



BRIEFING PAPER

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Rail regulation

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Inside:

1. Who or what is the regulator?
2. What does the regulator do?
3. The future



Contents

Summary	3
1. Who or what is the regulator?	4
1.1 Current	4
1.2 History	4
The early years, 1993-2000	4
From Regulator to ORR, 1997-2004	5
Safety regulator, 2005-06	6
Enter 'roads', 2014-15	7
2. What does the regulator do?	8
2.1 Track access	8
2.2 Competition powers	9
2.3 Economic regulation of Network Rail	10
Network Licence	10
Quinquennial Periodic Review	12
3. The future	14
3.1 McNulty and its consequences, 2011-12	14
3.2 Hendy, Bowe & Shaw, 2015-16	14

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Summary

This paper explains how the railways have been regulated since privatisation, including the present role and responsibilities of the Office of Rail and Road (ORR), and proposals for the future reform of rail regulation.

The ORR's main job is to ensure that the rail network performs smoothly and, where it does not, to remedy any problems and hold those responsible to account. It is responsible for safety regulation, the performance of, access to and investment in the network.

One of ORR's key roles is regulating Network Rail, the infrastructure owner and operator. While the regulator does not have a role in regulating the train and freight operating companies, its decisions regarding Network Rail have a direct effect on train services. The regulator can fine Network Rail for breaches to its network licence, which it has done on a number of occasions since 2002.

ORR is also one of the key players in the five-yearly periodic review process during which it sets Network Rail's outputs and funding for the following review period (the next one will run from 2019 to 2024 and begin later this year).

Plans for reform of ORR were put forward after the McNulty rail value for money study was published back in 2011 but little happened. There is now renewed impetus following the Bowe and Shaw reports on the future of the rail industry. The Secretary of State and the ORR have committed to reforming the role of the regulator in the future, focusing on customers, and improving cohesion and effectiveness.

ORR also has a role in monitoring the performance of Highways England – that is not discussed in this paper.

Briefings on other rail issues are available on the [Railways Topical Page](#) of the Parliament website.

1. Who or what is the regulator?

1.1 Current

The Office of Rail and Road (ORR) is the independent economic and safety regulator for the railway in England, Wales and Scotland. It:

- regulates Network Rail and HS1;
- regulates health and safety standards and compliance across the whole rail industry; and
- oversees competition and consumer rights issues.

ORR is a non-ministerial government department with around 280 staff and a budget of about £30 million each year. Its rail regulatory work is funded by the rail industry.

All members of the board are appointed by the Secretary of State for Transport, for a fixed term of up to five years. The current Chair of the ORR is Stephen Glaister; its interim Chief Executive is Joanna Whittington.¹

1.2 History

The early years, 1993-2000

When the Conservative Government proposed privatising the railways in 1992 one of the components of the new privatised set up would be an Independent Regulator to:

- Oversee the application of arrangements for track access and charging over the whole network;
- Promote competition and prevent abuse of monopoly power and anti-competitive practices; and
- Promote the interests of consumers and ensure that network benefits were maintained.²

The *Railways Bill 1992-93* was published on 22 January 1993. Section 1 of the [Railways Act 1993](#) provided for the appointment by the Secretary of State for Transport of “an officer to be known as ‘the Rail Regulator’”, for a term not exceeding five years. Section 4(1) specified that the Regulator had a duty to exercise his functions in the manner which he considered best calculated:

- (a) to protect the interests of users of railway services;
- (b) to promote the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of that railway network, to the greatest extent that he considers economically practicable;
- (c) to promote efficiency and economy on the part of persons providing railway services;
- (d) to promote competition in the provision of railway services;

¹ more details on the [ORR website](#) [accessed 3 May 2016]

² DoT, *New opportunities for the railways: the privatisation of British Rail*, Cm 1012, July 1992, p15

5 Rail regulation

(e) to promote measures designed to facilitate the making by passengers of journeys which involve use of the services of more than one passenger service operator;

(f) to impose on the operators of railway services the minimum restrictions which are consistent with the performance of his functions [...and]

(g) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

In addition, he was required to have regard to the financial position of the Franchising Director and Railtrack and to act in a way which would not make it unduly difficult for network operators to finance their activities. Other duties related to safety measures, environmental effects, and the interests of disabled users. Until 31 December 1996 he also had a duty to take into account any guidance given him by the Secretary of State.

