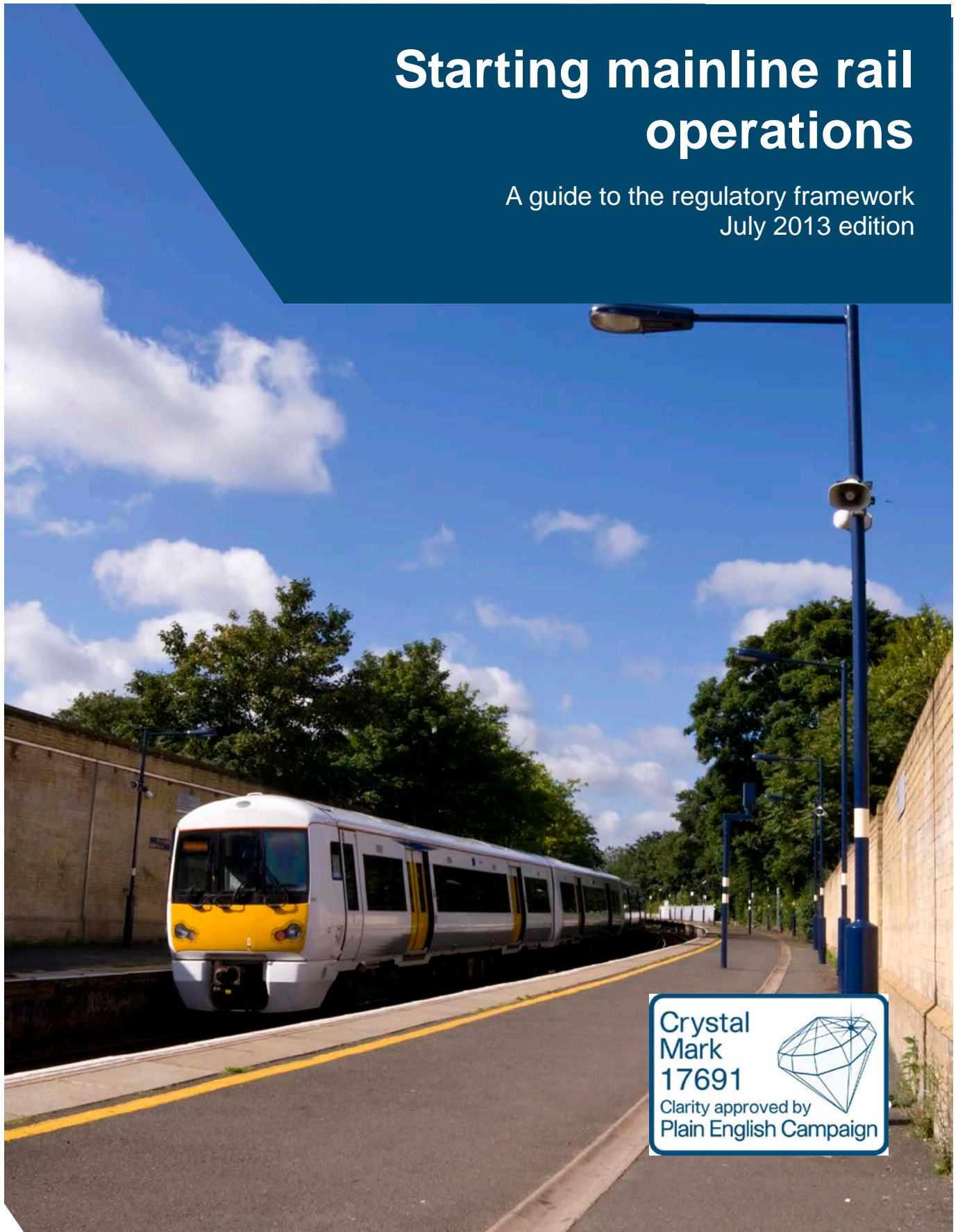




OFFICE OF RAIL REGULATION

Starting mainline rail operations

A guide to the regulatory framework
July 2013 edition



Crystal
Mark
17691



Clarity approved by
Plain English Campaign

Contents

1. Introduction	4
Timescales for becoming a train operator	4
ORR and the legal framework	5
Other bodies with authority in rail markets	6
2. Licensing	8
Background	8
Our role	8
European licences	8
Railways Act licences	9
The application process	10
Timescales	10
3. Health and safety	11
Background	11
Our role	11
Railways & Other Guided Transport Systems (Safety) Regulations 2006 (ROGS)	11
Relationship to other parts of the regulatory regime	12
Process of applying for a safety certificate	12
4. Interoperability	14
Background	14
Our role	14
Relationship to other parts of the regulatory regime	14
The application process	15
Timescales	16
5. Track Access	17
Background	17
Our role	17
Relationship to other parts of the regulatory regime	19
