

THE SCOTTISH MINISTERS' GUIDANCE TO THE OFFICE OF RAIL REGULATION

JULY 2012

The Scottish Ministers' ambitions for Scotland's Railways

1. Under current UK railways' legislation, the Scottish Ministers are responsible for setting a strategy for rail in Scotland, setting the strategic direction on what outputs should be delivered and setting the level of public expenditure available to support the delivery of those outputs.

2. The Scottish Ministers' ambitions and priorities for Scotland's railways from 2014 onwards are laid out in a statement to the Scottish Parliament on 21 June 2012 ('the statement') and the publication of their High Level Output Specification (HLOS) for Control Period 5. The statement envisages railway services which must form part of an integrated transport system, which are high quality, represent good value for money, support Scottish businesses and communities, promote tourism and offer a real alternative to road and air travel. The Scottish Ministers' ambition is for Scotland's railways to be a source of pride, with an international reputation for efficiency and service, supporting sustainable economic growth to make Scotland a better place to live and more competitive place to do business. The realisation of that ambition will be achieved in the context of the following practical, strategic railway services' outcomes:

- Improving journey times and connections
- Reducing emissions
- Improving quality, accessibility and affordability

3. In discharging its duties in Scotland, the Scottish Ministers expect the Office of Rail Regulation ("the ORR") to support the delivery of their ambitions for rail as outlined in the statement as well as in any relevant current and/or future strategy, policy or objective published by the Scottish Ministers and of which the ORR is formally notified. The Scottish Ministers expect the ORR to be aware that such a strategy, policy or objective may differ from that in place in respect of other parts of the GB rail network.

The Legislative Context

4. Section 4(5)(aa) of the Railways Act 1993 ("the 1993 Act") requires the ORR, in exercising its functions (other than safety), to have regard to any general guidance given to it by the Scottish Ministers about railway services wholly or partly in Scotland or about other matters in regard to Scotland that relate to railways.

5. This document revokes and replaces the revised guidance issued by the Scottish Ministers in September 2009.

Principles of Better Regulation

6. The ORR, in discharging its duties in relation to Scotland, is expected to act in a manner that is consistent with the Scottish Government's principles of better regulation:

- Proportionate
- Consistent

- Accountable
- Transparent
- Targeted

A more integrated approach to rail in Scotland

7. The Scottish Ministers are of the view that a more integrated approach to delivering railway services in Scotland will improve the quality, efficiency and resilience of those services. The Scottish Ministers are also of the view that greater local accountability for the management and operation of the rail infrastructure in Scotland will improve responsiveness to local issues and circumstances. The Scottish Ministers expect that the ORR and the regulatory processes and frameworks will support and not act as a barrier to:

- greater decentralisation of the key decision-making processes and delivery functions in relation to infrastructure management in Scotland, where this represents best value for money;
- innovation in the rail industry to improve alignment between industry players, including any development and delivery of a deeper alliance arrangement between Network Rail in Scotland and the operator of the ScotRail franchise;
- the development and delivery of closer working arrangements between Network Rail in Scotland and other passenger service operators;
- the development and delivery of closer working arrangements between Network Rail in Scotland and freight operators; and
- the activities and operation of Community Rail Partnerships in Scotland.

8. The Scottish Ministers expect the ORR to work with the rail industry to identify how best the impacts and benefits of any maturing and deeper alliancing arrangements should be reflected, monitored, reported on and ultimately captured for the benefit of passengers, customers, operators and the Scottish Ministers.

9. The Scottish Ministers also expect a simplification of the regulatory regime to reflect any improved alignment between Network Rail in Scotland and ScotRail, whilst protecting the interests of other operators.

Ensuring a high performing railway in Scotland

10. Ensuring that the performance and resilience of the rail network in Scotland is of a consistently high standard, for the benefit of passengers and freight users, is of critical importance to the Scottish Ministers. Accordingly, the Scottish Ministers expect the ORR to ensure that the regulatory framework, and its approach to monitoring and enforcing network outputs, will, insofar as possible, require the industry to work together to deliver the network performance targets set out by the Scottish Ministers in their HLOS.

11. The Scottish Ministers expect ORR to work with the industry to develop the suite of Key Performance Indicators as outlined in the HLOS submitted by the Scottish Ministers. In particular, the ORR is expected to support the industry to improve transparency and work towards a better record of right-time performance, with a view to the possibility of including right-time performance as a specific metric in Control Period 6 and beyond.

12. The Scottish Ministers expect ORR to ensure that information produced by the rail industry is transparent, high quality, and consistent so as to allow passengers and others to better understand the performance of rail services in Scotland. In support of this the Scottish Ministers expect the ORR to encourage the rail industry to work with passenger representative bodies to gain assurance regarding the acceptability of the relevance and presentation of any new ways of measuring performance.

Improving journey times

13. The Scottish Ministers are clear that performance should not be secured at the expense of journey times. The Scottish Ministers expect the ORR to work with the industry to achieve the journey time objective as set out at section 3.4 of the HLOS, encouraging the achievement of that objective to be pursued wherever opportunities arise in the normal course of business and within the public financial resources available for Control Period 5.

Securing efficiency and value for money

14. Under Section 4(5)(ab) of the 1993 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, in performing its duties the ORR must also have particular regard to the interests of those using or who may use railway services, the interests of those providing railway services, the interests of those funding railway services and the general public.

15. The Scottish Ministers expect the ORR to have regard to the funds available to the Scottish Ministers to support the rail industry and the requirement of the Scottish Ministers to provide that support within its allocated resource and capital budgets, while securing best value for money from that public expenditure. In making its determination for Control Period 5 it is vital that the ORR demonstrates its commitment to maximising value for money for rail users and in the use of public resources.

