



OFFICE OF RAIL REGULATION

Office of Rail Regulation Rules of Procedure

Introduction

1.1 The Office of Rail Regulation (“ORR”) came into being under the provisions of the Railways and Transport Safety Act 2003 (“the 2003 Act”). Section 16 of that Act provided for the functions of the Rail Regulator to be transferred to ORR, and further transferred all property, rights and liabilities of the Rail Regulator to ORR. The Railways Act 2005 transferred to ORR functions in relation to the railway safety purposes (as defined by Schedule 3 of that Act), and regulations made under the Health and Safety at Work etc. Act 1974 (“the 1974 Act”) made ORR responsible for the enforcement of the relevant statutory provisions as they relate to the railways.

1.2. Schedule 1 (“the Schedule”) to the 2003 Act contains provisions about ORR. Paragraph 1(1) of the Schedule provides that ORR shall consist of a Chairman and at least four other members appointed by the Secretary of State. Paragraph 8 of the Schedule requires ORR to determine arrangements for the conduct of its proceedings and to publish those arrangements. Paragraph 18 of the Schedule requires that these shall include arrangements regarding conflicts of interest of a member, an employee or Committee Member. ORR is given the power at paragraph 6 to establish one or more committees and, under paragraph 7, to delegate a function to the Chief Executive, another employee or to a committee.

1.3. The Board has approved these Rules of Procedure (“the Rules”). The Rules shall, where applicable, be read and interpreted together with the provisions of the 2003 Act and other relevant legislation, and any amendment to or re-enactment of those provisions. Its words and phrases shall have the meanings as set out in the Definitions section below.

Definitions

2.1 The following words and phrases have the meanings as set out below:

“the Board” means the members of the Office of Rail Regulation as defined in paragraph 1(1) of the Schedule;

“Board Secretary” means the employee of ORR who is appointed, from time to time, to act as secretary to the Board;

“Chairman” means the person appointed by the Secretary of State to act as Chairman of ORR;

“Chief Executive” means the person appointed to act as chief executive in accordance with paragraph 3 of the Schedule;

“Chief Inspector” means the person appointed as Her Majesty’s Chief Inspector of Railways;

“Committee Member” means a person who serves on a committee of ORR in accordance with these Rules;

“Independent Member” means a person who is appointed in accordance with these Rules to be a Committee Member but who is not a member of ORR’s Board or an ORR employee;

“the relevant statutory provisions” means the provisions of Part 1 of the 1974 Act and of any health and safety regulations, together with the existing statutory provisions, as defined by section 53 of and Schedule 1 to the 1974 Act.

2.2 The Interpretation Act 1978 applies to the interpretation of these Rules as it applies to an Act.

General provisions

3.1 ORR, in the performance of its functions, shall have regard to generally accepted principles of good corporate governance and principles of good regulation.

3.2 The Board, employees, Committee Members and Independent Members shall be subject to a general duty of confidentiality in relation to the conduct of the affairs of ORR.

The Board

4.1 The Board will take collective responsibility for decisions made by it. A non-executive member of the Board should obtain the prior approval of the Chairman or in his/her absence the Chief Executive before making public statements including statements to the media on behalf of or relating to ORR.

4.2. Members of the Board and Committee Members shall be subject to the Code of Conduct as set out at Annex C.

4.3 The Board will annually review its performance and that of ORR’s committees and provide details of such review in its annual reports and accounts.

4.4 The Board shall appoint a person to be Chief Executive.

4.5 The Chief Executive shall appoint a person to be Chief Inspector. The Chief Inspector shall be a member of the senior civil service.

4.6 The Chief Inspector will have right of access to the Board in writing, or in person at meetings, if he/she wishes to raise any matter concerning health and safety on the railways

Meetings

5.1 The Board may invite any person to attend all or part of a Board meeting.

5.2 The Board Secretary, after consulting with the Chairman and Chief Executive, will propose to the Board by the end of each calendar year a schedule of meetings for the year commencing the following April for the Board’s approval. The Board will normally hold ten meetings each year.

5.3. A meeting may be called by the Chairman or by any two members of the Board who make such a request in writing to the Chairman or, in his/her

absence, to the Chief Executive. In such circumstances the Chairman (or Chief Executive) shall arrange for a meeting so requested to be held within 15 working days of the request.

5.4 Board meetings will normally be convened with a minimum of five clear working days' notice. A meeting may exceptionally be called on less than five days' notice. Such shorter notice will only be valid if ratified at the meeting called on short notice.

5.5 Notice of a meeting shall be given to members of the Board in writing (including transmission of the notice by facsimile or electronic mail). Failure of a member to receive notice of a meeting does not invalidate that meeting or any business transacted at it.

5.6 A member of the Board should not be absent from more than two consecutive meetings without the prior agreement of the Chairman or in his/her absence the Chief Executive. Where a member of the Board is absent for more than two consecutive meetings without prior agreement, the Chairman may notify the Secretary of State in accordance with paragraph 2 of the Schedule.

Agendas and papers

6.1 In normal circumstances the agenda and any papers for meetings of the Board will be circulated to members of the Board five working days in advance of a Board meeting. Papers may be distributed using electronic mail with the specific agreement of respective members of the Board. The non-receipt of agenda or papers for a meeting by any member of the Board shall not invalidate the meeting or any business transacted at that meeting.

6.2 The order of business at all Board meetings shall follow the agenda issued for that meeting unless otherwise directed by the Chairman at whose discretion the order may be altered at any stage.

6.3 Papers may be tabled at a meeting of the Board only with the permission of the Chairman.

6.4 No business other than that on the agenda will be taken except where the Chairman considers the item should be discussed.

