

SECRETARY OF STATE FOR TRANSPORT GUIDANCE TO THE OFFICE OF RAIL REGULATION

INTRODUCTION

The Legislative Context

1 Section 4(5)(a) of the Railways Act 1993 (as amended) (“the 1993 Act”) enables the Secretary of State to give general guidance to the Office of Rail Regulation (ORR) about railway services or other matters relating to railways. In addition, Section 4(5B) of the 1993 Act enables the Secretary of State to give guidance to ORR in relation to the ORR’s exercise of its safety functions, other than in relation to the ORR’s functions as an enforcing authority for the purposes of the Health & Safety at Work Act 1974.

2 Paragraphs 6 to 9 and 13 to 22 of this document set out guidance 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”) that are not safety functions or functions assigned to ORR under Section 67(3) of the 1993 Act.

This guidance replaces the guidance issued on 23 September 2002. The Secretary of State has consulted the National Assembly for Wales (NAW) in preparing this guidance.

3 This document also includes guidance in paragraphs 10 to 12 provided to ORR under Section 4(5B) of the 1993 Act.

Role of Government

4 In the July 2004 White Paper, *The Future of Rail*, the Government stated that it would take charge of setting the strategy for the railways. Government 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

5. 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.

The Secretary of State's Priorities

6 The Secretary of State’s key priorities for the rail industry are for the industry: to maintain a high level of safety; to control its costs and live within the public funding available to it; to meet the needs of passengers and freight users; and to contribute to the Government’s sustainable development objective.

Engagement

7 Section 51 of the 2005 Act contains a specific duty on the ORR to provide information, advice and assistance to the Secretary of State and NAW, as required.

8 The Secretary of State and NAW wish to maintain close working relations with the ORR, while recognising the boundaries between their respective responsibilities. The

Secretary of State would wish ORR to share information with them and consult with them, except where statutory exceptions or commercial confidentiality require otherwise. In particular, to promote timely, well informed decision making, the Secretary of State 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 the Secretary of State or NAW.

9 Addressing the Secretary of State's priorities as described in paragraph 6 above also requires the Secretary of State, NAW and the ORR to work closely. In this regard, the Secretary of States wishes ORR to have regard, in the exercise of its functions, to relevant strategies, policies and objectives published by the Secretary of State or NAW from time to time, and which are notified to the ORR.

Safety

10 Section 4(5B) of the 1993 Act as inserted by the 2005 Act, places the ORR under a duty to have regard to any general guidance given to it by the Secretary of State in relation to the ORR's exercise of its safety functions, other than in relation to the ORR's functions as an enforcing authority for the purposes of the Health & Safety at Work Act 1974.

11 The Secretary of State is concerned to ensure that rail safety is maintained and improved in a manner which makes best use of the financial resources available and provides value for money for both the fare payer and the tax payer.

12 The Secretary of State would wish to be advised by the ORR of, and to discuss with the ORR, any material measure which the ORR proposes to take or policy which it proposes 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 & Safety at Work Act 1974.

Budget management and value for money

13 Under Section 4(5)(c) of the 1993 Act (as substituted by the 2005 Act) the ORR is "to have regard to the funds available to the Secretary of State for the purposes of his functions in relation to railways and railway services." 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 users or potential users of railway services, those providing railway services and those funding railway services. As a funder of railway services, the Secretary of State will want to secure value for money from the outputs, including objectives and standards, that he wants to be achieved during the period covered by the access charges review.

14 Public resources available to spend on the railway are constrained. In having regard to the funds available to the Secretary of State, the ORR is asked to note that the Secretary of State is 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 the Secretary of State, the Secretary of State wishes the ORR to note particularly that he does not wish to incur additional expenditure beyond allocated budgets and does not wish to incur expenditure which is not value for money.

15 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 material negative or positive financial consequences for the Secretary of State, the Secretary of State would wish to be advised of this by the ORR as soon as is reasonably practicable so that he may consider the matter and, if appropriate, make representations. In doing so, the Secretary of State wishes ORR to allow him the opportunity to consider whether he would wish to amend the HLOS or any other strategies and policies.

16 The Secretary of State wishes to retain the flexibility to improve or ameliorate his 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 duty under Section 4(5C) above, the Secretary of State wishes 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.

17 The Secretary of State wishes 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 being called upon.

Access Charges Reviews

18 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 the Secretary of State to provide information on the high level outputs he wishes to purchase and the indicative level of funding available.

19 To facilitate the efficient operation of this process, the Secretary of State wishes 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

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

Rail Freight

21 The then Secretary of State set out the 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 Government's sustainable distribution objectives. The Government wishes to facilitate the growth of a competitive and dynamic private sector rail freight industry and is committed to ensuring that policies and regulations should work to this end and should not put unnecessary obstacles in the way of future growth.

22 The Secretary of State wishes the ORR, in developing any proposals, and in making decisions in relation to rail freight, to note particularly the Government's Rail Freight Policy Statement. The Secretary of State would wish to be advised by the ORR of, and to discuss with the ORR, any material measure which the ORR proposes to take or policy which it proposes to pursue in relation to rail freight.