

## Chief Executive's Office

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Date:  
14 October 2009

Bill Emery  
Chief Executive  
Office of Rail Regulation  
1 Kemble Street  
London  
WC2B 5AN

*Dear Bill,*

### ENGAGEMENT WITH THE OFFICE OF RAIL REGULATION

I am writing to you in relation to the Guidance issued to the Office of Rail Regulation (ORR) on the 29<sup>th</sup> September by Stewart Stevenson, Minister for Transport, Infrastructure and Climate Change.

This letter supplements the Guidance by setting out Transport Scotland's (TS) expectations of engagement with ORR and how that will support the delivery of rail strategy and policy in Scotland.

### Policy context

The Scottish Government published its National Transport Strategy in 2006, with the supporting document Scotland's Railways providing the policy context that has informed Ministers' expectations of the rail industry in Scotland and which among other things underpinned the Scottish HLOS.

### Process for engagement

It is essential that there is a systematic process of engagement between our organisations which is effective and efficient, with respective roles and responsibilities clearly defined. This ensures that there is visibility and recognition of each others expectations and requirements and recognises that we have a shared responsibility to ensure that both organisations are consulted on key developments, issues and concerns at as early a stage as possible except where statutory exceptions or commercial confidentiality requires otherwise.

The primary focus of our engagement will be to monitor the performance of Network Rail against its regulatory outputs for Scotland as identified through the Periodic Review process. However, we would expect ORR to engage with us on any issues in which they are involved and which impact either directly or indirectly on the rail network in Scotland.

We would expect that the process will include but not be restricted to the following-

- an annual meeting between the ORR Board and the appropriate Scottish Minister(s);
- six-monthly Chief Executive meetings;

- quarterly meetings between the Director of Strategy & Investment for Transport Scotland and the ORR Director with responsibility for Scotland;
- quarterly hold-to-account meetings on Major Projects;
- quarterly review meetings on the programme of operations, maintenance and renewals; and
- regular (at least monthly) “catch up” discussions between officials.

Officials from my Rail Regulation and Standards Team will look to work with ORR over the coming weeks to agree the purpose, format and timing of the above.

### **Provision and publication of information**

We would expect that ORR will provide timely, regular and sufficient information to TS. This will ensure that our engagement is effective and will also support our accountability to Scottish Ministers and the Scottish Parliament. As a minimum, we would expect monthly, detailed reports, including forward looking assessment, on the following-

- the progress of Network Rail in delivering against their regulatory outputs, as defined through the Periodic Review process; and
- the financial position of Network Rail.

Officials from my Rail Regulation and Standards Team will look to work with ORR over the coming months to agree format, content and timing of these reports.

Where ORR intend to place information on Network Rail performance in Scotland into the public domain, we would expect the opportunity to comment at least one week in advance of publication.

### **Resource**

We expect that ORR will provide, within its available funding, the necessary resource and expertise to-

- monitor and where necessary enforce the regulatory outputs for Scotland;
- support the engagement process and the production of information; and
- where necessary, provide support on specific issues.

### **Partnership working**

Our preferred approach is to work in partnership with the rail industry in Scotland and we would expect ORR to encourage industry bodies, including Network Rail, to engage fully with TS.

### **Supporting the ScotRail franchise.**

Passenger train services are currently specified and delivered through the ScotRail franchise.

Responsibility for setting the terms of the franchise and monitoring ScotRail performance lies with Scottish Ministers. We will work with ORR to ensure that there is a clear and shared understanding of how the regulatory outputs determined through the Periodic Review process support the successful delivery of current and future franchise agreements.

### **Health and Safety**

We will ensure that any relevant health and safety concerns which come to our attention will be communicated to the ORR for investigation and action as necessary. TS are in regular communication with the ORR and officials attend the ORR Railway Industry Advisory Committee, where topical safety issues are discussed. We expect that ORR will keep us informed of any issues arising from their safety regulation work which impacts either directly or indirectly on the rail network in Scotland and that they will consult with us on any proposals that they have.

The Department for Transport (DfT) remains the competent railway safety authority and TS officials will consult with DfT on any proposals that they have to make or amend regulations under the Health and Safety at Work etc Act 1974.

I hope that this letter, along with the Ministerial guidance, will give us a solid basis on which to continue and build upon our strong relationship.

Yours Sincerely  
David

**David Middleton**

