



Department
for Transport

Government Response to the Periodic Review 2018 Draft Determination

Moving Britain Ahead

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Introduction

Government is grateful for the opportunity to respond to the Periodic Review 2018 (PR18) Draft Determination. We have been closely involved with the PR18 process since its outset in the summer of 2016 and are pleased to note the excellent progress that has been made by the Office of Rail and Road (ORR), Network Rail (NR) and the wider rail industry since then in delivering PR18.

Our response does not seek to address every point raised in the Draft Determination and its supporting documents. Rather, we have focussed on issues of particular importance to the achievement of Ministerial objectives for Control Period 6 (CP6), to the protection of the passenger and taxpayer interest, or where specific input from Government is still required. We have not sought to provide detailed commentary on route documents, for instance, save in a small number of instances where we have identified specific financial issues. We have no desire to act as an impediment to the continued improvement of working relationships between NR's routes and its customers which we judge is critical (and current not yet sufficiently advanced across the whole network) and we see a proper route-owned planning process as a key enabler of those relationships. This reflects our strong focus on ensuring a more joined up approach between track and train.

This response sets out Government's views on the Draft Determination and the wider PR18 process. Much of the content of this response is narrative in nature. Where we wish to formally highlight points of particular relevance, we have done so through the use of roman numerals. For the avoidance of doubt, this document addresses only the Draft Determination for England and Wales, reflecting the devolution of responsibilities to the Scottish Government.

1. Periodic Review 18: the Context and the Challenge

From the outset, we have been clear that PR18 posed a particular challenge to Government, the ORR and the rail industry. The review has taken place against the backdrop of a number of complicating factors. In particular:

- Serious issues with the delivery of the May 2018 timetable have shone an important light on the need to improve system operation capability. Work is underway, chiefly through the ORR's own Timetabling Inquiry, to identify the causes of these issues and remedies to prevent a future repeat.
- Severe problems have emerged with the design and delivery of the Control Period 5 (CP5) settlement. Cost-overruns to the enhancements programme have forced replanning and reductions in the scope of planned works. Progress on efficiency has fallen far behind expectations, with NR's overall efficiency currently forecast to be worse at the end of CP5 than it was at the outset. Train performance levels have fallen far short of expectations, with decline on many parts of the network, notwithstanding continued, significant taxpayer investment.
- NR's reclassification to the public sector, which occurred approximately six months after the start of the period, has significantly changed the financial architecture of the company, with consequent implications for its financial and corporate governance.
- The independent reviews set up in light of failures in the enhancements programme have led to significant changes to responsibilities and the strategic direction of the industry. The Shaw Report¹ supported moves towards a more devolved and responsive NR. The Bowe Review² led to the establishment of new processes for enhancements, with a clearer client/provider role between Government and NR.

A key role of the PR18 process, which ORR identified from the very start of the process, has been the modernisation of the industry's regulatory architecture to learn the appropriate lessons from CP5 and set the industry on a more stable footing for the delivery of CP6. We have been pleased to see these themes maintained throughout the PR18 process, from the Initial Consultation, through the detailed working papers and the development of the Financial Framework and onwards into the Draft Determination.

Government has played its own role in modernising the industry's architecture and refocussing priorities on the end-user over the last couple of years. Through our High Level Output Specification³ (HLOS) and Statutory Guidance to the ORR⁴, published

¹ <https://www.gov.uk/government/publications/shaw-report-final-report-and-recommendations>

² <https://www.gov.uk/government/publications/bowe-review-into-the-planning-of-network-rails-enhancements-programme-2014-to-2019>

³ <https://www.gov.uk/government/publications/high-level-output-specification-2017>

⁴ <http://orr.gov.uk/about-orr/who-we-work-with/government/department-for-transport/related-links/secretary-of-state-for-transport-guidance-to-orr>

in July 2017, we identified the maintenance of safety and the improvement of performance as our top priorities for CP6, recognising the critical importance of these outputs to users of the railway. Our Statement of Funds Available⁵ (SoFA), published in October 2017, committed Government to continued record investment, enabling around £47.9bn of spending on rail infrastructure across CP6, of which £34.7bn would be enabled by direct Government grant. The Secretary of State's Strategic Vision for Rail⁶, published in November 2017, set out our longer term strategy to improve the railway for users and the economy, focussing on a more joined up approach between track and train.

