Network Rail's response to ORR's PR18 working paper 1: Implementing route-level regulation

24 August 2016

1. INTRODUCTION AND PURPOSE

Context and challenges

We have an established devolution programme to move more decision making from the centre to our route businesses. This programme established the new operating model that we adopted in 2016.

At the heart of devolution is the principle that empowered leaders will be able to focus more precisely on the needs of their customers and can take decisions faster and can innovate more effectively.

The Shaw Report welcomed and endorsed our approach, but encouraged us to go further and faster. We agree and are rebalancing operational responsibility, pursuing deeper devolution to routes that are equipped with the skills, capacity and resources that allow them to run as effective customer-focussed businesses. We will continue to be one company and so our central teams will retain their critical role in supporting the routes and ensuring the network operates as a single integrated system through the System Operator function.

We have recently published an update of our Delivering for our customers Transformation Plan which sets out the overall transformation journey that Network Rail has been on and what we will do next to accelerate the pace of change. It also explains how we are integrating the conclusions of the Shaw Report into these plans.

Role of route regulation

Our devolved structure provides an opportunity to improve how we are currently regulated, in particular to support our ongoing devolution programme and deliver more for passengers, freight users, rail operators and taxpayers. End-user priorities must be central to industry (and regulatory) decision making. A greater focus on customers should mean that their priorities are firmly embedded in ORR's PR18 determination.

We agree that it may not be possible to deliver route-level regulation in full in CP6 and that its implementation may need to be phased. We consider that it is important for ORR to conclude at an early stage of the review (for example in its conclusions to its PR18 initial consultation) the scope of what can be implemented for CP6. This will allow us and our customers to focus scarce resources on the most important issues. ORR should have realistic expectations about what can be achieved, particularly on the extent to which customers can be involved in the development of the company's plans given the likely limited industry resources and timing constraints.

Implementing route-level regulation in CP6 will be a significant change from the current regulatory approach. We consider that 'getting this right' should be a key priority for ORR during PR18. Recognising that the industry has limited resources, we think that it is important that the PR18 work plan prioritises the basic 'mechanics' of route-level regulation. This is likely to mean that other issues that could be investigated as part of PR18 should be treated as lower priorities. Over the last two years Network Rail has worked closely with its customers, through RDG, to review the access charges and incentives regime. We encourage ORR to give high regard to the RDG Review of Charges project which identified those parts of the charging regime which are fit for purpose and those that are most in need of review as part of PR18. RDG's work should assist ORR in being able to focus its work for PR18.

There will also be a number of practical implications of moving towards route-level regulation that will need to be worked through over the course of PR18. For example, we agree with ORR's view that there are challenges associated with making effective comparisons between routes, particularly given the different operating environments in each route. Enabling effective and meaningful route comparisons will be complex and we look forward to engaging with ORR and other stakeholders about how this can be done in a meaningful and transparent way. This will, of course, be reliant on the extent to which data is available to allow meaningful comparisons to be made.

We recognise the limitations of the current framework with regards to Network Rail's final decision whether to accept ORR's Final Determination. Therefore, we would welcome discussions with ORR over different ways of potentially reviewing aspects of ORR's Final Determination. This could include, for example, third-party reviews or having regard to our customers' views on the deliverability of the route-level outputs proposed by ORR within the funding available.

Structure of response

The rest of this response reflects the structure of ORR's working paper on implementing route-level regulation. Noting that ORR's working papers are intended to facilitate a more dynamic process of engagement and to support an iterative approach to policy development, our response highlights our emerging thinking in a number of areas.

We welcome ORR's approach in this regard and look forward to continuing discussions on the implementation of route-level regulation with ORR, customers and other stakeholders during PR18. Over the coming months it will be important to move from the conceptual discussions towards being able to assess and analyse the practical implications of route-level regulation in greater detail. We are particularly mindful of issues such as data availability and the potential impact on our billing systems.

2. WHERE WE ARE NOW

The potential for changes in Network Rail's routes

Network Rail may, for cost or operational reasons, wish to change route boundaries during CP6. It is important that the regulatory framework does not hinder our ability to make changes in this regard. We are pleased ORR recognises the need for sufficiently flexible processes to accommodate changes to route boundaries or the creation of new routes.

We note ORR's reference to the issue of having a continuous set of data that allows for meaningful comparisons between routes and as boundaries change. While we agree that transparency is important, we consider that reporting and monitoring requirements should be proportionate and not add unduly to the overall reporting burden.