Application process	19
General approval (track access)	20
Timescales	20
6. Depot access	22
Background	22
Our role	22
Relationship to other parts of the regulatory regime	23

Application process	23
General approval (depot access)	23
Timescales	23
7. Station access	24
Background	24
Our role	24
Relationship to other parts of the regulatory regime	25
Application process	25
General approval (station access)	26
Timescales	26
Annex A: Diagram of safety, access and licensing needs	27
Annex B: Legal framework and duties	28
Legal framework	28
Statutory duties	30

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 in Great Britain. 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.

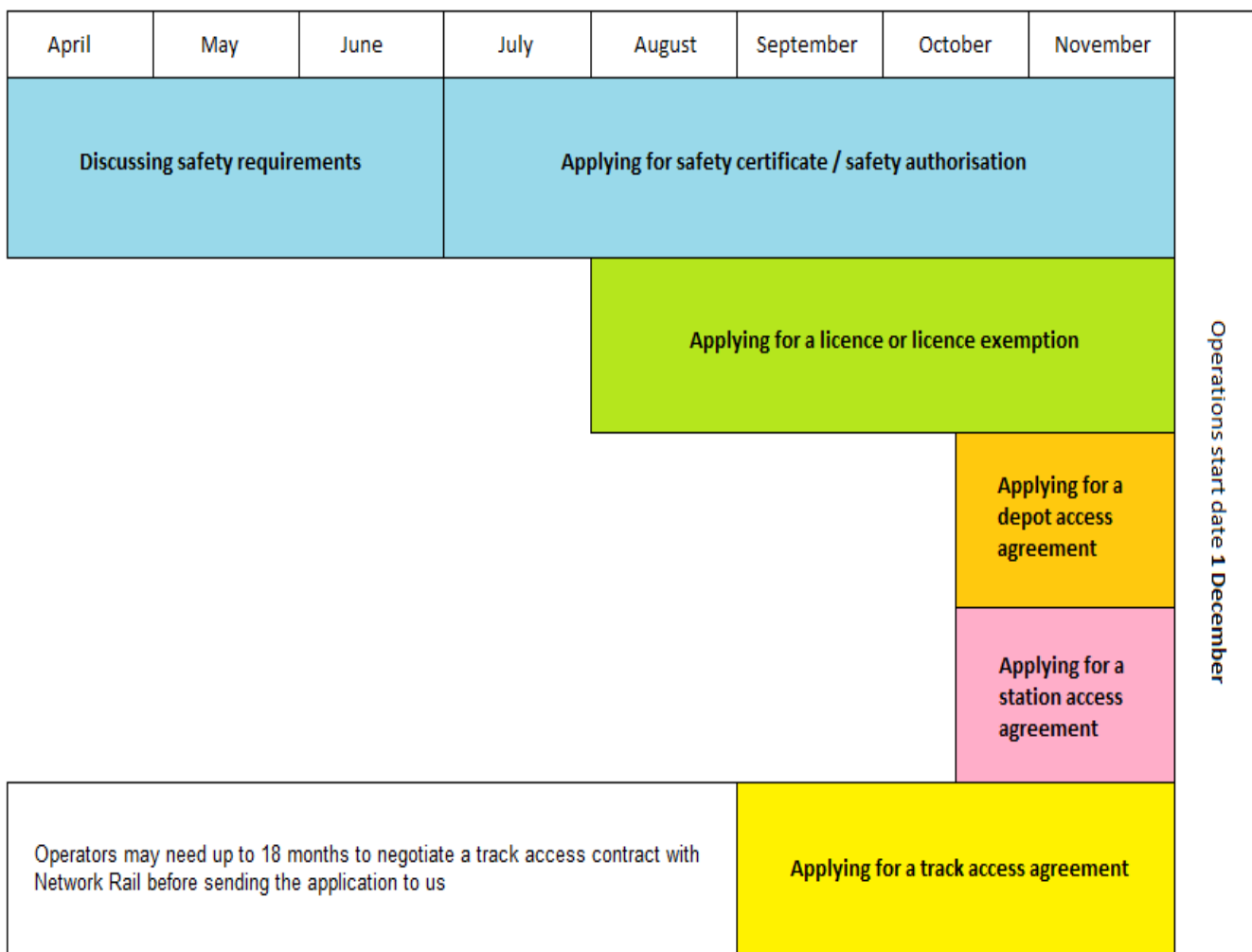
- Licensing railway operators (see chapter 2)
- Health and safety issues (see chapter 3)
- Interoperability (see chapter 4)
- Access to track (see chapter 5)
- Access to light maintenance depots (see chapter 6)
- Access to stations (see chapter 7)

