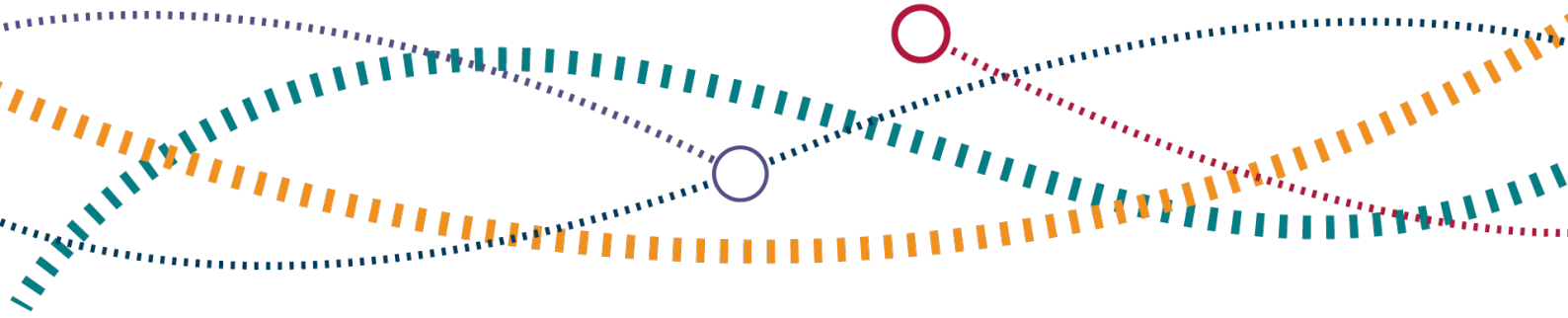
Starting Mainline Rail Operations

05 March 2024

This document is currently being reviewed.



Contents

1. Introduction

1.1 This guide provides summaries of the relationship between the regulatory and contractual requirements that govern the economic, health and safety regulation of the mainline rail network operated and managed in Great Britain by Network Rail (hereinafter "the mainline network"). It is not a complete guide to each topic, but it is a starting point and provides links to more detailed sources of information.

1.2 This guide is aimed at people or organisations that are new to the issues surrounding rail regulation and want to know what steps a prospective train operator will have to take before it starts running services.

1.3 The following areas are dealt with in this guide:

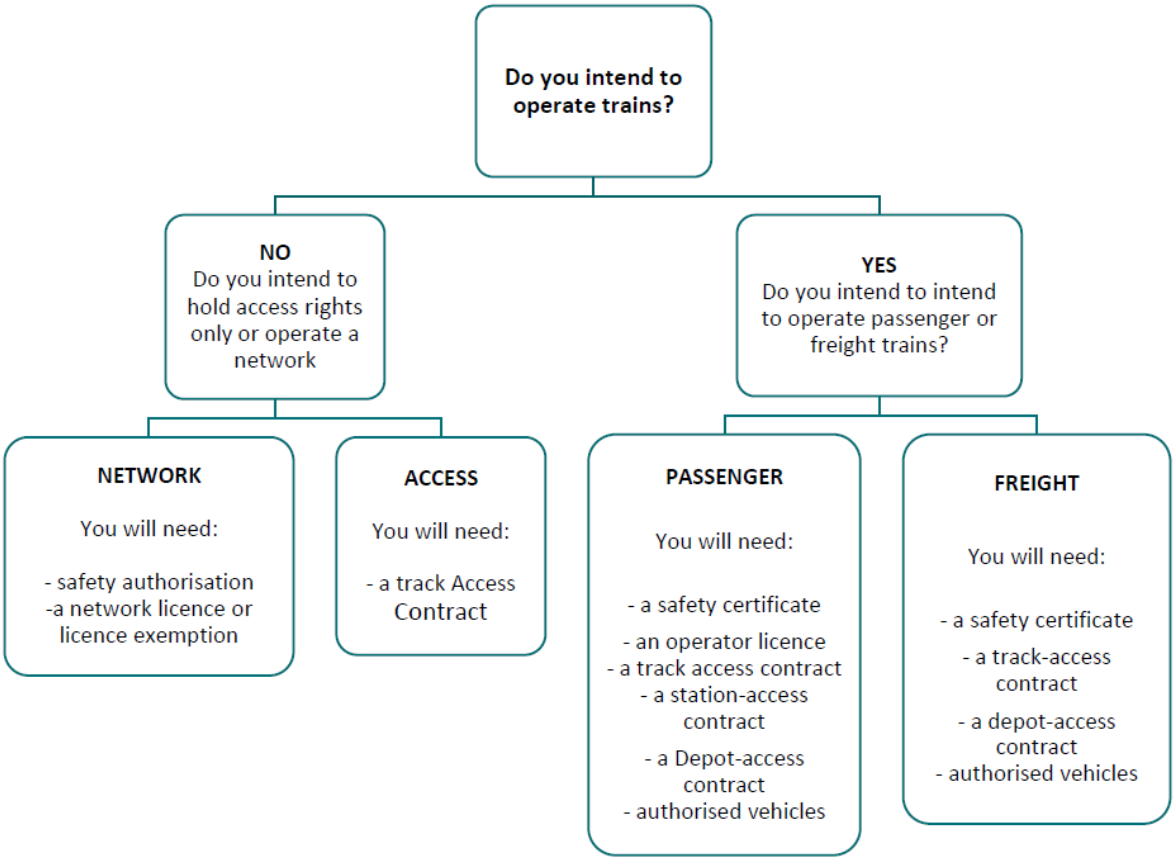
- Licensing railway operators (see chapter 2)
- Health and safety issues (see chapter 3)
- Interoperability (see chapter 4)
- Access to track (see chapter 5)
- Access to light maintenance depots (see chapter 6)
- Access to stations (see chapter 7).

1.4 You can get more detailed information by using the links in this document or by looking at UK rail industry websites. Network Rail's website is also a valuable source of information, particularly Network Rail's Network Statement. There are also parts of the network where the infrastructure manager is not Network Rail and the process to obtain access differs. We are happy to discuss any prospective rail operator's plans for new services.

1.5 You should also make sure you are familiar with general legal requirements. For example, an important area for prospective passenger-train operators are the laws to protect consumers. ORR is the concurrent competition authority for the railway industry alongside the Competition and Markets Authority (more information on the CMA role can be on competition and consumer law can be found on its website).