⁵ <https://www.gov.uk/government/publications/railways-statement-of-funds-available-2017>

⁶ <https://www.gov.uk/government/publications/a-strategic-vision-for-rail>

2. A Modernised Regulatory Regime

Against the backdrop of the very significant challenges outlined above, we recognise the great strides that ORR has made in modernising its regulatory regime during PR18, to ensure that it remains fit for purpose. In particular, we welcome:

- The focus that PR18 has placed on NR route devolution as a means of improving NR's efficiency and delivery and making the company more accountable to its customers, with complementary regulation of the System Operator to bring a new focus to its performance.
- The shift towards a bottom-up approach to assessing NR's Strategic Business Plans, ensuring that ORR's assessments on efficiency and deliverability are more evidence-based and informed by customer concerns than they have been for any previous Periodic Review.
- The emphasis on ensuring NR's routes continue to feel strong ownership of the Strategic Business Plans as they progress through the milestones of the regulatory review.
- The emphasis on providing appropriate stability to the supply chain to enable it to build its capability and deliver the CP6 work programme efficiently and effectively.
- The modernisation of the Financial Framework to reflect NR's public sector status, ensuring proper financial governance which balances public sector spending practices with NR's need for long term financial planning.
- The approach to Track Access Charges, which removes many charges whose incentive effects were negligible and ensures that new open access operations will move towards paying an appropriate share of their costs to facilitate their continued, sustainable development. Freight and charter operators will continue to be protected, helping to support their growth and the important role they play for rail users.
- The new framework for separating the development, design and delivery of new enhancements from the regulatory process, while ensuring important protections for routes through the introduction of change control processes for their settlements when new enhancements are committed.

We are grateful for the ORR's ambition, imagination and collaborative approach in making these changes. We consider that they will result in a significantly strengthened regulatory regime and placed the rail industry on a stronger footing to face the challenges of CP6.

3. Value for Rail Users and Taxpayers: Alignment with our HLOS and SoFA

The SoFA, which we published in October 2017, continued the Government's clear commitment to continuing record levels of investment to improve our railway. However, the reclassification of NR to the public sector necessitated a radically different approach to setting the HLOS and SoFA compared to previous Periodic Reviews. In particular, our approach to setting the HLOS and SoFA over the course of 2017 was influenced by the following factors:

- The lessons of CP5, where many enhancement schemes were committed without a thorough understanding of their costs and benefits, led us to adopt a different approach to the HLOS, with the focus shifted to the top-level outputs which matter most to users: safety and performance.
- NR's reclassification ensured that its borrowing would now score in national accounts. On this basis, we concluded that there was little purpose to the organisation continuing to fund its activities through borrowing across CP6 and determined that NR should therefore not take loans or issue bonds to fund the HLOS⁷. As we desired to preserve a broad continuity of Track Access Charge levels (recognising the pass-through financial implications that these have for Government in respect of franchised operators), we increased grant levels markedly as a result.
- The SoFA now has a rapid impact on national accounts once set, placing a constraint on the wider use of public funds. Accordingly, we needed to set the SoFA on the basis of much more detailed estimates of NR's revenue requirements than was previously the case and worked closely with both NR and ORR to this end. We were particularly grateful for the ORR's Advice to Ministers⁸, which focussed on maintenance and renewals costs for CP6.
- Furthermore, on the basis of work carried out over the course of August and September 2017, our SoFA was set for the first time on a "post-efficient" basis, building in the latest efficiency assessments available from NR's business planning process at that time.

With all of NR's spending now recorded in the national accounts, we have been particularly interested in ensuring that the objectives set out in our HLOS and the funding envelope identified by our SoFA remain at the heart of the PR18 process.

The improvement of asset condition, asset sustainability and train performance was a key objective of our HLOS, recognising the critical importance of reliability to users of the railway. The Strategic Business Plans submitted by NR in February identified a

⁷ In addition, Network Rail must refer to the 'Network Rail Framework Agreement' before entering into any financial transactions which may be classified as borrowing.

