

## **ORR's priorities for 2007/08 and approach to focused and effective regulation: Summary of consultation responses received**

On 30 November 2006, ORR sought views from its stakeholders on what its priorities should be for 2007/08 and how it could continue to become more focussed and effective in its regulatory work (see <http://www.rail-reg.gov.uk/upload/pdf/reg-priorities-consult-0708.pdf>)

The consultation period ran until 29 January 2007. Twelve responses were received from the Association of Train Operating Companies (ATOC), English Welsh and Scottish Railway Ltd (EWS), Heritage Railway Association, National Express Group, Network Rail, Northern Rail, Porterbrook, Rail Freight Group, Rail Safety and Standards Board (RSSB), SPT, Transport for London (TfL) and Transport Scotland. A summary of the responses is presented below and the full responses have been placed on the ORR website.

### **ATOC**

- The Business Plan is consistent with the expectations in ORR's Corporate Strategy 2006-09.
- Welcome the principle of "stepping back from the detail" and the work done in preparation for the Periodic Review and in health and safety.
- More emphasis should be placed on actions ORR might take in this control period to ensure Network Rail's overall improvement continues.
- Concern expressed in four areas - the slow progress in disbursing Network Rail's Discretionary Fund, the GRIP process which in practice can slow down spending and ration by attrition, securing station improvements and the levelling off of improvement in Network Rail's performance.
- The nature of the franchise model is such that train operators will take opportunities to generate extra revenue through improvements.
- TOCs rely heavily on Network Rail but have limited influence, despite the access charge regime. ORR's regulatory role is therefore crucial and its Business Plan should pay increased attention to actions such as investigation, analysis, exhortation and ultimately enforcement.

### **EWS**

- ORR is critical to the future success of the rail industry; independent economic regulation is vital for investor confidence and growth.
- ORR needs to be aware that its opinions, publications and decisions will be taken seriously by its stakeholders and should take into account the effect of its actions on the economic health of the rail industry in general and individual businesses in particular.
- All of ORR's actions should contribute to the public interest outcome even if it means regulatory and economic theory having to take a back seat.

- The overriding objective must be to reduce the costs of Britain's railways. The industry must wean itself away from reliance on public expenditure and ORR's role is central to this objective.
- ORR should be a champion for simplification and reducing complexity. Recent proposals proposing more charging regimes and additional regulatory obligations relating to sustainability are not encouraging.
- This philosophy should be extended to the Network code and ORR's safety role where its administrative role should be kept under constant rules.
- ORR should exploit the combination of economic and safety regulation and weed out rules that add cost, complexity and have no effect on safety.
- ORR's decision-making processes need to be speeded up. The introduction of the Board has squeezed the timetable on consultation to allow for Board papers, discussion and decisions.
- In 2007/08 ORR should lead a fundamental review of efficiency, keeping an open mind and embracing what the rest of the world has to offer. It should consider employing experts in the various disciplines who have recent experience in delivering low-cost successful railways.
- ORR is wrong to pursue a "light touch" towards regulation; the industry is not yet mature enough and the supplier/customer relationships are different to other industries. ORR's role should be as a champion for change, simplicity and efficiency.
- ORR needs to be sure that, where it is transferring power and responsibilities to others in the industry, they are in a position to accept and deliver them.
- On ORR's specific proposed objectives:
  - Improving health and safety performance* – the effect on the cost and efficiency of the railway must be taken into account. No merit in having a safe railway that is so expensive that users turn to other, less-safe modes.
  - Securing improved efficiency and performance* – agree should be a priority but no support for the intention to "increase the regulatory burden" in the area of sustainable development. Need to resolve work on documenting network capability.
  - Securing robust plans for 2009 and beyond* – the future of the freight industry "hangs on the outcome of the decision on freight charges". Ideal opportunity to embrace ideas to improve efficiency.
  - Improving and aligning relationships* – ORR should seek simplification and lower costs through our involvement in these areas.
  - ORR as a combined regulator* - expect ORR during 2007/08 to review the cost and appropriateness of safety rules and practices and to see some emerging benefit.

### **Heritage Railway Association**

- Look forward to hearing how licensing and exemption simplification will relate to the heritage sector.

- Trust that the special position of heritage railways and tramways will be taken into account in the review of health and safety legislation, in particular the safety verification section of the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS), (urge retention of ROTS Regulations for the heritage sector).
- Look forward to hearing how unnecessary regulatory burdens will be reduced in relation to the heritage sector.
- Reports and recommendations from investigations undertaken by Her Majesty's Railway Inspectorate (HMRI) should be made available to the heritage sector where appropriate.
- Consider that the Association has an excellent relationship with ORR/HMRI.
- Continue to oppose the application of the levy to their member railways and tramways but, if present system continues, would push for any increase to be in line with inflation and to continue to be based on railway operations only.

