



Department
for Transport

Rail Regulation

Summary of Call for Evidence responses

Moving Britain Ahead

May 2016

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Executive summary

Introduction

- 1 Our Call for Evidence was published in December 2015¹ and we received over 30 written responses. These covered a wide range of views from stakeholders across the railway industry. This included: train and freight operators, infrastructure managers, rolling stock companies, consumer and industry groups, passenger representative bodies, the regulator, and devolved administrations. We also received input from some stakeholders via meetings which we include here.
- 2 We would like to take this opportunity to thank all those who responded to our Call for Evidence. In particular the ORR for its highly constructive approach. The ORR's response is available on its website.²
- 3 We would also like to highlight and thank the members of our expert challenge panel for their invaluable contribution to our work. The panel members were: Chris Bolt, Deirdre Hutton, Graham Smith, Graham Mather and Stuart McIntosh.
- 4 This document provides a summary of the responses we received, highlighting areas of consensus and areas where there were a range of views. It is split into themes rather than being based around the specific questions we put forward as many responses covered important areas not specifically highlighted by our questions.
- 5 Although not every response can be set out in detail here, we have considered every response carefully when coming to our conclusions and recommendations.
- 6 The government responded to the consultation in a written ministerial statement on 17 March, which, alongside the Government's initial response to the Shaw report, stated that:

“My recent consultation on the role of the Office of Rail and Road (ORR) showed clear support for strong independent regulation to put customer needs at the heart of rail. To support the ORR, I will work with it to implement changes to bring greater clarity to its statutory duties and to enhance its working relationship with Transport Focus. I will also update the Statutory Guidance I provide.”

¹ <https://www.gov.uk/government/consultations/rail-regulation-call-for-evidence>

² http://orr.gov.uk/__data/assets/pdf_file/0017/21239/orr-response-to-dft-call-for-evidence-on-rail-regulation-2016-01-28.pdf

Call for Evidence questions

- 7 In our December Call for Evidence we asked 4 main questions. These are repeated below:

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.*

Independent economic regulation and the role of government following reclassification

- 8 Most responses did not believe that the reclassification of Network Rail changed the need for an independent economic regulator. In particular they saw a continued need for an independent regulator in areas such as access and charging.
- 9 Some suggested that the role of the ORR as regulator was no longer as significant due to DfT's capacity, as shareholder, to hold Network Rail to account. The freight operators countered that independent regulation is important to ensure their interests are protected and fair access to the network is preserved.
- 10 The majority of responses recommended that the role of economic regulation will need further consideration following the publication of the Shaw report.
- 11 Many stated the particular need for independent economic regulation if private capital is reintroduced into Network Rail. Whilst others went further and saw an independent regulator as vital for the continued involvement of the private sector in the funding and development of the railway, for example in the railway supply chain.
- 12 Several responses felt that the periodic review process works well and provides certainty to the industry and supply chain. In particular the current approach to operations, maintenance and renewals was seen as crucial for enabling investment.

Regulation of enhancements

- 13 Many of the responses highlighted the recommendations of the Bowe Review around enhancements. Some felt that with Network Rail publically owned the government, rather than the ORR, should provide oversight for enhancements, and that these should sit outside of the periodic review timetable.
- 14 Others argued that there is still a role for the regulator in overseeing the efficient delivery of enhancements and safeguarding the boundaries between enhancements and renewals.
- 15 Some responses focussed on the planning and delivery of enhancements highlighting the need to better consult users and ensure that outcomes (e.g. frequency and journey time improvements) are realised.

Regulation of track access and charges

- 16 Most responses highlighted the key role that the regulator plays in overseeing track access and charging, including dispute resolution and balancing the interests of multiple stakeholders. Many stated this was important for continued private sector involvement in the railway.

ORR's statutory duties

- 17 Views on the number and priority of ORR's statutory duties were mixed, although there was a fairly broad sense that there are too many duties, with negative implications for clarity and transparency of decision making.
- 18 Some responses highlighted the flexibility that the current range of duties provides

ORR, whilst others supported rationalisation and / or prioritisation. Several responses advocated for new duties.

- 19 Consumer groups suggested that the ORR needed to be more consumer orientated in its approach to regulation, something that could better be reflected in its duties.

Enforcement

- 20 Only a handful of responses commented specifically on enforcement with respect to Network Rail, but those that did believed that the regime was not working in its current form. Particularly in the face of reclassification.
- 21 Many responses saw a need for DfT to play a greater role in holding Network Rail to account given the Secretary of State's shareholder position.
- 22 Several commented that corporate level fines have been ineffective at incentivising Network Rail. Whilst others emphasised the need to improve the regulator's toolkit, particularly focusing on there being clear reputational consequences where outcomes are not delivered.

Passenger protection and competition

- 23 While there were positive comments about the ORR's role in effectively protecting passengers, the tension between different regulatory bodies responsible for passenger protection, particularly the ORR and DfT, came through strongly in some responses.
- 24 Some responses noted that progress had been made on passenger protection, but that there was still further progress to be made. With some recommending a stronger role for the regulator and others arguing that these functions should sit within franchise agreements.
- 25 A number of responses did not support the ORR taking on an advocacy role for passengers. Fearing that this could disadvantage the interests of other users.
- 26 Several responses highlighted the role of Transport Focus including some calls for it to be given greater resources and powers.
- 27 On competition some responses questioned the need for concurrent powers between the ORR and the Competition and Markets Authority, seeing this as a duplication of efforts. However they stated the need for rail expertise in any competition assessments. Several responses set out their support for open access.

Safety regulation

- 28 On safety regulation the majority of responses were broadly supportive of the ORR's record as the safety regulator. Most did not see benefits from moving safety regulation elsewhere.
- 29 Many responses felt that although the current model was appropriate the full benefits of integration between safety and economic regulation under a single body had not yet been achieved.³

³ As well as economic and safety regulation for the entire mainline rail network in Britain, ORR also has responsibility for safety enforcement for the London Underground, light rail, trams and the heritage sector

- 30 Some responses were concerned that costs and trade-offs with investment elsewhere were not taken into account by the ORR when considering improvements in safety.

Governance, transparency and regulatory approach

- 31 Most responses called for greater clarity between the respective roles of government and the regulator in regulating the railway industry.
- 32 Many responses recommended a need for appropriate experience and knowledge of the railway on the ORR's board.
- 33 There were mixed views on transparency with some responses believing the ORR were sufficiently transparent and others arguing they could go further. Some felt that the ORR could better engage with industry and passengers.
- 34 Some responses wanted to see greater accountability to the devolved administrations and funders.
- 35 Several responses suggested that there could be scope for a lighter touch approach to regulation from the ORR. The need for a route based approach was also seen as more important given Network Rail's devolution.

Annex A: List of those consulted

- Alliance Rail
- Angel Trains
- Arriva
- The Chartered Institute of Logistics and Transport
- DB Schenker
- Eurostar
- Eurotunnel
- First Economics
- First Group
- Freightliner
- Freight Transport Association
- HS1 Ltd
- HS2 Ltd
- Keolis
- London Travel Watch
- Network Rail
- Office of Rail and Road
- Parliamentary Advisory Council for Transport Safety
- Railfuture
- Rail Delivery Group
- Rail Freight Group
- RMT
- Rail Safety and Standards Board
- Siemens
- Stobart Group
- Transport Focus
- Transport for London
- Transport Scotland
- Welsh Government

- West Midlands Integrated Transport Association
- Which
- Four responses were also received in a personal capacity
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