John Swift, a QC specialising in competition law, was appointed as Regulator-designate on 18 January 1993.³ He was appointed as Regulator-proper in early December 1993.⁴ Tom Winsor assumed the role at the beginning of July 1999. In an interview he gave to the FT on his appointment Mr Winsor gave the view that the powers of the regulator had been underused in the past but that he would “bring that to an end”. In particular, he highlighted the failure of the Regulator to make use of enforcement action against railway companies that failed to meet their obligations.⁵

From Regulator to ORR, 1997-2004

In November 1997 the Labour Government signed a voluntary Concordat with the Regulator, intended to provide “a framework for better regulation of the railways”. The Concordat included a statement of the Government's objectives for the rail industry, the Regulator's aims and objectives, and a framework for communication between Ministers, the Franchising Director and the Rail Regulator.⁶

Labour's 1998 transport White Paper proposed a radical overhaul of the railways – introducing a new Strategic Rail Authority (SRA) to provide a ‘guiding mind’ for the railways, which would become the main regulator of passenger network benefits.⁷ The Regulator itself would be given a new duty to have regard to statutory guidance from the Secretary of State on “his broad policy objectives for the passenger and freight railway” and would continue to set the track and station access charges, including those for Railtrack.⁸ In July 1999 the Government published a *Railways Bill* to enact these changes.⁹ The Bill was referred to the relevant select committee after Second Reading¹⁰ and as a

³ “Key posts for rail sell-off are filled”, *Financial Times*, 19 January 1993

⁴ “Rail office will balance interests”, *The Independent*, 8 December 1993

⁵ “Trying to get back on track”, *Financial Times*, 6 July 1999

⁶ [HC Deb 6 November 1997, c282W](#)

⁷ DETR, [A new deal for transport: better for everyone](#), Cm 3950, July 1998, paras 4.12 & 4.16

⁸ *ibid.*, paras 4.22-4.24

⁹ for more information see section 4 of HC Library briefing paper [RP 99/72](#)

¹⁰ ETRA Committee, [Railways Bill](#) (twenty-first report of session 1998-99), HC 8274, 10 November 1999

consequence the Bill was dropped and amended provisions were instead introduced into what became Part IV of the [Transport Act 2000](#).¹¹

The 2000 Act strengthened the power of the Regulator to require the improvement and development of the railway, for example by directing the owner of railway facilities such as stations and tracks (i.e. Network Rail, or NR, then Railtrack) to improve them or to provide new facilities (though there were conditions and caveats around the power). The 2000 Act also imposed a new duty on the Regulator to have regard to "any general guidance from the Secretary of State about railway services or other matters relating to railways". The first set of guidance under this provision was issued in September 2002. It emphasised to the Regulator the importance of working with the SRA and the Health and Safety Executive (HSE) to strengthen and support the railway and ensure its financial resilience.¹²

With the administration of Railtrack in October 2001¹³ the Government announced its intention to set up a private company limited by guarantee (what became NR), which would need "far less intense" regulation. The Government would therefore "streamline the existing structure while still recognising that there will be a continued need for some form of independent economic regulation".¹⁴ Proposals for reform were put forward for consultation in October 2002 but were limited to establishing a statutory regulatory board that would exercise all the powers currently exercised by the Regulator.¹⁵ This was legislated for in Part 2 of the [Railways and Transport Safety Act 2003](#).¹⁶ In July 2004 the Regulator was replaced with the Office of Rail Regulation (ORR).

