

SCOTTISH MINISTERS' GUIDANCE TO THE OFFICE OF RAIL REGULATION

INTRODUCTION

The Legislative Context

1 Section 4(5)(aa) of the Railways Act 1993 ("the 1993 Act") (as inserted by Section 3(8)(b) of the Railways Act 2005) enables Scottish Ministers to give general guidance to the Office of Rail Regulation (ORR) about railway services wholly or partly in Scotland or other matters in or as regards Scotland that relate to railways.

2 This Guidance is provided to the ORR to assist it in:

- fulfilling its duties and discharging its functions under the 1993 Act, as those duties and functions are amended and supplemented by the Railways Act 2005 ("the 2005 Act"); and
- its engagement with Scottish Ministers.

Role of Government

3 In the July 2004 White Paper, *The Future of Rail*, the UK Government stated that it would take charge of setting the strategy for the railways. The UK Government and Scottish Ministers would set the level of public expenditure for the railways and take the strategic decisions on what outputs this should buy. The 2005 Act contained the legislative provisions necessary to achieve this.

Role of the ORR

4 The White Paper confirmed that there would continue to be a crucial role for the independent economic regulator. The 2005 Act also transferred all aspects of health and safety regulation related to the railway to the ORR. This simplified the regulatory structure and brought together economic and safety regulation, enabling the ORR to evaluate and decide upon outputs taking account both of economic and safety objectives.

GUIDANCE

Scottish Ministers' Priorities

5 Scottish Ministers' priorities for the rail industry are for it to contribute to the development and sustainability of Scotland's economy and society, meeting the needs of passengers and freight users. The industry must maintain a high level of safety, while controlling its costs and delivering improved outputs within the public funds available. The rail industry must contribute to Ministers' sustainable development objective. Scottish Ministers' also wish to emphasise the importance of effective management frameworks for the railways in Scotland.

Engagement

6 Section 51(2) of the 2005 Act contains a specific duty on the ORR to provide information, advice and assistance to Scottish Ministers, as reasonably required.

7 Scottish Ministers wish to maintain close working relations with the ORR, while recognising the boundaries between their respective responsibilities. Scottish Ministers would wish ORR to share information freely with them and consult with them, except where statutory exceptions or commercial confidentiality requires otherwise. In particular, to promote timely, well informed decision making, Scottish Ministers would wish ORR to share information and analysis as soon as is reasonably practicable about anything that is likely to be material to policy development or implementation, or to forward financial planning, by Scottish Ministers. Scottish Ministers would wish ORR to assist them in securing information from Network Rail to support the implementation of their strategies and policies as well as promoting informed decision-making.

8 Addressing Scottish Ministers' priorities as described in paragraph 5 above also requires Scottish Ministers and the ORR to work closely together. In this regard, Scottish Ministers wish ORR to have regard, in the exercise of its functions, to relevant current and future strategies, policies and objectives published Scottish Ministers and which are formally notified to the ORR.

Safety

9 The subject matter of Part 1 of the Health and Safety Act 1974 as it applies by virtue of section 117 of the Railways Act 1993 is a reserved matter under Section H2 of Part II of Schedule 5 to the Scotland Act 1998. Schedule 3 of the Railways Act 2005 made provision for the transfer to the ORR of safety functions. Scottish Ministers will work with the Secretary of State for Transport to ensure that ORR is mindful of the dimensions and impact of rail safety issues in Scotland. Scottish Ministers would wish to be advised of, and to discuss with, the ORR any material measure it is proposing to take or policy that it is proposing to pursue in addressing any safety issue other than in relation to ORR's functions as an enforcing authority for the purposes of the Health and Safety at Work Act 1974.