6.5 Members of the Board should treat papers as confidential to them and not discuss them with persons other than Board members or employees of ORR unless this is agreed with the Chairman or in his/her absence the Chief Executive. If so discussed, members of the Board should ensure that those with whom they have consulted are made aware of, and respect, the need for confidentiality.

Quorum

7.1 Save in the circumstances set out in paragraph 8.11, meetings of the Board will be quorate if a minimum of five members are present, the majority of whom must be non-executive members. For this purpose, the Chairman is regarded as a non-executive member. No decisions may be taken at a meeting unless a quorum is and remains present.

7.2 A member of the Board who is not entitled to vote on an item will not be counted for the purpose of determining a meeting quorate in relation to that item.

7.3 A member of the Board who leaves a meeting of the Board prematurely will be treated as a non-participating member of the Board for the purpose of any decision taken after the time of departure.

7.4 Participation will usually be in person, but in exceptional circumstances, or as agreed by the Chairman, members of the Board may participate by telephone or video-conferencing facility and be deemed to be present and constitute part of the Board for that meeting.

7.5 All attendances and absences by members of the Board for all or part of a meeting of a Board will be recorded in the minutes of any meeting.

7.6. No failure to comply with this section shall affect the validity of anything done by ORR.

Procedure at meetings

8.1 Subject to the specific provisions of these Rules, the Board may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. If the Chairman is present at a meeting of the Board he/she will preside.

8.2 If the Chairman is unable to be present then he/she will indicate which other non-executive member will preside. In the absence of such an indication or if that person is not present within 15 minutes after the time fixed for the commencement of any such meetings or is unwilling to preside, those members present shall elect one of the non-executive members to preside. Where someone other than the Chairman presides at a meeting in accordance with this rule any reference to the Chairman in Rules 6.3, 6.4, 8.3 to 8.6 and 9.1 shall, in relation to the conduct of that meeting, mean the person presiding at the meeting. This rule does not apply to the reference to Chairman in Rule 8.3(d) in relation to Rule 8.7. Where there is an equality of votes and the Chairman is not present, the decision must be deferred to a meeting at which the Chairman is present.

8.3 The Chairman will:

- a) preserve order and ensure that all members of the Board have sufficient opportunity to express their views on all matters under discussion;
- b) determine all matters of order, competency and relevancy;
- c) determine in which order those present should speak; and
- d) determine whether or not a vote is required and how it is carried out in accordance with paragraphs 8.5 to 8.7.

8.4 Written comments on agenda items submitted by any member of the Board who is not present when a particular agenda item is discussed may be circulated to those members of the Board who are present at the meeting and read out, by the Chairman if he/she so chooses, at the appropriate point in the meeting.

8.5 Decisions of the Board will normally be made by consensus rather than by formal vote. Failing consensus, decisions will be reached by vote when:

- a) the Chairman feels that there is a body of opinion among members of the Board at the meeting who disagree with a proposal or have expressed reservations about it and no clear consensus has emerged; or
- b) a member of the Board who is present requests a vote to be taken and this is supported by at least one other member of the Board; or
- c) any other circumstances have arisen where the Chairman feels that a vote should be taken.

8.6 Decisions will be taken by simple majority voting with each member of the Board having a single vote. A vote may be by oral expression or a show of hands. Only members of the Board who are present may vote with proxy votes not permitted. The Chairman shall declare whether or not a resolution has been carried or lost.

8.7 In the case of an equality of votes the Chairman shall have a second casting vote.

8.8 The minutes of the meeting will record only the numerical results of a vote showing the numbers for and against the proposal and note any abstentions. The minutes shall be conclusive evidence of the outcome. Votes will not normally be attributed to any individual member of the Board, but any member of the Board may require that their particular vote be recorded provided that he/she asks immediately after the item is disposed of.

8.9 The Board may agree to defer a decision on an agenda item so that it can be provided with additional information or for any other reason. The decision to defer, together with the reasons for doing so, will be recorded in the minutes of the meeting together with a proposed time for returning the matter to the Board for its consideration.

8.10 Where in the opinion of the Chairman (or, in his/her absence, any other Board member), and having considered advice from the Chief Executive or an appropriate member of ORR's senior civil service, significant operational or other matters require approval by the Board between meetings, papers will be circulated for approval by correspondence or by telephone. Any matter capable of being passed by the Board at a meeting may instead be passed by written confirmation given by a majority of the members of the Board with the Chairman having the power to cast a second casting vote as provided for in paragraph 8.7.

8.11 Where in the opinion of the Chairman, or in his/her absence the Chief Executive, the procedure in paragraph 8.10 cannot be followed due to the extreme urgency of the case, the Board may make any decision or approve any matter provided that two members of the Board (one of whom must be the Chairman so long as he/she can be contacted and can participate within the necessary timescale for the decision or approval) are present at a meeting called for the purpose or participate by telephone, video-conference facility or in such other manner as the Chairman, or in his/her absence the Chief Executive, considers appropriate in the circumstances. Any decision made or

approval given by the Board under this paragraph shall be minuted and reported to the Board at the next Board meeting.

Minutes of meetings

9.1 Minutes shall be kept of all meetings of the Board, including the names of those present. The draft minutes of meetings of the Board shall be circulated with the agenda for the next scheduled meeting of the Board and approved, as amended, at that meeting. The Chairman shall sign the minutes of meetings of the Board as approved.

9.2 Minutes of any meetings of the Board will record key points of discussions, but will not attribute comments to specific persons unless this is specifically requested by the person concerned. Where personnel, finance or other restricted matters are discussed, the minutes will describe the substance of the discussion in general terms. The minutes will be published on ORR's website and Board papers will be published on ORR's intranet apart from those containing restricted matters.

