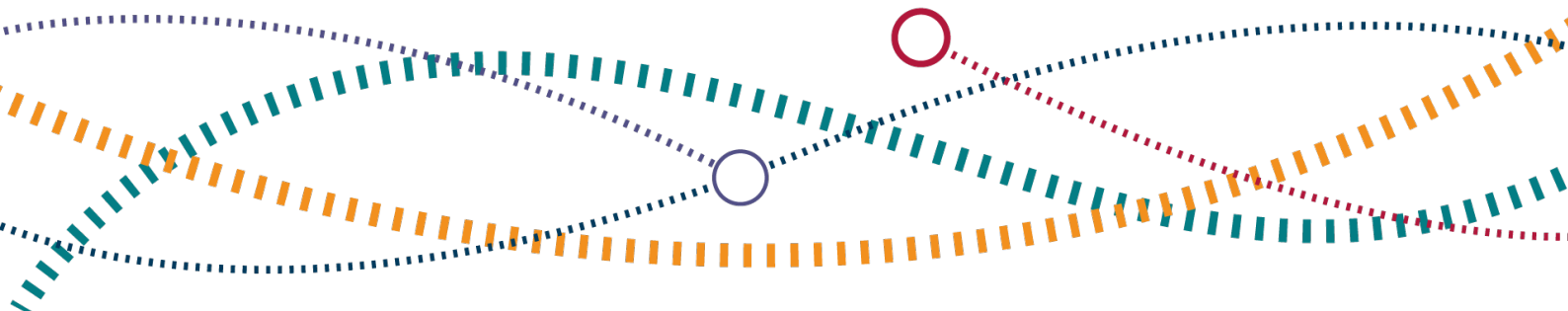




# PR23 draft determination

## Policy position – Managing Change

15 June 2023



# Contents

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# About this document

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This Managing Change Policy document is one of four policy positions documents of our draft determination for the 2023 periodic review (PR23).

PR23 will determine what the infrastructure manager for the national rail network, Network Rail, is expected to deliver with respect to its operation, support, maintenance and renewal (OSMR) of the network during control period 7 (CP7), which will run from 1 April 2024 to 31 March 2029, and how the available funding should be best used to support this.

This strongly influences:

- the service that passengers and freight customers receive and, together with tax payers, ultimately pay for; and
- the charges that Network Rail’s passenger, freight and charter train operator customers pay to access its track and stations during CP7.

Our draft determination sets out:

- our review of Network Rail’s strategic business plan (SBP); and
- decisions on its proposed outcome delivery and its planned expenditure to secure the condition and reliability of the network;
- changes to access charges and the incentives framework; and
- relevant policies on managing change and the financial framework.

In addition to [this document](#), we have also published as part of our draft determination:

Document type	Details
<b>Executive summaries of our determination</b>	Our key proposals from our draft determination for: <ul style="list-style-type: none"><li>• England &amp; Wales</li><li>• Scotland</li></ul>

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<b>Overviews of our determinations</b>	What Network Rail will need to deliver and how funding will be allocated in: <ul style="list-style-type: none"><li>• England &amp; Wales</li><li>• Scotland</li></ul>
<b>Consolidated decisions</b>	A summary of our draft decisions across Great Britain
<b>Introduction</b>	An overview of PR23 and background to our draft determination
<b>Settlement documents</b>	Detailed draft decisions for each of: <ul style="list-style-type: none"><li>• Scotland</li><li>• Eastern region</li><li>• North West &amp; Central region</li><li>• Southern region</li><li>• Wales &amp; Western region</li><li>• System Operator</li></ul>
<b>Supporting documents</b>	Technical assessments of: <ul style="list-style-type: none"><li>• Health and safety</li><li>• Outcomes</li><li>• Sustainable and efficient costs</li><li>• National Functions</li><li>• Other income</li></ul>
<b>Policy positions</b>	How we intend to regulate Network Rail during CP7 in relation to: <ul style="list-style-type: none"><li>• Financial framework</li><li>• Access charges</li><li>• Schedules 4 &amp; 8 incentives regimes</li><li>• <b><u>Managing change</u></b></li></ul>

## Responding to the consultation on our draft determination

We are consulting on our draft determination and welcome comments from stakeholders on any of our documents which form the draft determination on or before 31 August 2023.

Responses should be submitted in electronic form to our inbox: [PR23@ORR.gov.uk](mailto:PR23@ORR.gov.uk). We request stakeholders provide their response using [this proforma](#).