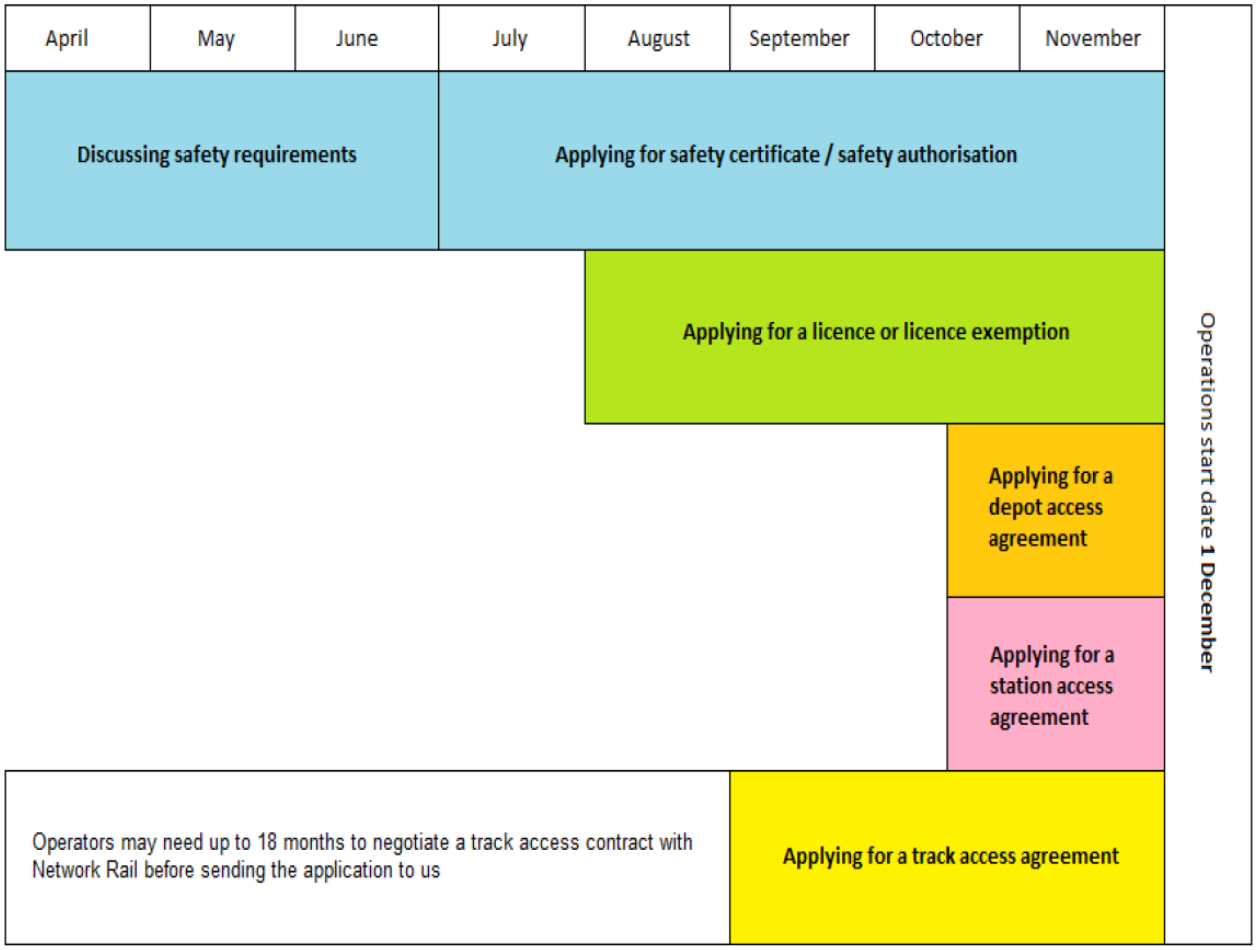
1.6 We recognise the advent of Great British Railways (GBR), which is envisaged to oversee rail transport for the mainline network, introduces questions for any transition. This document will be updated when necessary to reflect any changes.

Diagram of safety, access and licensing needs



Timescales for becoming a train operator

1.7 The diagram below shows the average timescales for processing the various access applications, safety certificates, authorisations and licences. In some instances it may take longer than the timescales shown. The timescales do not cover the time you need to fully develop any applications for safety certificates and licences, to negotiate contracts with Network Rail or other facility owners, to negotiate leases for rolling stock, and to employ train staff. Those wanting to run trains should also consider the timescales involved in negotiating leases for rolling stock and locomotives from the rolling stock companies (known as ROSCOs).



ORR and the Legal Framework

1.8 We were set up in 1993 to provide economic regulation for Great Britain's railways. In 2005 we were given responsibility for safety regulation. Our responsibilities include the following:

- Setting Network Rail's income every five years at an access charges review;
- Regulating the safety procedures for railways, metro systems, tramways and heritage railways;
- Making sure Network Rail keeps to its network licence and changing it if necessary;
- Issuing licences to operators of passenger and freight services, stations, light maintenance depots and mainline network (see chapter 2);

- Approving access granted to, track, light maintenance depots, stations and other facilities (see chapters 5, 6 and 7);
- Making sure the requirements of interoperability are met (see chapter 4); and,
- Making sure that the different markets for railways are working for the benefit of those using railway services and taking action where we find competition rules have been broken.

1.9 All of our decisions about economic regulation are made under our legal duties (known as section 4 duties as they are found in section 4 of The Railways Act 1993) and any policies on economic regulation that we have published. Annex B contains a brief summary of the laws and regulations that define our responsibilities.

1.10 If you want to operate passenger or freight services on the mainline rail network, you must:

- hold an appropriate railway operator's licence (see chapter 2);
- hold a safety certificate/safety authorisation and have the relevant safety management systems in place (see chapter 3);
- have a track access contract with Network Rail (see chapter 5); and,
- have the relevant light maintenance depot or station access agreements, as appropriate (see chapter 6 and chapter 7).

Other bodies with authority in rail markets

1.11 There are other bodies besides us which have responsibilities covering the mainline railway.

Department for Transport (DfT) and the Secretary of State

1.12 DfT, through the authority of the Secretary of State, is responsible for developing the Government's long-term strategy for railways. This involves specifying funding for the rail industry, including the level of passenger services and the overall size and shape of the network in England and much of Wales.

1.13 DfT issues concession-style agreements (public service contracts), after a competitive bidding process, to passenger train operators, directly oversees some operators and is involved in funding parts of the railways in line with government policy. DfT is also responsible for some consumer protection matters, including through ticketing and passenger benefits, providing services for disabled people and procedures for handling complaints.

Transport Scotland

1.14 Transport Scotland is an executive agency of the Scottish Government. It is accountable to Scottish Ministers and is responsible for putting their transport policies into practice. Transport Scotland is responsible for planning, letting, managing and funding the contract for services operating under the existing ScotRail passenger rail franchise and any other franchise that applies only in Scotland. Transport Scotland also pays for work on the Scottish rail network and has the power to provide financial help for providing, improving or developing rail facilities.

Welsh Assembly Government

1.15 Under the Railways Act 2005, the Welsh Assembly Government was given powers to take on more responsibility for passenger services in Wales. Transport for Wales, a wholly owned subsidiary of the Welsh government, is the franchising authority for many passengers services within Wales and also oversees the infrastructure of the Core Valley Lines, including developing upgrade works

Transport for London

1.16 In 2007 Transport for London (TfL) was given authority to award contracts (known as concessions) for operating certain passenger services in London. The London Rail concession currently relates to passenger services on the North, South, East and West London Lines, Gospel Oak to Barking, and Euston to Watford local services. Collectively these routes are branded as ‘London Overground’ and TfL is responsible for planning, letting, managing and funding the contract for these services. As of 2022, TfL is similarly responsible for the Elizabeth Line, known as Crossrail during its construction phase. This railway service operates on parts of the mainline network and partly on a new TfL-managed piece of railway infrastructure.