Committees

10.1 The Board may from time to time establish standing or ad hoc committees. For every committee the Board shall agree (and may, from time to time, amend) its terms of reference, membership, the chairman, quorum, frequency of meetings, reporting arrangements, whether or not minutes and papers should be published on ORR's intranet or website and administrative support or any other arrangements. The Board shall receive regular reports from its committees as it shall direct.

10.2 There shall be an Audit Committee, which will be a committee of ORR. Membership and terms of reference including procedure matters are set out at Annex D to these Rules.

10.3 There shall be a Remuneration Committee, which will be a committee of ORR. Membership and terms of reference are set out at Annex E to these Rules.

10.4 There shall be a Safety Regulation Committee, which will be a committee of ORR. Membership and terms of reference are set out at Annex F to these Rules.

10.5 Subject to any conditions imposed by the Board, these Rules shall govern the proceedings of a committee so far as they are capable of applying.

10.6 Minutes of committee meetings will record key points of discussions, but will not attribute comments to specific persons, unless this is specifically requested by the person concerned. Where personnel, finance or other restricted matters are discussed, the minutes will describe the substance of the discussion in general terms.

Delegation of powers

11.1 The matters listed at Annex A are reserved to the Board unless the Board decides to delegate them in accordance with these Rules. The list of matters reserved for decision by the Board does not preclude other matters being referred to the Board for decision. The Board may also treat as a

reserved matter anything that it sees fit and shall receive reports from the Executive in such a form as to allow such matters to be identified.

11.2 Paragraph 8 of the Schedule permits ORR to delegate a function to

- a) the Chief Executive or another employee, or
- b) a committee.

11.3 There is delegated from the Board to each committee of ORR the discharge of those functions which fall within their respective terms of reference.

11.4 Any delegation made by the Board may be made subject to any conditions the Board may impose and may be revoked or altered by the Board. The nature and scope of delegations shall be recorded in the minutes.

11.5 The Board may itself discharge a function even though it has delegated the discharge of that function.

11.6 The Board delegates to the Chief Inspector the performance of any of ORR's functions relating to its responsibilities for the enforcement of the relevant statutory provisions, subject to the condition that the performance of those functions is in accordance with any health and safety enforcement policy which the Board may from time to time approve. The Chief Inspector may authorise in writing any officer or servant of HM Rail Inspectorate (being an employee of ORR) to perform those functions on behalf of ORR, subject to the condition that the performance by the employee of those functions is in accordance with any health and safety enforcement policy which the Board may from time to time approve.

11.7 Subject to what is said at paragraph 11.6, there is delegated from the Board to the Chief Executive as accounting officer and head of the Executive the discharge of all functions of ORR other than:

- a) any matter reserved to the Board; and
- b) any matter delegated to a committee of ORR.

11.8 The Chief Executive may delegate the discharge of his/her functions under paragraph 11.7 (and, if he/she chooses, the authority to make further delegations) to one or more ORR employees. A list of such delegations shall be kept by the Chief Executive.

11.9 The Chairman and Chief Executive are both authorised to sign contracts or other documents on behalf of ORR, and the Board authorises that either may delegate this authority to one or more of ORR employees as he/she thinks appropriate.

Conflicts of interest

12.1 If a member of the Board or a Committee Member knowingly has any interest or duty which is material and relevant or the possibility of such an interest or duty, whether direct or indirect and whether pecuniary or not, that in the opinion of a fair-minded and informed observer would suggest a real possibility of bias in relation to any matter that is brought up for consideration at a meeting of the Board or any committee of ORR, he/she shall disclose the nature of the interest or duty to the meeting. The declaration of interest or duty

may be made at the meeting at the start of the discussion of the item to which it relates or in advance in writing to the Chairman. If an interest or duty has been declared in advance of the meeting this will be made known by the Chairman of the meeting prior to the discussion of the relevant agenda item. In the event of the person not appreciating at the beginning of the discussion that an interest or duty exists, he/she should declare such an interest as soon as he/she becomes aware of it.

12.2 If a member of the Board or a Committee Member has acted in accordance with the provisions of paragraph 12.1 and has fully explained the nature of their interest or duty, the members of the Board present at the meeting of the Board or of the committee will decide whether the interest or duty is one that is likely to influence the member's performance of his/her function or whether it is one that is relevant to that function. If it is decided that the former is the case, the member shall withdraw from all further participation on the issue in question.

12.3 If it is decided that the interest or duty falls into the latter category, the member shall withdraw unless the other Board members present at the meeting of the Board or of the committee decide that the member may participate to the extent that those Board members consider appropriate in the discussion and determination of the issue. If it is decided that the member with the interest or duty should leave the meeting the Chairman may first allow him/her to make a statement on the item under discussion.

12.4 If it is decided that the Chairman of a Board or committee meeting should leave the meeting because of a conflict of interest, another member or Committee Member will be asked to chair the discussion of the relevant agenda item in accordance with the procedure set out in paragraph 8.2.

12.5 ORR employees who are not members of the Board or a Committee Member, but who are in attendance at a meeting of the Board or a committee should declare interests in accordance with the same procedures as for those who are members of the Board or Committee Members. Where the Chairman of a meeting rules that a potential conflict of interest exists, any ORR employee so concerned should take no part in the discussion of the matter and may be asked to leave the meeting by the Chairman.

12.6 A member of the Board, Committee Member or ORR employee in attendance at meetings of the Board or a committee shall be subject to the procedural arrangements for dealing with conflicts of interest made in accordance with paragraph 18 of the Schedule to the Act as set out at Annex B.

12.7 Any decision made under the provisions of paragraphs 12.1 to 12.7 shall be recorded in the minutes of the Board or committee meeting together with any additional information that the Board or committee consider appropriate (including for example the extent to which the member or Committee Member has had access to papers prior to withdrawal).

