OPERATIONAL PLAN

2000–2001

Published by the Office of the Rail Regulator
June 2000

Contents

Regulator's foreword

Introduction

1. When I became Rail Regulator in July 1999, I made it very clear that I intended to take a different approach to the one which my predecessors had adopted.

2. The Railways Act 1993 endows the Rail Regulator with a stronger set of powers than those possessed by any of his counterparts in the privatised utility sectors. Parliament voted those powers so that they could, and in appropriate cases would, be used. However, in my opinion, those powers were not used to the appropriate extent, for example in relation to the reform of Railtrack's network licence and matters of rolling stock approvals.

3. Had the performance of railway companies been satisfactory up to July 1999, continuing with such an approach to regulation might have been justified. But while there have been a number of achievements, the railway's customers and public funding authorities have every right to be disappointed with several aspects of the quality of Britain's railways today.

4. Many of the problems have been associated with Railtrack's stewardship of the network. Until recently, Railtrack gave few indications that the day-to-day performance of the rail network would get significantly better. Its handling of the upgrade of the West Coast Main Line raised doubts about its delivery of key investment projects. It has failed to establish transparently fair and equitable relationships with its dependent customers. Its stewardship – even its knowledge – of the national railway assets with which it has been entrusted has not been satisfactory.

5. But there have been other problems too. Overall, the day-to-day performance of the railway has worsened over the past year. Train operators must bear a great deal of the responsibility for this. And whilst some operators (regrettably not all) have done well in introducing new services, focusing on customer needs and keeping prices down, there is still much to be done before we can be assured that the industry is fully playing its part in both keeping its customers informed and ensuring the benefits of an integrated railway network are really delivered.

6. There is, in short, still a long way to go before we have a railway of which the country can be proud and which is able to play a truly effective role as part of a modern integrated transport system. Equally, however, we can now see a number of encouraging trends. The industry is beginning to respond to the challenges and opportunities before it. And I believe that an important factor in that change has been the new approach to regulation.

What we have achieved

7. The Rail Regulator, through the fair and proportionate use of his powers, can make a significant difference. Independent and effective regulation is a key element in delivering better performance and this has been clearly demonstrated in recent months, most notably in the improvements in Railtrack's day-to-day performance following my enforcement action in August 1999.

8. In relation to the West Coast Main Line upgrade, I started enforcement action in November 1999, leading to a final order being served on 4 May 2000, where Railtrack admitted that its preferred signalling system would not be viable, that estimated costs had risen dramatically, and that it might not be able to meet the capacity commitments it gave in 1998. These disclosures have facilitated a better-informed discussion with train operators and funders of the realistic options for the upgrade.

9. In March 1999, an independent audit of the performance reports provided by the National Rail Enquiry Scheme (NRES) was commissioned. The audit revealed that calls abandoned by the caller in under 30 seconds were not being counted as calls made to the service. The effect was to inflate the percentage of calls reported by NRES as having been answered. NRES was instructed to stop excluding these calls from its performance calculations, and NRES has now improved to the point where it consistently meets its performance standards even with these calls included.

10. In my speech to the Railway Forum on 9 July 1999, I set out the main issues I would be tackling over the remainder of the year and in the months beyond. Many of the things I said we would do have been done. Others are still in train. We are currently reviewing the overall level of access charges for 2001 –2006. We have taken forward the debate on incentives. We have addressed issues of performance, asset stewardship and delivery of the West Coast Main Line

project. We have brought forward proposals to improve the contractual underpinnings of the railway industry through model clauses. We have prepared ourselves to exercise powers under the Competition Act 1998 from 1 March 2000.

11. All of these activities use scarce resources. That is why I initiated a review, both to take stock of what my Office is doing, and to set out our proposed work programme for the year ahead. There are a number of reasons for doing so now. First, the Government's proposals for the new institutional framework for the railway industry are now well advanced. It is likely that the Strategic Rail Authority will be formally established this year. It is appropriate for the Office of the Rail Regulator (ORR), as we move towards this new environment, to set out its vision of what its basic purposes are and what it should be doing to fulfil them.

12. Secondly, there is the question of financing ORR. The organisation is normally fully funded through fees paid by the holders of licences. In 1999–2000, additional sums were provided from public funds to support the increased costs of the new approach to regulation. But for 2000–01 we must return to the general principle established in the Railways Act 1993 that the industry pays the costs of its regulation. In this respect, the consultation on the draft plan confirmed general support for the principle of licence-funded regulation, as well as the activities set out in the draft plan.

13. Thirdly, the level of activity set out in this plan would simply not have been possible within the budgets administered by my predecessors. It was therefore right that I set out what my office proposed to deliver, and considered all representations before finalising it. Indeed, it is right that we should allow industry stakeholders a regular opportunity to demonstrate, through improved efficiency, that we should be doing less in return for lower licence fees.

14. The Government's utility review concluded that each of the sectoral regulators should consult on a draft work programme for the year ahead and that they should then report back on progress against the plan twelve months later. The Rail Regulator was not covered by the utility review. Nevertheless, I believe that many of its conclusions represent best practice for any regulatory body. That is why I intend to follow the utility review model and each year both consult on the future plan and

report back on the previous one. Starting next year my operational plan will also take a longer view, describing what we expect our activities to be over a three-year period.

Outline of this document

15. I am very grateful for the helpful and constructive responses to the draft plan. In the main, these views have been reflected here. This document is in two parts. The first part sets out the aim and key objectives for ORR. They encapsulate in an accessible but not unduly simplified form the reasons why we are here. They are also useful to us in organising our work and judging the relative importance of different tasks.

16. The second part sets out what we propose to do in 2000–01. Of necessity, it does so at a fairly high level. It does not try to specify every single thing we are undertaking nor those we have chosen not to include for the moment. It is, however, the most comprehensive account ORR has ever given of its proposed activities. We set out the key things we expect to be doing over the next year, explain why we will be doing them, indicate timescales and compare what we are doing or proposing to do with what we did before I became Regulator in July 1999.

17. It is important to note that neither the aim and objectives, nor the work programme, are substitutes for the statutory requirements placed on me by the Railways Act 1993 and the Competition Act 1998. I am not fettering my discretion. My intention is to inform stakeholders of how in practical terms I see the discharge of my functions in the light of current circumstances. It is not for me to change the functions which have been given to me by Parliament, nor add to, subtract from or in any other way change the conditions I must have in mind in carrying out these functions. It is a full and demanding programme. It will not be achievable without the full involvement of all the key players in the industry. Nevertheless, I am looking forward to reporting back next year on how well we and the industry have progressed.

TOM WINSOR

June 2000

The consultation process

Who we consulted and those who responded

Who we consulted

The Draft Operational Plan 2000-01 was sent to a wide range of interested parties for comment, including: Railtrack Plc; passenger and freight train operating companies; franchise holders; Department of the Environment, Transport and the Regions; the Rail Users' Consultative Committee network; Passenger Transport Executives; all holders of an operating licence; the Shadow Strategic Rail Authority; groups representing disabled passengers; other regulators and local authorities.

Those who responded

1. Adtranz DaimlerChrysler Rail Systems
2. AMEC Rail Ltd
3. Balfour Beatty Ltd
4. Eurostar (UK) Ltd
5. English Welsh and Scottish Railway Ltd
6. FirstGroup Plc
7. Freightliner Ltd
8. Gloucestershire County Council
9. Great North Eastern Railway Ltd
10. Heritage Railway Association
11. HSBC Rail (UK) Ltd
12. London Transport
13. Merseyrail Electrics Ltd
14. Merseytravel
15. National Express Group Plc
16. Office of Water Services
17. Prism Rail Plc
18. Rail Freight Group
19. Railtrack Plc
20. South West Trains Ltd
21. Stagecoach Holdings Plc
22. Wales & West Passenger Trains Ltd

Non-confidential responses can be seen on the ORR's website at: http://www.rail-reg.gov.uk and are also available from the ORR's library.

PART ONE

ORR aim

Through independent, fair and effective regulation to create and maintain the incentives and conditions necessary to achieve the continuous improvement of a safe, well-maintained and efficient railway which meets the needs of its users, and facilitate investment in capacity to satisfy the demands of growth in passenger and freight traffic at the time it is needed.

These things are to be achieved by the dedication of the talents of enabled, motivated staff at all levels, applying high standards in all they do, and by constructive interaction with the railway industry and all its stakeholders.

Key objectives

1. Utilise and develop the regulatory and commercial environment in a way which protects and promotes the interests of passengers and third parties.

2. Encourage the development of competitive markets within the railway industry in a manner which deters anti-competitive behaviour and delivers benefits to passengers and freight users.

3. Utilise and develop the regulatory and commercial environment in a way which promotes and encourages rail freight.

4. Create and maintain a regulatory and financial framework based on effective incentives and solutions to improve railway performance and promote innovation in:

   (a) the safe and efficient operation, maintenance and renewal of railway assets; and,

   (b) investment to improve and grow the railway.

5. Promote a radical change in industry attitudes, in order to make the most of the industry's new regulatory and commercial environment through private sector commercial practices and empowerment of dependent customers.

6. Simplify and streamline the regulatory and contractual matrix and ensure that it is fit for purpose with improved understanding.

7. Create the right environment and conditions for the retention of expertise and knowledge, thus empowering and enabling the Regulator's staff to work constructively, co-operatively, fairly and consistently with the railway industry and all stakeholders.