Budget management and value for money

10 Under Section 4(5)(ab) of the 1993 Act (as inserted by 3(8)(b) of the 2005 Act) the ORR is "to give what appears to it to be appropriate weight to the extent (if any) to which the guidance relates to matters in respect of which expenditure is to be or has been incurred by the Scottish Ministers." Under section 4(5C) of the 1993 Act (as inserted by the 2005 Act), the ORR must also have particular regard to the interests, in securing value for money, of those using or who wish to use railway services, those providing railway services and those funding railway services. As a funder of railway services, Scottish Ministers want to secure value for money from the outputs, including objectives and standards that they wish to be achieved by the railway industry during the period covered by current and future access charges reviews.

11 Public resources available to spend on the railway are constrained. In having regard to the funds available to Scottish Ministers, the ORR is asked to note that Scottish Ministers are required to live within allocated resource budgets and to secure value for money from public expenditure. Accordingly, where the ORR is taking decisions which may have actual or potential financial consequences for Scottish Ministers they wish the ORR to note particularly that they do not wish to incur additional expenditure beyond allocated budgets and do not wish to incur expenditure that is not value for money.

12 If, in the exercise of its statutory functions, the ORR considers that it is necessary to exercise its functions in a particular way that is likely to have either negative or positive material financial consequences for Scottish Ministers, they would wish to be advised of this by the ORR as soon as is reasonably practicable so that they may consider the matter and, if appropriate, make representations. In doing so, Scottish Ministers wish ORR to allow them the opportunity to consider whether they would wish to amend the High Level Output Specification or any other strategies and policies.

13 Scottish Ministers wish to retain the flexibility to improve or ameliorate their financial position within the framework of government accounting rules, including adjusting the balance between payment of grant and access charges in future years. Consistent with its duties under Section 4(5C) above, Scottish Ministers wish the ORR to facilitate this, providing always that the financial position of Network Rail remains neutral, and that there is no adverse impact on other funding authorities or on freight or passenger open access operators.

14 Scottish Ministers wish to work closely with the ORR in monitoring Network Rail's financial position to minimise the risk of the credit support arrangements provided by the Secretary of State for Transport being called upon.

Access Charge Reviews

15 Schedule 4 to the 2005 Act, in amending Schedule 4A to the 1993 Act, sets out the process by which the ORR is to undertake a review of access charges, including the requirement on Scottish Ministers to provide information on the high level outputs they wish to purchase and the indicative level of funding available.

16 To facilitate the efficient operation of this process, Scottish Ministers wish to co-ordinate with the ORR, so far as is reasonably practicable, activities in relation to access charges reviews, particularly in terms of financial implications, information required from Network Rail, or requirements placed upon Network Rail.

Franchising

17 The ORR is asked to note that the continued effective operation and sustainability of the franchising regime is of major importance to Scottish Ministers. In particular, Scottish Ministers wish to ensure that franchises remain within their allocated budgets, and that franchise bids made by bidders are deliverable, both operationally and financially. Scottish Ministers believe that these outcomes would be facilitated by greater certainty about access rights at the start of the franchising process and wish ORR to facilitate this wherever possible. Scottish Ministers consider that an active dialogue between ORR and Scottish Executive officials in relation to franchising issues is beneficial and wish ORR to participate in regular discussions with Scottish Executive officials in respect of current franchising issues.

Rail Freight

18 The then Secretary of State for Transport set out the UK Government's objectives for Rail Freight in his July 2005 Policy Statement. This recognises the important role that rail freight plays in the nation's logistics and in the achievement of the UK Government's and Scottish Ministers' sustainable distribution objectives. Scottish Ministers wish to facilitate the growth of a competitive and dynamic private sector rail freight industry and are committed to ensuring that policies and regulations should work to this end and should not put unnecessary obstacles in the way of future growth. Scottish Ministers wish the ORR to take account of their strategies and policies which have been notified to ORR as being subject to this provision to facilitate freight growth.

19 Scottish Ministers wish the ORR, in developing any proposals and in making decisions in relation to rail freight, to note particularly the UK Government's existing Rail Freight Policy Statement and Scottish Ministers' emerging strategies and policies as notified. Scottish Ministers would wish to be advised by the ORR of, and to discuss with the ORR, any material measure that the ORR proposes to take or policy that it proposes to pursue in relation to rail freight.

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