Safety regulator, 2005-06

The last major change made under Labour was the transfer of responsibility for safety regulation to the ORR from the HSE. This was announced in its 2004 rail White Paper¹⁷ and legislated for in Part 1 of the [Railways Act 2005](#).¹⁸ The ORR became both the economic and safety regulator for the rail industry on 1 April 2006, including the power to authorise a person to investigate and make a special report on a major incident. At the time, there were differing views as to whether this was a good idea. Those who favoured the transfer to ORR argued that it helped place the safety regime within the wider context of affordable reform of the rail industry.¹⁹ Others were concerned that the

¹¹ for more information see section II.H of HC Library briefing paper [RP 99/105](#)

¹² DfT, [Statutory guidance to the Rail Regulator](#), September 2002

¹³ for more information see HC Library briefing paper [SN1076](#)

¹⁴ [HC Deb 15 October 2001, c956](#)

¹⁵ DfT [Creating a regulatory board for the railways](#), October 2002

¹⁶ for more information see section II of HC Library briefing paper [RP 03/06](#)

¹⁷ DfT, [The future of rail](#), Cm 6233, July 2004

¹⁸ for more information see section II of HC Library briefing paper [RP 04/86](#)

¹⁹ e.g., Christian Wolmer: "[Compromise that fails to confront desperate need for radical reform](#)", *The Independent*, 16 July 2004

transfer would increase the safety risk on the railway.²⁰ The HSC and HSE were disappointed with the decision.²¹

Enter 'roads', 2014-15

Unlike previous governments, both Conservative and Labour, the Coalition Government that took office in May 2010 undertook little structural reform of the rail industry. Consequently, the main change to ORR's powers during this period was to introduce new powers with regards to the road network and a change in the regulator's name to the Office of Rail and Road (conveniently retaining the acronym ORR). This change took place from 1 April 2015.²²

As this has no bearing on the ORR's rail work it is not covered here. Further details can be found in section 1 of HC Library briefing paper RP 14/65, [Infrastructure Bill](#), December 2014.

²⁰ TUC press notice, "[TUC has safety worries about rail changes](#)", 15 July 2004

²¹ HSE press notice, "[The DfT Rail Review: HSE response](#)", 15 July 2004

²² ORR press notice, "[Office of Rail Regulation to be re-named Office of Rail and Road](#)", 20 March 2015; via the *Office of Rail Regulation (Change of Name) Regulations 2015* ([SI 2015/1682](#))

2. What does the regulator do?

As mentioned above, ORR is the independent economic and safety regulator for the railway in England, Wales and Scotland. It has three main strands to its work: economic regulation of NR (and HS1), health and safety regulation; and competition and consumer rights. It has a number of statutory duties in all of these areas.²³

The remainder of this section focuses only on economic issues. Information on the regulator's health and safety role can be found in HC Library briefing paper SN605, *Railways: safety*, February 2012. Information on some of its work in the area of rail compensation for passengers can be found in paper SN3163, *Transport: passenger rights, compensation and complaints*, June 2015.

2.1 Track access

Network Rail (NR) owns and manages most of the rail network in Great Britain. Anyone who wishes to operate trains on NR's network must have a track access contract with NR, for which a charge is made. Access to track is regulated under the *Railways Act 1993*, as amended, and track access contracts have to be approved by the ORR. The ORR's role in overseeing access contracts provides both protection against unfair contract terms being forced on TOCs and provides protection to third parties who might be affected by the terms of a contract between a TOC and NR.

The ORR has developed [model contracts](#) that contain standard provisions and give those entering into the contract a clear understanding of how their relationship is governed. Each model contract sets out aspects of train operation such as each party's rights and obligations relating to charging and the rights to run services. There are two model track access contracts – one for scheduled, franchised passenger services and one for freight services. The ORR's policy on the duration of access contracts is regulated by the *Railways Infrastructure (Access and Management) Regulations 2005 (SI 2005/3049)*, as amended.²⁴

An important aspect of the ORR's role in track access is to protect train operators from being charged unduly high prices by the infrastructure manager (NR), whilst ensuring that the access charges paid by operators are sufficient to enable NR to recover the costs of operating, maintaining and renewing its network. Variable charges are intended to provide incentives for train operators (and their funders and suppliers) to make efficient use of the network and to consider costs implied to NR when appraising choices and design of rolling stock.