Key means

Methods of achieving key objectives

1. **Utilise and develop the regulatory and commercial environment in a way which protects and promotes the interests of passengers and third parties.**

    1.1 Implement decisions relating to recent reviews of railway safety

    1.2 Monitor Railtrack's compliance with its network licence and, where necessary take enforcement action to safeguard the public interest

    1.3 Defend Railtrack's legal challenge to the enforcement order on performance issued in 1999

    1.4 Issue and modify licences

    1.5 Facilitate the development of better passenger information

    1.6 Monitor companies' compliance with their licences and take enforcement action where this is necessary to safeguard the public interest

    1.7 Facilitate the Shadow Strategic Rail Authority's franchise replacement programme

    1.8 Prepare for the anticipated enactment of the Transport Bill

    1.9 Contribute to the administrative processes involved in Transport and Works Act 1992 (TWAs) orders where notified by DETR

2. **Encourage the development of competitive markets within the railway industry in a manner which deters anti-competitive behaviour and delivers benefits to passengers and freight users.**

    2.1 Raise the railway industry's awareness of the Competition Act 1998

    2.2 Enforce the prohibitions of the Competition Act 1998 by dealing with complaints and notifications and investigate possible infringements

    2.3 Monitor compliance of all Rolling Stock Leasing Companies (ROSCOs) with their codes of practice

    2.4 Contribute to the ongoing development of the concurrency arrangements

2.5 Provide timely advice to the Director General of Fair Trading (DGFT) in relation to mergers cases affecting the railway industry

3. Utilise and develop the regulatory and commercial environment in a way which promotes and encourages rail freight.

3.1 Review Railtrack's strategy for rail freight development

3.2 Publish guidance to potential freight users (including developers of terminals) on the commercial and regulatory regime

3.3 Review the Regulator's policy for the approval of access charges for freight services

3.4 Keep under review the fitness for purpose of the licences held by English Welsh & Scottish Railway Ltd

3.5 Keep under review the rail freight market with a view to identifying and acting upon potential barriers to entry

3.6 Consider proposed new access contracts for freight train operators including English Welsh & Scottish Railway Ltd, Direct Rail Services Ltd and Freightliner Ltd

4. Create and maintain a regulatory and financial framework based on effective incentives and solutions to improve railway performance and promote innovation in:

(a) the safe and efficient operation, maintenance and renewal of railway assets; and

(b) investment to improve and grow the railway.

4.1 Determine Railtrack's level of charges for the next control period (April 2001–2006)

4.2 Develop the new structure of charges

4.3 Incentivise delivery

4.4 Implement the conclusions of the periodic review

5. Promote a radical change in industry attitudes, in order to make the most of the industry's new regulatory and commercial environment through private sector commercial practices and empowerment of dependent customers.

5.1 Strengthen Railtrack's accountability through modifications to its network licence

5.2 Review and possible revision of vehicle and route acceptance arrangements

6. Simplify and streamline the regulatory and contractual matrix and ensure that it is fit for purpose with improved understanding.

6.1 Development of model clauses for access contracts

6.2 Review of station access regime

6.3 Evolution of moderation of competition policy

6.4 Approval of track access agreements

6.5 Approval of station access agreements

6.6 Approval of light maintenance depot access agreements

6.7 Monitor and review international policies and developments

6.8 Effective handling of closure decisions

7. Create the right environment and conditions for the retention of expertise and knowledge, thus empowering and enabling the Regulator's staff to work constructively, co-operatively, fairly and consistently with the railway industry and all stakeholders.

7.1 Implement *Modernising Government*

7.2 Implement external efficiency review

7.3 Continuous improvement to ORR management systems, including the management and development of staff, and financial management

PART TWO

Key objective 1

1. Utilise and develop the regulatory and commercial environment in a way which protects and promotes the interests of passengers and third parties.

1.1 Implement decisions relating to recent reviews of railway safety

What we will do

Condition 3 of Railtrack's network licence requires Railtrack to establish, and maintain the separation from commercial functions, of a Safety and Standards Directorate (S&SD). It also establishes the regulatory framework for Railway Group Standards. We will propose modifications to Condition 3 to facilitate the implementation of the conclusions of the Department of the Environment, Transport and the Regions (DETR) report on Railtrack's S&SD[1] to improve the insulation of S&SD's functions from Railtrack's commercial activities. We expect that the modifications will also clarify the respective roles of the Regulator and the Health and Safety Executive (HSE) in enforcing Railway Group Standards. We are working with the HSE to ensure these proposals link effectively to the amendments to the Railways (Safety Case) Regulations 1994, also proposed in the DETR report.

We will improve our systems for monitoring Railtrack's compliance with its obligations under Condition 3 and will review the Railway Group Standards Code to ensure that it is fit for purpose.

We will conclude our review of ORR–HSE working arrangements on safety matters.

In conjunction with other railway industry bodies we will take appropriate action on the recommendations of the report of the Southall Rail Inquiry by Professor John Uff QC[2] in respect of:

---

1 *Railtrack's Safety and Standards Directorate – Review of main functions and their locations*, Department of the Environment, Transport and the Regions, London, February 2000

2 Professor John Uff QC FREng, *The Southall rail accident inquiry report*, HSE Books, Sudbury, February 2000

(a) train regulation policy; and,

(b) systems authorities.

We will assist Lord Cullen's inquiry into the accident at Ladbroke Grove in any way we can, including in relation to matters concerning the institutional structures of the railway industry and how they might be improved.

Why we will do it

Safety is the paramount concern for all those involved in the railway industry. ORR is not the safety regulator but does need to ensure that the industry's economic regulation is consistent with safety requirements and that safety considerations are taken into account in all decisions. Following the accidents at Southall and Ladbroke Grove, a number of improvements have been recommended and ORR will do what is necessary to implement them.

When we will do it

We expect the amendments to Condition 3 to be in place by Autumn 2000, at the same time as changes proposed by the HSE are made to the Railways (Safety Case) Regulations 1994. We will develop improved monitoring systems in parallel with this and begin our review of the Railway Group Standards Code during Summer 2000. Our internal review of ORR procedures will be complete by June 2000. In the light of that, we will consider changes to our existing *Memorandum of understanding* with the HSE[3]. We expect amendments to the Track Access Conditions on train regulation to be in place later this year. We are discussing with industry parties the timing of the work on the proposed systems authorities.

What we did previously

In the past we have liaised closely with the HSE. An ORR Director has rail safety as a key part of his portfolio with direct and immediate personal access to the Regulator on any safety issue. Now is the appropriate time for ORR to look both at how it relates to the HSE and how it approaches issues affecting

[3] *Memorandum of understanding between the Health & Safety Executive and the Rail Regulator*, Office of the Rail Regulator, London, March 1998

safety. Amendment of Condition 3 of Railtrack's network licence and the consequent changed monitoring activities are new and resource-intensive tasks.

1.2 Monitor Railtrack's compliance with its network licence and where necessary take enforcement action to safeguard the public interest

What we will do

We will review Railtrack's *2000 Network Management Statement for Great Britain* (NMS)[4] to ensure that it complies with Railtrack's network licence obligations. We will consult funders and operators of railway services on the adequacy of Railtrack's proposals. If we conclude that the NMS is not fully compliant with its licence obligations, we will take action to ensure Railtrack corrects the deficiencies. In particular, we will want to be satisfied that Railtrack is making an effective contribution to meeting the needs of growth in passenger and freight use throughout all zones of the network.

We will review Railtrack's biannual key performance indicators and the July 2000 reconciliation statement in the light of Railtrack's network licence obligations. We will deal with other stewardship issues as they emerge.

On 20 March 2000, the Regulator announced that he expected Railtrack to achieve a 5% performance improvement in minutes delay attributable in the period 2000–2001, in addition to catching up on any shortfall in the period 1999–2000. The Regulator will be monitoring Railtrack's performance to ensure compliance with its network licence. In addition the Regulator will be reviewing the results achieved in 1999–2000 and levying any penalty which may be due under the November 1999 enforcement order.

We are concerned about a number of aspects of track quality. We want to be satisfied that Railtrack's Track Quality Improvement Programme is delivering the necessary improvements. We are particularly concerned about the incidence of broken rails on the network. In conjunction with the HSE, we will scrutinise Railtrack's proposals and require Railtrack to ensure that it has appropriate targets and action plans in place. We want to be satisfied that the improvements in these aspects of track quality are not at the expense of other aspects of asset health.

[4] *2000 Network Management Statement for Great Britain*, Railtrack PLC, London, March 2000

On 5 November 1999, the Regulator published a draft enforcement order against Railtrack in respect of the West Coast route modernisation project[5]. On 27 March 2000, the Regulator published a modified final order requiring Railtrack to demonstrate what its infrastructure plans can deliver, and to provide options for further enhancement of the network. Having concluded that insufficient information was forthcoming, the Regulator made a final order[6] against Railtrack which came into effect on 5 May 2000. The Regulator is reviewing Railtrack's response to this and also the outcome of the costing work (see paragraph 4.1). This will establish:

(a) what Railtrack needs to do to meet its network licence obligations; and,

(b) to the extent that this involves additional funding, who should pay.

We will monitor Railtrack's performance against its other licence obligations. In particular, we will watch closely the delivery by Railtrack and other industry bodies on the obligation to provide accurate timetable information 12 weeks in advance of the day of operation.

We will review the operation of the Systems Code for information systems – a requirement of Condition 19 of Railtrack's network licence.

We will monitor Railtrack's financial performance and the operation of the property allowance scheme.

