

REPORTING AND INFORMATION REQUIREMENTS BETWEEN THE SCOTTISH MINISTERS AND NETWORK RAIL

INTRODUCTION AND SUMMARY

Primary purpose

The primary purpose of this document is to set out the engagement between the Scottish Ministers and Network Rail to ensure that Network Rail provides full, accurate and up to date information to the Scottish Ministers to assist them in discharging their statutory functions and other activities in relation to rail transport.

Network Rail management

The Scottish Ministers as part of the information, reporting or other process under this arrangement will not be involved in or in any way seek to influence the management practice of Network Rail or the manner in which it conducts its business.

Policy background

The White Paper, “The Future of Rail”, put forward the concept of a binding arrangement between the Government and Network Rail. The intention was that there would be an arrangement which would set out how Network Rail would keep the Government properly informed on rail industry performance and costs in order to inform policy and allow government to monitor progress towards achieving outputs. There would be a clear understanding of the outputs that Network Rail is required to deliver and how it will be held accountable. The Department for Transport has drawn up a parallel arrangement with Network Rail.

Arrangement

An effective working relationship between Network Rail and the Scottish Ministers is important – this document describes how both parties intend to work together and the agreed reporting and information requirements to deliver effective communications. The principle of an effective working relationship, including but not limited to effective communications, between Network Rail and the Scottish Ministers is a ‘reasonable requirement’ under Condition 7 of Network Rail’s network licence, any breach of this licence condition is enforceable by ORR.

This document is not intended to be a contract and is not contractually enforceable. Notwithstanding the terms of this document, these reporting and information requirements are without prejudice to any other duty or obligation of Network Rail to furnish to the Scottish Ministers such information that the Scottish Ministers consider necessary for the purpose of facilitating the performance of any of their functions or activities in relation to railway services.

It is understood and agreed by Network Rail that the arrangements set out in this document are entered into by the Scottish Ministers wholly without prejudice and are not intended to fetter the manner of exercise by them from time to time of any existing or future powers they may possess or acquire whether under contract, statute or common law enabling them to require information (including advice) from ORR, Network Rail or any other party as the case may be. If and whenever, notwithstanding the preceding sentence, the effect of this document or any provision

in it shall be to fetter, or appear to the Scottish Ministers to be capable of fettering, the exercise of any such power as aforesaid, then to that extent each such provision in this document shall be deleted and cease to have effect.

Whilst the Scottish Ministers and Network Rail accept that this arrangement is not binding they will wherever possible adhere to its terms in the interest of co-operation and good working practice.

Railways Act 2005

The Railways Act 2005 provides Scottish Ministers with a greater, more central decision making role on rail in Scotland. From April 2006 Scottish Ministers will assume responsibility for funding Network Rail activities in Scotland, specifying the railway outputs and priorities for Scotland. Network Rail's outputs and required funding are determined by the Office of Rail Regulation (ORR) in periodic reviews.

The Railways Act 2005 provides for a new iterative process in relation to future periodic reviews between the Scottish Ministers and ORR. The Scottish Ministers will be required to provide ORR with information about what they expect to see achieved by Scottish railway activities and the public finances that are, or are likely to become, available for purposes that contribute towards the achievement of what they expect to see.

Scottish outputs and targets

As a result of their new role as the funder of the rail infrastructure in Scotland, the Scottish Ministers will, through the High Level Output Specification, determine their desired outputs for rail in Scotland. However, in order to provide proper transparency and accountability in the current control period disaggregated Scottish outputs which Network Rail are expected to deliver in Scotland have been determined. In parallel, Scottish specific performance management and measurement targets for Network Rail to report on and be monitored against for Scotland have been put in place and will continue to be developed, as noted below.

Reporting and information requirements

The ORR, in carrying out its role of monitoring and enforcing on Network Rail's licensed activities, receives information from Network Rail on those activities. The Scottish Ministers will seek to use information and reports already available to ORR wherever possible.

Network Rail will seek to ensure that its business reporting and planning processes are designed to deliver the necessary Scottish information to the ORR and the Scottish Ministers in an accurate and timely manner.

