

Memorandum of Understanding between the Scottish Ministers and the Department for Transport

Network Rail Reclassification

Background

1. Network Rail Limited was created in 2002 as a private sector, not-for-dividend Company Limited by Guarantee. Due to a change in European reporting rules, the company with all of its subsidiaries (together referred to as “Network Rail” in this document) will be reclassified by the Office of National Statistics as a central government body.
2. The decision to reclassify Network Rail was a statistical one and was not due to any changes in the circumstances or performance of Network Rail. This creates a new relationship where Network Rail becomes an arm’s-length body of the Department for Transport (“the Department”).
3. The Department and Network Rail have entered into a Framework Agreement that sets out how the Department and Network Rail will interact in terms of corporate governance and financial management. The Department and Network Rail have drafted the Framework Agreement on the basis of a memorandum of understanding between both parties, to make changes only where they are: required to satisfy Government and Parliamentary budgeting and accountability requirements; or justified to deliver value for money.¹ This document uses the same defined terms as those used in the Framework Agreement.

Role of the Scottish Ministers in Scotland’s Railways

4. Under current rail legislation, the Scottish Ministers are responsible for setting the strategy for rail in Scotland. This includes strategic outcomes for the industry, primarily through Network Rail Infrastructure Limited’s (“NRIL’s”) operations and investment and the ScotRail franchise, and defining the level of public expenditure available to support this.
5. The Scottish Ministers’ vision for Scotland’s railways is of services which form part of an integrated transport system, which are high quality, represent good value for money, support Scottish businesses and communities, promote tourism and offer a real alternative to road and air travel. Scotland’s railways should be a source of pride, with an international reputation for efficiency and service, supporting sustainable economic growth to make Scotland a better place to live and more competitive place to do business.
6. The realisation of the vision will be achieved in the context of the following practical, strategic railway services’ outcomes:
 - Improving journey times and connections.
 - Reducing emissions.

¹ ‘Memorandum of Understanding between the Department for Transport and Network Rail’, <https://www.gov.uk/government/publications/network-rail-reclassification-memorandum-of-understanding>.

- Improving quality, accessibility and affordability.
7. Given the central role that Network Rail plays in the delivery of these outcomes, the Scottish Ministers have a strong interest in both its operational and corporate affairs at a Scottish and UK level. This interest also reflects:
- the substantial investment in Scotland's railways since executive devolution in 2006 with further significant planned expenditure for the period 2014-2019;
 - that Scotland's railways make a substantial contribution to Scotland's social as well as economic wellbeing, which means that the bulk of the costs of rail in Scotland are subsidised by the Scottish Government; and
 - that the Scottish route is at the leading edge of decentralisation and industry collaboration, which means that the Scottish Ministers have well established relationships with NRIL at a route level and with the UK executive team.

This Memorandum of Understanding (MoU)

8. This MoU outlines the role of the Scottish Ministers in Network Rail's governance following reclassification, in particular those areas of governance, reporting and financial management which may have a direct or indirect impact on the running of the rail network in Scotland.
9. This MoU represents an agreement between the Scottish Ministers and the Department and comes into effect on 1 September 2014, in line with the Framework Agreement.
10. This MoU does not affect the rights of the Scottish Ministers nor the existing relationship that the Scottish Ministers have with Network Rail. Nor does it prevent them from asking Network Rail for any meetings, nor does it prevent the Scottish Parliament exercising its existing rights of oversight over how Network Rail spends the Scottish Government's funding.
11. The MoU will be reviewed on 1 September 2015 and annually thereafter. It may be amended before then with the agreement of both parties.

Specific commitments relating to the Framework Agreement between the Department and Network Rail

12. The following outlines the role of the Scottish Ministers relative to the provisions of the Framework Agreement and the headings refer directly to the chapters of that document.

Introduction (Chapter 1)

13. The Secretary of State will inform, consult and take full account of the views of the Scottish Ministers as part of the review of the Framework Agreement scheduled for 1 September 2015 and the subsequent annual reviews.
14. Where Network Rail, the Department or the Office of Rail Regulation (ORR) propose an amendment to the Framework Agreement, the Secretary of State will inform, consult and take full account of the views of the Scottish Ministers on the proposals. The Scottish Ministers may propose amendments to the Framework

Agreement to the Secretary of State where it is demonstrated to the Secretary of State that a provision is having, or has the potential to have, a material effect on the rail network in Scotland.

Roles and Accountabilities (Chapter 2)

- 15.** The Secretary of State will inform, consult and take full account of the views of the Scottish Ministers in advance of approving the appointment of the Chief Executive.

Corporate Governance (Chapter 3)

- 16.** The Secretary of State will inform, consult and take full account of the views of the Scottish Ministers in advance of appointing or dismissing the Chair.
- 17.** The Secretary of State will inform, consult and take full account of the views of the Scottish Ministers when considering the developing recommendations of the Nominations Committee. This is to ensure that the Board has appropriate knowledge and understanding of the rail network in Scotland, and the economic and social role of Scottish rail services.
- 18.** The Secretary of State will inform, consult and take full account of the views of the Scottish Ministers before agreeing the Membership Policy with the Board. This is to ensure that the Membership Policy determines that a proportionate number of appointees should have a knowledge and understanding of the economic and social role of Scotland's rail services.
- 19.** The Department will inform, consult and take full account of the views of the Scottish Ministers prior to agreeing NRIL's Strategic Business Plan for Scotland that is published in response to the Scottish Ministers' High-Level Output Specification and prior to agreeing the Business Plan that sets out how NRIL will deliver the outputs in the Delivery Plan, and any subsequent changes to the Business Plan on aspects that affect Scotland.
- 20.** Where any material differences in outcomes, income or expenditure arise in NRIL's Annual Plan, as compared with the Business Plan put in place before each Control Period, which relate directly or indirectly to the operation of the Scottish network, the Secretary of State will inform, consult and take full account of the views of the Scottish Ministers prior to agreeing any changes.
- 21.** The Secretary of State will share with the Scottish Ministers any information received as a Special Member or otherwise which is relevant to the Scottish network.

Financial Management (Chapter 6)

- 22.** The Department will inform, consult and take full account of the views of the Chief Executive of Transport Scotland in advance of approving any new commercial transactions or ventures (under the process set out in the Framework Agreement) which have a material impact on the Scottish network.

Financial Reporting (Annex A)

- 23.** Officials from the Department will hold quarterly meetings with officials from Transport Scotland to discuss relevant areas of Network Rail's financial reporting.

24. In addition to the above, the Department will bring to Transport Scotland's attention, and vice versa, as a matter of urgency, any issues which will have or have the potential to have a material impact on the operation of rail services in Scotland or the programme of investment for the Control Period.

Financial Control (Annex B)

25. The Department will inform, consult and take full account of the views of the Chief Executive of Transport Scotland in advance of approving any guarantees, letters of comfort or contingent liabilities which relate to the operation of the Scottish rail network.

26. The Department will inform, consult and take full account of the views of the Chief Executive of Transport Scotland in advance of approving any property transactions (under the process set out in the Framework Agreement) where the transactions would occur on the Scottish network.

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