In particular, we consider that there is limited value in continuing to report against outdated assumptions that do not reflect how the business is run. A recent example of this is that at the time of the PR13 Final Determination we had a ten-route structure in place. ORR's cost and income assumptions were presented on that basis. For operational reasons, this structure subsequently changed to eight routes (and continues to be the current structure). However, we are required to continue to report against the PR13 Final Determination assumptions which is inconsistent with the way in which the business operates. This is confusing and creates an unnecessary reporting burden. We are also concerned that adjusting results for reporting purposes means that the reported data will not be recognisable to each route / function.

We would welcome further discussion with ORR on how to manage such changes in future and, more generally, a suitable change control process for the PR18 settlement. We recognise that any changes to route boundaries and/or their number must be done transparently and that the effect on route baselines needs to be fully explained.

ORR's working paper also notes we are currently considering the case for a new Northern route, which follows one of Shaw's recommendations. As set out in our Transformation Plan update, we are developing options for the possible creation of a Northern route which our Board will consider in Autumn 2016. Should any structural changes be required following this decision, we will need to reflect this in our CP6 planning and develop our Strategic Business Plan (SBP) accordingly. This could be a significant change that needs to be taken into account when considering overall priorities.

3. ORR'S APPROACH IN PR18

A potential framework for ORR's determination

Separate settlements

We agree that there should be separate revenue requirements for Scotland and each of Network Rail's geographic routes in England & Wales (within Network Rail's overall determination for CP6). We consider that functional plans should be developed for central functions and the System Operator, with their costs being allocated to routes and recovered through existing access charges.

In respect of the 'virtual route' that was recently established for rail freight and national passenger operators, we agree that a 'tailored approach' to its regulation will likely be required. We will be working on the detail of what this may look like over the coming months and would welcome further discussion about this with ORR.

Outputs

We consider that the regulatory output framework should support the achievement of routes' scorecard outputs and outcomes that Network Rail develops in conjunction with its customers and stakeholders. However, we believe ORR, as a key stakeholder, has an important role to assess whether our scorecards are sufficiently challenging and adequately capture long-term requirements (e.g. sustainable asset management). We believe our scorecards should be the primary means by which our performance is monitored in CP6. If we are able to agree scorecard measures and forecasts with our customers that appropriately reflect the requirement of the HLOS (and other stakeholder requirements as necessary) we believe that it should not be necessary for ORR to specify additional regulatory outputs, so that we can focus on one set of industry priorities. As well as reporting our actual performance against the scorecard measures, it will also be important that we are clear on the status of scorecard metrics as part of the overall regulatory framework.

As stated in our response to ORR's PR18 initial consultation, our regulatory outputs also need to be flexible and respond to the possibility of changing customer requirements and other circumstances (i.e. growth) over the control period.

We will respond separately to ORR's working paper on outputs, discussing the issues, above, in more detail.

Revenue requirement

We agree that route revenue requirements should be based on the building block approach. This will require ORR to determine a wide range of income, expenditure and financial assumptions at a route-level. This includes any allowances for risk and uncertainty that Network Rail will face in CP6. We discuss our views on these issues in the section on risk, below.

Treatment of central costs

To calculate route-level revenue requirements, ORR will need to make assumptions about the efficient costs of Network Rail's central functions, for example Finance and HR. It will also need to determine how these costs are apportioned to routes. We think that Network Rail's central costs should be entirely apportioned to Network Rail's routes. Therefore, these central costs should be treated in the same way as operating, maintenance and renewals costs, in the building block approach. This approach would mean that there would not need to be a separate revenue requirement for Network Rail's central functions.

System Operator costs

We note that Network Rail's System Operator function is likely to have its own regulated outputs. However, as we set out in our response to ORR's PR18 initial consultation document, we do not think it is necessary for it to have its own revenue requirement. As above, a functional plan would be developed for the System Operator. Its expenditure would then be allocated to each route for the purposes of calculating track access charges at a route-level, in the same way that we propose Network Rail's central services should be treated.

Cost of capital

One of the main building blocks in Network Rail's revenue requirement is the allowed return. The Weighted Average Cost of Capital (WACC) is a key input into the allowed return, which reflects the cost of financing to Network Rail if it was funded by debt and equity. The value of a company's WACC is related to the perceived risk of an investment (e.g. investors would require a higher return where the perceived risk of an investment is higher).

