



Department
for Transport

Rail Regulation Call for Evidence

Moving Britain Ahead



December 2015

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Introduction

- 1 The initial regulatory regime for the railways in Great Britain was established in the Railways Act 1993, which laid the groundwork for privatisation and had the following overall aims for the then newly created rail regulator:
 - (a) overseeing the application of arrangements for track access and charging over the whole network;
 - (b) promoting competition and preventing abuse of monopoly power and anticompetitive practices; and
 - (c) promoting the interests of consumers and ensuring that network benefits are maintained.¹
- 2 Since the creation of the rail regulator, while there have been some important changes,² including most significantly the transfer of rail related health and safety to the then Office of Rail Regulation (ORR) from the Health and Safety Executive in April 2006, the bulk of the regulatory regime, particularly the ORR's core economic role, has remained constant, despite considerable changes in the industry; in particular, changes have included the continued growth and success of the railway, which is now carrying double the number of passengers it did at the time of privatisation, and the commitment by the Government to building HS2 and the most significant investment programme in the network since the Victorian era to transform our railways.
- 3 More recently there have been a number of further significant developments:
 - The reclassification of Network Rail as a public body in September 2014, which changed the nature of the relationship between Government and Network Rail. In particular, Network Rail's debt now accrues to Government accounts such that any over-spending by the company therefore has a direct impact upon public funds.
 - The Bowe Review into the railway enhancements programme for 2014 to 2019, which has raised questions about the most appropriate role for the ORR in railway enhancements.³
 - The ORR taking on the role as Highways Monitor following the Infrastructure Act 2015, through which the Office of Rail and Road has taken on a materially different role in relation to roads regulation, than it has in relation to rail.
 - ORR taking on responsibility for regulating the railways in Northern Ireland.
 - The Public Accounts Committee's September report into Network Rail's 2014-19 investment programme recommended a fundamental review of the regulator's role and effectiveness in rail infrastructure planning, citing concerns that the ORR lacked sufficient understanding of Network Rail's costs.⁴
- 4 Moreover, further developments are expected in the future, including the potential for changes to the structure and financing of Network Rail after the Shaw Report is

¹ See [New Opportunities for Railways \(1992\)](#)

² Aside from the transfer of responsibility for railway related health and safety to the ORR from the Health and Safety Executive in April 2006, the ORR took on several consumer protection functions from the DfT including Passenger Information During Disruption following the publication of the rail command paper in 2012.

³ See: <https://www.gov.uk/government/publications/bowe-review-into-the-planning-of-network-rails-enhancements-programme-2014-to-2019-government-response>

⁴ See: <http://www.publications.parliament.uk/pa/cm201516/cmselect/cmpublic/473/47302.htm>

published by the time of the Budget in spring 2016 and the Government has responded to it.

- 5 While the Government continues to fully respect and recognise the importance of, and need for, independent economic regulation of the railways in helping to maintain a safe and efficient railway, it is also committed to ensuring that the regulatory regime remains fully effective, taking into account the changes and potential developments discussed above. Indeed, this is a significant priority given the continuing importance of rail in supporting economic growth and in bringing our country together.
- 6 It is for those reasons that the Government has decided to undertake a project to fundamentally consider the roles and responsibilities of the ORR to ensure that they remain appropriate.
- 7 This project will be run in parallel with the important Shaw Report into Network Rail, which is considering the longer-term future shape and financing. The project will identify whether any changes are necessary and appropriate, both in the short term to feed into the upcoming industry planning process in Periodic Review 18, as well as to consider whether broader, medium term changes are appropriate.

Approach

- 8 This project will be led by DfT. However, in taking this work forward DfT intends to work closely with parties from across the rail industry, including train and freight operators, Network Rail and other infrastructure providers, representatives of passenger interests, the rail supply chain, other regulatory bodies, investor representatives and, of course, from the ORR itself. DfT is keen to obtain the views of all relevant stakeholders about the future roles and responsibilities of the ORR. A challenge panel of industry experts will also shortly be established to provide expert input and challenge to the DfT review team throughout this process.
- 9 The project will conclude in March 2016. We expect the outcomes of the process to be, where and if appropriate, options for potential changes to the regulatory regime, which will need to be explored following the publication of the Shaw Report to take account of its findings.
- 10 In approaching this project, the DfT will conduct its work in a manner which reflects the importance of preserving the ORR's independence. Additionally, it will ensure that its recommendations are compatible with the law that governs rail regulation, including European law requirements, although its recommendations may include measures which would require change to the UK legislative structure.⁵

Key questions

- 11 As noted above, DfT wants to hear from stakeholders across the industry, but also users of the railway and all those who are interested in how it can be improved, to ensure that the full range of perspectives on rail regulation are taken into account. We therefore would welcome views from all interested parties on the following key issues, supported by evidence explaining and illustrating the points made where you are able to provide it.⁶ We expect that, alongside this, we will be exploring several of

⁵ This will also take account of the impact of upcoming developments, such as the European Fourth Railway Package, currently under negotiation, which could have implications for the rail regulatory regime for the UK.

