



Design framework: Our approach to regulating Network Rail in CP6

December 2018

Version 4

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Purpose of the document

Version 4: We have updated the design framework to reflect our October 2018 final determination. References to the August 2018 version of the design framework (version 3) have been included for transparency and consistency.

Purpose and scope

In this document, we set out our approach to regulating Network Rail in control period 6 (CP6) which will run from 1 April 2019 to 31 March 2024. This document reflects the decisions made in our 2018 Periodic Review (PR18), including our final determination¹ and Managing Change Policy².

It also reflects our proposed new regulatory policy for holding Network Rail to account for delivery of the commitments in our determination, and the obligations in its network licence, which we set out in our November consultation on holding Network Rail to account in CP6³. The new policy is intended to replace the existing economic enforcement policy for Network Rail.

This document is intended to be a reference tool that points the reader to where further information on a policy can be found in our PR18 documents. As such it focuses on setting out, in one place, the key aspects of our approach in order to provide a clear explanation of how we will regulate Network Rail in CP6.

It does not capture all of the detail about how we will regulate Network Rail in CP6 nor does it include all our policy decisions made in PR18. For example, we have not included the detail of the charges and incentives contained within track access contracts or the financial framework for Network Rail.

We plan to update this document to reflect the conclusions from our consultation on how we will hold Network Rail to account in CP6 and Network Rail's revised network licence, both of which we expect to publish before the commencement of CP6.

Using this document

For each topic we signpost the relevant section in our October 2018 [final determination overview document](#). We have also included references to the previous version of our [design framework](#) document (Version 3: August 2018, which reflected the June 2018 draft determination) to show the evolution in our position in a transparent way.

As our final determination went into more detail in some policy areas than the draft determination, some new references have been added.

¹ The suite of documents that make up our final determination can be found [here](#).

² Our Managing Change Policy can be found [here](#).

³ Our November 2018 consultation on holding Network Rail to account can be found [here](#).

Version control

ID	Date	Comment
1.0	15/08/2017	First publication reflecting the contents of the consultation on the overall framework for regulating Network Rail.
2.0	25/01/2018	Second publication reflecting the conclusions of the consultation on the overall framework for regulating Network Rail.
3.0	09/08/2018	Third publication, remodelled to provide a clear read across to the draft determination overview document. In order to retain traceability back to our policy development, we have included references to corresponding statements of our policy from the second version of this design framework.
4.0	20/12/2018	Updated to reflect the final determination, our Managing Change Policy and our November 2018 consultation on holding Network Rail to account.

1. The structure of our determination

ID	Policy position	Reference in final determination overview document	Equivalent reference in design framework version 3
1.1	In CP6, Network Rail will be regulated as a single company with a single licence but with a greater focus at route and System Operator (SO) level.	3.3	1.1
1.2	The determination will include a settlement for each geographic route, the Freight and National Passenger Operator (FNPO) and the SO.	1.9	1.2
1.3	The route and SO settlements will set out the funding they will receive (the revenue requirement) to enable them to deliver their commitments to their customers. The settlements include funding to manage risk, both within the route/SO and across Network Rail.	3.65	1.3
1.4	The settlement for Scotland is ring-fenced, therefore the risk funding for Scotland should be held at a route level.	8.27	1.4
1.5	Where Network Rail allows the routes/SO to act as informed customers, we will reflect this in the way we regulate the central functions by, for example, giving space to the routes/SO to scrutinise the central functions' performance and to challenge them, where necessary.	3.56	1.5