1.4 This guide cannot cover all aspects of our economic and safety regulation. 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](#). 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. One area for prospective passenger-train operators to get familiar with is laws to protect consumers. There is more information on consumer law on the Office of Fair Trading's [website](#).

Timescales for becoming a train operator

1.6 The diagram below shows the average timescales for processing the various access applications, safety certificates 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.



ORR and the legal framework

1.7 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 stations, track, light maintenance depots and other facilities (see chapters 6 and 7)
- Making sure the requirements of interoperability are met (see chapter 4)
- 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

1.8 All of our decisions about economic regulation are made under our legal duties (known as [section 4 duties](#) as they are set out 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.

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

- hold an appropriate railway operator's licence (see [chapter 2](#));
- hold a safety certificate or 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 station or light maintenance access agreements where appropriate (see [chapter 6](#) and [chapter 7](#)).

Other bodies with authority in rail markets

1.10 There are other bodies besides us, which are involved in railway regulation.

Department for Transport (DfT) and the Secretary of State

1.11 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 Wales.

1.12 DfT issues franchise agreements, after a competitive bidding process, to passenger train 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

1.13 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

1.14 Under the Railways Act 2005, the Welsh Assembly Government was given powers to take on more responsibility for passenger services in Wales.

Transport for London

1.15 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, East and West London Lines, Gospel Oak to Barking, and Euston to Watford local services. From late 2012, the concession will also cover the South London Line. TfL is responsible for planning, letting, managing and funding the contract for these services.

Passenger transport executives

1.16 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.

1.17 Outside London there are six PTEs funded by local councils. They are Centro in the West Midlands, Merseytravel in Merseyside, Metro in West Yorkshire, Nexus in Tyne and Wear, Transport for Greater Manchester, and Travel South Yorkshire in South Yorkshire.

Network Rail Infrastructure Limited

1.18 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 developing '[route utilisation strategies](#)', which aim to make sure the railways are used and developed efficiently, consistent with available funding. 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 In 2005, the Railway (Licensing of Railway Undertakings) Regulations 2005 (the [2005 Regulations](#)) came into force in Great Britain. Under the Regulations most railway operators who provide passenger- or freight-train services must hold a European licence. A European licence gives the holder authority to operate passenger- or freight-train services across the European Economic Area (EEA). In Britain, an operator who holds a European licence also needs a Statement of National Regulatory Provisions (SNRP) from us. A SNRP sets out certain responsibilities for operators who provide train services.

2.4 The requirement to hold a European licence does not apply to all railway services – there are certain exclusions set out in regulation 4 of the 2005 Regulations. Those undertakings that do not need a European licence to provide a train service will usually still need a Railways Act licence or licence exemption.

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 European licences and issue SNRPs under the 2005 Regulations. We recognise European licences issued by other EEA states although the licence holder will also need an SNRP from us.