Revision of the Rules of Procedure

13.1 These Rules will be reviewed as and when required by the Board and may be varied, revoked or added to by the Board as necessary by the consent of the majority of the members of the Board present at a meeting. No Rule may, however, be suspended or amended where this would contravene any statutory provision.

Matters reserved to the Board

1. Subject to paragraph 5, the following matters are reserved to the Board:

Regulatory Policy

- i. approval of ORR's corporate strategy
- ii. approval of ORR's business plan
- iii. approval of decisions on major items of regulatory policy such as:
 - approach to and draft and final decisions on price reviews;
 - Health & safety enforcement policy and economic enforcement policy;
 - enforcement action (see note 5 below);
 - adverse findings following Competition Act investigations;
 - access agreement approvals which raise new issues of principle or are particularly sensitive;
 - licence modifications which raise new issues of principle or are particularly sensitive; and
 - Network Code modifications that raise new issues of principle or are particularly sensitive.
- iv. review of final reports produced from investigations under paragraph 4 of Schedule 3 of the Railways Act 2005 prior to publication;

Organisation issues

- v. approval of ORR's annual budget
- vi. approval of ORR's annual report and annual accounts
- vii. approval of any significant change in accounting policies and practices
- viii. approval of the appointment or removal of auditors
- ix. approval of the remuneration of auditors
- x. approval of the policy in relation to the strategy and programme for internal audit and the actions required as a result of external and internal audit reports
- xi. confirmation of the adequacy of internal controls including financial, operational and risk management
- xii. approval and oversight of any major legal dispute in which ORR is involved or potentially involved, including approving the commencement by ORR of significant litigation, the defending of

- significant litigation and any decision on whether to appeal any significant judgment that has been given against ORR
- xiii. approval of the publication of any ORR consultation paper involving major issues of regulatory policy and any paper issued subsequently by ORR in connection with that consultation if the subsequent paper involves any change to a policy previously approved by the Board
 - xiv. approval of ORR's response to any significant consultation conducted by the Government or by another body
 - xv. approval of a review of the effectiveness of all major incident response arrangements every three years and after a major incident.
 - xvi. approval of any delegation in accordance with ORR's Rules of Procedure and the rescinding of any such delegation

Management issues

- xvii. approval of the appointment of the Chief Executive and the terms and conditions of service
- xviii. approval of the remuneration of the Chief Executive and other senior civil service employees
- xix. approval of the broad policy in relation to ORR's executive remuneration
- xx. approval of major changes to ORR's human resources policies and procedures including training and development to ensure compliance with best practice
- xxi. approval of major changes to ORR's Executive management structure
- xxii. approval and monitoring of ORR's Health and Safety policy as a duty holder under the 1974 Act
- xxiii. general oversight of the discharge by the Executive of the ORR's day-to-day business

Committees

- xxiv. approval of the terms of reference and membership of ORR committees, standing or ad hoc and any changes to those matters

Contractual and other obligations with third parties

- xxv. approval of the entering into any contracts not in the ordinary course of business
- xxvi. approval of the undertaking of any major capital projects above £500k
- xxvii. approval of material contracts of ORR in the ordinary course of business, e.g. acquisition or disposal of fixed assets above £500k
- xxviii. approval of any new Memorandum of Understanding or formal agreement that ORR may enter into with a third party including with

a government department or other UK regulatory body and any material changes to any existing Memorandum of Understanding or formal agreement

Corporate governance

- xxix. monitoring of compliance with appropriate corporate governance codes, as necessary
- xxx. approval of arrangements in respect of ORR's policy on conflicts of interest
- xxxi. approval of any changes to ORR's Rules of Procedure including the Annexes
- xxxii. formal annual review of the Board's own performance and that of its committees

General

- xxxiii. anything that by law is reserved to ORR's Board (including deciding, as a qualified person for the purposes of section 36(2) of the Freedom of Information Act 2000, whether information that has been requested should be treated as exempt information under that section of that Act)
 - xxxiv. anything else which ORR's Board thinks fit
2. The Board shall have the ability to exercise any power or function which it has delegated elsewhere.
 3. The Board may take advice or consider recommendations from any committee of ORR, as required under their terms of reference.
 4. With regards to any financial transaction, in a situation of emergency where expenditure is urgently required to safeguard any of ORR's operations or to protect ORR assets, the Chairman, or in his/her absence, the Chief Executive, may approve such unbudgeted expenditure with any such approval being submitted at the earliest opportunity to the Board for ratification.
 5. Nothing in these reserved matters shall include the enforcement of the relevant statutory provisions, for so long as that is delegated by the Board to the Chief Inspector, unless the matter is one which departs from the health and safety enforcement policy approved, from time to time, by the Board.

Annex B

Conflicts of interest: procedural arrangements

Introduction

1. Paragraph 18 (1) of the Schedule requires that ORR has in place arrangements under which a member, employee or Committee Member who has a financial or other personal interest which is likely to influence his/her performance of a particular function is obliged -
 - a) to declare the interest, and
 - b) to withdraw from the performance of the function to the relevant extent.
2. Under paragraph 18(2) ORR is also required to put in place procedural arrangements under which a member, employee or Committee Member who has a financial or other personal interest which is relevant to a particular function, but does not fall under paragraph 18(1) of the Schedule is obliged:
 - a) to declare the interest, and
 - b) unless the members of the Board direct otherwise, to withdraw from the performance of the function to the relevant extent.