We intend to publish all responses on our website alongside our final determination in October 2023. Annex A to our proforma document sets out how we will treat any information provided to us, including that which is marked confidential.

### Next steps

After taking account of stakeholder responses, we expect to issue our final determination on Network Rail's delivery and funding for CP7 by 31 October 2023.

We expect to issue our review notices by December 2023 and, subject to Network Rail's acceptance, issue notices of agreement and review implementation notices. These will give effect to the decisions made during PR23 in time for CP7 to commence from 1 April 2024 and for Network Rail to develop its plans for delivery.

# Introduction

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This document sets out our Managing Change Policy, which Network Rail<sup>1</sup> is required to comply with under its [network licence](#).

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- 1.1 The Office of Rail and Road (ORR) is the combined economic and health and safety regulator for Great Britain’s rail network and the regulatory body for railway services in Northern Ireland. ORR is also the economic monitor for England’s strategic road network.
- 1.2 Our core purpose is to protect the interests of rail and road users, improving the safety, value and performance of railways and roads today and in the future.

## Why a Managing Change Policy is needed

- 1.3 ORR holds Network Rail to account against its network licence. In our [Holding to Account Policy](#)<sup>2</sup> we set out how we monitor Network Rail’s performance, how we identify if we need to take action, and the actions we may take to secure improvement.
- 1.4 Over the course of a five-year control period, we monitor performance against several outputs determined through the periodic review process, including:
  - (a) ORR’s **final determination** setting out the outcomes that Network Rail must deliver for the funding provided for England & Wales and Scotland;
  - (b) ORR’s **settlement documents** (within the final determination) for each of the Network Rail regions and System Operator (SO), outlining the funding for each and the outcomes they must deliver. In the Periodic Review 2023 (PR23), our determination will also identify a set of expectations in relation to Network Rail’s ‘core’ national functions, which provide various responsibilities and services on behalf of regions on a centralised basis (including for example finance, safety protocols and procurement); and

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<sup>1</sup> All references to Network Rail in this document are to Network Rail Infrastructure Limited.

<sup>2</sup> We are currently [consulting](#) on the updated holding to account policy for CP7. Consultations close on 9 June 2023.

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- (c) Network Rail’s **delivery plan** setting out how it plans to deliver the outcomes for the funding in the final determination.

1.5 We recognise that there may be circumstances where elements within these outputs need to change during the control period. We therefore have a Managing Change Policy, as described in this document, which sets out under what circumstances elements of the periodic review might change, and the process we and Network Rail use to manage those changes.

1.6 In addition to the processes described in this document, there are other mechanisms to deal with changes in specific circumstances:

- (a) Network Rail regularly updates its delivery plan over the course of the control period. We review the updated plans, in terms of progress to date and any changes made, publishing a [report](#) on our findings to provide assurance to funders. For example, a region may revisit its internal budget allocation to make changes to its renewal plans;
- (b) We have a role in processes that can be used to change Network Rail’s overall funding in exceptional circumstances and for a narrow range of situations where certain conditions are met. Examples include our approval role in Network Rail returning Network Grant money to funders, and our role in the access charge rebates process; and
- (c) Very exceptionally, an interim periodic review can be triggered to carry out a new charges review if there has been a significant material change in circumstances that means that Network Rail no longer has the resources to deliver its outputs.

1.7 The Managing Change Policy complements these mechanisms. It enables Network Rail to respond flexibly to changing circumstances that impact on accountabilities and/or funding of a region, the SO, or the ‘core’ national functions (together referred to in this policy as “Network Rail Business Units”) while ensuring:

- (a) Proposed changes are clearly reasoned and evidenced, and their impacts understood by Network Rail, ORR, funders, and third parties. This provides confidence that Network Rail will continue to deliver appropriate outcomes for an efficient level of funding;

- (b) Clarity about what ORR and stakeholders are holding Network Rail to account for at any point in time, and how this links back to what was planned and funded in the final determination;
- (c) ORR retains the ability to hold Network Rail to account – including through the comparison of Network Rail’s performance between regions or over time – and maintains transparency for stakeholders on how Network Rail is performing; and
- (d) The integrity of the five-year infrastructure funding period is maintained, meaning the operation and maintenance of the infrastructure is planned in a way that ensures the long-term sustainability of the assets.