On an annual basis, charges for franchised passenger train operators comprise the following elements:

²³ listed at: ORR, [Our railway duties](#) [accessed 3 May 2016]

²⁴ these regulations implemented the relevant parts of the [First European Railway Package](#)

- a fixed track charge;
- a variable track usage charge;
- a traction electricity charge (incorporating the electrification asset usage charge);
- a capacity charge; and
- a change of law charge

In addition, there are provisions for a possible rebate to be paid by NR under certain circumstances approved by ORR. There are also additional permitted charges covering payments for enhancement charges paid through the track access contract.²⁵

The Periodic Review process for Control Period 5 (2014-19) was concluded in early 2014. The ORR published its final determination in October 2013, confirming an average increase of 36 per cent of total franchised passenger variable charges in real terms.²⁶ However, many franchised operators were largely protected from this increase under the terms of their franchise agreements (which bound them to CP4 charge levels).²⁷

In November 2015 the Rail Delivery Group (RDG) completed a review of access charges and set out how it thought the regime should change for the following control period.²⁸ The ORR will set out its thoughts as part of Periodic Review 2018.

2.2 Competition powers

ORR has powers under both consumer and competition law with regard to the railways:

- Consumer law aims to ensure that businesses are fair and open in their dealings with consumers; and
- Competition law outlaws any agreements, business practices or actions which have a damaging effect on competition in the UK.²⁹

ORR has a range of functions and responsibilities to keep railway markets under review and to take appropriate measures where markets are not working to the benefit of users or funders.³⁰ It fulfils these responsibilities through a programme of market studies. These can result in a number of outcomes, one of which is a market investigation reference to the [Competition and Markets Authority \(CMA\)](#).³¹ ORR has published a guidance document on its approach to market studies, which provides details on how it fulfils its responsibilities.³² Recent

²⁵ full details can be found in: ORR, [Criteria and procedures for the approval of track access contracts](#), December 2011

²⁶ ORR, [Periodic Review 2013: final determinations](#), 31 October 2013, chapter 16

²⁷ ORR/NR, [CP5 price lists and related documentation](#), December 2013

²⁸ RDG, [Review of Charges: Summary Report](#), 26 November 2015

²⁹ ORR, [Competition](#) [accessed 4 May 2016]

³⁰ under the *Railways Act 1993*, the *Railways Infrastructure (Access and Management) Regulations 2005 (SI 2005/3049)* and the *Enterprise Act 2002*

³¹ the CMA took over many of the functions of the Competition Commission (CC) and the Office of Fair Trading (OFT) from 1 April 2014

³² ORR, [ORR's approach to reviewing markets](#), October 2009

studies include a review of the Real Time Train Information code of practice, and access to rail freight sites.³³

Under Chapters I and II of the [Competition Act 1998](#), as amended, and the relevant EU law, ORR (concurrently with the CMA) has powers, in relation to the supply of services relating to railways, to enforce the prohibitions on agreements that prevent, restrict or distort competition and on the abuse of a dominant position. ORR has a range of powers to:

- consider complaints about possible infringements of the relevant law;
- impose interim measures to prevent significant damage;
- carry out investigations both in response to complaints and on its own initiative, including requiring the production of documents and information and searching premises;
- impose financial penalties on undertakings;
- give and enforce directions to bring an infringement to an end;
- accept commitments that are binding on an undertaking; and
- agree to settle a case where the business under investigation is prepared to admit that it has breached the relevant law and agree to a streamlined administrative procedure to govern the remainder of the investigation, in return for which ORR may agree to impose a reduced penalty on the business.³⁴

Information on current investigations can be found on the ORR website.³⁵

2.3 Economic regulation of Network Rail

NR took over the ownership and operation of the rail infrastructure from Railtrack from 1 October 2002. ORR has a range of statutory powers to set the contractual and financial framework within which NR operates the network, ensuring that the company carries out its activities efficiently and well, and that it is appropriately funded. The level of income required by NR is regulated by the ORR via a process of five-yearly periodic reviews and, where appropriate, interim reviews.