We will investigate complaints in relation to matters within ORR's jurisdiction and take the necessary action. We are currently investigating allegations that Railtrack is in breach of its network licence as a result of its handling of certain vehicle and route acceptance proposals (see section 5.2).

Why we will do this

All of these are aspects of Railtrack's public interest obligations in respect of the stewardship of a vital national asset. They address problems which are

---

5 *West Coast Main Line: statement by the Rail Regulator*, Office of the Rail Regulator, London, November 1999

6 *West Coast Main Line: Final Order against Railtrack plc*, Office of the Rail Regulator, London, May 2000

immediate and go to the core of Railtrack's ability to act as a competent steward of the network.

When will we do it

The review of the 2000 NMS is expected to be complete by July 2000. The reconciliation statement showing performance against the 1999 NMS will be received by the end of July 2000. Monitoring of the 2000–2001 performance targets will be continuing, as will monitoring of the emerging position on track quality and broken rails. We will consider the information received from Railtrack and others in relation to the West Coast route modernisation. Monitoring of other aspects of Railtrack's performance will be continuing. We expect to review the Systems Code in the second half of the year.

What we did previously

Setting performance targets for Railtrack, and analysing the annual NMS, are tasks on which ORR has been engaged in previous years. Railtrack's weaknesses in respect of asset stewardship (as identified in Booz Allen and Hamilton's report to the Regulator in April 1999)[7] and broken rails demand more intensive regulatory scrutiny. In 1999 we also took action in respect of Railtrack's passenger performance targets for 1999–2000. In addition, the need to monitor closely the unfolding of the West Coast route modernisation generated further regulatory action.

1.3 Defend Railtrack's legal challenge to the enforcement order on performance issued in 1999

What we will do

We will defend Railtrack's application to the High Court for a determination that the Regulator acted unreasonably in his enforcement action against the company in 1999 in relation to its failure to meet its passenger performance targets.

[7] *Railtrack's Performance in the Control Period 1995-2001*, Booz Allen & Hamilton Limited, London, March 1999

Why we will do it

We explained the reasons for our action against Railtrack in detail in August 1999 and in our response to Railtrack's representations in November 1999. The principles we set out have general importance as well as specific relevance to that case. Section 55 of the Railways Act 1993 requires the Regulator to take enforcement action unless the public interest requires a different course. Where a monetary penalty is imposed, it should be proportionate and sufficient to incentivise the company in question to comply with its licence obligations. The action which we took was fully justified in the public interest.

When we will do it

This work will continue until the conclusion of the case.

What we did previously

Railtrack instigated the proceedings in January 2000. This is therefore a new stream of work.

1.4 Issue and modify licences

What we will do

We will grant new licences and licence exemptions to applicants which meet the established criteria. We will implement a quality management system to improve the licence/exemption granting processes and productivity.

We will revise our existing *Guidance on Licensing of Operators of Railway Assets*[8], publish procedural guidance on how to apply for licence exemptions and publish an information note on the licensing/exemption regime.

We will continue to review the suitability of licence conditions. We will propose licence modifications where we consider them necessary. Where they involve conditions which would transfer to the Strategic Rail Authority (SRA)

[8] *Guidance on Licensing of Operators of Railway Assets*, Office of the Rail Regulator, London, September 1995

under the terms of the Transport Bill, we will consult the Shadow Strategic Rail Authority (SSRA).

We will continue to exercise our change of control functions under the licences when changes of control occur. We will make suitable arrangements with the SSRA to ensure this function is carried out satisfactorily when changes of control occur as a result of franchise replacement.

We will continue the consultative approach to changing the overall amount charged through licence fees taking full account of improved efficiency and sharing best practice to ensure costs are kept in balance.

Why we will do it

The granting of new licences and licence exemptions are likely to remain with the Regulator following enactment of the Transport Bill. We wish to improve the quality and efficiency of our processes and the information available to applicants and others with an interest.

When we will do it

These activities will be continuing throughout the year.

What we did previously

What has been described in this section is a thorough ongoing review of our processes and the information available to the public about these processes.

1.5 Facilitate the development of better passenger information

What we will do

We will ensure that Railtrack plays its full part in the development of improved information systems to passengers by working with the industry to improve two elements of information dissemination:

(a) provision of current train running information from Railtrack to train operators; and

(b) provision of timely and accurate timetable information from train operators to passengers during periods of planned disruption to the network such as those caused by engineering works.

We will assess whether licence modification is the means to achieve this.

Why we will do it

Passenger groups have made the Regulator aware of unreliable information during planned disruption, particularly in relation to the West Coast Main Line upgrade. It is essential for passengers to have timely, reliable and up-to-date information on which to base their travel plans. There are issues around funding and access to and ownership of data in relation to Railtrack's real time information system which need to be resolved before the system can be implemented.

When we will do it

We have already met with Railtrack to learn about the technical development of its Real-Time Train Movements system which it is developing with input from ATOC. We intend to work with Railtrack to address the funding and data issues in order to enable it to meet its target date of April 2001 for Phase 1 implementation. We will also discuss with SSRA how best to ensure that industry parties work together collectively and consistently to make sure passengers get the information they need.

What we did previously

In May 1999 the Regulator modified Railtrack's network licence and passenger train operators' licences to require them to make available early information about changes to train times. Rail companies are now under an enforceable obligation to make available train timetable information for the next 12 weeks on a rolling basis (the T-12 commitment) and to make other information, such as fares and seat reservations, available shortly afterwards.

1.6 Monitor companies' compliance with their licences and take enforcement action where this is necessary to safeguard the public interest

Our proactive programme of monitoring to check compliance with licence condition requirements will continue and we will work closely with the SSRA to facilitate the transfer of our monitoring work when licence conditions become the responsibility of the SRA. We will respond, by taking enforcement action if appropriate, where breaches of licence conditions occur.

The licences impose important requirements on operators to protect the interests of passengers and freight users. It is our responsibility to ensure that the companies comply with these requirements. To this end, a comprehensive proactive programme of monitoring will continue to be implemented. As well as the public interest benefits of increased transparency and availability of information, this programme will take account of the cost imposed on the industry in complying with information requirements.

National Rail Enquiry Scheme (NRES)

What we will do

We are investigating the claim by the Association of Train Operating Companies (ATOC) that the NRES first performance standard (that 95% of all calls answered must be answered within 30 seconds) is unachievable or achievable only at disproportionate cost. We will ensure that if an alternative standard is approved it is both achievable and substantiated by research into what passengers need from NRES. We will work to ensure that firm quality standards are included in any revision to the NRES arrangements.

Why we will do it

NRES plays a vital role in ensuring that rail users and potential rail users have access to the information necessary to plan their journeys. The Regulator's enforcement action with regard to NRES has been a key factor in ensuring that the scheme delivers its quantitative standards. The emphasis must now shift to ensuring that quality as well as quantity is delivered, and that the scheme develops in line with wider technological and other developments in the provision of information and services and consumers' needs.

When we will do this

An independent study was commissioned to ascertain whether or not NRES' performance standard is achievable without disproportionate cost. The study also examined what callers need in terms of NRES' speed of answer. The study has now been completed and any changes to the NRES agreement are due to be implemented by late Summer 2000.

What we did previously

The Regulator's enforcement of the second NRES performance standard – that 90% of calls must be answered – has proved very effective. The train companies have not incurred a penalty under the second enforcement order since it was made and NRES continues to meet or exceed this standard.

We have encouraged NRES to implement a robust mystery shopping programme to monitor quality of response. The Regulator took action to ensure that engineering works information is updated onto the industry computer systems at least 12 weeks in advance. This has lead to a dramatic improvement in NRES' handling of enquiries about train alterations due to engineering work.

ATOC codes of practice

What we will do

We will encourage ATOC to ensure that its voluntary codes of practice are fit for purpose and are managed effectively. We will carry out a further review later this year to find out whether the recommendations in the previous review have been fully implemented and are working effectively.

Why we will do it

ATOC's voluntary codes of practice[9] play an important part in maintaining a number of consumer and network benefits which are not provided for

[9] *Code of Practice: Customer Complaints and Correspondence involving two or more Rail Service Providers*, Retail Association of Train Operating Companies, London, July 1998

Code of Practice: Presentation of Timetable Information, Association of Train Operating Companies, London, July 1998

elsewhere in the regulatory framework. It is therefore essential that they are managed effectively.

When we will do it

We propose to publish the 1999 review of ATOC's codes of practice, subject to the SSRA's views, by Summer 2000 and to carry out the further review of the codes in Autumn 2000.

What we did previously

We carried out a review of ATOC's voluntary codes of practice in April 1999. This revealed many deficiencies in the way ATOC was managing the codes. The findings of the review were shared with ATOC, which has made progress in implementing many of the review's recommendations since it was undertaken.

Complaints handling

What we will do

All train operating companies (TOCs) are required to produce and comply with formal procedures which govern the way they handle passengers' complaints. These procedures are based on guidelines issued by ORR. We have revised these guidelines and will require train operators to review their complaints handling procedures in line with them. We will consider whether any action is necessary in respect of Railtrack's complaints handling procedures. Whilst Railtrack receives complaints from members of the public across the range of

---

Code of Practice: Acceptance, Holding and Disposal of Lost Property, Association of Train Operating Companies, London, July 1998

Code of Practice: Access and Travel Arrangements for Passengers with Disabilities, Association of Train Operating Companies, London, August 1998

Code of Practice: Handling Customers during Service Disruption, Association of Train Operating Companies, London, August 1998

Code of Practice: Facilitation of Interchange between Train Services, Association of Train Operating Companies, London, August 1998

Code of Practice: Personal Security for Rail Travellers, Association of Train Operating Companies, London, August 1998

Code of Practice: Joint Industry Provision of Customer Care Following a Major Rail Accident, Revision 1, Association of Train Operating Companies, London, March 1999

its activities, it is currently only required to have a formal complaint handling procedure in place to deal with complaints about the major stations that it operates.