General principles

3. It is important to ORR to:
 - ensure that no member, employee or Committee Member is involved in taking a decision or participates in a discussion on any matter where that person has a conflict of interest;
 - ensure that those providing information to ORR can be confident that it will be properly handled; and
 - avoid any impression that any member, employee or Committee Member has used his/her relationship with ORR to his/her personal advantage.
4. Every member, employee or Committee Member should avoid situations in which his/her duties and private interests may conflict or where there would be a suspicion of conflict and ensure that, before he/she becomes involved in taking a decision or participating in a discussion, there are no conflicts of interest that, in the opinion of a fair-minded and informed observer, would suggest a real possibility of bias.
5. Where a member, employee or Committee Member comes into possession of confidential information in the course of his/her duties, he/she must not use or disclose that information in order to benefit himself or herself or any other person.
6. A member or Committee Member should consult the Chairman before accepting a new appointment which may lead to a conflict of interest.
7. Each member, employee or Committee Member is responsible for his/her own compliance with these procedural arrangements and with the law.

Interests that should be registered

8. In the interests of transparency and accountability ORR requires members or Committee Members to complete a 'register of interests' form, of interests that are capable of being interests that might conflict with his/her duties.

9. The Board Secretary will keep this register. Members or Committee Members should notify that person of any changes and are responsible for keeping their entry in the register up to date. The register is available for scrutiny by the public and is published on ORR's website.

10. Every year the Board Secretary will confirm with members or Committee Members that their interests have been registered. He/she may from time to time ask members or Committee Members to confirm that their registered interests are up to date and that they have complied with these procedural arrangements.

11. It must be confirmed in ORR's annual report that ORR has complied with these procedural arrangements.

Registering Interests

12. Members or Committee Members should register the following interests:

- relevant securities which are not placed in a blind trust (see paragraph 13 below);
- remunerated employment, office or profession other than with ORR;
- other regular sources of remuneration;
- directorships, whether remunerated or not; and
- membership of public bodies (hospital trusts, governing bodies of universities, colleges and schools, and local authorities), trusteeships (of museums, galleries and similar bodies) and acting as an office holder or trustee for pressure groups, trade unions and voluntary or not-for-profit organisations.

13. "relevant securities" means any financial interest (such as shares or debt securities (including debentures, bonds, options, rights or future rights to shares or other securities but not including units in a unit trust or equivalent managed fund and not including gilts, government bonds or other financial instruments issued by or on behalf of HM Government)) in the bodies referred to in paragraph 14 held by a person, their spouses or dependent children which are not placed in a blind trust. "Blind trust" means an arrangement by which a person gives a stockbroker or other professional investment manager absolute discretion to manage investments in relevant securities and under which that person:

- is not consulted before any dealing takes place;

- does not instruct the investment manager with regard to any specific securities; and
- is not informed of changes in specific investments or the state of the portfolio other than in an aggregated form or as required for tax returns.

14. The bodies referred to in paragraph 13 are bodies having an interest in the GB rail industry which includes:

- persons who operate trains, networks or other railways assets or who are parties to access agreements;
- persons applying for licences or approval or direction of access agreements;
- persons who supply any material equipment or services to the railway industry including rolling stock leasing companies and construction contractors;
- funders; and
- bodies which are part of the same group as a person falling within any of the above sub-paragraphs.

Disclosing interests

15. From time to time a member or Committee Member may have or become aware of interests which might conflict with their ORR duties. As well as keeping their entry on the register of interests up to date, a member or Committee Member must disclose to the Board Secretary such interests as soon as he/she becomes aware that they may cause a conflict, for example, on receipt of an agenda or Board meeting papers.

16. Such interests must be disclosed whether or not they are entered on the register.

17. As required by paragraph 12 of ORR's Rules of Procedure the minutes of any ORR Board or committee meeting will note the disclosure of any such conflicts and the decision of the Board members in relation to continued participation or withdrawal from discussions and decisions. In addition, the Board Secretary will keep a permanent record of all such disclosures of interests made by any member or Committee Member or employee in attendance at a meeting. That record will be kept confidential and will not be disclosed save in the following circumstances:

- Where there is a requirement for disclosure for the purposes of managing actual or potential conflicts;
- Where there is any statutory or legal obligation to disclose the information; or
- Where there is an appeal or judicial review (or realistic threat of judicial review) of the decision in question and the Chairman decides that a disclosure of the record would be appropriate.

18. In considering whether to disclose such an interest, a member or Committee Member should ask whether, in the opinion of a fair-minded and

informed observer, the interest would suggest a real possibility of conflict on that person's part. The following questions may be useful:

- Does he/she have any material financial or other business relationship with a stakeholder?
- Does he/she have any other relationships with another party, the existence of which might suggest a real possibility of bias on their part?
- Has he/she taken a public position that might be seen as compromising his/her ability to deal objectively with a matter that is relevant to ORR?
- In the opinion of a fair-minded and informed observer, would the interests of close family members suggest a real possibility of bias on the part of the member or Committee Member?

19 In particular, a material financial interest held by a member or Committee Member, other than through a blind trust, in a body referred to in paragraph 14 should be considered to have such a wide ranging potential influence in relation to ORR's decisions that it creates a strong presumption, rebuttable only in exceptional circumstances, that it is not practicable for the member or Committee Member in question to serve on the Board or committee. For the purposes of this paragraph, a material financial interest in a funder is not to be interpreted as covering the holding of gilts, government bonds or any other financial instruments issued by or on behalf of HM Government.

1. 20. Advisory interests in the bodies referred to in paragraph 14 may in certain cases be *likely to influence* a member's or Committee Member's functions within the meaning of paragraph 18(2) of the Schedule. An assessment can be made on a case by case basis as to whether they preclude Board or committee membership or can be dealt with on a case by case basis in accordance with the procedures set out below.