Network Licence

ORR regulates NR under its [Network Licence](#). There are six parts to the licence, covering different areas of operation: network management and timetabling; restrictions on activities; dealings with third parties; information requirements; corporate matters; and standard industry obligations.

As far as passengers are concerned, Part A (network management and timetabling) is probably the most relevant and important. Under Part A (Condition 1), NR's network management obligations are to secure:

- (a) the operation and maintenance of the network;
- (b) the renewal and replacement of the network; and

³³ for more information see: ORR, [Market studies](#) [accessed 4 May 2016]

³⁴ ORR, [Guidance on ORR's approach to the enforcement of the Competition Act 1998 in relation to the supply of services relating to railways](#), 31 March 2016, pp7-8

³⁵ ORR, [Competition issues](#) [accessed 4 May 2016]

(c) the improvement, enhancement and development of the network,

in each case in accordance with best practice and in a timely, efficient and economical manner so as to satisfy the reasonable requirements of persons providing services relating to railways and funders, including potential providers or potential funders, in respect of:

(i) the quality and capability of the network; and

(ii) the facilitation of railway service performance in respect of services for the carriage of passengers and goods by railway operating on the network.³⁶

NR has a general duty to achieve the purpose set out above to the greatest extent reasonably practicable having regard to all relevant circumstances including its ability to finance its licensed activities.

ORR can fine NR for any breaches of its licence. To date there have been 21 breaches of its licence by NR (not including earlier breaches incurred by Railtrack). The amount of fines imposed for these breaches totals approximately £74.75 million.³⁷ By far the largest of these was issued in July 2014 when NR was ordered to return £53.1 million to funders (i.e. train operating companies) for failure to deliver its agreed obligations in 2013-14.³⁸ Prior to this the largest penalty had been for £14 million in 2008 for the “systemic weaknesses in Network Rail’s planning and execution of engineering work, which represent a serious continuing breach of its licence”, exposed during Christmas 2007/New Year 2008.³⁹

In recent years there has been some attempt to tackle criticisms that fines levelled on NR did not have any practical benefits for passengers – as the money went to the Treasury and disappeared into the Consolidated Fund. For example, following the £53.1 million fine in 2014 the DfT announced that the money would be invested in fitting out trains with new wi-fi equipment, specifically on routes into London from Bedford, Brighton, Kent and Portsmouth as well as services into Manchester, Leeds and Sheffield.⁴⁰

Subsequently, in December 2015 the ORR announced that instead of accepting the £2 million fine levelled on it in August 2015 for failing to deliver reliability and punctuality requirements on Thameslink and Southern train routes in 2014-15 NR had agreed to set up a new £4.1 million ‘Rail Reparation Fund’ to directly benefit passengers affected by poor performance on those routes. This fund would be used to pay for more station staff; employ more track workers to provide rapid response

³⁶ ORR, [Network Licence granted to Network Rail Infrastructure Limited \(As at 1 April 2014\)](#), p5

³⁷ ORR, [Licence enforcement action taken by us to date](#) [accessed 4 May 2016]; note £2 million of this was doubled and invested in a specific fund, see below

³⁸ [ORR Breach Letter to Network Rail](#), 7 July 2014

³⁹ ORR press notice, “[ORR confirms £14m penalty for Network Rail](#)”, 9 May 2008