⁸ http://orr.gov.uk/data/assets/pdf_file/0017/25217/pr18-advice-to-dft-on-the-development-of-the-england-and-wales-hlos-and-sofa-for-cp6.pdf

small improvement in train performance levels across the span of CP6, but the situation on an operator-by-operator basis was mixed, with declines in performance forecast for some operators. We regard it as critical that the regulatory process results in CP6 performance targets which are both stretching and realistic.

Accordingly, we would make the following points:

- 1 We strongly support ORR's challenge to NR's routes to do more work with their customers on CP6 performance trajectories. We do not wish to express a view on the precise targets we believe are appropriate, but we are clear that the critical issue is that an appropriate balance is struck between ambition and realism. Given the very considerable investment Government has committed to improving the condition of the network, we regard improvements to train performance as a critical output for CP6.
- 2 We are pleased that the proposed change control processes will allow performance targets to flex in response to newly committed enhancements.
- 3 We are prepared to discuss targets included in current franchises with train operators where this is a material issue. We are clear, however, that we do not intend to excuse operators from making every effort to work closely with NR to improve train performance.

In respect of NR's efficiency, we welcome the approach that the ORR has taken in the Draft Determination. NR's Strategic Business Plans contained levels of efficiency broadly consistent with those upon which our SoFA was set. It is right, however, that the ORR has robustly challenged NR to seek further efficiencies. A strong, independent regulatory challenge, built on the basis of bottom-up work by ORR and the independent reporters, is vital to ensuring that both users of the railway and taxpayers receive the best possible value for money. We would, therefore, like to make the following points in respect of efficiency:

- 4 We agree with the principle of the ORR challenging NR to go beyond the level of efficiencies identified in its Strategic Business Plans.
- 5 We do not, however, wish to set out a view on the specific efficiency target that should result from this challenge process, reflecting that this is properly a matter to be determined by ORR on the basis of the evidence available to it so that we secure a stretching yet realistic target.
- 6 We strongly encourage ORR to continue with its challenge to Routes to lead the development of efficiency targets, reflecting the vital importance of them feeling strong ownership of the eventual CP6 Business Plans.
- 7 We particularly support the shift towards a whole-asset, whole-life approach to assessing efficiency, recognising this as crucial to the long-term financial and operational sustainability of the railway.
- 8 We agree with the principle set out in the Draft Determination that, where additional efficiencies are identified, the funds released as a result should be predominantly allocated to the improvement of asset sustainability and train performance. These were the key objectives identified in our HLOS and we would wish to see better trajectories for these vital outputs than we identified in the Strategic Business Plans.
- 9 We would encourage the ORR to continue to engage with NR, its supply chain and Government on the establishment of CP6 spending profiles ahead of the Final Determination. These profiles will need to reflect the capability of the supply

chain, particularly in light of the wider Highways England and HS2 capital profiles, and the wider public fiscal position.

- 10 We support the ORR's decision to use CPI rather than RPI as the indexation factor for Track Access Charges. We would note, however, that this support is contingent upon the overall profile of charges being set in such a way that NR is held neutral on the total quantum of income from them across the period, so that the total level of grant required does not exceed the £34.7bn limit expressed in our SoFA.

We note that the ORR has identified further funds it believes could be released through the generation of additional property income and reductions in NR's proposed levels of research and development spending. We consider research and development activity to be vital to the future sustainability and improvement of the rail network and that the rail industry should expect to do this as part of its mainstream activity. Insofar as ring-fenced funding is needed, we accept that the Strategic Business Plan submission did not provide sufficient evidence to justify a request for more than £430m of public expenditure. We have further noted the ORR's view that NR should be required to carry out approximately £80m of additional safety-related works. Accordingly, we would like to make the following points:

- 11 We support the ORR's challenge to NR to generate more income from its property portfolio, but as with the issue of efficiency, we do not offer a view on the appropriate outcome of this challenge, recognising that this is a matter for the ORR to determine, to ensure stretching yet realistic targets.
- 12 Given the critical importance of research and development to the future of the rail network, we would ask that ORR consider how the industry can be better incentivised to mainstream this activity, and to increase the effectiveness of its spending. We would ask ORR to consider how it can provide incentives over time for industry to substantially increase the effectiveness of its research and development activity and to reduce its dependence upon ring-fenced funds provided by Government.
- 13 Nevertheless, we accept the reasons for ORR's proposed reduction in NR's research and development spending, but we would encourage the ORR to consider allowing NR a slightly larger allocation than the £100m proposed in the Draft Determination, provided the company is able to present a better evidenced and supported business case for this spending, which addresses the issues raised by the Draft Determination, particularly those at paragraph 7.85 of the overview document.
- 14 In particular, any approval of an increase in the allowance for research and development should be contingent on NR demonstrating how it will use funds in a collaborative manner, to drive innovation and efficiency across the industry while attracting match-funding wherever possible.
- 15 We would particularly welcome research and development activity focussed on the improvement of timetabling systems and technology, in light of recent issues with delivery of the timetable, as well as wider technology supporting advice on potential options for network and service change, and research in lowering whole-life asset costs. These activities have the potential to facilitate the delivery of our HLOS.
- 16 In light of the poor case made for investment in research and development at the time of the Strategic Business Plans, we would welcome discussions with industry on how the case for future public spending on research and development can be

made more effectively, including for expenditure later in CP6 should additional resource become available through effective management of NR's risk reserve.

- 17 We support the ORR's challenge to NR on safety, recognising that the continued safety of the railway was a key requirement of our HLOS, but we leave the determination of the works required to achieve this as a matter to be resolved between ORR and NR.

In respect of the allocation of NR's central costs between funders, addressed in paragraphs 8.20-8.21 of the Draft Determination, we would like to make the following points:

- 18 We engaged constructively with CEPA, who carried out work on this issue on behalf of ORR. We regard the CEPA work as highly credible and accept its conclusion that NR's proposed cost allocation was fair. Accordingly, we do not believe that cost allocations should be changed in the Final Determination.
- 19 Our SoFA was set on the basis of highly detailed information provided by NR on its CP6 revenue requirement. This included assumptions on cost allocation, which are consistent with those in the CEPA report. This situation is likely to continue in future Periodic Reviews. We would therefore suggest that should ORR wish to work with funders to revisit cost allocation formulae in detail, this should be done early in the next Periodic Review programme, well ahead of the publication of the SoFA for CP7.

The Draft Determination indicated that since the publication of the SoFA, NR has identified an additional £250-300m of income from the Crossrail Supplementary Access Charge (paragraph 10.7). We are clear that had this income been reported to us in advance of the publication of the SoFA, it is likely that the level of Government grant available would have been reduced by a corresponding amount. Accordingly, we would make the following point:

- 20 The Final Determination should recognise that Government may have a legitimate need to reallocate this funding from NR to other areas of transport spending. While we have not formalised this requirement at this time, it is highly likely that we will do so. Accordingly, NR should programme on the basis of this funding being used for "contingent renewals", which could be cancelled readily and with few consequences should Government need to reallocate this money to areas.

The Draft Determination places a requirement on NR to change its proposed allocation of risk funding. When NR introduced its proposed risk buffers in the Strategic Business Plans, this ran contrary to our previous assumptions, which did not account for the need for such a significant risk pot for a public sector entity. However, we have accepted the advice on NR, ORR and ORR's independent reporter that the level of risk provision is acceptable for an organisation with a portfolio of works of the size and complexity of NR's. We would therefore make the following points in respect of risk funding:

- 21 We agree with the ORR's proposal that the size of the NR central Group Portfolio Fund should be reduced, with approximately £850m of this funding being reallocated to routes. We further agree with ORR that routes should assign this proposed allocation to "contingent renewals". We believe this approach helps to cement the principles of route devolution. It enables the rapid deployment of funds held in route-level risk buffers as risks fail to materialise, maximising financial efficiency and the benefits to users of the railway.

22 We expect to see arrangements put in place around risk funding, whether held centrally or at route level, which ensure that funds are released for activity on a rolling basis, as and when risks fail to materialise. This will be critical to ensuring that funding is not lost to the railway as a result of the financial flexibilities framework that will be available to NR during CP6.

23 In the first instance, we would expect funding released from risk allocations to be used for the improvement of asset condition, asset sustainability and train performance. We would, however, be open to the prospect of some released funds being used for research and development activity, subject to satisfactory business cases.

Taken as a whole, we are very clear that the approach adopted by the ORR is optimally designed to ensure the delivery of our objectives within our available funding and would encourage the ORR to continue with this approach through to the Final Determination.