2. Performance against scorecards and other requirements

ID	Policy position	Reference in final determination overview document	Equivalent reference in design framework version 3
2.1	<p>We will make greater use of scorecards in monitoring Network Rail. Scorecards will:</p> <ul style="list-style-type: none"> • Contain a balanced set of measures; • Enable route comparison; and • Reflect the high level output specification (HLOS) requirements 	3.11	2.1
2.2	<p>Looking ahead to the annual scorecard process, we expect all routes to have set out a plan for engagement with clear deadlines, to be able to provide evidence of agreement and lack of agreement. They should:</p> <ul style="list-style-type: none"> • seek to agree trajectories in a timely, clear and constructive manner; • work with other routes to ensure cross-border issues are addressed (i.e. between all routes, not just England & Wales); • obtain agreement at an appropriate level of seniority with the operator in question; and • keep a clear and appropriate record of what has been agreed and when. 	1.25 in scorecards and requirements supplementary document	2.2
2.3	<p>The SO has committed that it will agree its tier 1 scorecard with its Advisory Board on an annual basis and will include an updated suite of scorecards in its Delivery Plan in March 2019.</p>	Para 58 in our settlement for the system operator	2.3
2.4	<p>Network Rail has committed to publishing its SO, route and comparison scorecards.</p>	5.8	2.4
2.5	<p>To support comparison between routes, we are requiring Network Rail to report on certain consistent route measures in CP6:</p> <ul style="list-style-type: none"> • for all the geographic route scorecards, the consistent route measures relate to the route's contribution to train performance for passenger (CRM-P) and freight (FDM) services and to network sustainability (CSI); and • for the route comparison scorecard, Network Rail has agreed to include a set of additional end-user focused measures (e.g. passenger satisfaction for the route). 	3.72	2.5

ID	Policy position	Reference in final determination overview document	Equivalent reference in design framework version 3
2.6	With respect to Scotland, we will have particular regard to the requirements in the Scottish HLOS, some of which are reflected in the Scotland route, the FNPO and the SO scorecards. In addition, Network Rail has created a Scotland tracker to capture Network Rail's delivery of the HLOS requirements.	3.20	2.6
2.7	We will monitor and report on the SO's performance using its suite of scorecards. The SO will produce and publish an annual narrative report to explain those elements of its performance which do not lend themselves to reporting on the scorecard. The SO's Advisory Board will approve the contents of this report.	3.75, 3.76 and 3.77	2.7

3. Quality of routes/the SO's stakeholder engagement

ID	Policy position	Reference in final determination overview document	Equivalent reference in design framework version 3
3.1	We will not be prescriptive about how the routes/SO (or other business units) engage with stakeholders. Rather, we expect them to follow the broad principles of good stakeholder engagement, namely that the engagement should be effective, inclusive, well governed, and transparent.	3.26	3.1
3.2	At a minimum, we expect each route and the SO to: <ul style="list-style-type: none"> • engage with stakeholders in the annual business planning process; • develop and agree scorecards with their passenger and freight operator customers and funders; and • ensure there is scope for bilateral and multilateral engagement. 	3.25	3.2
3.3	To incentivise the routes/SO to improve the way they engage with stakeholders over CP6, we will undertake an annual assessment of the quality of the routes'/SO's engagement on a regular basis over CP6.	3.39	3.3
3.4	The new railway boards should assist us in monitoring Network Rail. However, as they are at an early stage of development, we will consider how well they are working over CP6 in order to determine how we rely on them in monitoring Network Rail.	3.37	N/A

4. Collaborative working

ID	Policy position	Reference in final determination overview document	Equivalent reference in design framework version 3
4.1	We expect Network Rail and operators to work together to achieve gains in performance and efficiency, as appropriate. We will consider how well Network Rail is working collaboratively with the wider industry over CP6.	3.43	N/A
4.2	Some opportunities to improve performance and efficiency on the railway could be unlocked by Network Rail entering into innovative commercial arrangements with one or more operators. We will publish guidance that sets out our views on what commercial arrangements are likely to be permitted, focusing on the perceived barriers.	Table 3.1	N/A
4.3	Certain projects that could improve performance may not proceed because of factors related to the structure of the market (e.g. possible coordination/free-rider problems, or misaligned risk appetites and time horizons). Where Network Rail or operators identify such opportunities and are otherwise unable to take them forward, there may be scope to access funding through the new Performance Innovation Fund, a new fund we have established worth £40m over CP6 that is intended to support innovative projects aimed at driving improvements in performance that would otherwise fail to obtain funding.	Table 3.1, 3.50	N/A