⁴⁰ DfT press notice, “[Plans unveiled to boost wi-fi on trains](#)”, 7 July 2014

during disruptions; and introduce incident management software to help quickly resolve issues that occur on the South East route.⁴¹

Quinquennial Periodic Review

The rail industry Periodic Review takes place every five years. Central to the review is ORR's assessment of what NR must achieve, the money it needs to do so, and the incentives needed to encourage delivery and outperformance. The review also looks at how NR should work more closely with train operators, suppliers and others to reduce costs and deliver more for customers. ORR's objective for the review is as follows:

To protect the interests of customers and taxpayers by ensuring our determination enables Network Rail and its industry partners to deliver or exceed all the specified outcome and output requirements safely and sustainably, at the most efficient levels possible comparable with the best railways in the world by the end of the control period.⁴²

Each review covers what is called in rail industry planning a 'control period'. We are currently in the middle of Control Period 5 (CP5), which runs from 2014 to 2019. The outputs and the funding that NR must deliver over this period were set during the [Periodic Review 2013 \(PR13\)](#).

ORR started the periodic review for CP5 in 2011. The Government published its High Level Operating Statement (HLOS) and Statement of Funds Available (SoFA) in July 2012; these set out the major projects it wished NR to deliver in CP5 and the funding it was prepared to offer to pay for it. This included already committed projects (i.e. that had previously been announced and were in some cases already underway) such as Crossrail, Thameslink, major stations upgrades at Reading and Birmingham New Street, electrification schemes and elements of the 'Northern Hub'. It also included new schemes such as an 'electric spine' on parts of the Brighton Main Line, the Midland Main Line and East-West Rail and electrification of the Welsh Valleys line and the Great Western Main Line in the Thames Valley. The SoFA for CP5 was £16.8 billion.⁴³

ORR published a draft determination for consultation in June 2013 and its final determination in October 2013. Its main decisions were as follows:

- delivering what matters to passengers – nine out of ten regional, Scottish, Southeast and London trains to run on time, with fewer serious delays and cancellations on mainline long distance services;
- reducing engineering works disruption to passenger trains by 8% and freight trains by 17%;
- running the network for £38bn from 2014-19;
- reduced day-to-day costs by £1.7bn less than Network Rail said it would cost;

⁴¹ ORR press notice, "[ORR and Network Rail agree new £4.1m 'Rail Repairation Fund' to directly benefit passengers](#)", 1 December 2015

⁴² ORR, [Periodic review 2013 \(PR13\) guide](#) [accessed 4 May 2016]

⁴³ DfT, [High level output specification 2012](#), 16 July 2012; NOTE it does not include HS2

13 Rail regulation

asking Network Rail to deliver efficiencies of nearly 20% compared to the end of CP4;

investing over £12bn on improving the network and its facilities;

investing over £21bn on day-to-day network running, including £17bn on maintenance and renewal of track and equipment (over £5bn on maintenance and over £12bn on renewals); and

maintaining high safety standards, including investing £250m to improve worker safety and £109mn on improving safety at level crossings.⁴⁴

In terms of **value for money** ORR stated that NR was unlikely to make its efficiency target of 23.5 per cent by the end of CP4 (31 March 2014), and asked it to make total efficiencies of nearly 20 per cent in CP5 compared to the end of CP4. ORR also indicated that further savings of £1.7 billion could be made on running costs for the railways over CP5. ORR indicated that it would look closely at how NR continues to devolve its business to route level;⁴⁵ check that it spends money efficiently (i.e. that efficiencies are genuine rather than just deferred spend); require NR to be more open about how taxpayers' money is spent and what it achieves; and report on how all parts of the industry perform and remedies for poor performance. ORR concluded that if NR can deliver these efficiencies over CP5 it would "have achieved the challenging targets set out by the government's independent consultant Sir Roy McNulty in his 2011 report".⁴⁶

In terms of **performance**, ORR requires NR to ensure that an average of 92.5 per cent of passenger trains arrive on time and to keep the proportion of cancellations and significantly late trains (CaSL) to an average of 2.2 per cent of passenger services by the end of CP5.⁴⁷