Review

The Scottish Ministers and Network Rail will keep these reporting and information requirements under review. If it appears to either party that these requirements are inappropriate or insufficient for its intended purpose, or would otherwise benefit from amendment, the parties will discuss in a timely manner and in good faith with a view to agreeing to appropriate amendments to these arrangements. In particular, both

parties may wish to review the arrangements as we move from Control Period (CP) 3 to CP4.

PRINCIPLES

The Scottish Ministers and Network Rail have agreed to follow the six principles set out below:

Partnership working

It is recognised by the Scottish Ministers and Network Rail that the need for partnership working is paramount. The principle of partnership working shall be based upon a good, efficient and effective working relationship to ensure that both parties are kept fully informed with no surprises. Maintenance of effective working relations will be necessary and will be fostered through regular and ad-hoc bilateral meetings. Those attending meetings will be of appropriate seniority having regard to the issues for discussion and will take steps properly to inform themselves about the issues to be discussed in advance of the meetings. Where decisions are to be taken, or may need to be taken, those staff will have the appropriate or delegated authority to make such decisions as are required.

Transparency

Transparency involves working in an open, transparent and unambiguous manner to ensure that the aims and objectives of the Scottish Ministers are clear and there is a common understanding of how Network Rail is managing and operating, and will in future manage and operate, its business in relation to Scotland - this is particularly important with respect to the allocation of Network Rail central costs and the movements of the Scottish allocation of Network Rail's Regulatory Asset Base.

Consistency

To encourage the unified rail industry approach through quadrilateral meetings and other working between the Scottish Ministers, the ORR, the Train Operating Companies including those in the freight sector (TOCs) and Network Rail, the Scottish Ministers will, so far as reasonable and practicable, make as much use as possible of information and reports already created by Network Rail for the ORR. The Scottish Ministers will seek to ensure that their information requirements are consistent and avoid conflicts of interest or unnecessary overlap and duplication.

Proportionality

Network Rail will provide information, access and analysis on request from the Scottish Ministers on its business and operations. The amount and detail of the information provided will be proportionate to the importance, significance and technical or other complexity of the matter as reasonably viewed by the parties. If the information is not readily available, the Scottish Ministers will conduct an impact assessment to ensure that the impact on Network Rail is reasonable, and Network Rail will provide such information as is reasonable and proportionate following such an assessment. Network Rail will provide the Scottish Ministers with assistance in conducting such an impact assessment.

Effective communication

As the new formal relationship between the Scottish Ministers and Network Rail following the passage of the Railways Act 2005 begins to take effect it is important that relations and processes are developed to ensure maximum benefit.

Focus on output delivery

To focus on the outputs to be delivered by Network Rail. This focus will include a comparison between the delivery of these outputs with the trajectories set for them, and may be broadened to take account of the inputs required by Network Rail to achieve them.

SCOTTISH OUTPUTS AND TARGETS

At the last access charges review, ORR set regulatory targets which Network Rail is obliged to achieve in order to deliver the required outputs and the income which Network Rail needs to do this. These targets will form a major part of the Secretary of State's "reasonable requirements" as described in Condition 7 of Network Rail's Network Licence, for the purposes of that licence condition and, as such, will be enforceable by ORR.

For their part, the Scottish Ministers, as the specifier of the rail infrastructure in Scotland, and funder of its associated costs, will determine their desired outputs for the railway in Scotland which would form the basis of the reasonable requirements to be enforced by ORR under Condition 7 of the Network Licence, in respect to the network in Scotland. The Scottish Ministers will determine their outputs under the High Level Output Specification as part of future access charges reviews.

Network Rail is a private company accountable to its members and through the regulatory framework, to the ORR. As a private company it has duties to comply with company legislation and has contractual obligations to passenger and freight operators and other parties. Network Rail has responsibilities under its network licence for reporting and managing performance across the entire industry.

