provisions.
8.7	Deleted	Deleted on the basis that this is unnecessary.
8.8	Part II, 1	Moved to Part II (Interpretation) and new definition of 'Stakeholder' adopted – see Chapter 5 above.
<b>Non-discrimination</b>		
9.1	20.1-20.3	Allocation to routes and the SO. See Chapter 4 and 9 above on removal of ability to consent and addition of provision relating to specified operators.
<b>Information for ORR</b>		
10.1	8.1, 8.5	Allocation to routes and the SO.
10.2	8.3	-
10.3	8.2	-
10.4	Part II, 12	Moved to Part II ( <i>Interpretation</i> ), because the provision applies to the licence generally.
10.5	Deleted	Deleted on the basis that it is unnecessary to state this expressly in the licence.
<b>Regulatory accounts</b>		
11.1	Deleted	Deleted on the basis that it is not necessary to retain state this in the licence.
11.2	9.1	Drafting split into different paragraphs for readability. Setting out requirement to compile further information alongside regulatory financial statements for readability.
11.3	9.3, 9.4	Lengthy paragraph with more than one obligation split for readability.

Current licence condition	Proposed licence condition	Further explanation of changes
11.4(a)	9.1	-
11.4(b) – 11.4(e)	-	This provision contains detailed and specific accounting rules. It has been deleted as we consider it more appropriate for these details to be set out in Regulatory Accounting Guidelines.
11.5	9.5, 9.7	Provision split to make it more readable.
11.6	9.5, 9.7	Simplified to set out the different matters which can be certified in accordance with the condition, whilst removing the required text and allowing ORR to publish the text separately. It is not helpful for the detail of the statements to be included in the licence condition.
11.7	9.8	See Chapter 7 above on the requirement to detail how Route Business and SO views have been taken into account.
11.8	9.9	Reference to information around the re-opener provisions removed on the basis that it is unnecessary.
11.9	Part II, 1, 9.1(b)	New definition of “ <i>Regulatory Accounting Guidelines</i> ” moved to Part II ( <i>Interpretation</i> ). Drafting simplified to remove some unnecessary text.
11.10	9.11	Drafting split for readability. Reference to ‘ <i>primary financial statements</i> ’ removed on the basis that it is unnecessary.
11.11	9.12	Drafting split into different paragraphs for readability.
11.12	9.10	Drafting split into different paragraphs for readability.
11.13	9.13, 9.14	Drafting split into different provisions and paragraphs for readability. Reference to ORR extending the date of documents being provided changed to a reference to documents being provided by that date unless ORR ‘ <i>otherwise consents</i> ’ – see Chapter 7 above.
11.14	27.7	Undertaking provision moved to undertaking condition.
11.15	27.8	-
11.16	Part II, 1, 9.10(a)	Definition of ‘Auditor’ incorporated into Condition 9.10(a) for simplicity. Redundant definitions removed.

Current licence condition	Proposed licence condition	Further explanation of changes
<b>Annual and periodic returns</b>		
12.1	10.4	Order of returns reversed to make the provision more user-friendly.
12.2	10.5	-
12.3	10.5	See Chapter 7 above on the changed time period for the notification of requirements for the Annual Return.
12.4	10.6	See Chapter 7 above on the changed time period for the notification of requirements for the Annual Return.
12.5	10.7	Remove reference to consultation with ORR on the basis that it is unnecessary.
12.6	Part II, 1, 10.1 – 10.3	Definition of ' <i>Relevant Period</i> ' moved to Part II. Provision split into different provisions for readability. See Chapter 7 above on the changed time period for the notification of requirements for the Periodic Return.
<b>Reporters</b>		
13.1	Deleted	This provision sets out the purpose of the condition. It has been deleted on the basis that it is not necessary to retain such a provision in the licence.
13.2	Part II, 1, 11.1	Definition of ' <i>Reporter</i> ' moved to Part II. See Chapter 7 above on Reporter appointment and the change to the scope of Reporter reviews.
13.3	11.2	-
13.4	11.3	All points set out in a list for simplicity.
13.5	11.5-11.6	Allocation to routes and the SO
13.6	11.4, 11.6	Allocation to routes and the SO
13.7	Part II, 1	Provisions setting out the meaning of defined terms moved from Part III to Part II for ease of reference.