2.7 Conditions in each licence 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.

European licences

2.8 European licences do not usually contain conditions. They generally have the following three parts.

-
- Part I (Scope) sets out the type of assets that the licence holder is authorised to operate, and the purposes which they may be operated for. There are two main categories of European licence – one for passenger trains and one for freight trains.
 - Part II (Interpretation) defines the main terms used in the European licence.
 - Part III (Revocation) sets out the main circumstances that could lead to operators losing their European licence.

2.9 However, each EEA state may set conditions for operating under a European licence within their jurisdiction. To operate in Britain, European licence holders must also hold an SNRP from us. The SNRP lists the conditions the operator must meet.

2.10 We publish model SNRPs on our website. We may include more or fewer conditions than the model SNRPs if we consider it appropriate.

Railways Act licences

2.11 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.

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

2.13 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

2.14 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

2.15 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 European licence.

2.16 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](#).

2.17 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.

2.18 Detailed guidance on qualifying for licence exemptions is available on our [website](#).

The application process

2.19 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.

2.20 You must pay a fee of £250 for an application for Railways Act or European licences. There is no fee for licence exemptions or applications for an SNRP only.

Consultation

2.21 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

2.22 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.

2.23 More details about the application process are available on our [website](#).

Timescales

2.24 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.

2.25 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](#) (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 [Rail Accident Investigation Branch \(RAIB\)](#) was established in 2005 and is the independent railway accident investigation organisation for the UK. It investigates railway accidents and incidents on the UK's railways to improve safety, not to establish blame. The RAIB's powers, duties, and scope of work are defined by [The Railway \(Accident Investigation and Reporting\) Regulations 2005](#). RAIB makes recommendations to us because we have the role of 'National Safety Authority'. We consider the recommendations and where appropriate pass them on to dutyholders who must take them into consideration and, where appropriate, act on them. You can find further details about the RAIB on the website on our [website](#).

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

3.4 [These regulations](#) introduced EU safety requirements for railway operators and infrastructure managers. They were amended by the [Railways and Other Guided Transport Systems \(Safety\) \(Amendment\) Regulations 2011](#) and the [Railways and Other Guided Transport Systems \(Miscellaneous Amendments\) Regulations 2013](#). 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). ROGS replaced the safety requirements of the Railways (Safety Case) Regulations 2000. You must have a certificate or authorisation for all mainline operations and many non-mainline operations.

The regulations which amended ROGS introduced the concept of an 'entity in charge of maintenance' (ECM). An ECM is a person or organisation that is responsible for the safe maintenance of a vehicle. You can only place a vehicle in service or operate it on the network if:

- the vehicle has an ECM assigned to it;

-
- that person or organisation is registered as the ECM in the National Vehicle Register; and
 - for freight wagons, the ECM has an ECM certificate.

3.5 The **safety management system** 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:

- 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 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, which is available on our [website](#).

Relationship to other parts of the regulatory regime

3.8 As a train operator or infrastructure manager, you must apply the [common safety method for risk evaluation and assessment](#) when you make significant changes that affect safety. Many projects that introduce new vehicles or infrastructure to the mainline railway must also take account of the [Railways \(Interoperability\) Regulations 2011](#) (RIR) (see chapter 4).

3.9 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 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 a safety certificate, you lose the access to training services.

3.10 Under the [Train Driving Licences and Certificates Regulations 2010 \(as amended\)](#), new drivers who cross borders will need to hold a train driver licence and complementary certificate. This will apply to new domestic drivers from 29 October 2013 and all existing drivers from 29 October 2018. More details on the requirements for applying for licences, and the need for assessors of train drivers to be recognised by us under the regulations, are in our [guidance](#).

3.11 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.