### **National Express Group**

- Agree with the overall strategy and the five key priority areas identified.
- Good progress made in delivering the strategy to date and National Express will continue to be involved in cross-industry groups to help further those aims.
- In respect of the proposed priority *Securing improved efficiency and performance*, concern that there is no mention of the role ORR intends to play in maintaining and improving Network Rail's level of performance.
- Although Network Rail may be exceeding their Control Period 3 targets, they are not keeping pace with the improvement rate being made by some of the TOCs. There is evidence of plateauing out and an increase in infrastructure failures.
- The move to bring maintenance in-house, although welcomed, may have reduced incentives on possession management and a recent increase in possession overruns has been seen.
- ORR should therefore focus on Network Rails' continuing reduction in delay minutes and Network Rail caused cancellations.

### **Network Rail**

- Welcome ORR's aim to take more of a focused and effective approach to regulation. The challenge will be to manage the transition carefully ensuring all industry parties are ready.
- Network Rail recognises that it will need to act responsibly and that more trust will need to be won from customers and stakeholders. Some areas can move towards "lighter touch" regulation more quickly than others.
- ORR should clarify the criteria it will use to intervene where its regulatory involvement "adds the most value in terms of the needs of users and the wider public interest". Network Rail recognises that it will need to have processes and internal checks in place to assure ORR that intervention is not necessary.

- ORR should actively encourage partnership and resolution of issues by the industry with regulation as a last resort. However, the industry has to feel that it is worthwhile dedicating resources to issues without the concern that ORR will simply rework or overrule such work. Clear explanation for ORR intervention will be required.
- As the rail industry has many parties with only short to medium term interests, ORR will have to play a role to ensure this does not distort behaviours.
- The role of reporters is to provide confidence to ORR but also to deliver benefits to Network Rail. Auditing should not be excessive as this would run counter to the principles of better regulation.
- The ORR consultation implied that we will be increasing monitoring and undertaking more detailed reviews. This should be made more explicit, defining how and where ORR wishes to increase monitoring and in which areas.
- ORR should always justify its decisions and conduct impact assessments for new and potentially significant work. The output from the impact assessment process should be shared.
- ORR should seek information from within first in an effort to avoid burdens on the industry and should establish and publish measures as indicators of progress towards better regulation.
- ORR should clarify its role in relation to Government and RSSB and how it will influence the domestic legislative agenda. It should work with the Government more on integrated transport issues and strengthen its relationships with other regulators.
- ORR should clarify its role as the National Safety Authority and what this means in practice and its role in relation to RSSB. More clarity should be provided on ORR's combined safety and economic role.
- In respect of ROGS, ORR's strategy needs to be clear on its role in realising the integration of one safe system for the network and how it will assure itself that safety management systems have considered interface issues and taken a system wide approach. Must be no confusion between ORR and NR's roles.
- ORR should conduct a back to basics review of safety regulations and liaise robustly with other regulators to fulfil its role under the Safety Directive and secure action against external parties who prejudice the safe operation of the railways.

### **Northern Rail**

- Already early signs of a more flexible and responsive approach to safety regulation than with HSE.
- Suggest ORR prioritises a review of the railway specific guidance on the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR), (and ideally liaises with HSE to review it in general), to identify ways in which the reporting of accidents and incidents can be aligned with Rail Accident Investigation Branch (RAIB) requirements.

- Would like to see more direct contact between ORR and TOC MDs (rather than via ATOC) and for us to be seen beyond the M25.
- ORR should introduce an electronic system to alert key TOC managers to new consultations (in addition to the relevant MD) similar to that used by ORR's track access team. Key contact details should be held for TOCs.
- ORR should continue to scrutinise and challenge Network Rail to develop greater customer focus and respond quickly to the needs of its customers.
- ORR should have target response times for requests from TOCs e.g. when seeking to identify if Network Rail is already funded to make specific investments.
- Question whether ORR would consider expanding the scope of General Approvals to allow TOCs to modify S2 to operate Ancillary Movements to/from workshop locations at short notice to take advantage of the operation of the competitive market in vehicle repairs.
- Need to benchmark against North American or European best practice and the comparison of route-specific costs within Network Rail to identify best practice against which Network Rail should be funded.
- Must be prompt industry agreement on Network Rail's priorities to ensure that schemes are included in the High Level Output Specification (HLOS). There needs to be a method of funding schemes identified by RUS outputs during the Control Period and of delivering third party funded schemes. ORR's assumptions concerning performance standards and improvement plans must be properly defined.
- The work on Stations Code and Network Code must be seen not to change the risks being carried by TOCs midway through a franchise without an appropriate route to achieve financial neutrality.
- Support ORR's intention to commission market studies.

#### **Porterbrook**

- Seek confirmation of the criteria ORR will apply in deciding which issues will best be addressed by industry.
- Seek confirmation of the type of market studies ORR envisages undertaking.

#### **Rail Freight Group**

- Overall Rail Freight Group considers that ORR acts in a robust and professional manner, is appropriately consultative and is even handed in its approach to regulation. ORR's independence is of considerable importance.
- On some occasions ORR operates "in a vacuum" and should give more consideration to the role of rail alongside other modes.
- ORR should promote more actively the use of the network for passenger and freight traffic.
- Track access contract approval processes should be speeded up, particularly in relation to access into private terminals.