Passenger transport executives

1.17 Passenger transport executives (PTEs) are regional agencies and put in place transport policy and public transport spending plans in specific regions. PTEs have power to secure passenger rail services in their areas, contracting with the local passenger train operators to provide extra services. PTEs can also provide investment to refurbish and update all aspects of the local transport system such as bus and rail stations, bus stops and light rail systems.

1.18 Outside London there are six PTEs or public bodies funded by local councils. They are Transport for the West Midlands, Merseytravel in the Liverpool City Region, Metro in West Yorkshire, Nexus in Tyne and Wear, Transport for Greater Manchester (TfGM) and South Yorkshire Mayoral Combined Authority.

Network Rail Infrastructure Limited

1.19 Network Rail owns most of the rail network in Great Britain. It is responsible for providing a reliable and efficient railway network to allow train operators to run their services. Network Rail is also responsible for delivering major projects relating to the railway network and working with rail operators to develop the timetable.

2. Licensing

Background

2.1 If you intend to operate a railway asset, under section 6 of The Railways Act 1993 ("the Act"), you must hold a licence or a licence exemption. The operator of a railway asset is the person who manages that asset (for example, the train operating company running a passenger train). Railway asset means any:

- network;
- train used on a network, whether for the purpose of carrying passengers or goods by railway or for any other purpose;
- station; or
- light maintenance depot ("LMD").

2.2 Licences granted under the Act give you the authority to operate railway assets within Great Britain, as long as you meet certain licence conditions.

2.3 Under The Railway (Licensing of Railway Undertakings) Regulations 2005 ("the 2005 Regulations"), most railway operators who provide passenger or freight train services in Great Britain must hold a Railway Undertaking licence together with a corresponding Statement of National Regulatory Provisions (a "SNRP") from us. A SNRP sets out certain responsibilities for operators who provide train services.

2.4 Under The Railway (Licensing of Railway Undertakings) Regulations 2005 ("the 2005 Regulations"), most railway operators who provide passenger or freight train services in Great Britain must hold a Railway Undertaking licence together with a corresponding Statement of National Regulatory Provisions (a "SNRP") from us. A SNRP sets out certain responsibilities for operators who provide train services.

2.5 It is a criminal offence to operate railway assets or to provide train services without proper authorisation.

Our role

2.6 We have the authority to grant licences and licence exemptions under the Act and to grant Railway Undertaking licences and issue SNRPs under the 2005 Regulations.

2.7 Through licensing, we place obligations on operators, such as those relating to providing services to disabled people and having third-party liability insurance. We have the power to investigate instances where licence conditions may have been broken and to take action where appropriate.

Railways Act Licences

2.8 Holding a Railways Act licence allows you to operate the assets specified in that licence in Great Britain. For station and LMD licences, there is normally an attached schedule listing the particular stations and LMDs you are authorised to operate. The licence normally explains how this list can be changed.

2.9 In general, network licences allow the operation of any network that is of a type listed in the licence's schedule.

2.10 Operator licences for passenger and non-passenger trains normally allow you to operate trains anywhere in Great Britain.

Relationship to other parts of the regulatory regime

2.11 If you think that you need a licence, we would expect you to contact us at an early stage to discuss safety requirements. It is normal to carry out these discussions as part of the process of applying for a licence. You should also contact our and Network Rail's track access and station and depot access teams to discuss the procedures for getting train services put into the rail timetable and approving agreements for access to track, stations and LMDs.

Licence exemptions

2.12 A licence exemption allows you to operate railway assets without the need for a Railways Act licence. A licence exemption is normally appropriate if we think that we do not need to make an operator follow standard industry arrangements. We cannot grant an exemption from needing a Railway Undertaking licence.

2.13 Generally, we would expect that mainline operations should be licensed. But as a general rule of thumb, a licence exemption will often be appropriate if you do not need a mainline safety certificate or authorisation under the Railways & Other Guided Transport Systems (Safety) Regulations 2006.

2.14 Operations that will often qualify for a licence exemption are:

- a network (including LMDs and stations) that is separate from the national mainline, such as a heritage railway;
- a minor network connected to the mainline, such as a goods terminal or a freight spur;
- certain LMDs; and
- maintenance and repair trains used in engineering work.

2.15 Detailed guidance on qualifying for licence exemptions is available on our website.

The application process

2.16 We have separate application forms for licences and licence exemptions. The application forms explain the information we usually need to process an application. They also ask for background information so that we have enough information to fully understand the proposed activities and to allow us to make an informed decision.

2.17 You must pay an application fee of £250 for an application for Railways Act or Railway Undertaking licences. There is no fee for licence exemptions.

Consultation

2.18 If we propose to grant a licence or a licence exemption, we publish a notice on our website giving our reasons. We normally allow 28 days for any interested party to comment, but occasionally we allow a longer consultation period.

Final Decision

2.19 Once the consultation period has ended, we will consider any comments we have received and have any necessary discussions with you and any relevant third parties. If we decide to grant the licence or licence exemption, we will normally do so within two weeks, as long as the consultation ends satisfactorily. The process will take longer if the consultation raises significant regulatory or other issues.

2.20 More details about the application process are available on our website.

Timescales

2.21 The timescale for the process of applying for a licence depends on the complexity of the issues involved in your application and any comments we receive during the consultation period.

2.22 When you apply for a licence or licence exemption, you must allow at least 12 weeks for us to grant the licence. Applying for a licence exemption is a straightforward process that takes around 8 to 12 weeks. However, you may find it useful to discuss the application process and your planned operations before you make the formal application.

3. Health and Safety

Background

3.1 The Health and Safety at Work etc. Act 1974 (legislation.gov.uk) (HSWA) and the health and safety regulations made under it provide the framework for regulating health and safety in Great Britain. General laws which have been developed under HSWA (such as the Management of Health and Safety at Work Regulations 1999) apply to the railway but there are also other safety laws which apply specifically to the rail industry.

Our role

3.2 As the independent health and safety regulator for the railway industry, we:

- enforce all health and safety legislation where it applies to the railway industry;
- provide advice and guidance for the industry on relevant laws and how to keep to them;
- assess applications for safety certificates and issue certificates; and,
- inspect railway operators' arrangements for managing safety.

3.3 The Rail Accident Investigation Branch (RAIB) was established in 2005 and is the independent railway accident investigation organisation for the UK. RAIB investigates accidents and incidents on the UK's railways with the aim of improving safety. RAIB is not a prosecuting body and does not apportion blame in its reports. The RAIB's powers, duties, and scope of work are defined by The Railway (Accident Investigation and Reporting) Regulations 2005. A RAIB report will usually contain a number of recommendations. RAIB addresses those recommendations to ORR and it is our duty to see see that they are taken into consideration and acted upon by the most appropriate organisations. You can find further details about the RAIB here.