4. Ensuring Sustainable and Competitive Markets: Charges and Incentives

We strongly support the approach the ORR has taken to charges and incentives across the PR18 process. It strikes a good balance between simplifying the system, improving transparency, and reinforcing the right incentives on the industry. Ultimately this should deliver better outcomes for passengers and freight shippers.

We also appreciate the way that ORR, and NR, have taken on board the feedback of stakeholders and funders in shaping the approach to specific issues, including on the allocation of fixed costs across the network. We are clear that this iterative, consultative process has led to a better outcome.

We would wish to make the following specific points in respect of access charges:

- 24 With respect to infrastructure cost charges for franchises, we agree with ORR's proposals to cap Network Rail's downside risk for variability in timetabled train miles. This strikes the right balance between incentivising Network Rail to use capacity effectively, whilst still providing certainty over what the total impact could be and allowing NR to plan accordingly.
- 25 Regarding the proposal to levy infrastructure cost charges on freight services carrying ESI biomass, we note that ORR has undertaken further analysis of the economics of biomass generation. When making their final decision we expect that ORR continues to engage with stakeholders, both freight operators and their end-customers, including ports, and takes in to account any new relevant evidence.
- 26 As we have set out in a number of places, we are supportive of reforming fixed track access charges (through infrastructure cost charges) so that open access operators pay an appropriate amount towards the costs of the network. This is critical for creating the level-playing field on which open access can play a greater role in delivering benefits for passengers.
- 27 We support only applying this reform to new open access services⁹. Similarly, we support applying this reform to existing operators where they propose significant changes to their services. We also recognise that new services take time to build their customer base so agree with the principle of phasing in ICCs for open access over 5 years. We would however, like to see the profile altered slightly so that they pay at least a small proportion of charges in the second year – around 10%, to better address taxpayer impacts. It is important to have a clear statement that all operators should pay their way as early as possible.
- 28 Over the course of CP6 we expect the ORR to monitor this approach carefully so that new operators are not able to unduly benefit from taxpayer subsidy and that

⁹ As defined at paragraph 3.51 of the supplementary document "Charges and Incentives: Infrastructure Cost Charges Consultation". We consider that any change to the definition as set out in the consultation document would have significant adverse consequences for taxpayer interests.

they are delivering genuine benefits for passengers. We look forward to continued work with ORR on the development of the Public Service Obligation levy. We would also like to see further work on disaggregation of services to help with future tweaks of the system to further improve the incentives in this area.

- 29 On variable charges we are particularly pleased that the ORR agrees with government that it is important to protect the critical benefits that freight and charter operators deliver. By limiting the short term impact of increases in charges through the phasing in of the increases over two control periods this gives these operators vital time to adapt and plan, so that they can continue to grow and develop their businesses. We do, however, agree that these operators should move towards paying an appropriate share of their costs over time.
- 30 We would like to express our strong support for the proposed Performance Innovation Fund, which we believe will provide a useful and important laboratory to test the impacts of more radical proposals for charging reform without creating wider risks for users of the railway or taxpayers.
- 31 We support ORR's approach on Schedule 4 and 8. In addition, we appreciate the reasoning around the desire for a further recalibration of Schedule 8 benchmarks during Control Period 6. We would like to see a re-opener provision supported by a robust benchmark recalibration methodology. This includes taking into account the appropriate timing for a recalibration, as this may have an effect on the financial impact. ORR's offer of publishing guidance on this would be welcome.
- 32 Finally, whilst it is still some way off, we consider that a more comprehensive review of schedules 4 and 8 may be a fruitful area of focus for Periodic Review 2023. To facilitate this, and to better ensure that the current system works as effectively as possible, we would like to see the industry, working closely with the ORR, collect the necessary data and where appropriate trial alternative approaches.

In summary, we believe that the proposals on Track Access Charges and incentives set out in the Draft Determination should have positive impacts on the market for rail services and, as a consequence, on passengers and freight shippers. We would urge the ORR to preserve this broad approach through to the Final Determination.

5. Holding Network Rail to Account and Closer Working Between Track and Train

It is absolutely critical that, once the regulatory framework for CP6 has been set, NR is properly held to account for the delivery of its regulated outputs within the scope of funding available from Government, so that it delivers the benefits users and funders require. We are clear that the SoFA represented the totality of the funding that Government can make available to the railway across CP6 for the delivery of the outputs defined in the HLOS. A failure by NR to deliver could, therefore, result in regulated outputs not being achieved.