Why we will do it

We consider it important that train operators provide a high level of service to their passengers in all that they do. When passengers' expectations are not met, they have a legitimate right to express their concerns to the train operators. We want train operators to handle these complaints in an effective, timely and customer-friendly manner and to treat the information provided from complaints as valuable customer feedback, using it to make improvements to their services.

When we will do it

The work on the review of complaints handling procedures is taking place now and will be completed in the early part of the next financial year.

What we did previously

The obligation of train operators to have in place formal complaint handling procedures has existed since privatisation. This current process is a continuation of an enduring requirement to secure that train operators' complaints handling procedures meet the needs of passengers and demonstrate best practice.

Penalty fares

What we will do

We will carry out a comprehensive review of the Regulator's *Penalty Fares Rules 1997*[10] and our penalty fares policy, and in particular provide extensive guidance for train operators submitting a penalty fares scheme for approval.

[10] *The Penalty Fare Rules*, Office of the Rail Regulator, London, March 1998

Why we will do it

Whilst each existing penalty fares scheme should comply with the Penalty Fares Rules 1997, schemes vary significantly between operators with some offering more comprehensive protection for passengers than others. By providing greater guidance for them, we can make it simpler for operators to submit schemes which meet our requirements, and by building best practice into the guidelines we can ensure better and more consistent protection for passengers.

When we will do it

We will complete the review of penalty fares schemes by September 2000.

What we did previously

The Regulator's existing policy statement dates from 1996, and the existing penalty fares rules from 1997. There is scope to improve considerably the guidance given to train companies in the operation of penalty fare schemes in the light of the best practice which has emerged in the last few years.

Accurate retailing

What we will do

We will review the results of the mystery shopping survey of the accuracy of station ticket office retailing to be carried out by ATOC in 2000. We will review the methodology of the survey to be carried out and consider whether we should exercise our right to audit the survey.

Why we will do it

Reviewing the methodology is important in terms of making sure that the results are as representative of ticket office retailing as can be. In turn, this will enable us to make recommendations for improvement. We have a right to audit any survey to check for irregularities.

When we will do it

The ATOC survey for this year will be carried out during Summer 2000.

What we did previously

We sought and achieved changes to the *Ticketing and Settlement Agreement*[11] to introduce a general requirement on TOCs to retail accurately at station ticket offices and a performance regime linked to the mystery shopping surveys to drive up retailing accuracy across the industry.

Sponsorship of the Rail Users' Consultative Committee (RUCCs)

What we will do

ORR will continue to ensure that the RUCC network is appropriately resourced to provide credible passenger representation.

Why we will do it

The RUCC network is currently sponsored by the ORR and plays an important part in ensuring that passengers' interests are represented effectively and brought to the attention of policy makers.

When we will do it

The sponsorship of the RUCC network will be transferred to the SRA once the Transport Bill has been enacted. Until then the responsibility for the resourcing of the network remains with ORR.

What we did previously

The work of RUCC sponsorship is a continuing task.

[11] *Ticketing and Settlement Agreement*, Association of Train Operating Companies, London, July 1995

Disabled passengers

What we will do

We will issue a revised code of practice which will describe the services and standards operators will be expected to provide for disabled passengers. The draft code was issued for consultation on 31 May 2000 and the results of the consultation will be taken into account when we publish the final code. We will also issue guidance on what the Regulator will expect to see delivered in the licensees' Disabled People's Protection Policies (DPPPs). We will require licensed operators whose licences contain the Provision of Services for Disabled People condition to review their DPPPs in light of this.

Why we will do it

Section 70 of the Railways Act 1993 requires the Regulator to prepare and from time to time revise a code of practice for disabled users of train and station. The Regulator also has a duty under section 4(6) of the Railways Act 1993 to have regard to the interests of disabled persons. We are carrying out a previous commitment to revise the current code of practice (published in 1994)[12]. The revised code is also being drafted taking into account the requirements of current legislation, particularly the Disability Discrimination Act 1995. This will enable licensees to deliver best practice in providing access for people with disabilities.

When we will do it

The code has recently been circulated for consultation and will be published in final form in Autumn 2000. Together with the SSRA we will review revised DPPPs. The Regulator will then approve revised DPPPs later in the year with an expectation of completion by January 2001.

What we did previously

We used the existing code as the baseline against which to approve the current DPPPs established by licensees.

[12] *Meeting the needs of Disabled Passengers: A Code of Practice*, Office of the Rail Regulator, London, July 1994

1.7 Facilitate the Shadow Strategic Rail Authority's franchise replacement programme

What we will do

We will work closely with the SSRA to ensure that the railway is equipped to meet the needs of growth and improved performance for both passengers and freight. The SSRA's franchise replacement programme will be a key contributor to this.

We will:

(a) ensure clarity of regulatory policy and procedures on matters affecting franchise replacement;

(b) ensure that those contracts over which the Regulator has jurisdiction are fit for purpose and operate in the public interest;

(c) provide advice and assistance to the SSRA as appropriate; and

(d) set up arrangements to ensure effective handling of regulatory issues arising from the franchise replacement process (*e.g.* access agreement approvals).

We will work closely with the Rail Users' Consultative Committee network to ensure that passengers' aspirations for the second generation of franchise contracts are made known to the SSRA at the appropriate point within the reletting of franchises.

We will set out our policies in respect of approvals of new access agreements as they affect the process of franchise replacement.

Why we will do it

The SSRA's franchise replacement programme is intended to create the framework for major investment in track and rolling stock and a step change in the quality of services available to passengers and freight customers. It is important that the new generation of franchise agreements are in kilter with the licensing regime and the established access arrangements.

When we will do it

This activity will continue throughout the year. It will be driven largely by the SSRA's timetable for franchise replacement. We are already participating in working groups with the SSRA. Work is already being carried out by the RUCC network according to the same timetable.

What we did previously

The SSRA's franchise replacement programme began quite recently. Accordingly this is a new activity for ORR and the RUCCs.

1.8 Prepare for the anticipated enactment of the Transport Bill

What we will do

We will work closely with Government to advise on technical matters relating to railway legislation in the context of the current Transport Bill. We have been doing this for some time and anticipate doing so as required until the Bill is enacted. We have unique experience of detailed matters relating to railway regulation and it is right that we should make our expertise available to government.

Why we will do it

The railways provisions of the Transport Bill will make important changes to the regulation of the railways. In particular, responsibility for consumer protection, closures and RUCC sponsorship currently held by ORR will pass to the SRA. It is essential to effect a smooth and orderly transition with no hiatus or weakening of the protection afforded to the railway's users.

When we will do it

Work will continue until the SRA has been formally constituted following enactment of the Bill.

What we did previously

This is a continuing activity.

1.9 Contribute to the administrative processes involved in Transport and Works Act 1992 orders (TWAs) where notified by DETR

What we will do

We will consider proposed TWA orders notified to us by DETR to identify any regulatory implications arising from the proposed works.

Why we will do it

We will do this to fulfil our obligations under the TWA process, as an official body being part of the process, to make known our interests and concerns associated with works proposed under TWAs. We will notify DETR of instances where the TWA is purporting to give consent to works which properly require the Regulator's consent under the Railways Act 1993.

When we will do it

We will notify the appropriate parties of our interest and concerns within the statutory timescales.

What we did previously

This is a continuing activity.

Key objective 2

2. Encourage the development of competitive markets within the railway industry in a manner which deters anti-competitive behaviour and delivers benefits to passengers and freight users.

2.1 Raise the railway industry's awareness of the Competition Act 1998

What we will do

We will finalise the guidelines relating to the application of the Competition Act 1998 to the railway sector. This process will be supported by a number of seminars sponsored by this office. We will also publish a number of pocket guides to help the industry understand the implications of the Act. We will encourage the industry to develop a compliance forum, and the ORR website will help all concerned obtain relevant and useful information about the Competition Act 1998 and how it works.

Why we will do it

The Competition Act 1998 came into force on 1 March 2000. It applies to the railway industry as well as other sectors of the economy. It is the responsibility of all railway companies to educate themselves regarding the implications of the Act and the availability of advice from ORR does not remove this responsibility. Nevertheless, as the primary enforcement body for the railway sector, it is right that we should help railway industry participants understand their new legal obligations.

When we will do it

The activity will be ongoing but concentrated toward the first half of 2000–2001.

What we did previously

We have published in draft form the guidelines relating to the application of the Competition Act 1998 to the railway industry[13]. We have also contributed to the drafting of the range of guidelines published by the Office of Fair Trading (OFT). We have prepared the office systems and key personnel for the tasks ahead.

2.2 Enforce the prohibitions of the Competition Act 1998 by dealing with complaints and notifications and investigate possible infringements

What we will do

We will investigate complaints and notifications (of proposed agreements or behaviour) received from the industry, passengers or freight users in accordance with the concurrency arrangements established by the OFT, the ORR and the other sectoral regulators. We will seek to do this within the time limits agreed with the Secretary of State for Trade and Industry. We will also investigate any other pertinent matters which come to our attention.