In previous periodic reviews, ORR has used the same value of WACC for both England & Wales and Scotland determinations. This is because it considered that the financial risk associated with the network in England & Wales and Scotland were broadly similar.

To calculate route revenue requirements, ORR will need to determine the appropriate return on route RABs. For PR18, we think that the return should be set at a company level (i.e. a single WACC). This is because in CP6 Network Rail will continue to raise debt and manage major risks as one company.

Debt and RAB

To calculate CP6 revenue requirements for each operating route in England & Wales, we need to be able to determine the proportion of Network Rail's total England & Wales debt and RAB that should be allocated to each route.

In PR13, ORR calculated indicative route revenue requirements using indicative values for opening CP5 debt and RAB for each England & Wales route. To do this, ORR used Network Rail's methodology for disaggregating Fixed Track Access Charges (FTACs), which was based on route-level assessments of long-run renewals costs. In effect, the indicative RABs were imputed from the route FTACs.

In CP5, Network Rail's regulatory accounts identify the RAB additions and changes in debt for each route, which are added to the same opening CP5 route RAB and debt values that were used to calculate the indicative route revenue requirements.

Route-based RABs and debt will be important inputs in calculating the allowed revenue for each route in CP6. There are a number of possible approaches to calculating these. Therefore, we think that the methodology for allocating debt and RAB to routes in England & Wales should be revisited to make sure that they are both appropriate. While there will be advantages and disadvantages for each of the options, they are all, to some extent, allocations and approximations. On that basis, there could be merit in concluding that unless a different approach leads to materially improved allocations to routes, ORR formalises the status of the existing indicative route RAB and debt positions that are already reported in Network Rail's regulatory accounts. We will work with ORR and other stakeholders during PR18 to consider the most appropriate approach for CP6.

Once route debt and RABs have been determined for CP6, we consider that the allocation approach should not be revisited in future control periods. This means that once the route RAB and debt have been agreed at the start of CP6, future changes to the value of route debt and RABs should reflect the experience within that route. We do not believe that there should be subsequent revisions to reflect new allocation approaches.

Financial framework

Risk and uncertainty

The approach to allowing Network Rail, as a single company, to manage financial risk and uncertainty for CP6 and beyond is a key priority for Network Rail.

Responding to changing circumstances

ORR needs to consider the extent to which the PR18 determination includes financial buffers to enable Network Rail's routes to respond to changing circumstances during CP6.

In CP5, Network Rail's primary financial buffer was headroom in its loan agreement with DfT, (i.e. the ability to borrow more money during CP6 than was funded through charges in the PR13 determination). We expect that Network Rail's borrowing limits for England & Wales and Scotland will remain in their current form for the foreseeable future. Therefore, ORR needs to consider how any CP6 borrowing limit for England & Wales will affect the way that the routes are able to manage financial risk. We consider that it would be difficult for Network Rail to be able to decide whether it should accept ORR's Final Determination without knowing the size of the borrowing limit. Therefore, we consider that ORR will be well-placed to input into the discussions on the size of the borrowing limit.

Network Rail will ultimately be responsible for managing the appropriate allocation of funds to manage risk between the centre and its routes, as part of its business planning activities. However, to produce CP6 route-based determinations, ORR will need to make assumptions about the way in which routes will deal with financial risk.

In ORR's main consultation document, it set out its view that each route needs some protection from the risk of having to cover significant unexpected costs relative to the funding available to it. We agree with this view and understand that ORR will consult in late 2016 on how the routes should deal with financial risk as part of a wider financial consultation. This will include the role of Network Rail centre and the implications of an over spend for any devolved regional funders in England & Wales.

Types of risk

In advance of ORR's consultation, we have considered how ORR should treat the different types of risk that Network Rail faces. We consider that there are three types of risk, as described, below:

- **route-level uncertainty** – route costs that are 'expected' to arise for which specific activity or cost is unknown;

- **network-level uncertainty** – costs that are ‘expected’ to arise for which the specific route location as well as activity or cost is unknown (e.g. localised costs caused by flooding); and
- **contingent risks** – potential higher expenditure (or lower income) from risks that are ‘unexpected’, particularly in terms of the frequency and scale of unknown events.

We think that route-level and network-level risks should be incorporated into our expenditure assumptions which, in turn, would be recovered through track access charges. Given the uncertainty associated with the location of network-level risks, the funds associated with these costs should be managed by Network Rail’s centre.

