

## Response to ORR's initial consultation on the 2018 periodic review of Network Rail (PR18)

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to [pr18@orr.gsi.gov.uk](mailto:pr18@orr.gsi.gov.uk) by **10 August 2016**.

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### Chapter 2: Context for the review

We invite stakeholders to comment on whether they agree with our view of the context for PR18 or whether they consider there are additional significant points. (If the latter, please explain how these might affect the review).

We would observe that as well as overall volume growth, the nature and geographical distribution of freight in particular is changing. Coal and steel were dominant in areas, such as Yorkshire, Humberside and South Wales, that are generally discrete from the main high volume passenger routes. In contrast, the growth sectors - intermodal and construction - are very much aligned with these main routes and also with London and the South East, thereby increasing the pressure on the busiest parts of the network. It follows that Network Rail need to respond efficiently to increased demand in these areas for both passenger and freight.

We would also note that, in spite of this increased use of the busiest parts of the network, freight performance has continued to improve and has not dropped off as has been the case with passenger TOCs.

### Chapter 3: Focusing the review where it can have most impact for passengers and freight customers

We welcome views on the proposed relative priorities for the review, as well as any other areas that should be prioritised (in which case, we would particularly value views on what should not be prioritised as a consequence).

We agree, in general, with the proposed areas for review and the categorisation into the High Priority, Continued Focus and Incremental Improvement, although we consider that network reliability should be High Priority, given the considerable disruption caused on a frequent basis by infrastructure failure, notably track circuit failures, points & signal failures and overhead line problems.

We welcome the intention to deliver improved outcomes in providing additional and more reliable passenger services, safeguarding network-wide coherence for freight and to a railway that supports economic growth and delivers environmental benefits through reduced road congestion. We would suggest that the provision of additional capacity for freight should also be a key outcome, since the environmental (and often economic) benefits of modal transfer are considerable and far greater than measures to improve environmental performance within the road mode.

#### **Chapter 4: Our proposed approach to the review**

We would like to know if you agree with the overall approach that we have set out for the review.

We would also welcome additional suggestions and proposals for how we might adapt our regulation to the current context. It would be helpful if you could arrange your comments around the headings in the chapter (set out below) where these are relevant to your response.

#### **Route-level regulation**

The Institute supports the general thrust of the Shaw report and welcomes greater devolution of accountability for efficient delivery to Routes. In our response to Shaw we did, however, express considerable reservations that cross-border flows, especially freight, could be seriously disadvantaged by a greater - and potentially incentivised - focus on TOC's and customers enjoying close relationships with a geographical Route.

We welcome the creation of a virtual Freight Route, and its expansion to include national passenger operators, but remain concerned that the ability of the virtual Route to exert direction and influence over geographical Routes will be limited. We believe that the geographical Routes should have an regulatory obligation to cater efficiently and fairly for cross-border flows to ensure that 'home' customers are not unduly favoured.

We support the proposed measures for regulating geographical Route performance and the way in which this could be used.

#### **System operation**

The virtual Freight route and the System Operation function should, similarly, have obligations to ensure that long term capacity, plus effective long term and short term paths are produced, and that overall performance meets agreed FOC/freight customer/national TOC specifications.

We do not believe that the costs of the Freight Route and the System Operator should be heavily regulated - they do not account for a significant proportion of NR costs and it is the output of these organisations that is of critical importance, especially in regard to cross-border

flows, and it is here that regulatory scrutiny should be focussed.

### **Outputs & monitoring**

We welcome the proposal to improve how the passenger experience is reflected in output measures and monitoring, but consider that a similar measure should also apply for freight customers - the FDM is a good measure of overall performance but does capture the individual experiences of customers.

We also welcome the suggestion for increased transparency in monitoring.

### **Charges & incentives**

We welcome increased understanding and transparency in costs and charges, but would note that for non-franchised operations, i.e. freight and open access where operators are not held harmless to changes in access charges and real money is involved, it is critically important that charges are predictable and stable.

Furthermore, access charges are an important component in overall costs and thus competitiveness of the rail mode - with Government objectives for modal shift and ORR's duty to increase the use of rail for freight as well as passenger, it is crucial that access charges should not drive freight off the railway and/or discourage the transfer of new flows from road.

