

Statement of National Regulatory Provisions (SNRP): Freight

granted to

English Welsh & Scottish Railway International Limited

Last modified 29 January 2013 to take account of condition 28: Rail Delivery Group.

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Note: Conditions 3-7 and 13-27 are not used in this SNRP.

Part I - Scope

- 1. The Office of Rail Regulation ("ORR"), in exercise of the powers conferred by regulation 10 of the Railway (Licensing of Railway Undertakings) Regulations 2005 ("the Regulations"), hereby grants to English Welsh & Scottish Railway International Limited, company registration number 03232475, ("the SNRP holder") an SNRP including the Conditions set out in Part III.

- 2. This SNRP shall come into force at the same time as the Regulations and shall continue in force unless and until revoked in accordance with Part IV.

Signed by authority of the
Office of Rail Regulation



Part II - Interpretation

1. In this SNRP:

“comply” is to be interpreted in accordance with ORR’s most recently published licensing guidance.

"control" (a) A person is taken to have control of the SNRP holder if he exercises, or is able to exercise or is entitled to acquire, direct or indirect control over the SNRP holder’s affairs, and in particular if he possesses or is entitled to acquire:

(i) 30% or more of any share capital or issued share capital of the SNRP holder or of the voting power in the SNRP holder; or

(ii) such part of any issued share capital of the SNRP holder as would, if the whole of the income of the SNRP holder were in fact distributed among the participators (without regard to any rights which he or any other person has as a loan creditor), entitle him to receive 30% or more of the amount so distributed; or

(iii) such rights as would, in the event of the winding-up of the SNRP holder or in any other circumstances, entitle him to receive 30% or more of the assets of the SNRP holder which would then be available for distribution among the participators.

(b) Subsections (4) to (6) of section 416 of the Income and Corporation Taxes Act 1988, and the legislative provisions referred to in those subsections, apply to the interpretation of paragraph (a) in the same way that they apply to the interpretation of subsection (2) of section 416 of that Act.

"licensed activities" means things authorised to be done by the SNRP holder in its capacity as operator of trains pursuant to its European licence.

"RSSB" means Rail Safety and Standards Board Limited (a company limited by guarantee and registered in England and Wales under number 04655675), and its successors and assigns.

2. Any reference in this SNRP to a numbered paragraph is a reference to the paragraph bearing that number in the Condition in which the reference occurs.
3. In interpreting this SNRP, headings shall be disregarded.
4. Where in this SNRP the SNRP holder is required to comply with any obligation within a specified time limit, that obligation shall be deemed to continue after that time limit if the SNRP holder fails to comply with that obligation within that time limit.
5. Where in this SNRP there is a provision for ORR or the Secretary of State to give consent, such consent may be given subject to conditions.
6. The Interpretation Act 1978 shall apply to this SNRP as if it were an Act.
7. The provisions of section 149 of the Railways Act 1993 (as amended) ("the Act") shall apply for the purposes of the service of any document pursuant to this SNRP.
8. Unless the context otherwise requires, terms and expressions defined in the Act, the Railways Act 2005, or the Regulations shall have the same meanings in this SNRP.

Part III - Conditions

Condition 1: Insurance Against Third Party Liability

1. The SNRP holder shall, in respect of licensed activities, maintain insurance (including self-insurance) against third party liabilities on terms approved by ORR (including, but without limitation, with respect to the type, cover and level of insurance and identity of insurer), with any such modification as may be required pursuant to paragraph 3.
2. The SNRP holder shall, except where ORR may otherwise consent, ensure that every insurance policy maintained pursuant to paragraph 1 shall require 30 days' notice to be given to ORR by the insurer or insurance broker of any lapse or cancellation of or material change to the policy.
3. Where ORR notifies the SNRP holder that ORR reasonably requires any modification of the insurance approved by ORR pursuant to paragraph 1, the SNRP holder shall, no later than 60 days (or such longer period as ORR may approve) from the date of the notice, procure that such modification is made.
4. In this Condition:

"self-insurance" means the SNRP holder's financial capacity to meet any liability to a third party in respect of which the SNRP holder does not otherwise have insurance.

Condition 2: Claims Allocation and Handling

1. The SNRP holder shall, except in so far as ORR may otherwise consent, at all times be a party to and comply with such agreements or arrangements (as amended from time to time) relating to:
 - (a) the handling of claims against operators of railway assets; and
 - (b) the allocation of liabilities among operators of railway assetsas may have been approved by ORR.

2. Except with the consent of ORR, the SNRP holder shall not, in relation to any of the agreements or arrangements described in paragraph 1 (the "relevant claims handling arrangements"), enter into any agreement or arrangement with any other party to the relevant claims handling arrangements:
 - (a) under which the SNRP holder agrees not to exercise any rights which it may have under any of the relevant claims handling arrangements; or
 - (b) varying the relevant claims handling arrangementsother than as provided for under the terms of the relevant claims handling arrangements.