Railways & Other Guided Transport Systems (Safety) Regulations 2006 (ROGS)

3.4 These regulations introduce EU safety requirements for railway operators and infrastructure managers. Under ROGS, you must not run vehicles or manage infrastructure (such as rail network or stations) unless you have the appropriate safety certificate (for train operators) or safety authorisation (for infrastructure managers, including station operators). You must have a certificate or authorisation for all mainline operations and many non-mainline operations.

3.5 The Regulations require most railway operators to maintain a safety management system (SMS). The SMS is the basis for making sure a transport system runs safely and in line with ROGS. As a train operator or infrastructure manager, you must keep written records of your arrangements for managing safety risks. When applying for a safety certificate, you must provide evidence that your safety management system makes sure the railway can be operated safely.

3.6 ROGS also contains requirements for mainline train operators to:

- introduce new or altered rolling stock (or infrastructure) safely;
- carry out risk assessments;
- send us an annual safety report;
- co-operate with other train operators and infrastructure managers to reduce risks; and,
- make sure their employees who carry out tasks where safety issues arise are suitably competent and fit to do so.

3.7 The legislation has been amended following the UK exit from the EU to ensure that it continues to make sense in the context of the UK being outside of the EU. The majority of the requirements contained within ROGS Office of Rail and Road | Starting Mainline Rail Operations 16 remain in place. ORR has produced an updated unofficial consolidated version of ROGS as guidance. You should still refer to the actual legislation for the authoritative version of the law.

3.8 We have published guidance that explains the requirements of ROGS and how to meet them in full. We strongly recommend that you consult this guidance before applying for a safety certificate or safety authorisation http://www.railreg.gov.uk/upload/pdf/rogs-guidance-may11.pdf

Relationship to other parts of the regulatory regime

3.9 As a train operator or infrastructure manager, you must show that you have procedures in place to safely introduce new or altered vehicles, or infrastructure. It is likely you will need to comply with the RIR regulations 2006 (as amended) as part of the authorisation process (see chapter 4). If these regulations do not apply, but there could be a new or significantly increased risk to safety, the project must go through a safety verification process (described in ROGS) where an independent competent person helps you with the project and makes sure safety is maintained. A project that meets the Interoperability Regulations does not need to go through the safety verification process as well.

3.10 Where a change (operational, organisational, or technical), is being proposed to the railway system, the Commission Implementing Regulation (EU) 402/2013 (as amended) (the Regulation on a common safety method (CSM) for risk evaluation and assessment [or "the CSM RA"]) must be applied. A person making the change (known as 'the proposer') needs to firstly consider if a change has an impact on safety. If there is no impact on safety, the risk management process in the CSM RA need not be applied and the proposer must keep a record of how it arrived at its decision. If the change has an impact on safety, the proposer must decide on whether it is significant or not by using criteria in the CSM RA (see Annex 1 of this guidance). If the change is significant the proposer must apply the risk management process. If the change is not significant, the proposer must keep a record of how it arrived at its decision.

3.11 Further guidance on the use of CSM RA is available at https://www.orr.gov.uk/sites/default/files/om/common-safety-method-guidance.pdf

3.12 Under the Railways (Access to Training Services) Regulations 2006, train operators applying for a safety certificate are also entitled to access to training services for train drivers and staff on the train, if the training is necessary to meet Office of Rail and Road | Starting Mainline Rail Operations 17 the requirements for getting a safety certificate. If these training services are only available from one operator or infrastructure manager, they must make them available to you at a fair price. Once you have obtained a safety certificate, you lose the access rights to training services.

3.13 As well as safety regulations that apply only to the rail industry, general health and safety laws also apply to rail operations in Great Britain. The HSWA and the Management of Health & Safety at Work Regulations 1999 include general duties

to manage safety, assess risks, co-operate with other duty holders, and make sure staff are trained and have the necessary skills, knowledge and experience.

Train Driver Licensing

3.14 The Train Driving Licences and Certificate Regulations 2010 (TDLCR) apply to railway undertakings and infrastructure managers who are required to hold a Office of Rail and Road | Starting Mainline Rail Operations 18 safety certificate or a safety authorisation under the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended) (ROGS). If this is the case, train operators must make sure that the drivers they employ to drive on the mainline railway meet the requirements of TDLCR.

3.15 Under the TDLCR regulation 4(1) & (2), a train operator must not deploy a person to drive a train unless that person holds a valid train driving licence and certificate, which permits the holder to drive the type of rolling stock over the specific infrastructure they are being deployed on.

3.16 The train driving licence is issued to the driver by ORR and is the personal property of the driver until it expires or is suspended or withdrawn. A valid train driving licence remains valid even when the driver changes employer.

3.17 The certificate is issued to the train driver by the employing train operator once the driver has passed the required specific professional knowledge and competence examinations on the rolling stock and infrastructure they are expected to drive on.

3.18 Further information may be found in the links provided below:

- TDLCR Regulations are here
- ORR guidance documents are here
- ORR FAQ's are here

Process of applying for a safety certificate

3.19 The application process for getting a safety certificate is described in more detail in our guidance on ROGS.

3.20 The process is summarised, below:

1. **Decide what type of application you need to make.**

   Does the application need a certificate, an authorisation, or both?

2. **Prepare your application.**

   Gather the necessary information. Involve staff and representatives from this stage on.

3. **Send your application to us and affected parties.**

   We will carry out an initial assessment, wait for comments from affected parties, and we may ask for more information. This process takes 28 days.

4. **We carry out a full assessment.**

   After our initial assessment, which is a check to ensure the application is suitable for a more detailed assessment, we will assess your safety-management system against the requirements of ROGS. We may ask you for more information throughout this assessment. We will also consider comments from affected parties. This assessment can take up to four months.

5. **We make our decision.**

   We will either issue a certificate or authorisation (or a refusal if appropriate). We must give reasons for our decision.

3.21 If we issue a certificate or authorisation, you must tell us about any changes to your operations. If you make a substantial change to your certificate, you will be required to apply for an amended certificate. More dsetails are provided in Chapter 29 of our Safety Certificate and Authorisation Assessment Manual on the ORR website which describes ‘substantial change’ in more detail.

3.22 We have published the assessment criteria we assess mainline safety certificates and safety authorisation applications against. You should consult these criteria when preparing your application. The assessment criteria is available at: Assessment criteria for mainline railway safety certificate and safety authorisation application.

4. Interoperability

Background

4.1 The interoperability regime applies to new, major, upgraded or renewed infrastructure and rolling stock. Applicants have to follow a framework and seek an authorisation from us to place the infrastructure or rolling stock into service.

4.2 4.2 The Railways (Interoperability) Regulations 2011 (as amended) (RIR 2011) came into force on 16 January 2012 and implemented the EC Directive 2008/57/EC on the interoperability of the UK rail system. The purpose was to facilitate compatibility between different national networks across Europe and to open markets in rail infrastructure products by developing a common set of standards.