## When the Managing Change Policy is used

- 1.8 Network Rail must comply with this Managing Change Policy when it is making **Relevant Changes**. These are changes that impact Network Rail Business Units’ accountability or funding. We set out the definition of Relevant Changes in Chapter Two. Should Network Rail make a Relevant Change without complying with this policy, this would be a break of the network licence and ORR may take action.
- 1.9 Network Rail should categorise Relevant Changes into **Notified Changes or Consulted Changes**, depending on their impact and significance. In exceptional circumstances, ORR may reclassify a Consulted Change as an **Exceptional Change**. We explain the categories of Relevant Changes in Chapter Three.
- 1.10 We explain the managing change process, clarifying ORR’s involvement in it, as well as our expectations for Network Rail’s engagement with stakeholders, in Chapter Four.

## Managing change principles

- 1.11 This Managing Change Policy is based on the following principles:
  - (a) Proportionality: not all changes are ‘relevant’ or in-scope. Instead, the focus is on the impact of changes on the settlements.
  - (b) Consistency: similar changes should have similar treatment, both over time and across different types of change (unless there are good reasons for differences).



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- (c) Transparency: funders and stakeholders should be able to understand what changes are happening, the reasons for the changes and the process that has been followed.
- (d) Timeliness: early engagement on more substantive changes should ensure that the impact of proposed changes can be considered in advance, making the managing change process is more effective.

### The status of this policy

1.12 This policy is an updated version of the policy in place during control period 6. It reflects the policy changes [consulted](#) on as part of PR23 and has taken stakeholder views into account. It will be in effect until it is superseded by a new updated version. Any changes to the policy will be subject to consultation with Network Rail and, where appropriate, stakeholders more generally.

## 2. Scope of the Managing Change Policy

Network Rail must comply with the Managing Change Policy when making changes that affect the accountability or funding of its Business Units.

### Relevant Changes

- 2.1 As a condition of its licence (Licence Condition 4), Network Rail is required to comply with this Managing Change Policy when making a ‘Relevant Change’, where the definition of Relevant Change is set out below.

A **Relevant Change** is a change that has a material impact on what Network Rail should deliver in operating, maintaining and renewing the network as set out in our final determination. This includes changes to:

- (a) Network Rail Business Units' accountability, which could include:
  - (i) the regions' boundaries;
  - (ii) the functions of Network Rail Business Units.
- (b) Network Rail Business Units' funding set out in the final determination (including changes to annual budgets).
- (c) The outcomes set in the final determination and/or their monitoring metrics (headline success and supporting measures, headline success measures baseline trajectories, and supporting measures forecasts).

- 2.2 For clarification purposes:

- (a) If Network Rail is unclear on whether a change satisfies the 'Relevant Change' criteria, it should contact us as soon as possible to discuss before making any decision.
- (b) Changes in how Network Rail Business Units allocate their annual budgets internally are not considered Relevant Changes for the purposes of this policy unless they change the accountability. This includes regions'

contributions to the relevant national risk fund. (since the funds allocated to Scotland are ringfenced, transfers between England & Wales and Scotland are not allowed and hence there are two separate risk funds).

## 3. Categories of Relevant Change

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Relevant Changes can be categorised by Network Rail as a Notified Change or a Consulted Change depending on their impact and significance. ORR can reclassify Consulted Changes as Exceptional Changes in certain circumstances.

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- 3.1 The categories of Relevant Change are: Notified, Consulted, and Exceptional. The categorisation of a change is determined by:
- (a) its potential to reduce our ability to regulate Network Rail and hold it to account effectively, including being able to compare performance between Network Rail Business Units;
  - (b) its materiality in terms of its monetary impact and potential impact on outcomes delivered to customers, end-users and funders; and
  - (c) whether Network Rail Business Units impacted by the change agree to it.
- 3.2 To clarify point 3.1(c) above, in agreeing to a change, a Network Rail Business Unit confirms that:
- (a) the change can be incorporated into its business plans such that it can still deliver against its commitments to customers, or that the change does not have a material impact on the commitments. This recognises that these commitments can change over time reflecting customers' changing priorities; and
  - (b) no changes to the requirements set out in the final determination are being sought.
- 3.3 Changes to performance measures are also categorised into the same levels. We provide more detail on this at the end of this chapter.