Finally on **safety**, ORR provided around £109 million for improving safety at level crossings (these account for half of the potentially catastrophic risks on the current network). This includes closing around 500 level crossings by the end of CP5. It has also provided £250 million to help improve track worker safety and will require more clarity from NR on how progress on safety will be measured and tracked (e.g. how it will cut train accident risk by 50 per cent) and what it is doing to improve the occupational health and the safety of rail industry employees.⁴⁸

The planning process for Control Period 6 (2019-24) is scheduled to begin later in 2016 as part of the Periodic Review 2018 (PR18) process.

⁴⁴ ORR, *Our decisions for 2014-2019* [accessed 15 March 2016]; for full details see: ORR, *Periodic Review 2013: Final determination of Network Rail's outputs and funding for 2014-19*, October 2013

⁴⁵ in February 2011 NR announced that it was devolving accountability to the route level so that each route managing director would, in effect, be running their own infrastructure railway business with significant annual turnover and resources, see: NR press notice, "[Network Rail moves to create devolved business units](#)", 21 February 2011

⁴⁶ op cit., *Our decisions for 2014-2019*; more information on McNulty and NR can be found in section 2.2 of HC Library briefing paper [SN2129](#)

⁴⁷ *ibid.*

⁴⁸ *ibid.*

3. The future

3.1 McNulty and its consequences, 2011-12

There have been calls for changes to the rail regulatory environment for a number of years now. The ORR conducted a systemic review of its role following the publication of the McNulty rail value for money report in May 2011. McNulty concluded that the UK rail industry should be looking to achieve efficiency savings of approximately 30 per cent by 2019 and proposed recommendations that, together, could deliver cost savings of between £700 million and £1 billion per annum by 2019.⁴⁹

Specifically on regulation, McNulty proposed that the industry move towards a single regulator (i.e. make the ORR responsible for regulating the train operating companies – currently the responsibility of the Department for Transport); and that in order to executive this expanded role, the ORR undertake a capability review.⁵⁰

In response ORR launched a wide-ranging industry reform programme, with the aim of working with the industry to address the recommendations made in the study's final report. This included a consultation on whether ORR should assume regulatory responsibilities for the TOCs.⁵¹ The outcome, published in March 2012, was that ORR assumed responsibilities in some minor areas but on the fundamental question, the Government said that it would “not at this stage proceed with additional measures outlined in the consultation on service quality standards, the enforcement of train service performance and a role for ORR as an adviser or arbiter on franchise change”.⁵² It said it would keep under review the option of transferring such functions to ORR in the future. Indeed, the Government's March 2012 command paper on rail reform stated that there were “clear benefits to be gained from moving towards a more unified regulatory structure for the railway”.⁵³

3.2 Hendy, Bowe & Shaw, 2015-16

Little happened after this until NR experienced problems delivering its infrastructure programme in the Summer of 2015.

In June 2015 the Secretary of State, Patrick McLoughlin, said that NR's performance in delivering parts of this programme for CP5 had “not been good enough” and that consequently one of the major strands of the enhancements programme – electrification – would be ‘paused’

⁴⁹ ORR press notice, “[Efficiency savings the key to substantial rail industry growth](#)”, 19 May 2011

⁵⁰ DfT/ORR, [Realising the potential of GB Rail: Summary Report](#), May 2011, paras 7.1-7.2; see also section 26 of the [Detailed Report](#)

⁵¹ DfT/ORR, [A greater role for ORR regulating passenger franchisees in England & Wales](#), 22 December 2011

⁵² DfT/ORR, [Joint statement by Department for Transport and Office of Rail Regulation](#), 2 March 2012

⁵³ DfT, [Reforming our railways: Putting the customer first](#), Cm 8313, 8 March 2012, paras 2.45-2.46

15 Rail regulation

while an urgent review was carried out.⁵⁴ He also announced that he was ordering two reviews:

- Sir Peter Hendy, newly appointed chairman of NR, would be asked to develop proposals for how the rail upgrade programme should proceed; and
- Dame Colette Bowe would be asked to look at lessons learned from NR's planning and performance failures and to make recommendations for better investment planning in future.⁵⁵

The Bowe and Hendy reviews were both published on 25 November, with the Autumn Statement.