5. Financial performance and cost efficiency

ID	Policy position	Reference in final determination overview document	Equivalent reference in design framework version 3
5.1	<p>Network Rail will account for income and expenditure in ways that maintain a clear picture of each route's/SO's performance. This means that:</p> <ul style="list-style-type: none"> Charges, income and funding from governments will be recognised at route and SO level; Expenditure will be recorded at route and SO level, including expenditure on services procured from other parts of Network Rail; and The FNPO route will provide funding to geographic routes so that they receive equivalent income from both passenger and freight operators (noting that a number of major freight market segments do not face charges to recover fixed costs). 	3.66	4.1
5.2	<p>Our assessments of financial performance and cost efficiency in CP6 will look across a range of different, complementary measures (that are both quantitative and qualitative) to come to a fuller view of Network Rail's financial performance. We are likely to focus on two particular measures for the routes/SO in CP6:</p> <ul style="list-style-type: none"> Efficiency, which compares expenditure on core business activities to the value of outputs on a like-for-like basis over time; and Financial performance measure (FPM), which compares income and expenditure against the financial assumptions underpinning the routes/SO's CP6 funding. 	3.68	4.2
5.3	<p>Our approach for assessing the routes'/SO's efficiency and financial performance in CP6 will:</p> <ul style="list-style-type: none"> achieve a better understanding of the efficiency by putting greater emphasis on reviewing and reporting on how they have delivered efficiency improvements; include an assessment of cost drivers, unit costs and productivity measures over time and across routes; make greater use of information from our safety role, for example, drawing on insights from safety reports where relevant; and 	3.69	4.3

	<ul style="list-style-type: none">• provide a forward-looking view of the efficiencies that Network Rail is likely to achieve across CP6 as part of our annual reporting.		
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6. Enforcement policy and reputational tools (including regulatory minimum floors)

Note this section highlights the key aspects of our enforcement policy as set out in the Final Determination. It also includes references to our November consultation on holding Network Rail to account, where relevant.

ID	Policy position	Reference in final determination overview document	Equivalent reference in design framework version 3
6.1	We will be updating our monitoring and enforcement policies to reflect the importance of reputational incentives and to focus our monitoring and reporting on the performance of routes and the SO.	3.83	5.1
6.2	We will continue our current approach of acting in a way that is: <ul style="list-style-type: none"> • risk based; • targeted; • proportionate; and • transparent. 	3.84 and 2.11 of our consultation on Holding Network Rail to Account	5.2 (slightly altered)
6.3	We will monitor and report on how well each route and the SO performs against its targets, using Network Rail's scorecards and other management information. We will make greater use of comparison between routes.	3.71 Further detail is included in our consultation on Holding Network Rail to Account	5.6
6.4	Where there is clear customer agreement to updated targets, we will place more weight on Network Rail's performance relative to these targets in our monitoring, and consequently less weight on the CRM-P and FDM requirements included in the final determination.	3.13	5.7
6.5	Where a route/SO out-performs against a customer-agreed target, we would be likely to recognise this in our monitoring and reporting. Where a route/SO under-performs against a customer-agreed target, we would likely consider what plans were in place to address this underperformance before taking additional steps.	3.19	5.8
6.6	We have set a regulatory minimum floor for three of the consistent route measures that we are requiring the geographic routes to include in their scorecards.	3.87	5.11

	We have also set a floor for national freight performance.		
6.7	We will take account of the quality of the routes'/SO's stakeholder engagement in how we monitor their overall performance; for example, we are likely to focus more on the performance of the routes/SO that are engaging less effectively with their stakeholders compared with those that are engaging well. We will also take account of the quality of the routes'/SO's engagement in determining whether and how we take action against Network Rail in the event that we have concerns about its performance.	3.28	5.13

7. Changes to Network Rail's network licence

Note this section highlights the key aspects of our proposed changes to Network Rail's network licence as set out in the Final Determination and [our conclusions on the review of the network licence](#), where relevant. It also includes references to our December 2018 Statutory Consultation on our proposals to revise Network Rail's network licence for CP6 (available [here](#)).

ID	Policy position	Reference in final determination overview document	Equivalent reference in design framework version 3
7.1	While our focus will be on the routes/SO, Network Rail remains a single company and central functions will need to deliver in accordance with Network Rail's network licence.	3.55	N/A
7.2	We are proposing to strengthen the core obligations around stakeholder engagement and passenger information, and restructure the existing obligations within the network licence to reflect more appropriately the separation of functions between the route businesses, the SO and other functions (with all obligations still being owned by Network Rail as a company).	3.24 and 3.91 See our review of Network Rail's network licence for more detail	6.1
7.3	In addition, we have proposed a new obligation on Network Rail, through its network licence, to: <ul style="list-style-type: none"> • enable the routes/SO to choose how to procure the goods and services they need (including those provided by central functions); unless • it demonstrates this would be inconsistent with its licence (including the requirement of the Network Management Duty to act in an efficient and economical manner) or with another area of law. 	3.61	N/A
7.4	The substantive changes we propose to make to the licence in time for CP6 will mean that: <ol style="list-style-type: none"> 1. the licence will clearly identify those obligations which apply to routes and the SO, and in future help to identify more clearly which management teams should be held to account when there is a breach of a licence condition; 2. the company will be required to maintain both the structure of its business and its governance arrangements in a manner which supports devolution, including new requirements on how 	Statutory consultation on changes to Network Rail's licence December 2018)	N/A