Contingent risks are, by their nature, much more uncertain. The associated costs could be significant, particularly if the number of route-level and/or network-level events is higher than could have been reasonably predicted. Therefore, these may be better managed by providing Network Rail with an appropriate debt facility. However, this debt is not without consequences for users of the railway. Risks funded by debt will be paid for by future railway users since they will increase debt and capex will be logged to the RAB.

In addition, when ORR assesses each route’s determination, it needs to use reasonable assumptions about the likely level of costs over CP6. ORR’s assumptions should be based on each routes expected level of costs reflecting route-level uncertainty. One lesson from PR13 is that making overly tight estimates of each cost category led to an unrealistic determination, when each of the cost estimates was combined.

The size of Network Rail’s borrowing limit and the process for agreeing it will be critical to developing robust revenue requirements for Network Rail’s routes. We agree with ORR that Network Rail’s borrowing limit should be included in the governments’ Statement of Funds Available (SoFA) so that we are clear on the total funds available for CP6.

Variances against PR18 assumptions (overspend and underspend)

It is important that ORR’s CP6 financial framework provides Network Rail with sufficient flexibility to allow it to manage reasonable variances from ORR’s determination assumptions during CP6. For example, variances could include natural re-phasing of capital expenditure plans, outperformance against budgets, and underperformance against budgets. ORR needs to determine how it will deal with these variances in CP6.

Key issues to consider are:

- Where does any additional money come from to fund overspend?
- Who pays in the long run for any overspend and who benefits from underspend?
- Who is rewarded / penalised for variances?

We think that re-phasing of expenditure within CP6 should be managed at the route-level and that there should not be a negative impact on financial performance. However, there may need to be financial adjustments to reflect whether any slippage has an impact on the sustainable asset management of the network.

Slippage of activities beyond CP6 would increase the company’s available debt headroom in the control period but might have an impact on sustainable asset management.

We consider that any financial outperformance should be reflected in route management incentive plans. It should also be reflected in routes’ regulatory accounts so that it is recognised in future periodic reviews and route control period revenue requirements. However, any surplus ‘cash’ should be held centrally. Similarly, underperformance should initially be managed within each route. Where the route cannot manage any underperformance (or underspend) within the route, it would need to seek to use a central risk allowance or central borrowing facility. In extremis, it may be necessary to make adjustments to route budgets such that any shortfalls in individual route budgets can be managed within an overall framework. A transparent process for reporting 'over' and 'under' expenditure at the route-level will be necessary. This would also include capturing routes' financial performance in their route regulatory accounts and in their RABs.

Charges and incentives

We note ORR's intention to consider the extent to which route-level regulation has implications for the structure of charges. This paper does not repeat the comments we have already made in our response to ORR's PR18 initial consultation relating to charges and incentives. However, we agree with the comments that DfT makes in its recently published response which states that "*changes should only be made where they lead to a significant better outcome for users [and that it would be] concerned at changes which lead to increased complexity, and potentially costs, without clear evidence that they would lead to improvements for users and taxpayers*".

We encourage ORR to give high regard to RDG's Review of Charges project. This identified those parts of the charging regime which are fit for purpose and those that are most in need of review as part of PR18. RDG's work should allow ORR to prioritise its work on charges and incentives for PR18.

We also encourage ORR to conclude on the overall charging and incentives framework as soon as possible so that we have sufficient time to focus on the detailed policy and calculation of access charges for CP6, in consultation with our customers.

Health and safety

We agree that the implementation of route-level regulation requires a full understanding of the implications for healthy and safety risks at the company and route-level and that this should be kept under review throughout PR18.

4. MAKING ROUTE-LEVEL REGULATION WORK: THE PERIODIC REVIEW AND INTERFACES

Key stages of the review

ORR's working paper helpfully sets out its thoughts on the implications of implementing route-level regulation on each of the stages of the periodic review.

In respect of PR18 timescales, as we set out in our response to ORR's PR18 initial consultation, it is important that sufficient time is allowed for routes to produce robust and evidence-based plans, together with effective consultation. An additional factor that needs to be taken into account (and is discussed later in ORR's working paper) is the requirement under our Framework Agreement with DfT for it to approve our SBP prior to publication. More generally, it will be important to be clear about the role of each stakeholder during PR18 – for example, DfT's role as funder, sponsor and shareholder.

