

Rail Strategy
Department for Transport
3/18-19, Great Minster House
33 Horseferry Road
London
SW1P 4DR

please reply to:
Clara Vale
Thibet Road
Sandhurst
Berkshire
GU47 9AR

orr.project@railexecutive.gsi.gov.uk

chris.page@railfuture.org.uk

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Railfuture response to the Rail Regulation call for evidence

Dear Ms Rose,

Railfuture is a national independent voluntary organisation campaigning for a bigger, better railway in Britain, so we welcome the opportunity to provide an informed response to the questions posed in this call for evidence

Our response to the questions is attached. Please accept my apologies for our late submission, which I hope that you can still accept.

If you require any more detail or clarification please do not hesitate to get in touch.

Yours faithfully

Chris Page

Chris Page
Railfuture
Vice Chairman

Response to the Rail Regulation call for evidence

Reclassification

A) ministers and government relationship with ORR

The regime still remains valid as the key functions of the ORR in terms of rail safety and ensuring best value for taxpayers money will have no less importance. However, government decisions will be much closer to the point of scrutiny.

If a DfT decision materially affects the performance of Network Rail, this will warrant reporting by ORR. For example, a programme may be started to create additional capacity in a route, but if the final investment tranche unlocking the capacity may then be cancelled by a ministerial decision, rather than a Network Rail management decision, ORR would need to report that investment decisions have been inconsistent and wasteful. This change in ORR's relationship with government is an inevitable consequence of the change in status. The chances of such a scenario developing can be minimised by ensuring that operates at a strategic level in the new regime, leaving tactical and operational decisions to Network Rail.

In assessing performance of all segments of the industry ORR must ensure that train operators and Network Rail do not try to blame government decisions for any failings.

B) promotion of private investment

The introduction of private investment should have no effect on the regulatory requirements. However the reclassification of Network Rail may be seen by potential private investors as increasing political involvement and so potentially increasing the commercial risk.

C) borrowing limit

The borrowing limit must not be allowed to impact on the completion of approved programmes or, if for example an approved programme is not completed, on train operator's franchise commitments. To avoid this happening, major programme budgets should be approved and funded for the whole programme, not on a year-by-year basis.

Similarly renewals and maintenance must be scrutinised by ORR on the basis of safety as well as economic performance. The organisation is our national rail safety agency (NSA) and has a duty under EU law to carry out these functions. If maintenance is cut, the ORR has a duty to ensure safety; if speed restrictions and timetable changes result and operating companies are consequently unable to fulfil their franchise obligations, ORR must report the root cause honestly and fairly.

D) Future Changes

ORR need to be empowered to block the sale of assets that might be needed for the future, either for reopenings or for enhancement to the current network.

Are the present statutory duties appropriate? How might they be improved?

Clearly ORR's safety function is working well and should be retained. It should also continue to adjudge open access (including freight) bids.

ORR has recently been the responsibility given for roads, namely to monitor the performance and efficiency of Highways England (the delivery body). ORR should have the same responsibility for rail, monitoring the performance and efficiency of Network Rail. A logical extension to this would be responsibility for monitoring the performance and efficiency of the operators in meeting their franchise commitments, particularly where a subsidy is paid.

To discharge these responsibilities ORR will need more rail expertise than it has now, but having this expertise would allow DfT to delegate responsibility for assessing the deliverability of Network Rail's delivery plan (currently no organisation appears to have this responsibility) and assessing the deliverability of franchise bids to inform the decision which DfT will make on which franchise bid to accept.

Some people suggest that ORR should assume responsibility for the strategy for development of the rail network and services. This would in effect recreate the Strategic Rail Authority. However the SRA ultimately failed, because strategic rail decisions are frequently political. In all organisations, strategy - ie future direction - is key to the future survival of the organisation, so must be set from the top of the command chain, which for the rail industry is the Department for Transport. The political aspect will become more important if some responsibilities are devolved to regional bodies. Delegating responsibility for assessing the deliverability of NR plans and franchise bids to ORR would release capacity within DfT to exercise responsibility for the (national, not regional) strategy for development of the rail network and services, and counter the accusation of DfT micromanagement. Strategy should not be delegated to such as ORR (an audit, assessment and inspection body), Network Rail (a delivery body), or the Rail Delivery Group (a supplier association).

ORR should set a higher priority on measures that can make stations more accessible to the public, such as appropriate levels of parking, improved pedestrian access from housing developments and should scrutinise local development plans to ensure that rail passenger numbers are not constrained by decisions of Local Planning Authorities. This could be achieved through being a statutory consultee or allowing members of the public to refer Local Plans to the ORR. In this way current practice of building housing developments near to stations without direct pedestrian access could be challenged. Examples exist where a potential 400 yard walk to the local station actually turns into a one mile drive.

Protection of Rail Users and Passengers

ORR has to balance the needs of different types of rail user, for example to ensure that on busy passenger routes there are sufficient freight paths, and that allocated freight paths are effectively used. Freight services must be able to run both in daytime and at night, so that the capital is deployed in rail assets is efficiently used.

An aspect of regulation which is not currently being considered is the contractual relationship between passengers and rail operators. The National Conditions of Carriage are completely out of tune with modern consumer legislation, and revising this relationship should form part of ORR's responsibilities. This should not form part of Transport Focus' role, which is primarily to represent passengers, as this would create a potential conflict of interest.

Governance

ORR board should have a stronger user representation, both from the passenger and freight point of view. This must be achieved without detracting from the focus on delivering value for money. Board members should be required to spend sufficient days per month to get a full grip on the issues to be tackled.

The ORR has a good relationship with the official national body Transport Focus, but most user groups and interest groups find ORR too remote. When scrutinising local projects ORR should seek the views of local organisations and not simply distil its input through national forums.

Where combined authorities or regional rail bodies are developing, the ORR needs to formalise a relationship with them. Some of these may be involved in funding infrastructure enhancements and the next round of franchising, particularly where local networks are being franchised as entities. The ORR urgently needs to develop a strategy for working with these new bodies. The ORR would have to create relationships with any new entities created as a result of any restructuring of Network Rail.

The implications for safety

A number of safety rules across the EU are being harmonised, as are specifications for most items of railway infrastructure and rolling stock. As the UK loading gauge is smaller than the EU standard, this will present some challenges for our NSA, the ORR. However, the core function is well established and understood and carried out effectively; the ability of ORR to successfully implement these changes, for example the rollout of ERTMS, must not be compromised. Creating a Single Market in the rail industry has potential long term cost savings of upwards of 30%.