16. The Scottish Ministers expect the ORR to ensure that Network Rail operates efficiently in all of its activities, and reflects this in the Strategic Business Plan for Control Period 5 and its delivery plan.

17. The Scottish Ministers expect the ORR to ensure that value for money is achieved through the approach that the ORR takes to setting the financial framework for Network Rail for Control Period 5. The Scottish Ministers also expect the ORR to consider the implications in terms of value for money of any activity the ORR

undertakes towards reviewing any aspects of the regulatory framework and processes. If the ORR considers that it is necessary to exercise or intends to exercise its duties or undertake an activity in a way that is likely to have a negative or positive, material, financial consequence for the Scottish Ministers, then the Scottish Ministers expect the ORR to notify the Scottish Ministers as soon as is reasonably practicable so that the Scottish Ministers may make representation to the ORR. The Scottish Ministers expect the ORR to notify the Scottish Ministers, as soon as is practicable, in such circumstances where the ORR exercises or intends to exercise a duty or activity which may give rise to the Scottish Ministers conducting a review, to ensure consistency of the approach taken or to be taken by the ORR, against the HLOS or any policy, strategy or objective in respect of the rail network in Scotland.

18. Providing that there is no adverse impact on the financial position of Network Rail and/or passenger or freight operators, the Scottish Ministers expect the ORR to apply the flexibility that exists within the framework of government accounting rules, including adjusting the balance between payment of grant and access charges in future years where this represents the best use of Scottish public resources.

19. The ability to secure greater certainty over track access rights and a fair pricing regime for track access is key to supporting the Scottish Ministers decisions on investments in rail capacity and services and attracting third party funding. The Scottish Ministers are therefore of the view that protecting the investment made by the Scottish Ministers and others in rail should be regarded as a key consideration and priority in the development and application of policies on track access rights and charging, and on rail competition. Specifically, the Scottish Ministers expect the ORR to discharge its functions in such a way to permit the Scottish Ministers and others to invest with reasonable assurance that the timetable outputs underpinning the investment case for planned infrastructure enhancements will be deliverable through track access rights without risk of compromise.

A greener Scotland

20. The Scottish Ministers see a clear role for the rail industry in contributing towards a greener Scotland and expect the ORR and the regulatory processes and frameworks to support and not act as a barrier to:

- the measurement by Network Rail in Scotland of its carbon emissions and the presentation and notification of that information to the Scottish Ministers so that the Scottish Ministers can assess the contribution being made by Network Rail to the wider Scottish carbon emission reduction targets contained within the Climate Change (Scotland) Act 2009;
- Network Rail in making its network and operations resilient to predicted future changes in the climate;
- Network Rail in the efficient use of resources and energy in support of a sustainable development strategy or policy that it implements or applies; and

- The effective stewardship of the natural environment for which Network Rail is responsible.

Rail Freight

21. Scotland's rail freight network is important to Scotland's economy. Accordingly, the Scottish Ministers expect the ORR to pay due consideration to any changes to policy which may impact that network.

22. In developing the track access charges arrangements for freight operators, the Scottish Ministers expect the ORR to use a mechanism which recognises the impact that freight operators have on the network but maintains the attractiveness of rail to freight customers, and which is adaptable to prevent the outputs of businesses in Scotland from becoming uncompetitive in their key markets.

Approaches to asset management

23. A substantial proportion of the rail industry subsidy requirement is in relation to the maintenance and renewal of the network assets. Therefore the Scottish Ministers have a very clear expectation that the ORR will ensure that Network Rail's asset management strategies are fully attuned to the specific needs of the Scottish operating route, and represent best value for money.

24. The Scottish Ministers expect the ORR to seek to secure efficiencies in Network Rail's maintenance and renewal of the network assets as well as ensuring that these efficiencies are fully taken into account in determining the Regulatory Asset Base (RAB).

25. The Scottish Ministers expect the ORR to ensure that improved asset knowledge and emerging asset management efficiencies, including asset life extension, are reflected in the amortisation charge, recognising the particular characteristics on the Scottish rail network.

26. The Scottish Ministers also expect the ORR to ensure that the development and delivery of asset management strategies are underpinned by accurate information on the rail assets and their condition and capability and that this information should be promptly available without further expense to, and may be dependably relied upon by, rail industry parties who may reasonably require it in pursuit of railway business.

Providing and securing information

27. Section 51(2) of the Railways Act 2005 imposes a duty on the ORR to provide information, advice or assistance to the Scottish Ministers in connection with the Scottish Ministers' functions or activities in relation to railways or railway services. The Scottish Ministers require that the ORR share information and analysis, either produced by the ORR or Network Rail, 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 Scottish Ministers, except where legal restrictions or commercial confidentiality prevent this. In particular, the Scottish Ministers expect

the ORR to ensure that the Scottish Ministers receive regular, timely, transparent and reliable reports on Network Rail performance, operational and financial, disaggregated as appropriate, to ensure that an accurate understanding of the network is maintained at all times.

28. The Scottish Ministers expect the ORR to continue its work to develop regular reporting on real time data, in support of the expectations outlined in paragraph 11 above.

Engagement

29. The Scottish Ministers wish to maintain close working relations with the ORR. They require that the ORR provide advice and information freely and consult with the Scottish Ministers as early as possible, except where legal restrictions or commercial confidentiality prevent that.

30. To build upon the current, positive working relationships, Transport Scotland's Chief Executive will issue a separate letter to the ORR on future engagement. That letter will then form part of this Guidance.

Resourcing

31. The Scottish Ministers welcome recent moves by the ORR to strengthen its resource base in Scotland. The Scottish Ministers request that the ORR continue to monitor its resourcing, ensuring that it can continue to provide the required capacity and capability to discharge its functions in Scotland in line with this Guidance.