2. 21. Such a case by case assessment should have regard to how directly the interests of the person with whom the member or Committee Member has such an advisory link would be influenced by ORR decision making. The greater the extent of the person's involvement in the GB rail industry as regulated by ORR the more problematic the interest is likely to be. Advisory interests where ORR decisions could have a material impact on the underlying value of the business in which that interest is held are likely to be unacceptable. Other relevant factors include:

- the subject matter and scope of the advice the Committee Member would be likely to be asked to give; and
- the duration of the relationship.

22 It will be important to weigh up the extent to which there could be any perception that the member or Committee Member has access to confidential information that could benefit a third party. In the case of consultancy or advisory interests, these are more likely to raise problems where the advice to

be given by a member or Committee Member to a person could be expected to be materially affected by ORR Board decisions.

23 Some interests will not raise such serious concerns and may only be *relevant* to one or more of a member's or Committee Member's functions (within the meaning of paragraph 18(2) of the Schedule).

24 Financial or advisory interests held by the spouse or dependent children of a member or Committee Member need to be considered under these rules on conflicts of interest. In certain situations interests of other close family members may need to be considered under these rules.

25 The presumption should always be in favour of declaring any interest that could be relevant to the performance of the functions of a member or Committee Member.

Procedures for handling interests

26. In the event that a member or Committee Member receives a written paper on a matter on which they have a conflict of interest, they must immediately return the paper to the Board Secretary with an indication of the extent to which the paper has been read.

27. If a member or Committee Member becomes aware of a conflict during the course of any discussion, his/her interest should be disclosed immediately and he/she should, if appropriate, withdraw from the discussion and any decision relating to the matter. However, in some circumstances he/she may, if the Board or committee permits, participate in such discussions and decisions in accordance with paragraph 12 of ORR's Rules of Procedure.

28. Before trading Relevant Securities or exercising options, a member or Committee Member should disclose his/her intention to trade to the Chairman, giving at least 24 hours notice. The Board Secretary will record the disclosure of the intention to trade by any member or Committee Member.

Employees

29. Employees must comply with the staff policy regulating financial or other interests in effect from time to time. If the employee is also a Board member or a Committee Member or in attendance at a Board or committee meeting, he/she must also comply with these Rules of Procedure to the extent that they apply stricter or more extensive rules.

Confidential information

30. The Criminal Justice Act (CJA) 1993 makes it a criminal offence for an individual who has information as an insider to deal in securities (including shares, debentures, warrants and options) on a regulated market. A member, employee or Committee Member who gains access to price-sensitive information through their duties will be considered an "insider" under CJA1993. A member, employee or Committee Member who has unpublished price-sensitive information on any company, and deals in the securities themselves, or arranges for someone to deal in the securities on his/her behalf, or passes the information on to someone, or encourages someone else to deal will be committing an offence.

31. Particular care should be taken to avoid disclosing to any person (or otherwise acting on) any discussion relating to decisions which have not yet been made public.

32. Even where disclosure would not breach the insider dealing rules, a member, employee or Committee Member must ensure that they do not disclose to any person information received during the course of the duties where such information has been provided on a confidential basis.

Annex C

Code of conduct

1. The Chairman, members of the Board and Committee Members must comply at all times with this code of conduct (or any agreed modification of it) and act in good faith and in the best interests of ORR. ORR employees must comply with this code if no office policy applicable to ORR staff has been published on the matter or, if one has been so published, this code sets a higher standard.

Public service values

2. ORR in its activities and actions will have regard to the principles of good regulation, being proportionality, accountability, consistency, transparency and proper targeting of regulation to achieved defined goals. The highest standards of propriety, involving integrity, impartiality and objectivity must be maintained in relation to the stewardship of public funds and the management of ORR. Any conflict between personal interests and the discharge of public duties must be avoided. No one to whom this code applies must seek through the performance of their duties to gain material benefits for themselves, their families or their friends.

3. Suspicion that a decision might be influenced in the hope or expectation of future employment with a particular firm or organisation must be avoided. Accordingly, during their term of office no one to whom this code applies must seek any consultancy contracts, directorships or other employment, or acquire a direct financial interest in a company regulated by ORR.

4. Those to whom this code applies are required to maximise value for money through ensuring that ORR operates in the most efficient and economical way, within available resources, and with independent validation of performance achieved wherever practicable.

Relationship with Government

5. ORR is independent of Government.

6. Communication between ORR and the Secretary of State and Ministers will normally be through the Chairman except where the Board has agreed that an individual member of the Board should act on its behalf. Nevertheless an individual member has the right of access to the Secretary of State and Ministers on any matter which he or she believes raises important issues relating to his or her duties as a member of ORR. In such cases, the agreement of the rest of the Board would normally be sought.

7. The main point of contact between ORR and government departments on day-to-day matters will normally be the Chief Executive or other ORR employees.

Gifts and hospitality

8. All gifts or hospitality received or given to those to whom this code applies shall be recorded in the register of gifts and hospitality kept by a member of ORR staff to whom the Chief Executive has delegated this duty. That person shall keep a regular check on the register and advise the Chief

Executive accordingly in order to avoid any suggestion of actual or perceived bias towards any particular stakeholder. The register will be made available to a member of the public if so requested. Gifts or hospitality amounting to a negligible sum (under £10) may be exempt from registration. Casual gifts such as calendars, diaries or other single items of office equipment can be accepted, but only if they bear the donor's name or insignia and can be regarded as advertising matter.

9. In deciding whether to accept a gift or offer of hospitality consideration should be given as to whether acceptance can stand up to public scrutiny. The decision to accept hospitality or a gift is a matter of judgement and personal integrity, and the advice of the Chairman, Chief Executive or person with responsibility for keeping the register may be sought. The following broad guidelines may be of assistance in assessing the relative merits of accepting an invitation:

- Event-based hospitality that presents networking opportunities with ORR stakeholders, and which might therefore inform or promote the work of ORR, is generally acceptable;
- Work-related hospitality from a single stakeholder is acceptable where it can clearly be seen to be of value to ORR's work;
- Hospitality that benefits the recipient personally should be avoided if it is difficult to justify as being of benefit to ORR, or if there is a risk of perceived bias or malign comment. Care should be taken that no extravagance is involved with working lunches and other social occasions.