	<p>the company makes changes to the its business (managing change process); and</p> <p>3. the licence will align with the 2018 periodic review ('PR18') outcomes and ORR's regulatory approach; and the licence will reflect the reclassification of Network Rail as a public sector arm's length government body</p>		
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8. Managing changes within CP6

In November 2018 we published our Managing Change Policy, which is designed to support us in making comparisons across the routes' performance and across the CP6 period and beyond.

ID	Policy position	Reference in final determination overview document	Equivalent reference in design framework version 3
8.1	<p>The objective of the Managing Change Policy is to achieve an appropriate balance between:</p> <ul style="list-style-type: none"> • The benefits of Network Rail being able to respond flexibly to changing circumstances; and • The benefits of the settlements in providing assurance to the routes/SO of their funding and responsibilities, and allowing us to hold routes/SO to account and make comparisons. 	3.98	7.1
8.2	<p>The Managing Change Policy applies to Relevant Changes, defined as changes which may reasonably be expected to impact:</p> <ul style="list-style-type: none"> • route and/or SO accountability; and/or • how much funding a route and/or the SO has available to it to deliver what it is accountable for in the control period. 	1.2 in our Managing Change Policy	N/A
8.3	<p>Changes within the scope of the process (Relevant Changes) include:</p> <ul style="list-style-type: none"> • Substantial organisational changes, in particular the shift of responsibilities of the routes/SO; • Route boundary changes; • Reductions in funding for individual routes/SO; and • Changes to what a route is expected to deliver, for example as a result of an enhancement. 	3.99	7.3
8.4	<p>The following changes are outside the scope of this policy (not Relevant Changes):</p> <ul style="list-style-type: none"> • decisions on enhancements (or changes to those enhancements) that are not included in the final determination; • changes to scorecards; and • changes in how a route or the SO allocates its annual core route budget within the route or the SO. 	1.4 in our Managing Change Policy	N/A

ID	Policy position	Reference in final determination overview document	Equivalent reference in design framework version 3
8.5	<p>The appropriate way of managing a potential change will be determined by:</p> <ul style="list-style-type: none"> its impact on our ability to regulate Network Rail and hold it to account effectively, including being able to compare performance between the route (and SO where appropriate); its materiality in terms of its monetary impact and potential impact on outcomes delivered to customers, end-users and funders; and whether the route and/or SO impacted by the change 'agree' to it. <p>Changes will be categorised as Level I, Level II or Level III.</p>	1.9	N/A
8.6	<p>Our approach will vary according to the level of the change:</p> <ul style="list-style-type: none"> Network Rail must inform ORR of all Level I changes; Network Rail must discuss all Level II changes with ORR before a decision is made; and Network Rail must seek ORR's opinion on all Level III changes. 	3.101-3.104 chapter 2 of Managing Change Policy	7.5
8.7	<p>In exceptional circumstances, where we need to prevent a Relevant Change being made, we would issue a direction for Network Rail not to make the Relevant Change. Alternatively, we may require that it can only make the Relevant Change if certain conditions are met. In the event Network Rail chose to implement the Relevant Change against such a direction, we would take appropriate action. This would only happen if the Relevant Change is so fundamental that it undermines the route and/or SO level settlements in a way that cannot be mitigated. We would expect exceptional changes to be extremely rare.</p>	1.16 and 1.17 of Managing Change Policy	7.7

ID	Policy position	Reference in final determination overview document	Equivalent reference in design framework version 3
8.8	<p>We are also proposing to amend Network Rail's network licence to deal with certain Level III changes that we would wish to prevent. This would apply to:</p> <ul style="list-style-type: none"> • a narrow set of Level III changes where we have provided an opinion that we do not support the change ('an exceptional change'); and • cases where the necessary Managing Change Policy process has not been followed appropriately. 	3.107	7.6



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