4.3 RIR 2011 was amended by The Railways (Interoperability) (Amendment) (EU Exit) Regulations 2019 (2019/345), on 31 December 2020. This corrected deficiencies that arose as a result of EU Exit and ensured that a clear and accessible domestic legal framework was established for interoperability. A key feature is the establishment of National Technical Specification Notices (NTSNs), UK standards defining the technical and operational standards that must be met by each subsystem in order to meet the essential requirements. NTSNs have replaced Technical Specifications for Interoperability (TSIs) that defined the essential requirements for interoperability during the period that the UK was a Member State of the EU. Applicants should identify NTSNs that are specific to their process and use the applicable version with correct amendments of the NTSN.

4.4 The regulations are likely to affect anyone who wants to build new lines or change the rail network in the UK, or anyone who wants to place new, renewed or upgraded rolling stock into use in the UK. This could cover infrastructure managers, passenger and freight-train operators, rolling stock leasing companies and manufacturers or suppliers of trains.

Our role

4.5 We are the National Safety Authority (NSA) responsible for enforcing the interoperability regime. Any ‘subsystem’ (that is any structural or functional system constituting the rail system), that is built, upgraded or renewed as a project within the scope of the RIR 2011 (as amended) must receive authorisation from us

before it can be put into service. The person making changes to a subsystem is known as a 'contracting entity'.

Relationship to other parts of the regulatory regime

4.6 Interoperability exists as part of railway safety regulation. The process of getting interoperability authorisation to start using a subsystem confirms that the relevant National Technical Specification Notices (NTSNs) and National Technical Rules (NTRs) have been met and that the points of connection are compatible. Both standards ensure that the essential requirements specified in RIR 2011 (as amended) are met. A process for establishing route compatibility is described in the Railway Group Standard GE/RT8270 Issue 02. Further details can also be found on the website of the Rail Safety and Standards Board (RSSB).

The application process

4.7 Under regulation 4(1), a structural subsystem, as defined in section 1(a) of Schedule 3 of RIR 2011 (as amended) cannot be put into service unless:

- We have given our authorisation under the interoperability regulations to place the structural subsystem into service; or,
- DfT has decided under regulation 13 that you do not need authorisation for upgrading or renewal of the subsystem.

4.8 You need to decide whether the type of project concerned falls within the scope of interoperability regulations, as noted above, and, if it is an upgrade or renewal, whether it is a 'major' project. If you think the project is not a major project, you should consider alternative arrangements such as the CSM on RA and EV. If you decide that the project is major, you need DfT to determine whether the project needs authorisation. For more information, contact DfT.

4.9 If DfT decides that you need authorisation, you need to appoint an Approved Body (or ApBo)) to carry out the assessment and certify conformity against any relevant NTSNss. The ApBo provides independent certification at specific stages in the project lifecycle as to whether a structural subsystem conforms to the required NTSNs. You will also need to appoint a Designated Body (known as a DeBo) to carry out the assessment and certify conformity against any relevant National Technical Rules (NTRs), following which you, as the applicant, receives a Certification of Verification. You as contracting entity are responsible for setting the scope of the ApBo/DeBo assessment. The ApBo/DeBo will prepare the technical

file, the certificate of conformity against any relevant NTSNs or NTRs. You must draw up and seek an authorisation and the verification declaration. We review the technical file to make sure due process has been followed and the subsystem meets the essential requirements of the relevant NTSNs and any NTRs that apply. NTRs are usually Railway Group Standards managed by the RSSB for GB mainline.

4.10 NTRs are usually Railway Group Standards managed by the RSSB for GB mainline.

4.11 If DfT decides that a project does not need to be authorised, it must consult us before confirming this decision.

Timescales

4.12 You need to appoint an ApBo either before you complete the design stage or before the manufacturing stage.

4.13 We strongly recommended that you send us the complete technical file in good time to avoid any delays to getting authorisation. There is no mandatory time limit for us to determine an application for authorisation; however applicants should build 4 months in their project timescales.

4.14 You do not need to have authorisation before you carry out tests needed before bringing the network or rolling stock into service.

5. Track Access

Background

5.1 If you want to operate trains on the mainline network you must have a track access contract with Network Rail. For other owners of railway networks in Great Britain, such as HS1 Ltd, Rail for London (Infrastructure) Ltd, Heathrow Airport Ltd, heritage rail operators and operators of freight terminals, you would also need an access contract with them to operate trains on their networks. However, you can hold rights in a track access contract without operating the trains yourself. This chapter provides an overview of the regulation of track access contracts.

Our role

5.2 Access to track is regulated under The Railways Act 1993 ("The Act") and The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (as amended) and track access contracts have to be approved by us. Regulated track access contracts and any amendments to them are void if we have not approved them. Our role of overseeing access contracts provides protection against unfair contract terms. It also provides protection to third parties who might be affected by the terms of a contract between you and a facility owner.

5.3 The access requirements in the Act do not apply to networks that we or the Secretary of State have granted a specific exemption to. The Railways (Class and Miscellaneous Exemptions) Order 1994 (CMEO) sets out some categories of network that are exempt. Other legislation also either exempts or excludes certain other networks and facilities. If you cannot get fair terms for access to an exempt facility, you can appeal to us to grant you access rights where the Access and Management Regulations) apply.

Open access

5.4 Open access passenger train operators are those who operate services purely on a commercial basis, that is not under a public service contract. These are companies who identify an opportunity to run a service which is not currently being provided, and they need track access rights and train paths in the timetable.

Model track access contracts

5.5 We have developed model contracts that contain standard provisions and give those entering into the contract a clear understanding of how their relationship is governed. Using model contracts reduces costs as fewer resources are needed to negotiate each provision and it ensures consistency. Each model contract sets out aspects of train operation such as each party's rights and obligations relating to charging and the rights to run services.

5.6 The Network Code is a common set of rules that applies to Network Rail and all parties who have entered into a contract for access to the track owned and operated by Network Rail (that is, all holders of access rights). The Network Code forms part of each such contract. Each Infrastructure Manager has a Network Code which applies to its network. The purpose of the Network Code is to:

- regulate change (including changes to the timetable, railway vehicles, the network, the Network Code itself and, under certain circumstances, a train operator's track access rights);
- provide procedures relating to environmental damage;
- produce a system to monitor performance and set out the process for agreeing performance improvements with Network Rail;
- produce procedures to deal with disruption to rail services;
- set out how information should be shared between Network Rail and train operators; and,
- set out the process for how we will handle appeals made under the Network Code.

Types of track access contracts

5.7 There are four model track access contracts – one for scheduled passenger services; one for charter services; one for freight services; and one for freight customers. If you intend to operate scheduled passenger services and you do not have an agreement with the DfT, we would still expect you to use the passenger model contract as a starting point and make any necessary changes. Network Rail will work with you on this.

5.8 Other types of track access contract relate to moving equipment for network maintenance and charter trains. Model contracts have notbeen issued for these. However, we would expect any draft contracts to reflect as far as possible the provisions used in the model track access contracts.

5.9 The duration of access contracts is regulated by the Access and Management Regulations. The default duration period for most access contracts is five years, although we can approve a longer term in some circumstances.

5.10 If you want access to a terminal or port, you need to enter into a 'facility access contract' with the facility owner. A separate guidance module is available on our website.