### Notified Changes

- 3.4 The following changes are **Notified Changes**:
- (a) changes to the allocation of amounts up to £50 million (fifty million pounds) of Network Rail's centrally-held risk fund;
  - (b) changes to budgets that are agreed by affected Network Rail Business Units;

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- (c) changes to Network Rail Business Units' boundary within a region (e.g., if a region decides to reorganise entities such as maintenance delivery units from one of its routes to another), or to other functions within Network Rail Business Units that do not change the reporting arrangements for the affected settlement(s) (e.g., moving a small staff team between Network Rail Business Units); and
- (d) any changes to supporting measures forecasts.

### Box 1: Example of a Notified Change

The following change, which was made by Network Rail during CP6, would be categorised as a Notified Change in CP7:

In the 2021-22 financial year, Network Rail decided to move funding from its centrally-allocated risk fund into its four regions in England & Wales. This was to cover rising inflation costs and mitigate those regions utilising all region allocated risk funding and prevent cancellation of works. The regions agreed to this additional funding and no reporting arrangements were affected as a consequence of this change.

## Consulted Changes

3.5 The following changes are **Consulted Changes**:

- (a) Any single change to the allocation of amounts of more than £50 million (fifty million pounds) of Network Rail's centrally-held risk fund;
- (b) changes that bring funding for Network Rail Business Units below what was set out in the final determination;
- (c) changes to funding that a Network Rail Business Unit does not agree to;
- (d) changes to accountability within or between Network Rail Business Units that affect the funds or outcomes established in the settlements;
- (e) changes to the reporting and comparisons Network Rail provides to ORR in connection with ORR's performance and outcome monitoring mechanism;
- (f) changes to headline measure baseline trajectory, headline success measure calculation methodology, headline success measure definition, addition/removal of headline success measure, supporting measure

calculation methodology, supporting measure definition, addition/ removal of supporting measures.

3.6 Other considerations when making consulted changes are:

- Updates to headline success measure baseline trajectories, which are set in ORR's determination, will only be made following a material change in circumstances. These circumstances are those unforeseen in Network Rail's forecasts or ORR baseline trajectories, and are likely to be outside of Network Rail's control and lead to a sustained change in realistic performance expectations in future years of the control period.
- As part of our general engagement, we may ask Network Rail to include or remove headline success or supporting measures, change their definition or calculation and update headline success measure baseline trajectories, as appropriate and in line with the categories of change set out above. If Network Rail does not make the changes ORR has asked for, ORR will have the option of making its own changes. In doing so, ORR will set out clear reasons for this and will provide Network Rail the opportunity to comment on the proposals and rationale. ORR will publish its decision along with relevant feedback from Network Rail.
- ORR does not expect Consulted Changes to be made frequently.

**Box 2: Example of a Consulted Change**

The following change, which was made by Network Rail during CP6, would be categorised as a Consulted Change in CP7:

In 2021 Network Rail decided to transfer a section of Wales & Western region, covering 72 miles of rail infrastructure around and including Worcester, to North West & Central region. Network Rail wanted to make the change as it would mean all responsibilities for asset management, strategic planning, operations and maintenance for Worcestershire and West Midlands Axis would sit within one region. Network Rail's [letter](#) summarised what the impact of the change would be on the CP6 financial settlement, and set out the changes to CP6 metrics used by ORR to monitor Network Rail's performance. Network Rail's letter also set out the stakeholder engagement it had with key stakeholders.

## Exceptional Changes

- 3.7 In occasional circumstances, if we consider a Consulted Change risks undermining the settlements of Network Rail Business Units, ORR can classify a Consulted Change as an **Exceptional Change**.
- 3.8 The following are examples of Consulted Changes which we would regard as Exceptional:
- (a) A change in accountability across Network Rail Business Units that ORR considers could:
    - I. undermine the settlements;
    - II. reduce our ability to make comparisons between regions; or
    - III. harm funders' and/or ORR's ability to keep a clear line of sight to what was planned and funded for in the final determinations
  - (b) A fundamental change to Network Rail Business Unit funding such that the Business Unit has no prospect of delivering a reasonable proportion of its customers' commitments and/or its requirements against the final determination.