Why we will do it

The Regulator has concurrent jurisdiction for applying the Competition Act 1998 to the railway sector with the Director General of Fair Trading (DGFT). That jurisdiction requires him to respond to complaints and notifications. In addition, it permits the Regulator to carry out investigations on his own initiative where he has reason to believe that an infringement may have occurred.

When we will do it

This activity will be continuing throughout the year and, where relevant, the outcome of investigations will be put into the public domain.

[13] *The Competition Act 1998 - Application to Railway Services,* Office of the Rail Regulator, London, February 2000

What we did previously

Before 1 March 2000, the Regulator had limited powers to investigate and deal with anti-competitive behaviour. Because of the significant change in the law relating to anti-competitive agreements and abuse of a dominant position, this is a new activity for ORR.

2.3 Monitor compliance of all Rolling Stock Leasing Companies (ROSCOs) with their codes of practice

What we will do

We will be proactive in ensuring that the ROSCOs comply with both the spirit and the letter of their codes of practice[14]. The Regulator will actively seek the views of the ROSCOs' customers and investigate any evidence or complaint which indicates a possible breach of the codes. The Regulator will use his powers under the Competition Act 1998 in cases where he believes the ROSCOs may have abused their market power in dealing with their customers.

Why we will do it

The ROSCOs' codes of practice were published after the Deputy Prime Minister accepted the former Regulator's recommendation as to the most appropriate ways to control possible abuses of market power on the parts of the ROSCOs. The recommendation was that a code of practice, backed up by the Regulator's powers under the Competition Act 1998 and supported by the SRA's three-year call option on existing ROSCO contracts, would provide the best method for preventing possible abuse of market power by the ROSCOs.

When we will do it

We will actively seek the views of the ROSCOs' customers during the latter half of the year. In addition, we will respond to any complaints received as soon as possible. In particular, through the codes of practice and his powers under the Competition Act 1998 the Regulator will endeavour to ensure that the

[14] *Code of Practice*, HSBC Rail Ltd, February 2000
Rolling Stock Leasing Company Code of Practice, Porterbrook Leasing Co. Ltd, February 2000
Code of Practice, Angel Train Contracts Ltd, February 2000

franchise replacement programme is not disrupted because of a ROSCO exploiting its market power.

What we did previously

The Regulator procured that the ROSCOs published their individual codes of practice in 1999. He issued a public statement making it clear that he expected the ROSCOs to abide by the spirit as well as the letter of the codes.

2.4 Contribute to the ongoing development of the concurrency arrangements

What we will do

We will continue to be a member of the OFT's concurrency working party and contribute to the development of competition policy and concurrency arrangements. This will include the development and publication of further guidelines, the development of working practices and consistent application of relevant competition law to all decisions.

Why we will do it

We will do this in the interests of providing consistent application of the Competition Act 1998 across all sectors of industry, as required by the Act.

When we will do it

This is a continuing activity.

What we did previously

This activity has been ongoing throughout 1999–2000.

2.5 Provide timely advice to the Director General of Fair Trading (DGFT) in relation to mergers cases affecting the railway industry

What we will do

We will analyse mergers and acquisitions in the railway industry and provide advice to the DGFT as appropriate.

Why we will do it

We will do this to enable the DGFT to take advantage of our expert knowledge of the railway sector.

When we will do it

We will do this as and when cases arise.

What we did previously

No significant cases were dealt with during 1999–2000, and therefore did not require any ORR input.

Key objective 3

3. Utilise and develop the regulatory and commercial environment in a way which promotes and encourages rail freight.

3.1 Review Railtrack's strategy for rail freight development

What we will do

We will consult on the adequacy of Railtrack's plans for the development of its freight business, as set out in its 2000 Network Management Statement (NMS), including its pre-feasibility plans for the development of its freight routing strategy. We will also consult on the adequacy of Railtrack's freight routing strategy for the West Coast Main Line[15] (WCMLFRS). In both cases this will address the adequacy of the plans against the reasonable requirements of train operators and funders. We will decide on whether, and if so what, further action should be taken if we consider the plans to be inadequate. To pursue further the development of the routing strategy, we expect to establish forum discussions between Railtrack, the SSRA, the ORR and train operators.

Why we will do it

Railtrack's overall approach to its freight business, and in particular the sufficiency and quality of track capacity (especially over the next 5-10 years), has been a concern for freight operators and customers. Customer and investor confidence requires that Railtrack can demonstrate that it has established coherent plans to develop and manage the network to cater for the requirements of freight growth on the mixed railway, where other sectors are also experiencing growth.

When we will do it

We expect to complete the review of the 2000 NMS by July 2000. We will consult on the WCMLFRS in June 2000. We plan to conclude our

[15] *Final Report: WCML Freight Routing Strategy 2000-2009*, Railtrack PLC, London, April 2000

consideration of both of the above by Autumn 2000, and to ensure that forum discussions have started within a similar timescale.

What we did previously

The Regulator fully recognised the need for Railtrack to develop the network for freight and encouraged Railtrack to set out its plans in its NMS. The 1999 NMS did this and identified seven major routes on which, in the medium term, it would not be able to accommodate freight demands forecast by operators.

3.2 Publish guidance to potential freight users (including developers of freight terminals) on the commercial and regulatory regime

What we will do

We will publish a summary of licensing and access matters, both domestic and international, which affect existing and prospective rail freight industry parties, including the developers of rail freight terminals. It will answer some of the more commonly asked questions connected with the substance and processes of regulation, and the contracts which require the Regulator's approval. It will be published on ORR's website as well as being available from the ORR library.

Why we will do it

Prospective licence holders and access beneficiaries need concise guidance on regulatory requirements and the contractual and operating arrangements to which they apply expressed in simple and straightforward terms. Improving affected parties' understanding of complex arrangements and procedures will be helpful to them and keep their transaction costs down.

When we will do it

We will publish the guidance in Summer 2000.

What we did previously

ORR has dealt with requests for information in a number of ways. We have responded to *ad hoc* requests for information or explanation either in writing,

on the telephone or in person. ORR has explained the various regulatory requirements at preliminary meetings and have issued copies of regulatory guidance documentation such as the pack entitled *Guidance on Licensing of Operators of Railway Assets*[16].

3.3 Review the Regulator's policy for the approval of access charges for freight services

What we will do

We will consult on possible changes to the Regulator's policy and publish a revised policy. This will then inform the Regulator's approach when access agreements are submitted for approval.

Why we will do it

There have been significant changes in the rail freight industry since 1995 when the then Regulator published his framework for the approval of access charges for freight services. Rail freight has grown, new access agreements have been entered into covering the whole of the network, and a better understanding of cost causation has been developed. The periodic review of Railtrack's access charges will have a major impact on the incentive framework for franchised passenger train services. New freight operators are considering entering the market and existing freight operators are seeking to negotiate new track access agreements. It is therefore an opportune time to review the regulatory framework for freight access charges.

When we will do it

We have published a consultation document. The consultation period is open until 7 July 2000. We will publish the second document in August 2000.

[16] *Guidance on Licensing of Operators of Railway Assets*, Office of the Rail Regulator, London, September 1995

What we did previously

The Regulator has used the 1995 policy document to inform his approval of the charging elements of access agreements.

3.4 Keep under review the fitness for purpose of the licences held by English Welsh & Scottish Railway Ltd (EWS)

What we will do

We will ensure that the EWS companies comply in full and in a timely manner with the information provision conditions contained in their licences. We will also keep those licences under review and, where necessary, propose modifications.

Why we will do it

As the largest rail freight operator, EWS has a dominant position in some market sectors. On privatisation, EWS gained control of a significant proportion of the capital and other assets (*e.g.* locomotives) of the former British Rail freight operation. The licences therefore need to reflect the potential for abuse and should enable ORR to obtain sufficient information on which to take action should this be required to safeguard the interests of freight users and the public in general. The rail freight market (and EWS with it) is continually evolving. We therefore need to ensure that the company's licences develop in line with that evolution and remain fit for purpose.

When we will do it

This will be a continuing process. EWS have provided certain information to the Regulator under the licences (information on customer prices and rolling stock disposition) which we are currently examining, and they will be required to provide other information on transactions between companies in, and associated with, the EWS group by 31 July 2000.

What we did previously

Action this year will be broadly in line with past practice.

3.5 Keep under review the rail freight market with a view to identifying and acting upon potential barriers to entry

What we will do

We will publish a summary of the results and conclusions from our first *National Survey of Railfreight Users*[17], launched in January 2000. We will also initiate a programme of industry visits and meetings. As part of the work on model clauses, we will review and if necessary revise the template connection agreement for rail freight terminals.

Why we will do it

The purpose of the survey is to obtain a clearer picture of how the railway is performing in relation to the specific requirements and aspirations of current and potential rail freight users. In particular we are seeking a better understanding of the existing barriers to entry in order to inform the development of our regulatory strategy for freight.

The purpose of the programme of industry meetings and visits is to allow the Regulator to observe at first hand some of the important operational and practical matters affecting the industry.

We will want to be satisfied that freight connection agreements contain a fair balance of rights and obligations between the parties.

When we will do it

A document summarising the results of the survey and emerging conclusions will be published in June 2000. The programme of visits and meetings is to commence in the Summer. The work on the freight terminal connection agreements will be taken forward as part of the model clauses initiative.

What we did previously

Our previous approach focussed more on reaction to complaints received and matters referred for the Regulator's attention.