- Concern that the volume of work ORR is undertaking, if not co-ordinated properly, could result in conflicting outputs and that significant additional complexity could be created (for example in the approach to different elements of charging).
- Support ORR's work to improve Network Rail's performance and efficiencies and expect strong pressure to be maintained.
- Some way to go in ensuring Network Rail develops its customer focus. Would support measures to incentivise the greatest use of available capacity.
- Expect ORR to give strong attention to the reasonable requirements of freight in HLOS process.
- The framework for third party enhancements needs to be tested and reviewed.
- ORR should press for full implementation of EU Directives across Europe, for example ensuring interoperability is progressed quickly throughout the EU.
- ORR's role in respect of international freight services and on the CTRL needs clarification.

## **RSSB**

- Expected the business plan to give a clearer statement of the anticipated benefits from each of the stated priorities. What will the success of "even better regulation" look like?
- Need to achieve clarity on the role of ORR as the National Safety Authority; the Business Plan should set out it is intended to resolve this issue.
- The reference to improving safety performance *where practicable* should read *where reasonably practicable* to be consistent with UK health and safety law.
- The business plan should acknowledge the work ORR and the industry have undertaken to clarify the interpretation of reasonably practicable.
- The statement that "We will continue to focus our efforts on the most serious risks and *areas where we can exert the greatest influence*" gives rise to concern – ORR should focus its efforts on the areas of greatest risk and not be diverted into other areas simply because it is easier to take actions.
- The Business Plan should make reference to the industry's research and development programme, particularly bearing in mind ORR's statutory duty in the area of R & D.
- RSSB urge ORR to maintain a balanced approach across the environmental, social and economic pillars of sustainability.

## **SPT**

- Welcome ORR's commitment to providing focused and effective regulation of the industry.
- Remain concerned that Network Rail "continue to exploit their dominant position" e.g. failing to consult SPT on network change proposals, charging for internal consultations for disposal of surplus land, seeking greater detail

on approvals from contractors on third party funded projects than for Network Rail sponsored projects, and seeking additional expenditure on enhancements and spares on the back of third party investment.

- Would like to place on record their expectation that they are consulted prior to the disposal of any land by Network Rail. Concerned that the lack of automatic consultation might be exacerbated by industry taking more responsibility. Welcome confirmation that bodies such as SPT will be consulted on relevant network and station change matters, land disposals and changes to access contracts.

## **TfL**

- Broadly agree with ORR's suggested approach to focused and effective regulation.
- Need to consider how third party funders can be more fully involved in industry processes such as the Network Code. Progress in this area has been slow.
- Any devolvement of decision making to Network Rail must be accompanied by proper controls and monitoring to ensure that decisions take full account of the public interest.
- There must be an enhanced focus from Network Rail on the regional agenda. This would accord well with the need for greater transparency and the disaggregation themes now being promoted.
- A key priority should be to concentrate on how to facilitate network development and promote investment. Acknowledge some moves to promote this e.g. investment rebate mechanism.
- It is worth reviewing whether some station and depot activities could be removed from the "more intrusive" element of the regulatory regime or streamlined.
- There is no specific mention of ORR's environmental duties or the promotion of sustainability to mitigate the effects of climate change.

## **Transport Scotland**

- ORR continues to develop to meet the challenges of a rapidly changing industry and to integrate safety and economic regulatory activity. This is a challenging task requiring support from funders, operators and stakeholders.
- A key priority for all those involved in the specification and provision of railways services is for increasing stability in the contractual, regulatory and delivery frameworks.
- Commitment to ORR's five key priority areas is not sufficient; ORR will need to work with funders to ensure the public interest is promoted throughout. Ensuring that maximum value for money is secured for funders and operators is a key task.
- Welcome the engagement already established between Transport Scotland and ORR. Important that ORR recognises that different priorities and emphasis will emerge as a result of Scotland's National Transport Strategy

and it needs to plan its activities to take these into account. The impact on Scotland of ORR GB wide level policies must be in the forefront of discussion and engagement.

- Support the transfer of responsibility to Network Rail but ORR must ensure its processes for challenge and audit are robust and credible.
- Funders should be engaged in the consultation programme at an early stage. Welcome the use of more targeted and focused letters on technical policy developments.
- ORR should take into account the resource available across industry for effective engagement in the consultation process and avoid having significant consultations running in parallel.
- Welcome the emphasis on ensuring the effectiveness of safety regulation. Clear requirement for ORR to engage with funders and industry on European safety regulation and provide leadership to inform programmes that are compatible with ORR's wider objectives.
- Welcome ORR's leadership in the management of industry data; this needs to be integrated with asset management information and the provision of independent assessments of industry performance to support funders in their decision making. ORR has an opportunity to build on its activities to create a centre of excellence within the industry.
- ORR needs to ensure that the outcome of the Access Charges Review secures maximum value for funders and operators while protecting the asset condition of the rail network. There are opportunities to improve the transparency of the charging system and to align incentives.
- Challenge is to deliver whole industry efficiency as well as to allow funders and freight operators to plan their businesses within a stable framework.