5.11 The people applying for track access contracts are usually train operators who will exercise the rights contained in the track access contract themselves. However, there are circumstances where others, such as a logistics company or terminal owner, may want to enter into a track access contract but not operate the trains itself. This would be because the applicant will nominate someone else (nominated train operator) to operate trains on its behalf. The nominated train operator must keep to the preconditions which relate to all train operators. For instance, they must have a licence and hold a valid safety certificate before exercising the track access rights and have their own freight operating company customer track access contract with Network Rail.

'Agreed' and 'disputed' track access contracts

5.12 Normally, you and the facility owner would successfully negotiate most track access contracts and any 'supplemental agreements' (agreements which change the original access contract). However, if you cannot agree terms you can apply to us for directions which will require the facility owner to enter into a contract with you. Applications for new contracts under section 18 of the Act, and for amendments to contracts under section 22 of the Act are 'agreed' applications. Applications for new contracts under section 17 and for amendments to contracts under section 22A are 'disputed' applications. Applications under section 22A to amend a contract can only be made if you want to use the network or facility more extensively. You should only appeal under the Access and Management Regulations if sections 17 and 22A of the Act do not apply for access to that network or facility.

Relationship to other parts of the regulatory regime

5.13 Track access contracts are only one part of the set of arrangements for the regulatory regime. If you want a track access contract then you are likely to need to apply for access contracts at other facilities such as stations, light maintenance depots, ports or terminals. Where access requirements in the Act do not apply to other facilities because they are exempt, and you cannot agree fair terms with the owner of the facilities, you can apply to us for access under the Access and Management Regulations. Applying for all of the access contracts at the same time will reduce the time needed for you to meet all of the regulatory requirements before you start actual operations. The model track access contract has a 'condition precedent' provision, which means the contract does not take effect, and you may not operate trains, until you have met the necessary safety requirements. So we would expect you to apply for your licence (or exemption), safety certificate and access contract approval in good time to have the application processes completed before your operations start (see the section on timescales in chapter 1). If you are not going to be running trains yourself you would not need to meet the safety requirements, but your nominated operator would need to meet these requirements.

Application process

5.14 The process for getting us to approve a track access contract is set out in our guidance module Making an Application. In summary, you would first need to negotiate the terms of a track access contract with Network Rail (where it is the facility owner). If you agree terms, Network Rail would then consult with you and those who could be affected by the access rights. It would try to resolve any issues arising from that consultation. You would then apply to us for directions under section 18 of the Act.

5.15 If, after negotiations with Network Rail, you could not get the rights you need or the terms you want, you can apply to us for directions requiring Network Rail to enter into a new track access contract under section 17. Even if you cannot agree terms with Network Rail, you can still ask it to carry out the consultation and then apply direct to ORR and, if no satisfactory consultation has been carried out, we would consult people who might be affected by the new contract, as well as carrying out the consultation we must carry out under the Act.

5.16 If you want to make changes to your access contract, you will need to get our approval under sections 22 or 22A of the Act. The process for getting approval for the different types of amendment is set out in more detail in Making an Application.

Making an application

5.17 Before making an application, you and Network Rail (or, in the case of a section 17 or 22A application, just you) should make sure the application is consistent with our policy as set out in our Guidance modules. We have provided application forms for freight and passenger operators to help you give us the information we need to consider the application.

ORR consideration and decision

5.18 We will consider any application in line with our policy and guidance and taking account of our duties (mostly set out in section 4 of the Act). For applications that raise significant issues, we may hold a hearing or meetings with the train operator, Network Rail or those likely to be affected by the proposed contract.

General Approval

5.19 Sections 18(1)(c) and 22(3) of the Railways Act 1993 enable ORR to give its prior approval for certain types of new access agreements and to certain types of amendment to existing agreements. This prior approval is known as a General Approval and we have issued General Approvals for passenger and freight operations. You may find that your new Track Access Agreement, or an amendment to an existing Track Access Agreement, could be approved in this way.

5.20 We rely on the industry to ensure the documentation it submits for approval to be accurate and within the scope of the General Approval. We reserve the right to audit submissions made under the General Approval.

5.21 Further detail on the criteria and procedures for the approval of Depot Access Agreements can be found here.

Timescales

5.22 The Access and Management Regulations states that ORR must reach a decision within 6 weeks once all relevant information has been received. You should also consider the following.

- We will need enough time to come to an informed decision on each application; and,
- The date you need rights to be approved by so bids can be made for having services included in the working timetable.

5.23 Even minor track access contracts and their amendments can raise significant issues if, for example, network capacity is limited. We also need to allow enough time to understand any concerns raised in response to Network Rail's consultation. In most cases, Network Rail expects to complete its consultation in the six weeks before you send your application to us for approval of the access contract. If significant issues arise in the consultation, this period may be longer.

5.24 If Network Rail has already carried out a satisfactory consultation and we have had time to consider any issues arising from it, we would expect to take:

- 12 weeks to reach and publish our conclusions on an application for a new or significantly amended agreement; and
- six weeks for a simpler application that would have little effect on the rest of the network.

6. Depot Access

Background

6.1 You will need access to light maintenance depots (LMDs), or other facilities where light maintenance services are carried out, for routine maintenance of your trains. To get access to these facilities, you will need an access contract with the facility owner. We regulate these access contracts under the Act. Section 82 of the Act defines “light maintenance services” as services of any of the following descriptions:

- the refuelling, or the cleaning of the exterior, of locomotives or other rolling stock;
- the carrying out to locomotives or other rolling stock of maintenance work of a kind which is normally carried out at regular intervals of twelve months or less to prepare the locomotives or other rolling stock for service.

6.2 Network Rail owns the freehold to most depots in Britain. It generally acts as landlord of the depots used by facility owners. The facility owner is normally, but not necessarily, the operator of the facility. If this is the case, the facility owner needs a licence or licence exemption to operate the facility. If you want access to depots you do not run yourself, you need to enter into an access contract with the relevant facility owner.

Our role

6.3 Access to depots is regulated under the Act, and depot access contracts need to be approved by us. All depot access contracts, and any amendments to them, are void if we have not approved them. The access requirements in the Act do not apply to some depots, either because we have granted a specific exemption or they fall under one of the categories for exempt facilities in CMEO.

6.4 However, you can still gain access to a depot by asking us to grant you access under the Access and Management Regulations. We have published guidance and an application form for this purpose.

6.5 Our role of overseeing access contracts provides protection against unfair contract terms. It also provides protection to third parties who might be affected by the terms of a contract between you and a facility owner.

Depot access contracts

6.6 We have produced two model depot access contracts. These are as follows:

- a standard Depot Access Agreement which covers general access; or
- a non–TOC beneficiary Depot Access Agreement, for use when a third party is procuring depot services on behalf of another party.

6.7 Each depot access contract contains depot access conditions and annexes specific to each depot. The depot access conditions are standard rules which govern the relationship between all those who have access contracts for the depot, covering matters such as the process for agreeing changes to the depot, and the remedies available when things go wrong. It is usually the National Depot Access Conditions that are in the contract, but other access conditions can be agreed if necessary.