[17] *National Survey of Railfreight Users*, Office of the Rail Regulator, London, January 2000

3.6 Consider proposed new access contracts for freight train operators including English Welsh & Scottish Railway Ltd (EWS), Direct Rail Services Ltd (DRS) and Freightliner Ltd

What we will do

The present generation of track access agreements for freight train operators expire in the near future. After agreeing terms with the operators in question, Railtrack has submitted, or is expected shortly to submit, new contracts for the Regulator's approval. The contracts will cover virtually all of the freight activity on the rail network. A key input into this will be a review of freight charging policy being conducted in conjunction with the periodic review.

Why we will do it

The purpose of regulatory scrutiny is to ensure that the public interest objectives set out in section 4 of the Railways Act 1993, including the promotion of the use of the network for rail freight, are met.

When we will do it

We are already at an advanced stage of considering the proposed Railtrack-Freightliner track access agreement, although the existing agreement does not expire until 2001. The other major agreement, between Railtrack and EWS, also expires in 2001, and we expect an application for approval to be made during 2000. We also expect to be asked to approve a new contract between Railtrack and DRS during 2000.

What we did previously

The current global track access agreement between Railtrack and EWS was approved in 1997 for five years. It replaced about 100 individual flow-based agreements with a streamlined structure. The current Freightliner agreement was approved in 1996 for five years. The current DRS agreement was approved in 1998, initially for a period of 12 months. It has subsequently been extended until 30 June 2000.

Key objective 4

4. Create and maintain a regulatory and financial framework based on effective incentives and solutions to improve railway performance and promote innovation in:

(a) the safe and efficient operation, maintenance and renewal of railway assets; and

(b) investment to improve and grow the railway.

4.1 Determine Railtrack's level of charges for the next control period (April 2001-2006)

What we will do

Our assessment of Railtrack's overall revenue requirements depends on a detailed analysis of:

(a) activities which it needs to undertake in order to deliver the required outputs;

(b) the need for increased efficiency in these areas;

(c) the appropriate financial framework; and

(d) forecasting of "single till" income.

On the first issue, we challenged Railtrack to demonstrate why it needs to do more than it has done in the past. We also initiated a fundamental review of the maintenance and renewal costs underlying the West Coast Main Line upgrade and consulted on this in June 2000. We have recently received Railtrack's initial assessment of the costs associated with the Incremental Output Statement

published by the SSRA in December 1999[18]. Extensive further work is required in each of these areas.

On the second issue, Railtrack has argued that it cannot achieve efficiency savings of 3–5% per annum as set out in the Regulator's December 1999 periodic review document[19]. On the other hand, some operators (particularly freight operators) have argued that there is much more scope for improved efficiency. We are therefore undertaking further work to assess the robustness of the Regulator's December 1999 provisional conclusions in this respect. This includes comparisons with the absolute level of efficiency and rate of productivity improvement in other railways as well as an assessment of the new information emerging from Railtrack's renegotiations with its contractors.

On the third issue, we are reviewing responses to the Regulator's provisional conclusions on the Regulatory Asset Base (RAB) and the cost of capital. Further work is required in some areas and the Regulator will continue to monitor developments in the Competition Commission's inquiry into Mid Kent Water and Sutton and East Surrey Water. We are also considering the appropriate treatment of renewals and enhancement expenditure, including whether enhancement expenditure which is included in the RAB should be depreciated and whether renewals should continue to be paid for on a pay-as-you-go basis or whether some of this expenditure should be capitalised in the RAB.

On the final issue, further work is needed to validate the Regulator's provisional conclusions on further income from freight, open access and property.

Why we will do it

It is essential that the analysis of Railtrack's revenue requirements is robust so that the level of charges is neither excessive nor insufficient to enable the company to finance the required level of outputs.

---

[18] *The Periodic Review of Railtrack's Access Charges: Provisional Conclusions on Revenue Requirements*, Appendix E, Office of the Rail Regulator, London, December 1999

[19] *The Periodic Review of Railtrack's Access Charges: Provisional Conclusions on Revenue Requirements*, Office of the Rail Regulator, London, December 1999

When we will do it

Most of these activities will be completed in the first half of 2000 so that the Regulator is able to publish draft conclusions on the periodic review.

What we did previously

This is the first review of Railtrack's access charges since privatisation. In the 1995 determination of charges, a similar process was followed. However, in order to meet the requirements of a privatised industry, the approach we are taking in this periodic review is considerably more detailed.

4.2 Develop new structure of charges

What we will do

As part of the periodic review, we are reviewing the structure of Railtrack's charges. Our provisional conclusions on these issues was published in April 2000. There will be considerable further work to develop detailed charges in accordance with these policy decisions. This will include further consultancy work in relation to usage charges, electric traction charges and capacity reservation charges.

Why we will do it

It is important that the structure of charges reflects Railtrack's cost structure and incentivises it to become more responsive to the requirements of its customers.

When we will do it

The timetable is the same as for the determination of Railtrack's overall revenue requirements outlined above. In June 2000, we also published provisional conclusions on station access charges and station access arrangements.

What we did previously

Since 1995, ORR's understanding of Railtrack's cost structure has greatly improved. The work we are doing in this area builds on this newly available information

4.3 Incentivise delivery

What we will do

In addition to the structure of charges, we are reviewing other aspects of the incentive framework as part of the periodic review. This includes a review of the operational performance incentives in Railtrack's access agreements where the Regulator has commissioned consultants to recalibrate the key parameters. It also involves further consideration of the appropriate measures of the serviceability and condition of the network. We are also reviewing Railtrack's information reporting requirements and are considering a number of potential licence modifications in this area.

Given the large scale of the enhancement expenditure which may be required, we are developing a more transparent process within which access agreements relating to enhancements can be negotiated and submitted to the Regulator for approval. This will also provide greater clarity about the way in which the Regulator would expect to reflect enhancements in the RAB at future periodic reviews.

Work is also taking place to develop guidelines on considerations which will be relevant when setting monetary penalties in cases of enforcement action.

Why we will do it

Strong and effective incentives and clarity about the treatment of enhancements are essential if Railtrack is to deliver the improvements which its customers, passengers and society require.

When we will do it

The timetable for most of this work is the same as for other aspects of the periodic review outlined above. However, the formal licence modification process may extend beyond the periodic review. The enhancement framework will be kept under review in the light of experience with the franchise replacement process and other enhancements.

What we did previously

The recent growth in demand for railway services was not predicted at the time of privatisation. This means that large-scale enhancement of the network was not expected. The new demands on the network have reinforced the importance of this work

4.4 Implement the conclusions of the periodic review

What we will do

After the final periodic review conclusions are published, Railtrack and the operators will submit modified access agreements to the Regulator for his approval. We plan to publish model clauses for the relevant Schedules of those contracts. However, there may still be a requirement for detailed analysis of the proposals, particularly where the parties negotiate bespoke variations from the template arrangements.

The Regulator has supported the introduction of a provision in the Transport Bill to give Railtrack a right of appeal to the Competition Commission in relation to the periodic review. Now that the Government has accepted that recommendation and the Bill has been amended accordingly, the Regulator will need to be well prepared for the possibility of such an appeal.

If Railtrack refuses to agree the necessary licence modifications, these will need to be referred to the Competition Commission for determination.

Why we will do it

These preparations are required so that the conclusions of the periodic review are introduced as smoothly as possible.

When we will do it

Most of the work in this area will be in the second half of the year, although significant preparation will be required at an earlier stage. We expect to publish drafts of the relevant schedules in July 2000.

What we did previously

The 1995 determination was made when the railway industry was still in the public sector. Its implementation was therefore simpler and faster. Implementation of the conclusions of the periodic review is therefore a new area of work for ORR.

Key objective 5

5. Promote a radical change in industry attitudes, in order to make the most of the industry's new regulatory and commercial environment through private sector commercial practices and empowerment of dependent customers.

5.1 Strengthen Railtrack's accountability through modifications to its network licence

What we will do

We will propose modifications to Railtrack's network licence using the procedures set out in sections 12–16 of the Railways Act 1993. The proposed modifications will place obligations on Railtrack in the following areas:

(a) provision to the Regulator of regular and detailed information about the condition of Railtrack's assets together with independent audit of that information; the new arrangements will be modelled on the reporters system used by Office of Water Services (OFWAT) and their experience of this system will inform our detailed proposals;

(b) regulatory accounts and statements of these accounts for each financial year;

(c) ring-fence finance and resources in Railtrack plc;

(d) establish a register of the condition and capability of Railtrack's assets, including property, and populating it with reliable data;

(e) restrictions on the disposal of any Railtrack assets with potential for railway uses;

(f) the way in which Railtrack deals with third parties.

Why we will do it

Railtrack's network licence was granted in March 1994 on the express assumption that the company would remain in the public sector. Railtrack was then privatised in 1996 and no appreciable change was made to its network licence. Two modifications have since been made to the network licence: Condition 7 (stewardship of the network) and Condition 8 (timetabling – the T-12 obligation). With these exceptions, the network licence remains in the form in which it was granted when Railtrack was in the public sector. It is not suitable for a private sector Railtrack whose ties to the Government have been broken. For that reason we intend to strengthen it so as to improve the accountability of Railtrack to the public interest. By making modifications in the areas listed above, Railtrack will have greater clarity, stability and predictability in regulation. It will know far better what is expected of it and so will its customers and those who rely on it. This work also forms part of the development of common practices being taken forward by the regulatory offices' working group.

When we will do it

Draft licence modifications for the areas listed in (a), (b) and (c) above are set out in the April 2000 periodic review document[20]. These will be developed further for the final conclusions in Summer 2000. Proposals for the areas listed in (d), (e) and (f) above will be consulted on during the Spring and Summer 2000. It is our intention to have all these modifications in place on or before 1 April 2001 (the beginning of the next price control period).