Network Rail's core responsibilities are to operate, maintain and renew the railway infrastructure to provide a safe and reliable railway and to deliver the outputs determined by ORR and the reasonable requirements of its customers and funders, including the Scottish Ministers. Where agreed or required through the regulatory process, Network Rail will also deliver or facilitate the delivery of enhancements and commercial developments for the benefit of the railway.

Prior to the next access charges review it has been agreed by all parties that there needs to be greater, more detailed information on the Scottish network to provide sufficient transparency and accountability necessary for effective performance monitoring and planning and for the Scottish Ministers to perform their statutory responsibilities. This will include:-

- Scottish specific network outputs for Network Rail to deliver along with the appropriate performance management and measurement targets which are specific to Scotland; and

- Operational and financial transparency through detailed Regulatory Accounting Guidelines disaggregated to an appropriate level for Scotland.

Scottish specific network outputs have been determined through the ORR disaggregation work-stream, and will be effective from 1 April 2006 when the Scottish Ministers will assume funding responsibilities for the Scottish rail network. The production of Scottish specific information and performance management and measurement targets have been introduced and information on Scotland in the Regulatory Accounts is to be provided from no later than 1 April 2006.

The disaggregated Scottish network outputs will form the basis of the Scottish Minister's reasonable requirements during this control period and therefore be enforceable where appropriate by ORR under Condition 7 of Network Rail's network licence. It will also be a reasonable requirement for the purposes of Condition 7 of the Network Rail's network licence that the Scottish Ministers are kept properly informed by Network Rail on progress in achieving the Scottish specific performance management and measurement targets and the steps being taken to avoid and remedy issues.

REPORTING AND INFORMATION REQUIREMENTS

General

The ORR, in carrying out its role of monitoring and enforcing of Network Rail's licensed activities, receives information from Network Rail on those activities. The Scottish Ministers will be provided and seek to use relevant information and reports already created by Network Rail. In particular, the Scottish Ministers will rely on Network Rail complying with the reporting requirements of the Regulatory Accounting Guidelines and any revised Guidelines which take account of the Scottish Ministers new role as funder of the rail network in Scotland. Where the Scottish Ministers require additional information, they will in the first instance approach the ORR and seek that information through the information network that the ORR has in place or through other means unless it is known that the information must be obtained directly from Network Rail.

The Scottish Ministers will also require Network Rail's input in connection with the Scottish Ministers' statutory functions and other activities in relation to the rail sector, for example, to support franchise specifications, network enhancements, rolling stock strategies, and rail planning exercises. Further, in accordance with the Regulatory Accounting Guidelines, Network Rail will provide transparent cost information with respect to the allocation of central costs and on GB-wide initiatives funded centrally but delivered in Scotland.

Network Rail will also require information and advice from the Scottish Ministers in order to fulfill their responsibilities and to deliver the specified outputs for the network. The Scottish Ministers will act reasonably in response to such requests and will share with Network Rail their plans and priorities for the network, with suitable and appropriate documentation, in a clear and timely manner.

Business planning

Network Rail will set out its trajectories and plans for delivering the Scottish specific outputs and performance management and measurement targets in its annual Business Plan. The Scottish Ministers will then monitor, through the ORR, Network Rail's performance against these outputs and their delivery trajectories.

In advance of each annual Network Rail Business Plan, the ORR specifies to Network Rail, in accordance with Condition 7 of Network Rail's Network Licence, the matters which should be addressed in the Business Plan, in order to meet the reasonable needs of customers and funders. When the Scottish Ministers wish to submit proposals on such matters for consideration by the ORR, they will discuss these with the ORR and Network Rail, and Network Rail will provide any necessary advice and assistance to the Scottish Ministers.

The Scottish Ministers, to the maximum extent possible, will draw on the ORR's quarterly balanced scorecards (the Network Rail Monitor for Scotland) and supporting reports provided by Network Rail in order to provide the Scottish Ministers with regular information on Network Rail's progress in delivering the disaggregated Scottish specific outputs. The reports will need to provide sufficient detail for the Scottish Ministers to carry out their statutory functions and other activities effectively. The ORR will hold primary responsibility for keeping the Scottish Ministers informed about any issues arising on matters affecting Scotland - both proactively and at the request of the Scottish Ministers.