Process of applying for a safety certificate

3.12 The application process for getting a safety certificate is described in more detail in our [guidance on ROGS](#).

3.13 The diagram below provides a brief summary.

<p>1 Decide what type of application you need to make.</p> <p>Does the application need a certificate, an authorisation, or both?</p>
<p>2 Prepare your application.</p> <p>Gather the necessary information. Involve staff and representatives from this stage on.</p>
<p>3 Send your application to us and affected parties.</p> <p>We will carry out an initial assessment, wait for comments from affected parties, and we may ask for more information.</p> <p>This process takes 28 days.</p>
<p>4 We carry out a full assessment.</p> <p>After our initial assessment, which is a check to make sure 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.</p> <p>This assessment can take up to four months.</p>
<p>5 We make our decision.</p> <p>We will issue a certificate or authorisation (or a refusal if appropriate). We must give reasons for our decision.</p>

3.14 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 have to apply for an amended certificate. More details are given in Annex E of our [Safety Certificate and Authorisation Assessment Manual](#) on the ORR website, which describes 'substantial change' in more detail.

3.15 We have published the [full criteria we assess certificate applications](#) against. You should consult [these criteria](#) when preparing your application.

4. Interoperability

Background

4.1 Interoperability is a European initiative that:

- establishes a common European verification and authorisation process for placing new, upgraded or renewed infrastructure or rolling stock in service; and
- provides for common technical standards (called Technical Standards for Interoperability or TSIs) to be applied across the trans-European rail system (specific railway routes in the EU)([TEN](#)). This initiative applies to the entire rail system in the UK.

4.2 The purpose of interoperability is to open rail markets to new operators, simplify services that cross borders, and make railways on the trans-European rail system technically compatible, which should reduce network costs across Europe.

4.3 [The Railways \(Interoperability\) Regulations](#) (RIR 2011), which came from EU [Directive 2008/57/EC](#), became part of UK law in January 2012.

4.4 RIR 2011 are likely to affect anyone who wants to build new lines or change the existing 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 issuing authorisations and enforcing the RIR. Any 'subsystem' (a structural or functional system forming part of the the rail system), that is built, upgraded or renewed as a project within the scope of the RIR must receive authorisation from us before it can be put into service. The person making changes to a subsystem is known as a 'project entity'.

Relationship to other parts of the regulatory regime

4.6 Interoperability has a direct relationship to safety. The process of getting interoperability authorisation to start using a subsystem confirms that the relevant TSIs and national technical rules have been met and that the points of connection are compatible. A process for establishing route compatibility is described in the Railway Group Standard [GE/RT8270 Issue 02](#).

4.7 A person can only operate authorised infrastructure or rolling stock if they have been awarded a ROGS safety certificate for train operators or a safety authorisation for infrastructure managers and station operators.

The application process

4.8 Under RIR regulation 4(1), a structural subsystem (as defined in section 1(a) of Annex II to the Directive) cannot be put into service unless:

- we have given our authorisation to place the structural subsystem into service;
- or
- DfT has decided under regulation 13 that you do not need authorisation for upgrading or renewing the subsystem.

4.9 You need to decide whether the type of project concerned falls within the scope of the RIR, if it is an upgrade or renewal, and whether it is a 'major' project. New projects automatically fall within the scope of the RIR. If you think the project is not a major project, you should consider alternative arrangements such as the Common Safety Methods on Risk Assessment or arrangements in your ROGS safety management system about engineering change. If you decide that the project is major, you need DfT to determine whether the project needs authorisation. For more information, [contact DfT](#).

4.10 If DfT decides that you need authorisation, you need to appoint a 'notified body' (known as a NoBo) to carry out the assessment and issue a certificate of conformity to confirm that you meet any relevant TSIs. You will also need to appoint a 'designated body' (known as a DeBo) to carry out the verification assessment and issue a certificate of verification to confirm that you are meeting any relevant Notified National Technical Rules (NNTRs). You, as the project entity, are responsible for setting the scope of the NoBo and DeBo assessment. The NoBo or DeBo will prepare the technical file and the certificate of verification against any relevant TSIs or NNTRs.

4.11 You must draw up a verification declaration when you are satisfied that:

- all the essential requirements (all conditions set out in Annex III to the Directive) have been met;
- the NoBo and DeBo have followed the verification assessment procedure;
- the NoBo and DeBo have drawn up the certificate of verification;
- the project is technically compatible with the rail system it is being integrated into (see the conditions set out in Annex VI to the Directive); and
- the NoBo or DeBo has prepared a technical file containing the information and documents specified in regulation 17(2) (and regulation 17(5) if appropriate) of the RIR 2011.