### **Approaches for enhancements**

We believe that NR do not have an effective process for planning and managing enhancements. Quite apart from high-profile failings with GW Electrification, we are deeply concerned that it has taken years to analyse and develop a capacity enhancement scheme for the Felixstowe branch, where a shortage of paths is constraining growth at the UK's biggest freight location. Similar comments apply to a number of private party schemes (e.g. new freight facilities) where NR has not had, and has failed to establish, a clear understanding of its infrastructure and how it can be developed.

There have been serious failings in engineering analysis and more attention paid to internal process than the desired outcome. Clear strategic planning and project direction is required to ensure that departmental requirements and shortcomings do not stand in the way of project delivery.

### **ERTMS and related technology**

We believe that ERTMS and wider digital solutions have a key part to play in improving the capacity and efficiency of the railway. It is, however, clear that robust technical solutions are proving elusive and that ERTMS alone does not, on its own, deliver increased capacity - a range of other measures, such as grade separation at junctions and remodelling of station approaches is needed to fully exploit the benefits of ERTMS, which are largely closer spacing of trains on plain line between junctions and nodes.

It follows that work on, and investment in, traditional tangible engineering solutions must continue alongside the development of ERTMS - this will also mean that some additional capacity will be delivered in the event of the Digital Railway running late.

## Chapter 5: Developing the high-level framework for the review

We welcome views on how our high-level approach could be implemented and on the potential framework set out in chapter 5. As part of this, we invite thoughts on what it is practicable to achieve in PR18 and in CP6, and what might be more realistic to achieve in the subsequent periodic review.<sup>1</sup>

We would also welcome any further suggestions and ideas on how we might improve how we regulate Network Rail.

We support the proposed approach, but believe the main focus should be on the devolved geographical Routes, the virtual Freight Route and the System Operator. The central support and technical functions should not be ignored but should be studied to the extent that they affect the key functions. The central functions that have the greatest impact are likely to be the Route Services Directorate (notably the National Supply Chain) and to Infrastructure Projects, which also has a major impact on the delivery of enhancement schemes.

Re para 5.6, would reiterate that measuring the impact of NR's delivery on outcomes for passengers should apply equally to freight customers.

We support the continued 'single till' approach for NR revenue and would not wish to see, for example, separate costs and charges raised for the services of the System Operator.

We believe that incentives need to be considered very carefully to avoid unintended consequences. It would be all too easy to incentivise a Route Director to deliver for his prime customers but, in the process, lead him to ignore the needs of - or even consciously disadvantage - transit traffic in which he has no natural or financial interest. Route incentivisation is probably best focussed on the production side - the availability and performance of infrastructure assets and operational efficiency of the Route for *all* customers and users.

## Chapter 6: Process and engagement

We would be grateful for comments on the proposed phases of the review, including any views on the [draft timetable](#) and our proposed approach to engagement.

We also invite high-level views on the process for customer engagement by Network Rail's routes and the system operator to inform their business plans, in terms of what is achievable for this review.

We would also welcome any views on how Network Rail and train operators would like to engage and be involved in the implementation process for PR18 and any thoughts on the process relating to Network Rail's right to object to our determination.

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<sup>1</sup> You may also wish to read and comment separately on the working papers that we will publish following this consultation document.

We appreciate the need for thorough and comprehensive development of proposals for PR18, but the process inevitably causes uncertainty and worry on the part of those whose businesses stand to be directly affected by any changes, notably FOC's and freight customers. Measures to reduce the length and degree of uncertainty would be welcome.

Whilst stakeholder involvement with Routes is clearly desirable, we have concerns about how this can be achieved by operators and customers who use and traverse a number of Routes. In a highly competitive and low margin business such as freight, even large FOC's do not have the resources to attend numerous Route Stakeholder Groups and small FOC's and customers are unlikely to be able to be represented on more than an occasional basis. This is a serious concern since it could lead to such Groups and Routes developing a skewed and inaccurate perception of what 'the customer' requires. We believe the virtual Freight Route will need to represent all freight customers and FOC's at Route Stakeholder Groups, with customers and FOC's attending personally when they wished to raise a matter of importance.

#### **Any other points that you would like to make**

The Institute, as an organisation independent from industry profit and loss considerations - and with a considerable body of experience and expertise - is happy to be involved further in the PR18 process and provide neutral objective input and assistance as required.

Thank you for taking the time to respond.