What we did previously

Railtrack's network licence was issued by the Secretary of State for Transport on 31 March 1994. In April 1996, a new condition (Condition 19) was added under section 12 of the Railways Act 1993 requiring Railtrack to prepare and maintain a code of arrangements for obtaining access to and developing data systems which are necessary to or expedient for the operation of the network. In September 1997, the Regulator modified Condition 7 of the network licence to introduce a requirement on Railtrack to meet, to the greatest extent

[20] *The Periodic Review of Railtrack's Access Charges: Provisional Conclusions on the Incentive Framework,* Office of the Rail Regulator, London, April 2000

reasonably practicable, the reasonable requirements of train operators and funders in the way in which it maintains, renews and enhances the network. In May 1999, the Regulator modified Condition 8 to require Railtrack to plan its maintenance, renewal and enhancement of the network in time for consequential changes to the national timetable to be not less than 12 weeks prior to the change being implemented.

5.2 Review and possible revision of vehicle and route acceptance arrangements

What we will do

We will continue to work with the HSE, the SSRA and the rest of the railway industry to ensure that short-term improvements to the vehicle and route acceptance processes are implemented and that new trains are permitted to run on the network as soon as reasonably practicable, consistent with the overriding need for safety.

We are reviewing the industry's processes for vehicle and route acceptance. We have received and are considering a complaint from two rolling stock manufacturers about the sufficiency of Railtrack's procedures, and have received Railtrack's response. We will hold a hearing into the merits of the complaint with a view to deciding the matter as quickly as possible. This will be followed by a consultation document asking the operating companies and the industry as a whole to comment on proposed improvements to the contractual framework, the role of Group Standards in non-safety processes and wider procedural improvements.

Why we will do it

There is considerable public and industry disquiet about the length of time it is taking for new trains to gain their acceptance and start productive work on the Railtrack network. Meanwhile, older trains with fewer facilities for passengers (such as space and equipment for people with disabilities) continue to run on the system and to lower safety standards. This is clearly unacceptable. There needs to be a radical review of how the various industry parties manage the acceptance process to ensure that safety requirements for new trains are fully met. There can be no compromise on train safety. However, it is important that

the procedures which are followed to arrive at safety decisions are properly understood and work efficiently.

When we will do it

The work is already in progress. A number of trains have received their safety approvals in recent weeks.

The hearing on the rolling stock manufacturers' complaint was held on 9 May 2000 and the Regulator is considering the outputs from it. A consultation document will be published shortly after the determination of the complaint. Further stages will be developed in the light of responses to that consultation.

What we did previously

The work on the SSRA's working group on rolling stock approvals began on 6 October 1999 and ORR has been represented at its meetings since then. The rolling stock manufacturer's complaint was received on 12 October 1999 and Railtrack's response was received in February 2000. Consideration of the detailed material submitted by the complainants and Railtrack has continued since then, and ORR has now received a legal review on the matter from counsel in preparation for the hearing.

Key objective 6

6. Simplify and streamline the regulatory and commercial matrix and ensure that it is fit for purpose with improved understanding.

6.1 Development of model clauses for track access contracts

What we will do

We will publish model clauses for use by Railtrack and train operators submitting track access agreements for approval. Where appropriate, different model clauses will be established for passenger and freight operators and to cater for differing circumstances. We will also establish model clauses for enhancements to infrastructure.

Schedule 4 (possessions), Schedule 7 (charges) and Schedule 8 (performance regime) to the franchised passenger track access agreements will be revised and, where appropriate, standardised to incorporate the Regulator's periodic review conclusions.

In relation to the Track Access Conditions, Parts B (performance monitoring) and H (operational disruptions) are being reviewed as part of the periodic review. Parts E (environmental) and G (network change) are being revised in conjunction with the model clauses project. Part F will be reviewed in the work on vehicle and route acceptance.

A new edition of the *Criteria for the Approval of Track Access Agreements*[21] guidance document will be published.

We will begin a review of the *Access Dispute Resolution Rules*[22] in light of the railway industry's experience of their use. Revisions are necessary in the light of the Arbitration Act 1996 and further improvements may be required in the light of consultation and the establishment of model clauses.

---

21 *Criteria for the Approval of Passenger Track Access Agreements, 2nd edition*, Office of the Rail Regulator, London, March 1995

Criteria and Procedures for the Approval of Freight Track Access Agreements, Office of the Rail Regulator, London, December 1994

23 *Access Dispute Resolution Rules*, Railtrack PLC, London, April 1995

Why we will do it

It is important that access agreements contain an appropriate division of responsibility for risks and contain clear and appropriate specifications of the rights of the parties and of their remedies if things go wrong. Long-term contracts should be of benefit to both parties. The quality of the current generation of access contracts leaves considerable room for improvement in all of these areas.

Under section 21 of the Railways Act 1993, the Regulator has the power to publish model clauses for access agreements. If he does so, he is entitled to encourage and require their use.

Model clauses for access contracts can and should provide a framework for sound, strong and timely investment by Railtrack and train operators. By doing so, they can facilitate the achievement of the objectives of the franchise replacement programme and the public interest in several ways. They can promote the use and development of the railway; promote efficiency and economy on the parts of railway operators; minimise regulatory burdens; and they can enable infrastructure and train operators to plan their businesses.

When we will do it

Model clauses will be published in the summer. The new edition of *Criteria for the Approval of Passenger Track Access Agreements* will follow shortly after that.

What we did previously

This is the first use of section 21. The Regulator has not previously published model clauses.

6.2 Review of the station access regime

What we will do

We will implement the conclusions of our review of the station access regime. This is likely to involve changes to the Station Access Conditions[23] and the performance and abatement regimes for stations. We will also be developing, in consultation with interested parties, model clauses for station access agreements. We will be implementing the conclusions of the periodic review insofar as it affects the access charges train operators pay to use stations.

Why we will do it

Existing station access arrangements were established at privatisation. They are complex. Some elements have proved complicated to operate in practice, especially the procedure for making changes to station facilities.

We have been reviewing these contractual arrangements to consider how they might be improved or simplified. We engaged Lambert Smith Hampton Transport Consultancy (LSH), working with Hollingworth Bissell and Schofield Rail Ltd, to carry out detailed research in this area and make recommendations. Their report has been received[24] and we are consulting on options for improvements.

Implementation of the conclusions of this review should create stronger incentives on Railtrack and train operators to ensure stations are effectively maintained and facilitate the implementation of enhancements at stations by simplifying and streamlining the station change procedure.

When we will do it

We published our provisional conclusions on station charges and station performance regimes in May 2000. At the same time, we announced how we

---

[23] *National Station Access Conditions 1996 (England and Wales)*, 1996
National Station Access Conditions 1996 (Scotland), 1996

[24] *Performance Regime: Final Report*, Lambert Smith Hampton Transport Consultancy Division, London, March 1999

propose to take forward the results of the LSH report and the development of station access model clauses.

What we did previously

Our resources were focussed on providing guidance and assistance to Railtrack and train operators on the operation of the station access regime and ensuring that the complex requirements of the change procedures were followed. Simplification and clarification of the regime should enable resources to be focussed on key regulatory issues, rather than detailed guidance on the operation of the procedures.

6.3 Evolution of moderation of competition (MoC) policy

What we will do

We will work closely with the SSRA on the development of Stage 3 of the moderation of competition policy in the context of the franchise replacement process and the regime for moderation of competition after the existing arrangements for Stage 2 expire in 2002.

Why we will do it

We will do this to ensure that new services which create significant passenger benefits can be introduced whilst recognising the need to facilitate long term investment.

When we will do it

Individual proposals will be considered over the course of the franchise replacement process on a case by case basis. We are considering timescales for the wider review.

What we did previously

We dealt with individual cases under the MoC Stage 2 arrangements.

6.4 Approval of track access agreements

What we will do

We will consider on their merits applications for the approval of track access agreements and for amendments to them. The process of consideration will be executed in a timely and efficient manner and be discharged in accordance with the Regulator's statutory duties. In the coming year, we expect to receive for approval major upgrade agreements relating to Thameslink 2000, the introduction of new services by CrossCountry Trains Limited and several track access agreements in parallel with the franchise replacement programme. We expect to continue to receive a large number of other supplemental track access agreements for approval. These usually provide for the introduction of new or improved services by train operators.

Why we will do it

Under sections 18 and 22 of the Railways Act 1993, track access agreements and amendments to them are void unless the Regulator has approved them (or the relevant facility has been exempted from those sections of the Act).

When we will do it

Agreements and amendments will be considered in a timely and efficient manner when submitted for approval. This work will continue throughout the year and will take into account changes introduced when the Transport Bill is enacted. The new legislation will introduce a new power for the Regulator to give general approvals of new access agreements.

What we did previously

This is a continuation of current processes. However, as a consequence of the franchise replacement programme we expect to receive an increasing number of more complex upgrade access agreements, with consequent need to increase resources for this task.

6.5 Approval of station access agreements

What we will do

We will consider applications for the approval of station access agreements and amendments to them in a timely and efficient manner. Many amendments will fall under general approvals issued by the Regulator. In those cases, we will continue to provide advice on documentation requirements. We will ensure that such amendments are submitted to the Regulator in a suitable form for placing on the public register, and will review them to ensure that they are consistent with the terms of the general approvals.

Why we will do it

Under sections 18 and 22 of the Railways Act 1993, station access agreements and amendments to them are void unless they have been approved by the Regulator (unless the station concerned has been exempted from those sections of the Act).