⁶ For example, the DfT would welcome any existing research which may be available to stakeholders.

the issues described below in meetings with stakeholders across the industry.

In the light of Network Rail's reclassification, does the role of the regime remain valid? If not, how might it be changed? Having particular regard to . . .

- *The impact of the reclassification of Network Rail on the roles and accountabilities of Ministers and Government's relationship with the ORR.*
- *The regulatory requirements of various parties including Government, infrastructure managers, train operators (passenger and freight), the supply chain, passengers and freight customers, with particular reference to the promotion of private investment in the railway.*
- *The implications of the reclassification of Network Rail on the role of the ORR in relation to investment in the railways, particularly in the light of changes to the financing regime (e.g. the introduction of the borrowing limit), identifying particular impacts in relation to the ORR's role in:*
 - *Enhancements*
 - *Operations, Maintenance and Renewals*
 - *Performance*
- *The potential implications for the regime of any future changes to Network Rail's structure and/or ownership.*

Are the ORR's present statutory duties appropriate? If not, how might they be improved through refocussing, simplification or prioritisation? Having particular regard to . . .

- *Whether Network Rail's reclassification to the public sector requires any revisiting or prioritisation of the ORR's duties and how any such prioritisation might be structured so as to promote investment and secure value for money from the investments made by Government and industry.*

What is the most effective role for the regulatory regime in competition and securing effective protection of rail users and passengers? With particular regard to . . .

- *The effectiveness of the current regulatory regime, in balance with the franchising system, in securing effective protection for passenger interests.*
- *The appropriateness of the current division of responsibilities between bodies responsible for the protection of passenger interests, particularly the role of Transport Focus and its interaction with other entities concerned with the interest of passengers.*

How might the arrangements for securing the effective governance, accountability and efficiency for the ORR as part of the regulatory regime be improved? With particular regard to . . .

- *The effectiveness of the current governance arrangements for the ORR*
- *The nature and extent of the ORR's engagement with stakeholders when conducting its regulatory functions and its approach with respect to transparency*
- *The implications for the regulatory regime of further devolution, both within England, and between the nations of the United Kingdom.*

- *Any broader changes to the regulatory landscape which could reduce or otherwise change, the range of bodies, with regulatory or related functions, operating in this sector.⁷*

The implications of comments in relation to the above for the broader functions of the ORR, particularly in relation to safety and roads regulation (to the extent not already detailed above)

Is there anything else about the future role and responsibilities of the ORR, or the regulatory functions of the railways, not covered in the questions above that you consider should be taken into account?

Responses

Please ensure that your response reaches us before **Friday 15 January 2016**. If you would like further copies of this document, it can be found at web address www.gov.uk/dft or you can contact the Department using the details below if you need alternative formats (Braille, audio CD, etc.).

Please send responses to:

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When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, 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 it would be helpful if you could explain to us why you regard the information you have provided as confidential. 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

⁷ We also note the work being conducted by HMT and BIS with respect to the functions of economic regulators, including the ORR. See <https://www.gov.uk/government/publications/a-better-deal-boosting-competition-to-bring-down-bills-for-families-and-firms> We will remain in close contact with HMT and BIS to ensure co-ordination of this project with that work.

as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Terms of Reference

- 1 The project will make recommendations for enhancing the effectiveness of the rail regulatory regime in securing a safe, effective and efficient railway, with specific reference to the role of the Office of Rail and Road (ORR).
- 2 It will have particular regard (i) for the arrangements for securing value for money from investment in the railway from taxpayers, passengers and other sources, and (ii) to the arrangements for securing the protection of the interests of users (iii) the importance of an environment that supports private sector investment and involvement in the rail sector and (iv) the changed context for investment in the railway following the reclassification of Network Rail to the public sector.
- 3 It will focus primarily on the ORR's functions in respect of economic regulation and consumer protection, while recognising that this may have consequent implications for both other ORR functions such as roads and safety regulation, and for other bodies with an interest in issues such as consumer protection, including Transport Focus.
- 4 Its recommendations will cover both (i) short and medium term issues relating to the forthcoming Periodic Review 2018 process, which will be used to determine the Control Period 6 (2019-2024) rail settlement and (ii) longer term options for reform, taking into account the report which Nicola Shaw is currently developing.
- 5 It will conduct its business in a manner which reflects the importance of preserving the ORR's independence.
- 6 It will ensure that its recommendations are compatible with the law that governs rail regulation, although its recommendations may include measures which would require change to the UK legislative structure.
- 7 This project will conclude by March 2016.