It is also important to note that the nature of renewals planning, including the access planning cycle, means that any significant changes to our renewals plans in the first two years of CP6 (for example, following the publication of the HLOSs / SoFAs or ORR's Final Determination) might result in changes to our plan that have a significant impact on efficiency. We are particularly concerned about the amount of time available to update and agree our Strategic Business Plan (SBP) following the publication of HLOSs / SoFAs. If these result in significant change, this is likely to have a material impact on the quality of our plans. It is important, therefore, that this is taken into account when assessing our plans.

As discussed in section one above, therefore, it will be important that ORR has realistic expectations about what can be achieved in PR18, particularly on the extent to which customers can be involved in the development of the company's plans. We consider that the process for seeking customer input into the planning process will be an iterative one, which will continue beyond PR18.

Network Rail preparation for the Initial Industry Advice (IIA)

As acknowledged in ORR's working paper, routes and central functions are developing their plans as part of our continuous business planning process (as opposed to specifically for the IIA and subsequent SBP). We expect that the IIA will be published around the end of this year. There will be subsequent updates to these plans, prior to the finalisation of the SBP submissions.

Network Rail's and ORR's guidance on planning

We note ORR's intention to publish its guidance to Network Rail on the information it will require from the SBP submissions in February 2017. We consider that this guidance should be focused on the structure of the plan (including ensuring clarity on the production of route and functional plans) and Network Rail's approach to putting it together. Importantly, ORR's guidance should be consistent with how we plan our business and our own planning guidance that is issued to routes and central business functions.

We agree that there should be a plan for each route. However, it is important to note that thought will need to be given to balancing of expenditure, outputs and risk, facilitating a network approach where this is appropriate.

We expect to issue updated planning guidance to routes and central functions in September 2016. Work is underway on developing formats and data structures for the next round of the development of their plans. We would welcome ORR's involvement in this activity as soon as practicable and more generally, we are keen to work closely with ORR in the preparation / development of its guidance.

ORR'S Advice to Ministers

In principle, we support the alternative approach suggested by ORR to provide more frequent advice to governments throughout PR18. It would be consistent with Network Rail's continuous business planning approach, although it would be important to ensure that such an approach does not overburden the periodic review process (for example, an increase in requests for information to support the development of more frequent advice).

Statement of Funds Available (SoFAs) and High-Level Outputs Specification (HLOS)

Network Rail needs clarity on the total available funds for CP6. As set out in section three, above, we agree that Network Rail's borrowing limit should be included in the SoFAs.

We support a less prescriptive approach to the Secretary of State's HLOS which could be based on objectives, rather than specific output targets. We note this position is also consistent with DfT's response to ORR's PR18 initial consultation. DfT's response states that it is attracted to a model of specification that emphasises broad outcomes for users rather than inputs, as well as its consideration of whether it might be appropriate to specify performance trajectories rather than specific targets. We look forward to discussing this with DfT and ORR over coming months.

We also note ORR's suggestion that the Scottish HLOS is based on a different approach to that for England & Wales, although we consider that a similar approach to the specification of outputs would be desirable.

Production of Route Strategic Plans (RSPs)

We agree that customer engagement will be a core part of the process for developing each route's strategic plan (which will form part of Network Rail's overall SBP), although it will be important to have realistic expectations on the extent to which customers can be involved in the development of plans during PR18.

Network Rail's recent work on the introduction of customer focused scorecards for 2016/17 should provide a pragmatic starting point from which to start discussions for CP6.

We agree that the role of the centre in providing assurance and oversight will be important, particularly if ORR is to take a risk-based approach in the review of route strategic plans.

We recognise the importance of route ownership of the plans, and that any adjustments that have been made should be transparent. In respect of the options put forward by ORR to increase the transparency, we would be concerned if routes were required to submit their strategic plans both before and after any centrally driven adjustment to activities, costs and funding. We consider that this would inevitably shift the emphasis away from customers towards ORR.

We do agree, however, that there needs to be a transparent process around any central adjustments that have been made and that plans will need to be signed off by Route Managing Directors (RMDs). RMDs should be accountable for any adjustments that are required if, for example, the sum of each route's plans is unaffordable.

We agree the importance of a streamlined process for securing DfT's agreement to the plan. We will work with DfT, Transport Scotland and ORR to agree how this process will work.