When we will do it

This work will continue throughout the year and will take into account changes introduced when the Transport Bill is enacted. The new legislation will introduce a new power for the Regulator to give general approvals of new access agreements.

What we did previously

This is a continuation of current processes.

6.6 Approval of light maintenance depot access agreements

What we will do

We will continue to consider applications for the approval of amendments, novations and replacements of depot access agreements in accordance with the Regulator's statutory duties in a timely and efficient manner. We will continue to consult stakeholders where appropriate.

We will also evaluate the effectiveness of the depot access regime and propose appropriate changes to it. As part of this review, we will be identifying areas where general approvals and general consents are appropriate and consider whether there are cases for exemptions from the access regime.

Why we will do it

The encouragement and facilitation of improvements to the provision of light maintenance services and the efficiency and economy with which they are provided is in the public interest.

When we will do it

This work will continue throughout the year and will take into account changes introduced when the Transport Bill is enacted. The new legislation will introduce a new power for the Regulator to give general approvals of new access agreements.

What we did previously

The same process was followed in the past.

6.7 Monitor and review international policies and developments

What we will do

We will monitor new developments in international rail-related matters including proposals for new EU legislation. This will be through contact with the European Commission, DETR and other parties.

In particular, we will continue to play our part in informing the discussion by the European Parliament and the European Council of the European Commission's Infrastructure Package. We will work with DETR and the SSRA on plans to implement the package if it is approved. We will also consider the implications of European proposals on conventional interoperability, safety and other matters.

We will discuss regulatory matters with other EU member states and other countries with a view to sharing experience and increasing understanding of issues which affect the regulation of the railway industry in Great Britain.

The International Rail Regulator (IRR), who is a separate legal entity funded by holders of international operating licences, will exercise his functions as required. These include the consideration of applications to operate international services as defined in Directive 91/440/EC and the notification and advertising of international access contracts. The IRR will issue further guidance to those considering applying for international licences, for those holding international licences and for those with an interest in international access matters.

Why we will do it

We believe that developments at a European level have increasing importance for the regulation of railways in this country. Recent proposals concern not only the liberalisation of international rail services but domestic operations, including the role of regulatory bodies, licensing, charging, capacity allocation, investment, separation of functions, technical standards and safety. We believe it is important to influence new proposals and take account of existing thinking at a European level in formulating plans for domestic regulation. We also consider it valuable to be aware of other countries' experiences.

There is no discretion in the exercise of the IRR's functions under the Railways Regulations 1998 which implemented Directives 91/440, 95/18, and 95/19/EC. These European Directives[25] concern accounting separation and access rights for certain types of international services, a common European licence and the process of capacity allocation for those services. The International Rail Regulator is the licensing authority and the appeal body for disputes over access for these international services in Great Britain. The functions are generally intended to provide transparency and fairness in the operation of international rail services. We consider that providing guidance on these

[25] *Council directive 91/440/EEC of 29 July 1991 on the development of the community's railways*, O.J. No. L237, August 1991

Council directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings, O.J. No. L143, June 1995

Council directive 95/19/EC of 19 June 1995 on the allocation of infrastructure capacity and the charging of infrastructure fees, O.J. No. L143, June 1995

functions is helpful to the industry and to others with an interest in international railway matters.

When we will do it

Consideration of new proposals is a continuing function. However, discussions on the Infrastructure Package and proposed conventional interoperability Directive are likely to be completed during 2000. There will then be a period of up to two years within which implementation will take place.

The IRR will exercise his functions as required and within the timescales set out in the Railways Regulations 1998. He plans to issue further guidance on licensing and access by Summer 2000.

What we did previously

We have been involved in discussions at European level of the Infrastructure Package and the conventional interoperability Directive. We have also participated in discussions led by DETR on the implementation of the high-speed interoperability Directive.

The IRR has published a general document on his role, together with initial thinking on criteria, guidance and procedures[26] in dealing with international access. He has issued two international licences – to Eurostar (UK) Ltd and to EWS (International) Ltd – and has been notified of a suite of access agreements for Eurostar (UK) Ltd.

6.8 Effective handling of closure decisions

What we will do

We will meet casework performance targets, improve the industry's understanding of the requirements needed to process effectively applications for closure consents, and investigate cases where a closure has taken place without prior consent.

[26] *International Rail Regulator: Initial Thinking on Procedures, Guidance and Criteria*, Office of the International Rail Regulator, London, October 1998

Why we will do it

Sections 37–50 of the Railways Act 1993 require the Regulator to make decisions on proposed closures.

When we will do it

This work will continue until the relevant functions have been transferred to the SRA when the Transport Bill is enacted.

What we did previously

Closures are dealt with on a case by case basis.

Key objective 7

7. Create the right environment and conditions for the retention of expertise and knowledge, thus empowering and enabling the Regulator's staff to work constructively, co-operatively, fairly and consistently with the railway industry and all stakeholders.

7.1 Implement *Modernising Government*

What we will do

ORR is a Non-Ministerial Government Department staffed by civil servants as well as people who joined the civil service from the railway industry and the private sector. The Government is seeking to bring about consistency in the approach of departments to the conduct of their business. ORR will harness the key elements of the *Modernising Government*[27] agenda to establish best practice in all our processes and in our dealings with the industry and government. We will continue to communicate effectively with our stakeholders, present our policy objectives impartially and transparently and continue to listen and provide advice to those who seek it. From this year, we will be consulting on operational plans on a yearly basis.

Why we will do this

This is good practice which should be developed. Consulting on our operational plan this year is an important piece of work where we are seeking the views of those we regulate and those who have an interest in what we do. By setting out our forward work programme for comment, we will be measured on what we achieve under our objectives. We further believe that our policy decisions should be forward-looking and deliver outcomes. We are currently implementing a comprehensive IT strategy which will meet ORR's business needs for the future.

[27] Civil Service Reform, Cabinet Office, London 1999

When we will do this

This work is a continuation from the previous year. We will report on our achievement against our objectives in our Annual Report.

What we did previously

This is a continuation of policy developments in line with the *Modernising Government* agenda. Consulting externally on our operational plan is a new strand of work. We have always strived to provide a high quality service to our stakeholders and the IT strategy, which began last year will help us to develop this further.

7.2 Implement external efficiency review

What we will do

Whilst the annual operational plan will lead to more effective scrutiny and better informed decisions, we will introduce, along with the other statutory utility regulators, an independent assessment of the efficiency with which resources are used by the ORR.

Why we will do it

To provide more openness in the prioritisation of budgets to ensure that the ORR's objectives and work programmes have been set in a way which is fair to both industry and consumers.

When we will do it

The efficiency review will follow on from the publication of the operational plan.

What we did previously

This is a new initiative.

7.3 Continuous improvement to ORR management systems, including the management and development of staff, and financial management

What we will do

Much of the work of ORR's Resources Division is of a continuing nature and responds to the need to support ORR. Budgets have to be established, invoices paid, accounts prepared and audited, staff recruited, paid, developed and housed in safe, secure and well serviced accommodation. In addition to these routine activities, several new developments will be taken forward during the year and these are summarised below. Overarching them is a commitment by the Division's staff to provide a quality service to ORR in line with well-specified service standards.

Why we will do it

In accordance with public policy, the transition from cash to accruals accounting will continue with the objective of achieving full resource based accounting in 2001–2002. Training and advice will be provided to all budget holders and budget liaison officers to impart a working level awareness of resource accounting and budgeting. Work will be done on developing systems for identifying and managing risks. The internal audit programme, which is driven by audit risk assessment methodologies, will facilitate this work.

Regulation is a knowledge business dependent on good quality professional staff who add value and are well valued. To underline our commitment to valuing staff and developing the human resource, ORR is putting in place good systems of staff management and a comprehensive training and development programme.

When we will do it

We will seek to achieve Investors in People ("IiP") accreditation during 2000. This work will be well supported by the full implementation of a programme to address a number of improvement opportunities around giving meaning to office values, management of staff turnover, better meetings management and more effective internal communications.

ORR has signed up to the Civil Service Modernisation agenda[28] and intends to meet the targets centrally set for 2000–2001. These include 360-degree feedback for all Senior Civil Service staff, stretching diversity targets and a better performance management system.

We will review our human resources policies to ensure they meet the needs of ORR and comply with recent legislation. In order to improve access to personnel data, a review will be carried out to establish ORR's requirements for such information and a Human Resources management information system fit for the purposes of ORR will be installed.

Under the provisions of the Transport Bill, some 70 staff supporting the Rail Users' Consultative Committees and working in ORR's consumer protection functions will transfer to the SRA. This process will be well managed in partnership with the SRA in order to achieve a seamless transition.

A main challenge will be to accommodate the increase in staff arising from the increase in regulatory activity. This will be achieved in line with the health and safety standards for office accommodation. ORR will also work towards accreditation within the Government Secure Intranet.

What we did previously

Milestones for implementing resource accounting and budgeting have been achieved as planned including the preparation and audit by the National Audit Office of our shadow resource accounts for 1998-1999.

Some progress was made with IiP and final accreditation is expected during the coming financial year.

Training for all staff has been delivered in effective briefing and communications; effective delegation; meetings management; staff appraisal; identifying training needs; management development around the theme "Achieving results together"; and the Human Rights Act 1998.

The rent renegotiation for the Office was successfully concluded. A programme of cyclical refurbishment has been commenced.

[28] Civil Service Reform, Cabinet Office, London 1999