We have been pleased, throughout the PR18 process, to note the emphasis that ORR has placed on promoting more joined up working between track and train. We would offer some specific comments in this area, in respect of NR's accountability to its users:

33 We share the ORR's view that Route Supervisory Boards are not yet operating in a satisfactory manner. We expect to see continued pressure to clarify the role of these boards and enhance their effectiveness and transparency.

34 We are clear that we see improving the level of communication and consultation between NR and train operators as critically important. We strongly endorse the ORR's proposals in this area, though we wish to contribute further to aspects of the ORR's proposed approach to CP6 scorecards, most specifically how these fully reflect the role of Government as a major customer and as shareholder, before final decisions on this are made"

35 We wish to see a continued step-change in NR's customer engagement, building on the lessons learned during CP5 and the earlier stages of the PR18 process.

We were also reassured by the strong focus on improving monitoring of NR's activity and ensuring that the organisation's component parts are held responsible in a manner that properly embeds route devolution and the wider programme of transformation. In respect of the published proposals, we would like to make the following comments:

36 We agree with the ORR's proposals for strong regulation of the System Operator function, including the proposed increase in resources for that function. We welcome the SO's improvement plans, and now want to see them delivered effectively. We are clear that the SO's capability and responsiveness must improve if we are to see improvements in the service it provides its customers, including Government, and ultimately train performance across CP6. While we await the outcomes of the ORR's independent inquiry into recent timetabling problems, it is our firm view that improving the effectiveness of the System Operator will be an important factor in avoiding any future repeat of these

problems. We recognise that the structure and role of the System Operator may continue to need to evolve over the course of CP6, as the process of route devolution develops. We address this issue further in our response to ORR's consultation on the Network Licence.

- 37 We are concerned that the FNPO route is not sufficiently empowered to protect the interests of the freight industry, in particular how it ensures that the System Operator, geographic routes, and other parts of NR deliver for freight. We therefore agree with ORR's recommendations to the FNPO route on how it is incentivised to deliver against its strategic business plan, and we want to see Network Rail implement these recommendations.
- 38 We remain concerned about the balance of responsibility between NR's routes, the System Operator and Infrastructure Projects. We would be grateful if the ORR could give further and continued focus on how this relationship works, as it is important that these relationships do not impede the development of closer relationships between routes and their customers. DfT is working jointly with NR on a programme of work to improve the delivery of enhancements and renewals which is looking at how the clarity of roles and accountabilities with NR addresses these issues. The ORR's involvement in this work will be welcome to ensure it provides the appropriate regulatory monitoring of national functions to avoid any duplication of work and to address the concerns set out in the draft determination.
- 39 We are clear that any future arrangements between routes and Infrastructure Projects must accommodate the possibility that routes should be able to procure projects from providers other than Infrastructure Projects, enabling contestability and competition in the market for rail projects, strengthening accountability and improving value for money. The ongoing work to improve the delivery of infrastructure projects and NR's response to the Hansford Review in the form of their "open for business" programme will be imperative to embed this behaviour within NR ahead of CP6.

In respect of the ongoing monitoring of NR's performance against its CP6 targets, we have been encouraged by the approach the ORR has taken to improving the effectiveness and accessibility of its monitoring regime. In particular:

- 40 We strongly support the move towards separate monitoring of the performance of each of NR's routes and the major central functions. We regard this as essential to realise the benefits of route devolution. ORR must make the most of this approach, with clear and accessible comparisons, clearly presented in documents such as the Network Monitor, to enable clear and effective benchmarking, strong accountability and the sharing of good practice between Routes.
- 41 We welcome the move towards more use of leading indicators of performance in the ORR's monitoring of NR. While this cannot entirely supplant the use of trailing indicators, we think it has the potential to drive significant cultural and behavioural improvements.
- 42 We support the proposed changes to the monitoring of efficiency and financial performance.
- 43 We also support the proposed changes to the escalation of concerns and the progression towards enforcement action. We approve of the proposals to make use of more targeted enforcement action on individual routes or functions and the intention to use more reputational incentives, such as public hearings. These are critical to underline clear route accountability.