## Changes to Performance Measures

- 3.9 Changes to performance measures in our outcome framework are categorised as set out in the table below:

**Figure 3.1 - changes to performance measures**

Type of change	ORR change classification	Additional consideration
Headline success measure baseline trajectory	Consulted / Exceptional	Change will only be allowed if there is a material change in circumstances
		Or
		There is a change in calculation methodology which requires a change in the baseline trajectory

Headline success measure definition / calculation methodology	Consulted / Exceptional	
Addition / removal of headline success measure	Consulted / Exceptional	
Supporting measure forecast	Notified	
Supporting measure definition / calculation methodology	Consulted/ Exceptional	
Addition / removal of supporting measure	Consulted/ Exceptional	

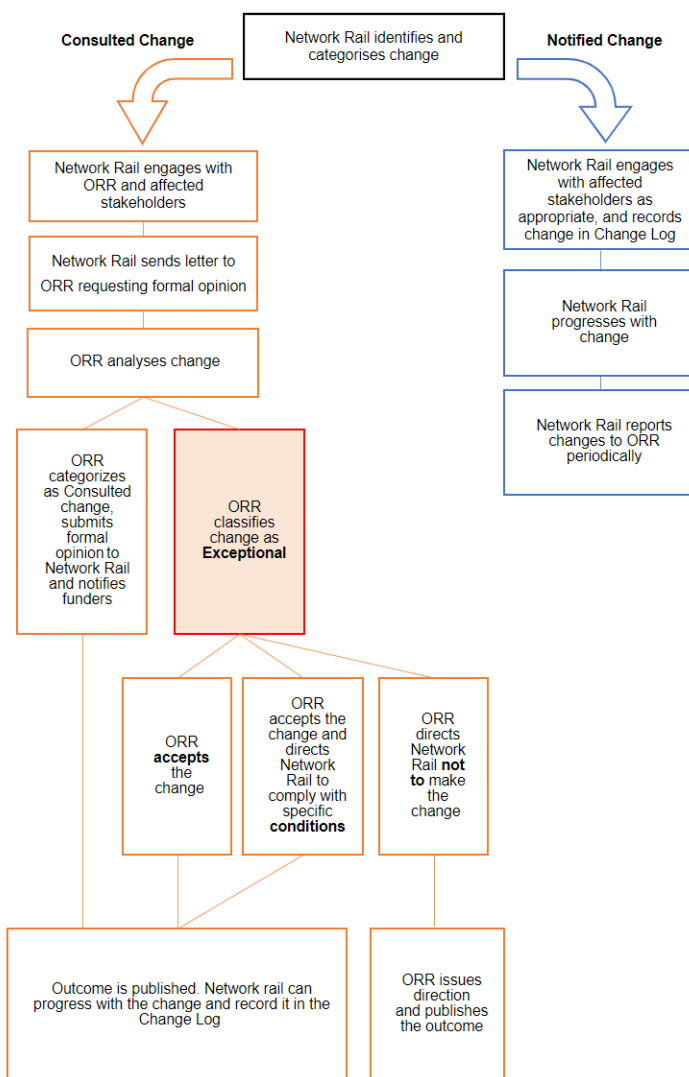


# 4. The Managing Change Process

When considering making a Relevant Change, Network Rail must categorise it as Notified or Consulted. ORR’s involvement in the managing change process will be proportionate and vary according to the category of change. We expect Network Rail to engage with its stakeholders as part of the change process.

4.1 The managing change process is summarised in Figure 4.1 and further explained in the remainder of this chapter.

Figure 4.1 Process Outline



## Emerging change

- 4.2 For any change being considered, Network Rail will need to decide whether it is a Relevant Change, and if so, categorise it as Notified or Consulted. Where Network Rail is not clear about whether the change is Relevant or what category the change is, it should discuss the issue with ORR as early as possible.
- 4.3 Additional information may emerge about the potential impact of a Relevant Change that alters its categorisation. If this results in a modification from Notified to Consulted Change, then Network Rail must inform ORR of this as soon as possible. If this results in a modification from Consulted Change to Notified or Exceptional Change, ORR will notify Network Rail as soon as possible.
- 4.4 There may be circumstances where Network Rail needs to make a Consulted Change urgently to respond to an unfolding situation. This Managing Change Policy should not be a barrier to such decisions being made in a timely manner. In these circumstances, we expect Network Rail to inform us about the driver, the expected scale and impact of the Consulted Change as soon as possible.
- 4.5 In all cases, Network Rail shall also explicitly consider and address any implications of proposed changes on the safety of its railway.