10. All invitations to attend industry or stakeholder events should be referred first to the Chief Executive, or in his or her absence, to the head of communications for advice. Care must be taken to ensure that there is appropriate representation at events, and that those attending are properly briefed in advance.

Public speaking and journalists

11. Particular reference should be made to paragraph 4.1 of ORR's Rules of Procedure. Special care should be taken about any invitation to speak publicly, including speaking to journalists. Care must also be taken in the publication of any articles. In any such instance, the Chief Executive should be informed in good time before such an article is submitted, or, in his/her absence, the head of communications, as appropriate, and in all cases views should not be expressed that are at variance from agreed ORR policy. The Chairman, members and Committee Members are not restricted from access to the media in their personal non-ORR capacity, or in pursuit of a professional interest, for example, as experts.

Expenses

12. Expenses are only recoverable if the expenditure is reasonably and necessarily incurred on behalf of ORR. Receipts must, wherever practicable, accompany claim forms. Claims should be submitted to the Chief Executive's office as soon as possible after they have been incurred.

Travel

13. When on ORR business, those to whom this code applies are entitled to travel and subsistence expenses incurred and other expenses necessarily incurred on business in accordance with the arrangements applying to the staff of ORR who are members of the senior civil service and to claim expenses accordingly.

Leaving ORR

14. On termination of office, the Chairman, members and Committee Members must return to ORR all property belonging to it.

Data protection

15. For the purposes of the Data Protection Act 1998 (as amended), those to whom this code applies give their consent for all purposes to the holding, processing and accessing of personal data about them held by ORR.

Annex D

Audit committee terms of reference

1. The Board has established an audit committee as a committee of the Board, to support them in their responsibilities for issues of risk, control and governance and associated assurance by:

- Reviewing the comprehensiveness of assurances in meeting the Board and accounting officer's assurance needs;
- Reviewing the reliability and integrity of these assurances;
- Providing an opinion on how well the Board and accounting officer are supported in decision taking and in discharging their accountability obligations (particularly in respect of financial reporting and risk management).

Membership

2. The Board made appointments to the committee, including the committee chair. The committee would comprise at least two non-executive members of the Board and at least one independent member with relevant experience. Membership would be reviewed every three years.

Reporting

3. The audit committee will formally report back to the Board after each meeting. As soon as is practicable minutes of each committee meeting will be circulated to members of the Board for noting.

4. The audit committee will provide the Board and accounting officer with an annual report, timed to support finalisation of the accounts and the Statement on Internal Control, summarising its conclusions from the work it has done during the year, with particular reference to the organisation's risk, governance and internal control framework.

5. All audit committee minutes and papers will be published on ORR's intranet unless the committee decides that all or particular items should be redacted.

Responsibilities

6. The audit committee will advise the Board and accounting officer on, and where appropriate make recommendations for changes to:

- ORR's strategic processes for risk, control and governance and the Statement on Internal Control;
- ORR's accounting policies, accounts, and financial annual report, This should include accounting policies and practice, compliance with laws and accounting standards and major matters of judgement. It will also cover the process for review of the accounts prior to submission for audit, levels of error identified, and management's letter of representation to the external auditors;
- the planned activity and results of both internal and external audit;
- the effectiveness of the internal audit function;

- adequacy of management response to issues identified by audit activity, including external audit's management letter;
- assurances relating to the corporate governance requirements for ORR;
- the adequacy of anti-fraud and corruption policies and whistle-blowing processes;
- (where appropriate) proposals for tendering for either internal or external audit services or for purchase of non-audit services from contractors who provide audit services;
- the appointment or dismissal of any external organisation appointed to provide internal audit services;
- the effectiveness of the internal audit function including the internal audit strategy and plan including the nature and scope of their audit programme covering the planning, undertaking and management of the internal audit process;
- the fees and annual costs of internal and external audit.
- any other matters referred to it by the Board

7. The audit committee will also annually review its own effectiveness and terms of reference and report the results of that review to the Board, including any recommendations for change.

Rights

8. The audit committee may

- co-opt additional members for a period not exceeding a year to provide specialist skills, knowledge and experience;
- procure specialist ad-hoc legal or other professional advice at the expense of the organisation, subject to budgets agreed by the Board.
- investigate any activity within its terms of reference, and seek through the accounting officer any information it requires from ORR employees. All such employees are directed to co-operate with any reasonable request made by the committee in the conduct of its enquiries.

Access

9. The representatives of internal and external audit will have free and confidential access to the Chair of the audit committee between meetings and the Audit Committee if required at each meeting.

10. The Chief Inspector of Railways will have free and confidential access to the audit committee and its Chair.

Meetings

11. The audit committee will meet at least three times a year. The Chair of the audit committee may convene additional meetings, as he/she deems necessary;

12. A minimum of two members of the audit committee will be present for the meeting to be deemed quorate;

13. Audit committee meetings will normally be attended by the accounting officer, the director and deputy director of corporate services, the head of finance, a representative of internal audit, and a representative of external audit;

14. The audit committee may instruct any other officials of the organisation to attend to assist it with its discussions on any particular matter;

15. The audit committee may instruct any or all of those who normally attend but who are not members to withdraw to facilitate open and frank discussion of particular matters;

16. The Board, accounting officer, internal audit or external audit may ask the audit committee to convene further meetings to discuss particular issues on which they want the committee's advice.