44 We welcome the commitment to the new Rail Ombudsman that is included in the Freight and National Passenger Operator route plan. We encourage the ORR to ensure that NR has allocated sufficient resources to ensure that NR plays an effective role in the scheme.

In light of the ORR's most recent Network Rail Monitor¹⁰, here are a number of concerns which we would like to become the subject of specific ORR focus over the remainder of the PR18 process.

45 We regard NR's readiness for CP6 as a matter of critical importance. The opening months of CP5, as ORR has recognised¹¹, were marked by stasis and lack of progress, with profound implications for the rest of the period. Avoiding a repeat of this for CP6 is essential. We would encourage the ORR to continue and, if necessary, intensify its monitoring of NR's CP6 readiness.

46 We note that NR remains badly adrift of its CP5 efficiency targets, with the situation forecast to worsen during 2018-19. While we recognise that the original CP5 targets may, with hindsight, have been undeliverable, we are clear that a continuation of the present situation in CP6 would be intolerable. We would ask the ORR to take every available action to drive a sustainable recovery in efficiency. We would also ask that ORR be mindful of the impacts of 2018-19 efficiency on the CP5 out-turn position and hence on the position at the start of CP6, to ensure that CP6 targets strike the appropriate balance between challenge and realism from the outset.

47 We further note that train performance continues to be far below expectations. Some of this may be down to specific events such as the recent timetable problems, but we would ask ORR to drive a continued focus on improving performance and to be mindful of the course of events over 2018-19 on the CP6 start-position.

Over the last few years, we have been grateful for the ORR's co-operation on the implementation of the findings of the Bowe Review, which have seen significant changes to the governance of enhancement projects. For CP6, new enhancements will not be committed as part of the regulatory process, but rather will be developed through the new Rail Network Enhancements Pipeline¹² (RNEP).

ORR has taken clear steps to modernise the regulatory regime for CP6 to reflect these changes to the planning and delivery of enhancements. We would like to make the following specific points in this area:

48 We are pleased that the new arrangements for the monitoring of NR's delivery of enhancement projects are properly reflected in the Draft Determination.

49 We very much welcome the separate document that ORR issued on the roles and responsibilities of different parties in respect of enhancements¹³. This document reflects very well the productive discussions between ORR, DfT and NR and provide a clearer basis for accountability, with ORR playing a particularly important role in monitoring NR's overall enhancements delivery capability.

50 We support the issue of an Enhancements Delivery Plan by NR, which should not include regulated outputs. Instead, the publication of Entry into Service milestones for enhancements which have successfully progressed to the delivery stage

¹⁰ <http://orr.gov.uk/rail/economic-regulation/regulation-of-network-rail/monitoring-performance/network-rail-monitor>

¹¹ <http://orr.gov.uk/rail/consultations/pr18-consultations/consultation-on-improving-network-rails-renewals-efficiency>

¹² <https://www.gov.uk/government/publications/rail-network-enhancements-pipeline>

¹³ <http://orr.gov.uk/rail/consultations/open-consultations/invitation-to-comment-on-roles-and-responsibilities-for-enhancements-in-cp6>

would be appropriate and would support the recently published RNEP. It will be critical in reporting on this issue that it is clear where a milestone has been missed and a new one set to ensure clear accountability.

51 We strongly support the ORR's proposed change control processes, which will allow updates to route plans and regulated outputs as necessary when new enhancements are committed.

We strongly support ORR's proposals to update the Network Licence to differentiate between the responsibilities of routes and central functions. We will provide a separate response to the Licence Review consultation. We welcome the ongoing dialogue between Government and the ORR on the alignment between the ORR's review of the Network Licence and the DfT review of the Framework Agreement, which sets out the corporate relationship between NR and Government. Between these two reviews, we believe there exists substantial potential to improve NR's accountability.

Conclusion

Throughout the PR18 process, we have been highly impressed by the degree of ambition, engagement, flexibility and imagination that the ORR has demonstrated in reforming the regulatory regime. We particularly welcome the strong reflection of Ministerial objectives and priorities throughout the document, focussed on how we can achieve a better railway for its users and funders in CP6. We support the Draft Determination and, subject to the comments provided above, would wish to see its principles carried through into the Final Determination.