The Scottish Ministers will have a particular interest in the following outputs in relation to Scotland:

- Network Rail's best forecast of the rate at which improvement in performance and/or reduction in cost will be delivered in Scotland;
- the key steps which Network Rail will take (either on its own account or together with its suppliers or with the TOCs) to secure performance improvements and/or cost-reductions in Scotland with an indication of the significance of those steps which are forecast to deliver the greatest changes;
- Network Rail's assessment of the scope for bettering the performance-improvement and/or cost-reduction in Scotland as established in the periodic review; and
- Network Rail's estimate of where any additional or alternative projects or enhancements might allow for further performance improvement if funding were available.

Securing efficiency

The Scottish Ministers will be particularly interested in Network Rail's progress in the following areas in Scotland:

- securing reductions in the cost of operating the network;
- securing reductions in the cost of maintaining the network;
- securing performance improvements through the more effective use of current assets;

- identification and treatment of out-performance in operating, maintaining and renewing the network;
- ensuring? that investment in renewing and enhancing the network is undertaken to achieve the outputs specified in a periodic review and that it is procured cost-effectively; and

The aspects of particular interest to the Scottish Ministers currently include:

- the steps which Network Rail is taking to produce separate information for Scotland and monitor effectively outputs and costs at a Scottish level;
- progress on developing an asset register which records accurately the condition of Network Rail's assets in Scotland and permits Network Rail to make informed decisions on the case for replacement or enhancement of assets;
- progress on the development and implementation of whole-life and whole-system costing and the implications for the Scottish network;
- progress in benchmarking performance (a) between different Network Rail Routes on the network and (b) with the operators of other networks;
- the results of such benchmarking exercises;
- the steps which Network Rail is taking to help suppliers plan ahead by providing them with accurate forecasts of the company's future purchasing requirements, and progress on work with the Railways Industry Association to improve supply-chain management;
- progress on the development of and changes to the Rules of the Route for Scotland including the steps which Network Rail is taking to revise its strategy for possessions and evaluation of the effects of such revision;
- progress on the development of and changes to the Rules of the Plan for Scotland including an evaluation of the effects of such changes; and
- progress on the development of the Route Utilisation Strategies (RUS) for Scotland including an evaluation of network capacity.
- the steps which Network Rail is taking to work in effective partnerships with other stakeholders, TOCs including freight companies, local authorities and Regional Transport Partnerships.

Improving the Performance and reliability of passenger services

Network Rail will provide reports every 4 weeks, detailing the current performance and reliability of the passenger railway industry on a GB-wide level as well as

progress with measures taken and proposed within the industry and within Network Rail to secure improvement in rail performance and reliability in line with UK Government PPM targets.

The four weekly reports will include additional information on the performance and reliability of the passenger railway industry in Scotland, including the impact of freight services, and cover in particular:

- Detail of progress and forecasts broken down by relative performance metrics and progress by franchises operating in Scotland and a comparison with other franchise operators across GB.
- Key performance trends in Scotland, including GB comparators.
- Progress of national industry rail performance initiatives (e.g. Integrated Control Centres and timetable amendments) and the reporting of their delivery benefits where identified.
- An assessment of the risks to delivery and their management.

The reports should cover, where appropriate, details of performance management initiatives such as benchmarking, joint Performance Improvement Plans and/or initiatives dealing with key performance issues e.g. the preparedness for severe weather.

Network Rail will provide the above reports in a timely and efficient manner. It is generally expected that these reports will be provided no later than four weeks after the end of the period detailed in that report.

Where information demonstrates and or where experience suggests that the measures currently in use to monitor performance trends, delivery and management, or the basis on which they are monitored and tested, do not address fully the information required by the Scottish Ministers, then Network Rail and the Scottish Ministers agree that this issue will be revisited with the ORR so that more appropriate measures can be developed.