## Stakeholder engagement

- 4.6 We expect Network Rail to engage with its stakeholders about Relevant Changes. Network Rail should seek to understand the potential impact of the change on stakeholders, make those stakeholders aware of the change, and give them an opportunity to influence it (including how it is delivered and/or possible negative impacts mitigated). Network Rail's stakeholder engagement should be consistent with the Stakeholder Engagement Duty in its network licence.
- 4.7 When considering a Consulted Change, Network Rail should engage with affected stakeholders before a change is made and provide them with information about the reason for the Consulted Change, its expected impact and the mitigations of possible negative impacts that are being explored and/or pursued.
- 4.8 We expect the high-level details and outcomes of stakeholder engagement to be reflected in the information Network Rail provides to us (described below). ORR may request additional information on a case-by-case basis (for example providing stakeholder comments).

## ORR involvement in the managing change process

### Notified Changes

- 4.9 The process of managing Notified Changes will be entirely handled by Network Rail. Once Network Rail identifies a Notified Change, it should record it in a Change Log<sup>3</sup> that will include all Relevant Changes made in the respective financial year. This should include a summary of the reasons for and impacts of the Relevant Change, any stakeholder engagement undertaken, and indicating when the Relevant Change took effect.
- 4.10 Network Rail will progress the Notified Change and must ex-post inform ORR by submitting the Change Log to ORR periodically, as agreed with ORR. This will provide transparency around any changes and help ORR to make comparisons between Network Rail Business Units over time in a way that supports better regulation.
- 4.11 The process for submission of the Change Log to ORR should be aligned with existing monitoring and reporting activities, for example Network Rail plans that are subject to ORR monitoring and reporting.

### Consulted Changes

- 4.12 Network Rail should engage with ORR (and affected stakeholders) as soon as possible when considering a Consulted Change and always in advance of the decision to make the change.
- 4.13 Network Rail should agree a timeline with ORR, setting out Network Rail's decision-making process as well as the time required for ORR to issue its opinion.
- 4.14 Based on this early engagement, Network Rail must submit a letter to ORR providing information about the Consulted Change it intends to make and seeking ORR's formal opinion in relation to it. This letter must include:
- a) the reason for the potential change and why it has been considered a Consulted Change (as per criteria set out in Chapter two);
  - b) which of Network Rail's Business Units the potential change will impact;

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<sup>3</sup> Or other formal record agreed by ORR.

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- c) the expected impact on Network Rail Business Units (including any impact on region boundaries);
- d) an explanation of any other options that are being considered; and
- e) evidence of stakeholder engagement.

- 4.15 ORR will provide Network Rail with a formal opinion on the Consulted Change. Network Rail will not progress the change before this opinion has been received. The opinion will set out any concerns ORR has about the implications of the change. ORR will publish the opinion and notify relevant funder(s).
- 4.16 We expect Network Rail to consider our opinion (and that of affected stakeholders) carefully when making the decision to progress the Consulted Change. Network Rail can disagree and continue with a change that we are concerned about. Where this arises, we would expect Network Rail to inform us of its decision and explain its rationale.
- 4.17 If, after discussions with Network Rail, ORR has fundamental concerns that it believes cannot be adequately addressed, ORR will consider reclassifying the change as Exceptional, as detailed in the next section.
- 4.18 Consulted Changes should be added to the Change Log and include a summary of the reasons for the change, stakeholder engagement undertaken by Network Rail, impacts of the change, and indication of when it took effect.

### Exceptional Changes

- 4.19 When Network Rail seeks ORR's opinion on a Consulted Change, ORR will assess the change to determine whether we consider the change to be **Exceptional**.
- 4.20 If this is the case, ORR will confirm this to Network Rail as soon as possible and provide an indication of the timescale in which ORR expects to issue a decision in relation to such a change.
- 4.21 We would expect to discuss the change with Network Rail to understand the nature of the change. Depending on the outcome of these discussions, we would consider the following options:
- (a) Supporting the change if Network Rail is able to address any concerns we have and agree to any conditions we would wish to impose. In this situation

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we would follow the Consulted Change process by issuing and publishing an opinion and notifying funders;

- (b) Placing conditions on the change through a direction to Network Rail, which we would publish, and also notify relevant funder(s); and
- (c) In extreme circumstances, direct Network Rail not to make the change. We would publish the direction and notify relevant funder(s) of our decision.

4.22 ORR reserves the right to consult with stakeholders ahead of issuing the direction if we consider it appropriate or necessary to inform our decision making.



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