The verification declaration:

- confirms that the subsystem meets the requirements of relevant directive, TSIs and NNTRs;
- confirms that the subsystem has been assessed by a NoBo and DeBo; and
- states which conditions of use apply and which procedures have been carried out during the verification process.

We review the technical file to make sure that the correct procedures have been followed and that the subsystem meets the essential requirements of the relevant TSIs and any NNTRs that apply. NNTRs are usually Railway Group Standards managed by the Rail Safety and Standards Board (RSSB) for mainline services in Britain.

4.12 When we receive an application, we grant an 'authorisation for placing into service' or we refuse the application. We may ask for extra checks if the subsystem does not meet the essential requirements.

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

Timescales

4.14 You need to appoint a NoBo either before you complete the design stage or before the manufacturing stage.

4.15 We strongly recommended that you send us the complete technical file in good time to avoid any delays to getting authorisation. There is no time limit for us to decide upon an application for authorisation. However, you should allow four months in your timescales.

4.16 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 Network Rail owns and manages most of the rail network in Great Britain. If you want to operate trains on Network Rail's network, you must have a track access contract with Network Rail. There are other owners of railway network in Great Britain, such as heritage rail operators and certain freight operators, and you would also need an access contract with them to operate trains on their network. 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 Act, and track access contracts have to be approved by us. All track 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 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.

5.3 If you cannot get what you believe are fair terms for access to an exempt network, you can appeal to us to grant you access rights if [The Railways Infrastructure \(Access and Management\) Regulations 2005](#) (Access and Management Regulations) apply. We have published [guidance and an application form](#) for this.

5.4 Our role of overseeing access contracts provides protection against unfair contract terms being forced on you. It also provides protection to third parties who might be affected by the terms of a contract between you and a facility owner. By making sure there is fair access to railway networks we can encourage competition to benefit the users of railway services.

Open access

5.5 Open-access passenger-train operators are those who operate services purely on a commercial basis (that is, not under either a franchise or a concession agreement). These are companies who identify an opportunity to run a service which is not currently being provided, and they apply to us for the necessary access rights and to Network Rail for being included in timetables.

Model track access contracts

5.6 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. 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.

5.7 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. 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 handling appeals made under the network code.

Types of track access contracts

5.8 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 (giving customers control over their own access rights for moving their goods). Although the model contract for passenger services is primarily designed for franchised operations, open-access operators (that is, non-franchised passenger operators) should use this model contract as a starting point and make any necessary changes. Network Rail will be able to help you put together this type of access contract.

5.9 Any other track access contracts (for example, for moving equipment for network maintenance) should reflect as far as possible the model track access contracts.

5.10 [Our policy on the duration of access contracts](#) is regulated by the Access and Management Regulations. In general, most access contracts are for between five and 10 years, although we may approve a longer term in some circumstances.

5.11 We have developed a [policy for contracts which will provide access rights in the future](#), rather than at the time. These are known as 'track access options'. You may want access rights in the future for a number of reasons (for example, if you are proposing to make an investment and you want to secure future access to enjoy the benefits of that investment).

5.12 If you want to connect your facility to Network Rail's network or another facility owner's network, you will need a ['connection contract'](#). This type of contract sets out the facility owner's maintenance obligations relating to the connection. We have developed a model connection contract that is flexible enough to be used for a wide range of different types of connections. If you want access to a terminal or port, you need to enter into a 'facility access contract' with the facility owner. We deal with connection contracts and facility access contracts in broadly the same way as all other access contracts.

5.13 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 enter into a track access contract but not operate the trains itself. This would be because the applicant does not want to operate the trains and instead 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.

