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OFFICE of  
RAIL REGULATION

Regulatory Reform Bill Team  
Better Regulation Executive  
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London  
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12 October 2005

## **Regulatory Reform Bill - consultation**

1. I am writing in response to the consultation on the Regulatory Reform Bill from ORR's perspective as economic regulator and future safety regulator of the rail industry. For the reasons set out below, we do not consider it appropriate for the Bill to apply to independent economic regulators.

### **Economic regulation**

2. Generally, we support the adoption of common principles for regulators and in particular the five key principles of regulation published by the Better Regulation Task Force. However, the term "regulator" applies to a wide range of bodies, and there is a significant difference between economic regulation and the regulation covered by the Hampton review. Indeed, economic regulators were specifically excluded from the Hampton review, and we would be very concerned about legislation which could in future be applied to economic regulators without full debate in Parliament. This would include application of the enforcement concordat to economic regulators. We would also note that the Better Regulation Task Force has recently reported positively on the steps taken by economic regulators to implement the recommendation of their 2001 report, which demonstrates our willingness to move to adopt best practice, within the existing statutory framework.

3. In ORR's case, Parliament has made some significant recent changes to our duties and functions in the Railways Act 2005, which follows the Rail Review White Paper published by the Government in July 2004. Given the importance of a period of stability in the rail industry, both to deliver improved efficiency and performance and to encourage further private investment, we would be concerned if the Bill gave rise to any impression that Ministers might now be able to change the balance of duties or ORR's functions without a full debate in Parliament. This would not only undermine the independence of economic regulation generally, but introduce uncertainty for ORR, the industry we

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regulate, and the private sector institutions which help fund it. We therefore consider that it should be clear on the face of the Bill that it does not apply to economic regulators.

4. As far as penalties are concerned, we have had an initial meeting with the BRE to discuss our approach, and we will publish a draft enforcement policy and penalties statement shortly. We are happy to participate in discussions aimed at spreading best practice and exchanging experience, but wish to stress that the framework for the levying of penalties by economic regulators is different to that of other regulators who are dependent on the courts determining the suitability and level of penalty. We understand that you do not propose to include economic regulators in the penalties review, and we think that is a sensible approach. However, this should be made clear on the face of the Bill.

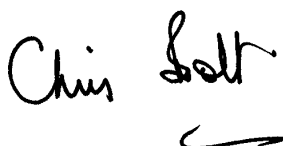
### **Safety regulation**

5. As the future safety regulator for the wider rail industry, ORR recognises that somewhat different issues may arise in respect of safety regulation, given that the Hampton review encompassed health and safety enforcement and that the HSE is a signatory to the enforcement concordat. However, the principle of independence and the need for certainty for the industry we regulate applies equally to our safety regulation role. We would welcome the opportunity to discuss these issues with you further, to ensure that the Bill does not create any uncertainty about delivering the benefits identified in the Rail Review from bringing economic and safety regulation for the railways together, and does not call into question ORR's independence in exercising its combined functions.

6. We would like the opportunity to discuss the impact of the Bill on ORR as you develop the Bill over the next few weeks. We are conscious that there has been prior engagement with some of the economic regulators, but not with ORR (apart from the initial discussion on penalties) despite the particular issues raised by our future status as a combined economic and safety regulator.

7. To avoid raising concerns in the industry at this stage, we would request that this response is treated as confidential.

8. I am copying this letter to Simon Virley, to Justin McCracken at the HSE, and to David Rowlands and Mike Mitchell at the Department for Transport.

A handwritten signature in black ink that reads "Chris Bolt". Below the signature is a small, simple arrow pointing to the right.

**Chris Bolt**