Improving the freight utilisation of the network

The Scottish Ministers will be particularly interested in Network Rail's progress in the following areas in Scotland:

- securing more efficient use of the current network for freight, working with freight customers to enhance reliability; and
- working with freight customers and others to identify and facilitate opportunities to move freight from roads to the rail network.

SUMMARY OF MEETINGS BETWEEN SCOTTISH MINISTERS AND NETWORK RAIL

A series of regular meetings has been established, each with its own remit and purpose. These are set out in the table below.

The purpose of these meetings is also to supplement reporting and information requirements as detailed in section 3.

Meeting	Scottish Ministers' Lead Officer	NR lead
Transport Minister Meeting	Network Rail Business Manager	Director, Scotland
High Level Progress Meeting	Network Rail Business Manager	Director, Scotland
Scottish Rail Strategy Steering Group	Head of Rail Strategy and Investment Team	Director Planning and Regulation/Head of Route Planning
Enhancements and Investments Programme Board	Head of Major Projects	Senior Programme Manager – MP&I - Enhancements
Performance Delivery Group	Rail Performance Manager	Route Director

The suite of meetings will be kept under review and further channels of contact will be opened up if necessary. Ad hoc meetings may be arranged as necessary.

MEETING TERMS of REFERENCE

MINISTER FOR TRANSPORT MEETING

Purpose

To discuss general industry and strategic issues and identify major issues for further discussion in specific/ designated meetings and to determine policy in respect of Network Rail's working with the Scottish Ministers and their working together (in their respective roles) with other stakeholders in the relationship.

Timing

- Scheduled every six months (or more frequently as required).
- Normal expected duration 2 hours.

Its intended **membership** would consist of representatives from:

Scottish Ministers;

- Transport Minister
- Chief Executive of Transport Scotland (TS)
- Director of Rail Delivery (TS)
- Director of Strategy and Investment (TS)
- Network Rail Business Manager (TS)

Network Rail;

- Chairman/Chief Executive/Deputy Chief Executive
- Director Scotland

Coverage

- Performance.
- Current industry issues.
- Update and discussion of Scottish Ministers rail strategy/ policy development.
- Issues escalated from High Level Progress Meeting.
- Reports on action plans/ initiatives intended to deliver improvements.
- Reports on specific issues which may have caused problems in the past or have the potential to in the future.

HIGH LEVEL PROGRESS MEETING

Purpose

To review all significant, current issues in terms of status, progress and next steps and for Network Rail to alert the Scottish Ministers in advance to forthcoming issues/problems which may cause concern.

Timing

- Scheduled bi – monthly (or more frequently as required).
- Normal expected duration – half day.

Its intended **membership** would consist of representatives from:

Scottish Ministers

- Chief Executive of Transport Scotland (TS)
- Director of Rail Delivery (TS)
- Director of Rail Strategy & Investment (TS)
- Head of Rail Performance (TS)
- Head of Rail Finance (TS)
- Network Rail Business Manager (TS)

Network Rail;

- Chief Executive or Deputy Chief Executive
- Group Finance Director
- Director Projects and Engineering
- Director Major Projects and Investment
- Director Planning and Regulation
- Director Scotland
- Director Government and Corporate Affairs
- Route Director

Coverage

- Current industry issues.
- Update on current Scottish Ministers / Network Rail areas of work.
- Issues identified by other meetings.
- Updates on financial issues relating to Scotland and progress on initiative to drive efficiency within the business.
- Issues affecting the company or the rail industry which are attracting (or likely to attract) wider public concern.

SCOTTISH RAIL STRATEGY STEERING GROUP

Purpose

To ensure maximum coordination and synergy of all rail planning being undertaken in the coming year or so by all parties within Scotland.

Timing

- Scheduled every 4 to 6 weeks.
- Normal expected duration 2 hours.