6.8 The annexes specific to a depot cover the details relevant to the specific depot (such as a depot plan and a description of the depot's facilities) and include a copy of the depot lease (where relevant). At depots where Network Rail is the landlord, the annexes also include a copy of a standard collateral agreement under which the beneficiary of a depot access contract can enforce Network Rail's obligations under the depot access conditions if the depot facility owner fails to enforce them itself.

6.9 If you and the facility owner can reach agreement on a draft depot access contract, the draft access contract should be sent to us for approval under section 18 of the Act. If you and the facility owner agree amendments to existing contracts, we approve those under section 22 of the Act. You may find that a general approval applies to your application.

6.10 If you cannot agree satisfactory terms with the facility owner, you can ask us to direct the facility owner to enter into a new depot access contract with you, under section 17 of the Act.

6.11 If you have an existing approved depot access agreement and are seeking amendments to this agreement which will permit more extensive use of the facility in question, such as accessing a greater number of depot services, and are unable to agree the amendments with the facility owner, you can ask us to direct the facility owner to make amendments to the agreement under section 22A of the Act. Please note that section 22A cannot be used to extend the duration of a depot access agreement.

Exemptions

6.12 A number of depots do not need to have depot access contracts approved by us before you can enter into them (that is, they are exempt). These exemptions arise mainly through the CMEO. If a facility owner believes that its depot should be exempt from the access regime, they can apply to us for a facility exemption under section 20 of the Act.

Relationship to other parts of the regulatory regime

6.13 You should know that there are separate contracts for getting access to depots. Securing access to track does not also mean you have access to depots. Depot access contracts have a different purpose, and are normally with different facility owners, and so need to be approved separately.

6.14 If you want to operate a depot you will also need to have a licence (see chapter 2).

Application process

6.15 When considering whether or not to approve depot access contracts, we must take account of our duties under section 4 of the Act. We will generally have to make sure the contracts set clear and appropriate obligations, remedies and incentives. We have made available model depot access contracts.

6.16 When we consider applications for specific approval under section 18 or section 22 of the Act, we will pay particular attention to any differences from our model contract, the charges proposed, and any potential effect on third parties.

6.17 Applications under sections 17 and 22A have a separate approval process. This is set out in schedule 4 to the Act. Further guidance on applications under sections 17 and 22A can be found in our Criteria and procedures for the approval of depot access agreements.

The General Approval for depots 2017

6.18 Sections 18(1)(c) and 22(3) of the Railways Act 1993 enable ORR to give its prior approval for new access agreements and to the amendment of existing agreements. This prior approval is known as a General Approval and you may find that your new depot access agreement, or an amendment to an existing depot access agreement, could be approved in this way.

6.19 We rely on the industry to ensure the documentation it submits for approval is accurate and within the scope of the General Approval. We regularly audit submissions made to us under the General Approval.

6.20 Further detail on the General Approval for depots (2017) can be found in our General Approval for depots (2017) guidance.

Timescales

6.21 We will aim to approve applications made under sections 18 or 22 which are not within the scope of a general approval within six weeks of receiving all the information we need. You should expect applications under sections 17 or 22A to take longer to process. Under the Access and Management Regulations, we must make our decision within six weeks of receiving the final piece of information we need.

6.22 Further detail on the criteria and procedures for the approval of Depot Access Agreements can be found in our Criteria and procedures for the approval of depot access agreements document.

6.23 The Stations and Depots team are happy to discuss any depot access queries and can be contacted at StationsandDepots@orr.gov.uk.

7. Station Access

Background

7.1 Network Rail owns the freehold to most of the railway stations in Great Britain. However, it leases most of these to passenger train operators. The party who operates a station, and whose permission is needed for access to the station, is known as the station facility owner. Generally, this is the leaseholder or, if there is no leaseholder, the freeholder.

7.2 The station facility owner is normally (but not necessarily) the operator of the station (that is, the person operating that station at the time). As a station is a railway asset, you must hold a licence or a licence exemption to operate a station (see chapter 2). Network Rail is the station facility owner and operator for a number of major stations.

7.3 If you want access to stations where you are not the station facility owner, you must enter into an access contract with the relevant station facility owner. A station access contract gives you permission for your trains to call at a station and use the specified facilities.

Our role

7.4 Access to stations is regulated under the Act, and station access contracts must be approved by us. All station access contracts, and any amendments to them, are void if we have not approved them.

7.5 The access requirements in the act do not apply to some stations. However, you can still get access to a station by asking us to grant you access under the Access and Management Regulations. We have published guidance and an application form for dealing with appeals made under the regulations.

7.6 Our role in overseeing access contracts provides protection against unfair contract terms being forced on you. It also protects third parties who might be affected by the terms of a contract. By making sure there is fair access to all railway networks we can encourage competition that benefits the users of railway services.

Station access contracts

7.7 We have produced a number of model station access contracts to reflect a variety of access relationships. These are as follows:

- A single station access contract between a station facility owner and the operator of regular scheduled passenger-train services
- A multiple station access contract between a station facility owner and the operator of regular scheduled passenger-train services
- A freight operator station access contract between a station facility owner and a freight company
- A charter station access contract between a station facility owner and the operator of passenger-train services that do not follow a scheduled timetable
- A diversionary station access contract between a station facility owner and a train operator when engineering work prevents access to the stations the operator would otherwise use under its existing station access contract

7.8 We have also produced versions of each of these contracts to be used for the stations managed directly by Network Rail (Independent stations). These model contracts can be found on our template documentation webpage.

7.9 Each station access contract includes relevant station access conditions and annexes specific to each station. The station access conditions are standard rules which govern the relationship between all those who have station access contracts for the station, covering matters such as the process for agreeing changes to the station, and the remedies available when things go wrong. It is usually the National Station Access Conditions (for England and Wales or Scotland) that are in the contract, but other access conditions can be agreed if necessary. At the stations where Network Rail is the station facility owner, the Independent Station Access Conditions apply.

7.10 The annexes specific to a station cover the details relevant to the specific station (such as a station plan and a description of the station's facilities) and include a copy of the station lease (where relevant). At stations where Network Rail is the landlord but not the station facility owner, the annexes also include a copy of a standard collateral agreement under which the beneficiary of a station access contract can enforce Network Rail's obligations under the station access conditions if the station facility owner fails to enforce them itself.

7.11 If you can agree a new draft station access contract with the station facility owner, you should send this to us for consideration for our approval under section 18 of the Act. If you cannot agree a draft contract, you can ask us to give directions that require the facility owner to enter into a station access contract with you under section 17.

7.12 If you and the facility owner agree amendments to an existing station access contract, we approve those under section 22. If you are seeking amendments to an existing station access contract which will permit more extensive use of the facility in question, you can ask us to direct the facility owner to make amendments to the agreement under section 22A of the Act. Please note that section 22A cannot be used to extend the duration of a depot access agreement.

7.13 In the cases of section 18 and section 22 applications, you may find that a general approval applies to your application.

Exemptions

7.14 Both we and the DfT have the power to exempt particular stations from the access requirements of sections 17, 18, 22 and 22A of the Act. If a facility owner believes that this is appropriate, they can apply to us for a facility exemption under section 20 of the Act.