Current licence condition	Proposed licence condition	Further explanation of changes
<b>Restricted use of information</b>		
<b>14.1</b>	21.1, 21.3	Allocation to routes and the SO. Exceptions moved into a single list to make the provision more readable. We propose a minor change here in that we consider that the persons to whom information relates should be required to consent to disclosure, rather than the person who provided the information (as they may be different).
<b>14.2</b>	21.2, 21.4	Allocation to routes and the SO. Provision split for readability.
<b>14.3</b>	Part II, 1	Provisions setting out the meaning of defined terms moved from Part III to Part II for ease of reference. Change made to the definition of “Protected Information” to make clear that the reference to agreements is to agreements referred to in the Railways Act 1993.
<b>Governance</b>		
<b>15.1</b>	22.1	Make more readable the circumstances in which the licence holder is required to act so far as reasonably practicable.
<b>15.2</b>	Part II, 1	Provisions setting out the meaning of defined terms moved from Part III to Part II for ease of reference. Date of publication of the UK Corporate Governance Code updated.
<b>Management incentive plan</b>		
<b>16.1</b>	Deleted	Deleted on the basis that the provision is out of date and the licence should not refer to specific incentive schemes.
<b>16.2</b>	Deleted	Deleted on the basis that the provision is out of date and the licence should not refer to specific incentive schemes.
<b>16.3</b>	Deleted	Deleted on the basis that the provision is out of date and the licence should not refer to specific incentive schemes.
<b>16.4 – 16.14</b>	Part II, 1, 23.1 – 23.3	See Chapter 10 above on explanation for changes to Incentive Scheme requirements. New definition of



Current licence condition	Proposed licence condition	Further explanation of changes
		' <i>Incentive Scheme</i> ' to make clear the scope of the provision.
<b>Fees</b>		
<b>18.1</b>	24.1, 24.2	Reference to Competition and Markets Authority updated. Drafting split into separate paragraphs for readability.
<b>Change of control</b>		
<b>19.1</b>	Deleted	See Chapter 11 above.
<b>Insurance</b>		
<b>20.1</b>	25.1	Drafting split into separate paragraphs for readability.
<b>Claims allocation and handling</b>		
<b>21.1</b>	26.1	-
<b>21.2</b>	26.2	-
<b>Safety and standards</b>		
<b>22.1</b>	13.1	Added provision for an exception where ORR consents – See Chapter 8 above.
<b>22.2</b>	13.2, 13.4	Allocation to routes and the SO in respect of their functions. Added requirement relating to Railway Industry Standards or equally effective means – See Chapter 8 above.
<b>22.3</b>	Part II, 1	Provisions setting out the meaning of defined terms moved from Part III to Part II for ease of reference.
<b>Environment</b>		
<b>23.1</b>	14.1-14.2, 14.5,	Lengthy paragraph split into different provisions for readability. Set out expressly that review of the Environment Policy requires revision where necessary for ease of understanding.
<b>23.2</b>	14.3	-

Current licence condition	Proposed licence condition	Further explanation of changes
23.3	14.4, 14.6	Allocation to routes and the SO in respect of their functions.
<b>Rail Delivery Group</b>		
25.1	15.1, 15.2	Allocation to routes and the SO in respect of their functions.
25.2	Part II, 1, 15.13	Provisions setting out the meaning of defined terms moved from Part III to Part II for ease of reference, other than the definition of ' <i>Member</i> ' which is specific to the condition (with 'member' being referred to in other contexts).

## Annex B: Responding to this consultation

This consultation closes on 31 January 2019. Please submit your responses, in electronic form, to our licence review inbox [NRLicencereview@orr.gov.uk](mailto:NRLicencereview@orr.gov.uk).

We plan to publish all responses to this consultation 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 this consultation and 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 responding to this consultation 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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