Its intended **membership** would consist of representatives from:

Scottish Ministers

- Director of Strategy and investment (TS)
- Head of Rail Strategy and investment Team (TS)
- Network Rail Business Manager (TS)

Network Rail;

- Director Scotland
- Director Planning and Regulation/Head of Route Planning
- Principal Route Planner
- Senior Route Planner

First ScotRail

- Managing Director
- Head of Operations

Office of Rail Regulation

- Head of operations/Head of network regulation

Coverage

Takes an overview of the work in the following areas:

- Rail input to National Transport Strategy.
- Rail Strategy.
- Scottish Planning Assessment.
- Route Utilisation Study.

The work of the steering group will help inform and be informed by:

- Joint Performance Improvement Plan.
- High Level Output Specification.

ENHANCEMENT AND INVESTMENTS PROGRAMME BOARD

Purpose

To discuss current and proposed enhancements to the Scottish network and any investment programme issues and progress.

Timing

- Scheduled periodically.
- Normal expected duration 2 hours.

Its intended **membership** would consist of representatives from:

Scottish Ministers

- Head of Major Projects (TS)
- Head of Rail Projects (TS)
- Head of Strategy and Investment (TS)
- Network Rail Business Manager (TS)

Network Rail;

- Director Scotland
- Route Enhancement Manager
- Senior Programme Manager – MP&I - Enhancements
- Project Managers of various major projects

Coverage

- Monitor high level progress of the investment and enhancement portfolios.
- Organisation (Development & Implementation).
- Current and ongoing investment and enhancement issues.

PERFORMANCE DELIVERY GROUP

Purpose

To discuss and assess rail industry progress on improving performance and the achievement of the Scottish Ministers performance management and measurement targets.

Timing

Every quarter.

Its intended **membership** would consist of representatives from:

Scottish Ministers

- Head of Rail Performance (TS)
- Rail Performance Manager (TS)
- Network Rail Business Manager (TS)

Network Rail;

- Route Director
- Area General Managers

Coverage

- Overall progress with the industry's and Scottish trajectory for rail performance.
- Individual progress made by Network Rail in reducing delays.
- Progress in joint performance improvement plans or successor arrangements.
- Scottish and GB national performance initiatives.
- Progress with any remedial actions, plans or required intervention.

INFORMATION EXCHANGE

The backbone of an effective working relationship is a policy of 'no surprises'. Where information is required to support Scottish Ministers in their day to day activities, including responding to information and parliamentary requests, Network Rail will use all reasonable endeavours to provide the information requested within 10 working days from receiving such request.

CONFIDENTIALITY OF INFORMATION RECEIVED

As a public body, the Scottish Ministers are subject to disclosure for information requests including any made in accordance with the Freedom of Information (Scotland) Act 2002, including information it has received from Network Rail. Much of this information will also be published by Network Rail pursuant to its licence obligations or by ORR and it is expected that this should meet the requirements of most other stakeholders. Network Rail will make clear which information it considers commercially sensitive or confidential before it is sent for both regular reporting and ad hoc information provided to the Scottish Ministers. The Scottish Ministers will consult with Network Rail on requests for information which have been identified as commercially sensitive or confidential or may potentially fall under this area, before disclosure and Network Rail will work with the Scottish Ministers to provide an appropriate and speedy response. Where information is agreed to be commercially sensitive or confidential following such discussion Network Rail will work with the Scottish Ministers to create a version of such information which is capable of disclosure, taking into account the open approach to information of the Scottish Ministers and the decisions and requirements of the Scottish Information Commissioner

ARRANGEMENTS FOR DEVELOPING PROJECTS

The recently developed Framework Development Agreement establishes a suite of template contracts between Network Rail and either the Scottish Ministers or third party sponsors, which will be used for general service developments and projects costing less than £50 million up to the detailed design stage. The contracts may in some cases be used to take a project through to delivery.

SITE VISITS

Network Rail will facilitate site visits for Ministers, officials and third parties where specific reasons, and clear, defined and agreed purpose and objectives are agreed before the proposed date of the visit, and the visit will not impose unreasonable burdens on Network Rail or unreasonably disrupt normal railway operations.

Requests for visits, and planning and logistics are coordinated by Network Rail's Government & Corporate Affairs team.

Agreement over media access and press releases is handled between the Scottish Ministers Press Office and the Network Rail Press Office.