Relationship to other parts of the regulatory regime

7.15 You should know that there are different contracts for getting access to stations. Securing access to track does not also give you access to stations. Station access contracts have a different purpose, and are normally with different facility owners, and so need to be approved separately.

7.16 If you want to operate a station you will also need to have a licence (see chapter 2).

Application process

7.17 When we consider applications to approve station access contracts, we must take account of our duties set out in section 4 of the Act. We will generally have to make sure that the contracts set clear and appropriate obligations, remedies and incentives.

7.18 When we consider applications for specific approval under sections 18 or 22 of the Act, we will pay particular attention to any differences from our model contracts, any charges proposed (for example, for exclusive services), and any potential effect on third parties.

7.19 For section 17 and section 22A applications there is a separate approval process, as set out in Schedule 4 to the Act. Further guidance on applications under sections 17 and 22A can be found in our Criteria and procedures for the approval of station access agreements.

General approval for stations (2017)

7.20 Sections 18(1)(c) and 22(3) of the Railways Act 1993 enable ORR to give its prior approval for new access agreements and to the amendment of existing agreements. This prior approval is known as a General Approval and you may find that your new station access agreement, or an amendment to an existing station access agreement, could be approved in this way.

7.21 We rely on the industry to ensure the documentation it submits for approval to be accurate and within the scope of the General Approval. We regularly audit submissions made to us under the General Approval.

7.22 For further information on the General Approval for stations (2017), please see our General Approval for stations (2017) guidance document.

Timescales

7.23 We will aim to approve applications made under sections 18 or 22 which are not within the scope of a general approval within six weeks of receiving all the information we need. You should expect applications under sections 17 or 22A to take longer to process. Under the Access and Management Regulations, we must make our decision within six weeks of receiving all relevant information we need Further detail on the criteria and procedures for the approval for Station Access Agreements can be found in our Criteria and procedures for the approval of station access agreements document.

7.24 The Stations and Depots team are happy to discuss any station access queries and can be contacted at StationsandDepots@orr.gov.uk.

Annex A Legal framework and duties

Legal framework

A.1 We have been given our authority through a number of Acts of Parliament and other regulations. The most significant of these are set out in this annex.

Railways Act 1993

A.2 We were established under this Act, which contains most of our economic duties. Specifically, this Act contains the legal framework related to licensing, access, the review of access charges and enforcing Network Rail's network licence. Section 4 of this act also contains most of the statutory duties which shape our decision making.

Railways and Transport Safety Act 2003

A.3 This act abolished the post of Rail Regulator and established our board structure to bring it into line with other regulated public services.

Railways Act 2005

A.4 This act transferred railway safety roles from the Health and Safety Executive (HSE) and Health and Safety Commission (HSC) to us. This safety function is in addition to our duty to take safety issues into account when exercising our general duties. The act also transferred certain consumer-protection roles to us from the former Strategic Rail Authority.

Access and Management regulations 2016

A.5 The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (as amended) apply alongside the Railways Act 1993 (the Act). Where the Act applies, service providers should follow the established ORR procedures, such as for contesting access to a rail facility under section 17 of the Act. The 2016 Regulations describe entitlements and obligations in respect of access and governance for railway undertakings (as well as service providers and infrastructure managers).

Health and Safety at Work etc Act 1974 (HSWA)

A.6 This act, and the health and safety regulations made under it, provides the framework for the regulation of work-related health and safety in Great Britain. The Railways Act 2005 made us responsible for developing health and safety policies for the railways.

Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (EARR 2006)

A.7 These regulations make us responsible for enforcing the provisions of HSWA on the railways. Under these regulations, we have authority to serve enforcement notices and prosecute those who break health and safety law affecting the railways.

Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS)

A.8 These regulations introduce certain EU safety requirements for rail operators and network managers into UK law. Under these regulations, rail operators must maintain a safety management system and hold a safety certificate or authorisation, to show that we have accepted their safety management system, before they are allowed to operate. The regulations also cover the safe design of new vehicles and network, and place controls on work where there is a significant risk to safety.

The Railways (Interoperability) (Amendment) (EU Exit) Regulations 2019 (RIR 2019)

A.9 These regulations amend the RIR 2011 which had governed rail interoperability deriving from EU directives Under these regulations, we are responsible for enforcing NTSNs.

Competition Act 1998

A.10 This act makes any agreement, business practice or action which has a damaging effect on competition in the United Kingdom, including abusing a dominant position, illegal. The CMA is the main competition regulator for the UK. However, if an agreement or conduct relates to the railways, we can take action under the Act.

More information on the Competition Act is given in 'Competition Act Guideline: Application to Services Relating to Railways'.

Enterprise Act 2002

A.11 This Act gives us the power to refer a railway market to the CMA if we think that there are signs that the market is not running effectively. The CMA will then carry out a Market Investigation. If it finds any damaging effects on completion it will order or propose remedies which it considers to be reasonably possible. 'ORR's Approach to Reviewing Markets' provides more information on our monitoring responsibilities under the Enterprise Act and other railways specific legislation.

Annex B Statutory duties

Section 4 of the Railways Act 1993

B.1 Section 4 of the Railways Act 1993 (as amended by other acts) sets out a number of general duties that we have to consider when we exercise our economic duties under the act. These duties are the basis of all of our decisions, making sure the railway is regulated in line with the public interest and the taxpayer gets value for money. These duties do not apply when we are acting under the Competition Act unless they cover matters which the CMA could take into account when it acts as a competition authority. The section 4 duties do apply to us using our discretion when we decide whether to refer markets to the CMA under the Enterprise Act.

Safety regulation

B.2 Our duties under section 4 of the act were altered by the Railways Act 2005 to take account of our new rail safety duties. We will continue to make it a requirement to consider safety alongside our other section 4 duties.

B.3 The Railways Act 2005 transferred safety duties under the Health and Safety at Work etc Act 1974 to us where they relate to railways. This duty is in addition to our section 4 duty to take safety issues into account when exercising our general duties. Our section 4 duties do not apply to exercising any safety duty transferred to us under the Railways Act 2005.

Other statutory duties

B.4 We also have an overriding duty, under section 21(1) of the Channel Tunnel Rail Link Act 1996, to make sure that our decisions would not affect the performance of any development agreement.

Our consultation and decisions

B.5 Where possible, any policies we develop go through a consultation process so we can be certain that they are well-informed and based on evidence. To do this we involve a full range of interested parties. Depending on the issue, this may include representatives of rail users and employees, Network Rail and other facility owners, train operators and franchisees, industry suppliers, providers of private finance and public-sector funders.

B.6 As economic regulator of the railways, we make a number of decisions which will affect facility owners and train operators. When making these decisions we always make sure they are consistent with our statutory duties under section 4 of the Act. We will also make these decisions in line with any published policies that we have. Before making a decision, we expect to have detailed discussions with all interested parties.

This publication is available at orr.gov.uk

Any enquiries regarding this publication should be sent to us at orr.gov.uk/contact-us