Dame Colette made one specific recommendation about the regulation of NR. Specifically, in light of NR's reclassification,⁵⁶ that the ORR's responsibilities in respect of enhancements planning should be reviewed before 2017.⁵⁷

In his response to the review the Secretary of State pledged that the role and responsibilities of ORR would be fundamentally reviewed in light of

- the arrangements for securing value for money from investment in the railway, both from taxpayers and other sources;
- the arrangements for securing the protection of the interests of users;
- the importance of an environment that supports private sector investment and involvement in the rail sector; and
- the changed context for investment in the railway following the reclassification of Network Rail to the public sector.

This review would be carried out alongside the Shaw review.⁵⁸

As part of the July 2015 Summer Budget the Government asked Nicola Shaw, the Chief Executive of High Speed 1,⁵⁹ to advise on the longer term future shape and financing of NR.⁶⁰

In her March 2016 report, Nicola Shaw endorsed the view that NR's operations, maintenance and renewals expenditure should continue to be set by a Periodic Review process, run by the ORR with input from industry and Government. She acknowledged that the ORR had already made it clear that it intends to move to a more decentralised form of regulation, setting its regulatory settlements on the basis of route data and route outputs. Shaw endorsed this and recommended that the ORR should, for the next Periodic Review, regulate NR on a route level,

⁵⁴ for more information on the electrification programme, the 'pause' and 'unpause' in 2015, see HC Library briefing paper [SN5907](#)

⁵⁵ [HC Deb 25 June 2015, c1068](#)

⁵⁶ on 1 September 2014 NR became an arms-length body of the DfT. This came about following a decision by the Office for National Statistics (ONS) to reclassify NR for statistical reasons; for more information see section 2.1 of HC Library briefing paper [SN2129](#)

⁵⁷ DfT, [Report of the Bowe Review into the planning of Network Rail's Enhancements Programme 2014-2019](#), 25 November 2015, para 6.6

⁵⁸ [Letter from Patrick McLoughlin to Colette Bowe](#), 25 November 2015

⁵⁹ HS1, also known as the Channel Tunnel Rail Link, was the UK's first high speed rail line; in late 2010 a concession was let to the private sector to operate the line for 30 years; for details see HC Library briefing paper [SN267](#)

⁶⁰ HMT, [Summer Budget 2015](#), HC 264, 8 July 2015, para 1.256, p58; see also [Terms of Reference](#), 20 July 2015

setting regulated outputs, expenditure and revenue by route. This would require that the routes have sufficient independence to pursue regulated outputs and financial performance.⁶¹

ORR welcomed the Shaw report and said that it would “[work] alongside Network Rail, governments, and industry partners to implement recommendations for the benefit of future users and funders, as we develop the regulatory framework for the railways for 2019 to 2024”.⁶² In a statement to the House the Secretary of State, Patrick McLoughlin, said that the 2015 consultation⁶³ had shown “clear support for strong independent regulation to put customer needs at the heart of rail” and that to support the ORR he would “work with it to implement changes to bring greater clarity to its statutory duties and to enhance its working relationship with Transport Focus. I will also update the statutory guidance I provide”.⁶⁴

⁶¹ DfT, [The future shape and financing of Network Rail: The recommendations](#), 16 March 2016, p59

⁶² ORR press notice, “[ORR statement welcoming the Shaw Report on Network Rail](#)”, 16 March 2016

⁶³ DfT, [Rail regulation: call for evidence](#), 10 December 2015

⁶⁴ [HC Deb 17 March 2016, c54WS](#)

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