17. An outline agenda programme for the coming 15 months will be agreed with ORR's Chairman and approved by the committee at its first meeting following the beginning of each financial year.

Information requirements

18. For each meeting the audit committee will be provided with:

- A report summarising any significant changes to the organisation's risk register;
- A progress report from internal audit summarising:
 - work performed (and a comparison with work planned);
 - key issues emerging from internal audit work;
 - management response to audit recommendations;
 - changes to the periodic plan;
 - any resourcing issues affecting the delivery of internal audit objectives.
- A progress report from the external audit representative summarising work done and emerging findings;
- Notice of any incidents of financial irregularity or fraud;
- Internal and external audit will have an opportunity at each meeting to raise any issues with the committee without ORR staff being present.

19. As and when appropriate the committee will also be provided with:

- External audit's audit strategy
- The internal audit strategy;
- Proposals for the terms of reference of internal audits;
- Full reports and follow up reports from internal audit investigations

- The internal audit's annual opinion and report; quality assurance reports on the internal audit function;
- ORR's draft accounts;
- ORR's draft Statement on Internal Control;
- A report on any changes to accounting policies;
- External audit's management letter;
- A report on any proposals to tender for audit functions;
- A report on co-operation between Internal and external audit.
- Any other material that the committee reasonably requires in order to fulfil its responsibilities.

Remuneration committee

Responsibilities

1. The committee will:
 - review the remuneration packages of ORR's senior civil servants including the Chief Executive by seeing that they are rewarded fairly and differentially according to their contributions to ORR, both in achieving their objectives and in developing their competencies, skills and knowledge;
 - keep under review the criteria for allocating individuals to performance tranches and awarding bonuses;
 - make final recommendations to ORR's Board on pay and bonus decisions for ORR's senior civil servants including the Chief Executive, taking account of the ORR's overall performance and recommendations of line managers; and
 - recommend to the Board broad pay policy in relation to all aspects of senior civil service (SCS) remuneration and monitor the operation of the pay system.
2. In carrying out its terms of reference the committee will give due regard to the principles of equal opportunity, ORR's pay strategy and Government guidance. ORR's SCS pay strategy will accord with the Cabinet Office's annual remit, as laid down by the Senior Salaries Review Body. The strategy will be approved by the ORR's Board before it is issued to SCS staff.
3. The committee is authorised to obtain independent legal or other professional advice.

Authority

4. The committee is an advisory committee established by the Board.

Membership

5. The committee will comprise three non-executive members.
6. A quorum shall be two members of the committee. Any member has the right to attend all or part of a meeting of the committee.

Meetings

7. The committee shall normally meet at least once a year, with the facility to call additional meetings if necessary.
8. No person may be present when any matters affecting that person directly are under consideration.

Reporting

9. The committee chairman, or in his/her absence, another member of the committee will advise the Board of the committee's recommendations at the next Board meeting following a committee meeting. As soon as is practicable

minutes of each committee meeting will be circulated to members for noting. They will otherwise remain confidential.

Safety regulation committee: terms of reference

Authority

1. The committee is an advisory committee established by the Board under its Rules of Procedure (paragraph 10.1 & 10.4-10.6). The Rules of Procedure govern the proceedings of the committee so far as they are capable of applying, except where the arrangements specified below are different. The committee will have no delegated powers or duties unless specifically delegated to act on behalf of the Board on certain matters.

Purpose

2. A Board / senior team forum:

- To assist the development, maintenance, review and updating of ORR's health and safety¹ regulatory strategy, and to review from time to time the overall adequacy of arrangements to meet ORR's statutory duties as undertaken by the executive. Particular focus will be given to:
 - the strategic work of ORR in relation to safety:
 - development of domestic and European safety related policy.
 - arrangements to integrate safety and economics across the Office and in particular delivering its focus on maintaining or improving safety performance and reducing the cost base of safety related provisions.
 - industry safety performance data.
- To examine such matters as requested by, and report its findings to, the Board.
- To make such recommendations to the Board as it sees fit from time to time.
- To provide guidance and advice to the Board and staff on the need for major accident inquiries.
- To review the safety inspection and policy formulation programmes as undertaken by the executive and provide endorsement of these programmes to the Audit Committee and the Board.

Membership:

3. The committee will consist of a mix of executive and at least two non-executive directors appointed by the Board from time to time.

20. Meeting arrangements

4. **Quorum:** The quorum for meetings is three members: one of whom must be a non-executive director and another of whom must be the Chief Inspector or Deputy Chief Inspector of Railways.

¹ "safety" is used in the rest of this document to denote health and safety

5. **Chairing meetings:** The committee will be chaired by the appointed chairman or in their absence the ORR Chairman. If neither is in attendance then the committee will appoint one of the attending non-executive directors as the chairman for the meeting.
6. **Frequency of meetings:** The committee will usually meet bi-monthly. The ORR Chairman or committee chairman may call special meetings at any time.
7. **Attendance:** The committee chairman will invite experts to attend and contribute to specific committee discussions.
8. **Agendas:** The secretary will agree the agenda with the chairman, following discussion with lead officers. The committee will from time to time consider its forward agenda. The agenda and any papers will be circulated, where practicable, one week in advance of the meeting.
9. **Papers:** The committee will normally receive formal papers to consider, but its work will also allow oral reports and discussion.
10. **Reporting:** The secretary will produce a meeting note documenting subjects discussed, any consensus or difference of views and actions. The meeting note will be included in the next Board agenda and an oral report will be given to the next directors' group meeting.
11. SRC will provide the Board with an annual report summarising its activities and conclusions from the work it has done during the year.
12. All SRC minutes and papers will be published on ORR's intranet unless the committee decides that all or particular items should be redacted.