

Rail Delivery Group

Response to

The ORR consultation on changes to the network licence

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Organisation: Rail Delivery Group

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Business representative organisation

Introduction: The Rail Delivery Group (RDG) was established in May 2011. It brings together Network Rail and passenger and freight train operating companies to lead and enable improvements in the railway. The purpose of the RDG is to enable Network Rail and passenger and freight train operating companies to succeed by delivering better services for their customers. Ultimately this benefits taxpayers and the economy. We aim to meet the needs of:

- Our Members, by enabling them to deliver better outcomes for customers and the country;
- Government and regulators, by developing strategy, informing policy and confronting difficult decisions on choices, and
- Rail and non-rail users, by improving customer experience and building public trust

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Introduction

1. This document outlines the key points from our members in response to the ORR's consultation on changes to the network licence. We are making separate responses to the consultation on the Draft Determination and the consultation on enhancements in CP6.
2. RDG is content for this response to be published on the ORR website.

Comments on the proposals

3. RDG supports the ORR proposal to update the licence to better reflect Network Rail's structure and to more generally align it with changes to the CP6 regulatory framework. This will help make the licence more relevant and clearer to interpret and apply to make compliance more straightforward for those who are accountable and responsible for meeting the licence obligations.
4. Network Rail is currently doing a lot of work to develop a stakeholder engagement model, which includes a principles-based code of practice, stakeholder engagement strategies (for Route businesses and national functions) and an annual assessment of engagement. Notwithstanding this, Network Rail recognises that further improvement is required in CP6 to develop and embed the framework.
5. We note the ORR comments in its consultation that the licence will not be prescriptive on stakeholder engagement but expects that Network Rail, its routes and System Operator (SO) will be required to engage in a manner which is effective, inclusive, well governed and transparent. We fully support this intention and agree with the principles. We suggest that these overarching principles (as set out in paragraph 10 of the consultation) are reflected in the licence rather than the "stakeholder engagement duty" requirements set out in Condition 1.7(b) to (e) of the proposed licence that appear rather prescriptive. We believe that the network licence, should be more purposive in nature whilst leaving flexibility as to how particular obligations are discharged. Flexibility is important to enable Network Rail's routes and SO to develop new ways of engagement with its stakeholders.
6. It is also worth noting that there is ongoing work to fully establish the SO advisory board and Route supervisory boards and their governance arrangements and so this remains an area where there will be continuing engagement between train operators and Network Rail.
7. We agree with the principle that a stakeholder engagement duty should be a core and overarching duty in the licence. We agree that the existing stakeholder relationships licence condition is outdated and too narrow and therefore we are supportive of the principle of updating the definition of stakeholder in the licence.
8. Freight operators believe that the proposed licence changes could be strengthened to further the interests of freight and national passenger operators. Although FNPO is not the same as geographic route businesses in that it has no asset management responsibilities, it is reliant on those geographic routes to ensure it can deliver for freight and national passenger operators and meet its own scorecard targets. It is therefore important that the FNPO route has sufficient influence over the geographic routes and support from the System Operator in order to be able to deliver for its customers.

9. We agree with Network Rail that the licence should not restrict the company's ability to make decisions in the interests of efficiency and delivering for its customers.
10. RDG supports the proposed changes to the safety and standards licence condition but considers that there is room for improvement. Rail Industry Standards already allow for the relevant Standards Committee to comment on the suitability of any proposed alternative arrangements. This facilitates the transparent application of the process and industry scrutiny of such deviations. It is proposed that a link is made to this existing industry process and we propose that Clause 12.3 (a) is rewritten as follows:

“it has, in consultation with affected parties, identified an equally effective measure which will achieve the purpose of the standard and asked the relevant Standards Committee to comment on the proposed alternative; and”
11. The legal drafting of the licence will be critical, particularly because the allocation of obligations is complex within a single legal entity. This is the case where more than one part of Network Rail's business has an accountability for processes which makes up a system captured by a single licence obligation. Given the intended scale of change to the licence and the legal drafting being completed over a short period of time, we suggest that the ORR carries out a formal review early in CP6 to assess how well the changes are working.