ORR scrutiny of RSPs

ORR's working paper states that its route-level scrutiny would require that it meets with individual route teams and carries out detailed analysis of the information provided. While we understand the need for ORR to engage with routes directly, it is important to recognise that routes are not currently resourced to manage such engagement and it may take time for this to develop. On this basis, we consider that Network Rail's centre will play an important role particularly in providing oversight and assurance in the production of each route's strategic plan.

We note ORR's intention to continue to use benchmarking techniques and that PR18 provides an opportunity to place some weight on benchmarking comparisons between Network Rail's routes. We intend to benchmark our routes to enable us to drive improvements in business performance. We have started work to look at the practical use of benchmarking between routes, although this is still in its relative infancy. Consistent with the significant issues that we have previously encountered in respect of international benchmarking comparisons, we are mindful of the need to normalise structural differences between routes.

Draft and final determinations

We consider that the submission of Network Rail's representations to the PR18 Draft Determination will be led at the company-level. Of course, in the development of the response, the central team would engage significantly with the route teams on the deliverability of each of the route settlements, with their views reflected accordingly.

Network Rail's decision to accept or object to the determination

We agree that it will be important to have the buy-in of route teams in Network Rail's single formal acceptance (or otherwise) of the PR18 determination. We envisage that RMDs would be involved in this decision. While we note the need to ensure ownership and accountability for delivery at route-level, we do not believe that route teams should make separate representations to ORR. Network Rail would need to manage this internally and reach agreement with routes on the proposed course of action, prior to formal confirmation of its decision. However, it is likely that our response will include views on the settlement for each route.

Our response to ORR's PR18 initial consultation also sets out our view that there would be merit in exploring how an individual route settlement (or indeed any aspect of ORR's Final Determination) could be challenged without challenging the whole determination, as is currently the case. We would welcome further discussion with ORR on how this could work.

More generally, this reinforces the need for a fair PR18 settlement which allows Network Rail to build its reputation and succeed, as opposed to one that is set on unattainable targets.

NR's route delivery plans

We agree that routes would have a significant role in leading the production of their delivery plans, although envisage that this would be part of our overall continuous business planning process and therefore forms part of an overall business planning process that is managed by the centre.

Regulatory arrangements for CP6 monitoring

We consider that the implementation of route-level regulation for CP6 will require fundamental reform to the way in which Network Rail reports to and is monitored by ORR. The reporting and monitoring framework currently in place cannot be rolled out across a route-based model without significant implications from a cost, headcount and management distraction perspective. The framework needs to recognise, therefore, the importance of ongoing customer engagement and a more prioritised risk-based approach by ORR. We would expect this to lead to a slimmer, more strategic regulator rather than an enlargement of ORR's reporting and monitoring activity.

Furthermore, we believe that our customers and funders should have a strengthened role in holding Network Rail to account for our delivery against the customer-focused scorecards. As we set out in our response to ORR's PR18 initial consultation, a regulatory regime that supports this should result in ORR being able to take a more targeted and risk-based approach, allowing it to focus on more strategic issues.

We consider that there is scope to reduce the scale of formal reporting (for example the Regulatory Financial Statements and Annual Return). Instead, more data could be provided as supporting material to ORR rather than through formal publications. Regulatory reporting would be focused on the delivery of regulated outputs which would ease significantly the regulatory reporting burden.

In respect of ORR's point that there should be a framework for monitoring the effectiveness of routes' engagement with their customers and stakeholders, we consider that the monitoring framework needs to balance this with a requirement not to constrain innovation or differing approaches.

We note that ORR may also make greater use of public performance tables, allowing greater comparison between routes and enhancing the role of reputation in the regulatory framework.

Network Rail is increasingly comparing each route’s performance as a way of driving business performance. It will be important to be able to report relevant comparisons between routes, at an appropriate level of detail. As with benchmarking, it will be important to understand and normalise any structural differences between routes to allow for meaningful comparison. As previously noted, regulation should support our devolution programme, therefore, it will be important that ORR adopts the same data and approaches that we ourselves are using in comparing routes’ performance, as opposed to developing alternatives.

As noted in our response to ORR’s PR18 initial consultation, we need to consider the extent to which management incentives for staff in routes should be based on route performance, while recognising their importance in delivering overall network performance.

Enforcement

In respect of enforcement in CP6, we consider that a much broader discussion is required on the role of enforcement. In particular, we are keen to review the interpretation of licence breaches, particularly for the non-delivery of outputs and whether the imposition of financial penalties on Network Rail remains an appropriate course of action.