Condition 8: RSSB Membership

1. If the SNRP holder's annual turnover has never exceeded £1 million and the SNRP holder is not a franchise operator, paragraph 2 shall not have effect until the SNRP holder's annual turnover exceeds £1 million for the first time. The SNRP holder shall provide ORR with such information in respect of its annual turnover as ORR may from time to time require.
2. With effect from the date of the coming into force of this SNRP, the SNRP holder shall:
 - (a) become and thereafter remain a member of RSSB;
 - (b) comply with its obligations under the Constitution Agreement and the articles of association of RSSB;
 - (c) exercise its rights under the Constitution Agreement and the articles of association of RSSB so as to ensure that RSSB shall act in accordance with the Constitution Agreement; and
 - (d) comply with the Railway Group Standards Code prepared by RSSB.
3. When an SNRP holder first becomes subject to the obligations in paragraph 2 his rights, obligations and liabilities associated with such membership shall commence on the same day, and the SNRP holder shall complete the formal and legal documentation associated with such membership within three months of that date.
4. In this condition:

"franchise operator"	includes an operator of last resort, under section 30 of the Act.
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Condition 9: Railway Group Standards

1. The SNRP holder shall comply with the Railway Group Standards applicable to its licensed activities.
2. In this Condition:

"Railway Group Standards" means standards authorised pursuant to the Railway Group Standards Code prepared by RSSB.

Condition 10: Environmental Matters

1. The SNRP holder shall establish a written policy designed to protect the environment from the effect of licensed activities, together with operational objectives and management arrangements (together "the environmental arrangements").
2. The environmental arrangements shall:
 - (a) take due account of any relevant guidance issued by ORR;
 - (b) be effective within six months beginning with the day on which this SNRP comes into force; and
 - (c) be reviewed by the SNRP holder periodically, and otherwise as appropriate.
3. Nothing contained in paragraph 1 shall oblige the SNRP holder to undertake any action that entails excessive cost taking into account all the circumstances, including the nature and scale of operations of the type carried out by the SNRP holder.
4. The SNRP holder shall, upon establishment and any material modification of the environmental arrangements, promptly send ORR a current copy of the policy together with a summary of the operational objectives and management arrangements.
5. The SNRP holder shall act with regard to the policy and operational objectives and use its reasonable endeavours to operate the management arrangements effectively.

Condition 11: Payment of Fees

1. In respect of the year beginning on 1 April 2005 and in each subsequent year, the SNRP holder shall render to ORR a payment which is the aggregate of the following amounts:
 - (a) the annual fee applicable to this SNRP, as determined by ORR; and
 - (b) an amount which shall represent a fair proportion as determined by ORR of the amount estimated by ORR (in consultation with the Competition Commission) as having been incurred in the calendar year immediately preceding the 1 April in question by the Competition Commission in connection with references made to it under section 13 of the Act with respect to this SNRP or any class of SNRP of which ORR determines that this SNRP forms part,
2. The payment shall be rendered by the SNRP holder within such time as ORR may require, being not less than 30 days beginning with the day on which ORR gives notice to the SNRP holder of its amount.

Condition 12: Change of Control

1. The SNRP holder shall, if any person obtains control of the SNRP holder, notify ORR as soon as practicable thereafter.

Condition 28: Rail Delivery Group

1. The SNRP holder shall:
 - (a) become and thereafter remain a Licensed Member of RDG;
 - (b) comply with its obligations under the RDG Articles; and
 - (c) procure that any member of its Group that is entitled under the RDG Articles to become a Member of RDG:
 - (i) becomes and thereafter remains a Member of RDG; and
 - (ii) complies with its obligations under the RDG Articles.

2. In this condition:

“Group” has the meaning ascribed to it in the RDG Articles;

“Licensed Member” has the meaning ascribed to it in the RDG Articles;

“Member” has the meaning ascribed to it in the RDG Articles;

“RDG” means the Rail Delivery Group (a company limited by guarantee and registered in England and Wales under number 08176197); and

“RDG Articles” means the articles of association of RDG.

Part IV - Revocation

1. ORR may (after having consulted the appropriate franchising authority where the SNRP holder is a franchise operator) revoke this SNRP at any time if agreed in writing by the SNRP holder.
 - (a) ORR may (after having consulted the appropriate franchising authority where the SNRP holder is a franchise operator) revoke this SNRP by not less than three months notice to the SNRP holder: if a final order has been made, or a provisional order has been confirmed under section 55 of the Act, in respect of any contravention or apprehended contravention by the SNRP holder of any Condition, and the SNRP holder does not comply with the order within a period of three months beginning with the day on which ORR gives notice to the SNRP holder stating that this SNRP will be revoked pursuant to this term if the SNRP holder does not so comply; provided that ORR shall not give any such notice before the expiration of the period within which an application could be made under section 57 of the Act in relation to the order in question or before any proceedings relating to any such application are finally determined;
 - (b) if the SNRP holder has not commenced carrying on licensed activities within six months beginning with the day on which this SNRP comes into force or if the SNRP holder ceases to carry on licensed activities for a continuous period of at least six months;
 - (c) if the SNRP holder is convicted of an offence under section 146 of the Act or regulation 15 of the Regulations in making its application for this SNRP; or
 - (d) if a person obtains control of the SNRP holder and:
 - (i) ORR has not approved such obtaining of control;
 - (ii) within one month of that obtaining of control coming to the notice of ORR, ORR serves notice on the SNRP holder stating that

ORR proposes to revoke this SNRP in pursuance of this paragraph unless the person who has obtained control of the SNRP holder ceases to have control of the SNRP holder within the period of three months beginning with the day of service of the notice; and

- (iii) that cessation of control does not take place within that period.