‘Agreed’ and ‘disputed’ track access contracts

- 5.14 Normally, you and the facility owner would successfully negotiate a track access contract and any ‘supplemental agreements’ (agreements which change the original access contract). However, if you cannot agree satisfactory terms or complete negotiations within adequate timescales, you can apply to us for directions which will force 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 make more use of the network or railway facility.
- 5.15 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

- 5.16 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 railway 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 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 current 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

- 5.17 The process for getting us to approve a track access contract is set out in chapter 2 of our [criteria and procedures document](#) (C&Ps). In summary, you would first need to negotiate terms with Network Rail (where it is the facility owner) of a track access contract. If you agree terms, Network Rail would then consult those who could be affected by the access rights, and you and Network Rail would try to deal with any issues arising from that consultation. After the consultation, if you and Network Rail are still in agreement about the terms of the contract, you would apply to us for approval under section 18 of the Act.
- 5.18 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 to force 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. Or, you could 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.
- 5.19 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 chapter 2 of our C&Ps.

Making an application

5.20 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 C&Ps document. 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

5.21 We will consider any application in line with our C&Ps 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. This process is set out in chapter 2 of our C&Ps document.

General approval (track access)

5.22 Sections 18(1)(c) and 22(3) of the Railways Act 1993 allow us to specify certain types of contract or amendments to contracts which do not need to be specifically approved by us. This is known as a general approval. 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.

5.23 We rely on operators and Network Rail to make sure the documents they send for approval are accurate and within the scope of the general approval. We regularly check general approvals to identify any party that misuses the process.

5.24 Further details on the criteria and procedures for getting general approval for new track access agreements and amendments to track access agreements can be found on our [website](#).

Timescales

5.25 Although the Act does not set timescales for sending us contracts you want us to give directions on (beyond those for statutory consultation relating to applications under sections 17 and 22A), you should consider the following.

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

5.26 These factors are dealt with below.

5.27 The time we will need to consider an application depends on its effect on the network, how complex it is and how different it is from our model contract. 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.

5.28 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.

5.29 If there was not a consultation before we received an application for our approval, we would normally expect the timescales in paragraph 5.23 above to be increased by around six weeks so we can make sure that adequate consultation takes place.

5.30 Under regulation 29 of the Access and Management Regulations, we must make our decision on any disputed application within two months of receiving all the relevant information. This will usually be from the end of the consultation period or the end of the hearing.

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.
- 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 run 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 in overseeing access contracts helps provide protection against unfair contract terms being forced on you. It also protects others who might be affected by the terms of a contract between you and a facility owner. By making sure there is fair access to all railway networks we can encourage competition to benefit the users of railway services.

Depot access contracts

- 6.6 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 (England and Wales or Scotland) that are in the contract, but other access conditions can be agreed if necessary.
- 6.7 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).
- 6.8 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. In this case you may find that a [general approval](#) applies to your application. You should get advice on this if necessary.
- 6.9 If you cannot agree satisfactory terms with the facility owner, you can ask us to direct the facility owner to enter into a depot access contract with you, under section 17 or section 22A of the Act.

Exemptions

6.10 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

6.11 You should know that getting access to track does not automatically mean you have access to depots. Depot access contracts are different contracts, and are normally with different facility owners, and so need to be approved separately.

Application process

6.12 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 [template depot access contracts](#). These are on our website.

6.13 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 template, the charges proposed, and any potential effect on third parties.

6.14 Applications under sections 17 and 22A have a separate approval process. This is set out in schedule 4 to the Act.

General approval (depot access)

6.15 Sections 18(1)(c) and 22(3) of the Railways Act 1993 allow us to specify certain types of contract or amendments to contracts which do not need to be specifically approved by us. This is known as a general approval. You may find that your new depot access agreement, or an amendment to an existing depot access agreement, could be approved in this way.

6.16 We rely on operators and Network Rail to make sure the documents they send for approval are accurate and within the scope of the general approval. We regularly check general approvals to identify any party that misuses the process.

6.17 Further details on the criteria and procedures for getting general approval for new depot access agreements and amendments to depot access agreements can be found on our [website](#).

Timescales

6.18 We will aim to approve applications which are made under sections 18 or 22, and 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 at least two months to process. Under the Access and Management Regulations, we must make our decision within two months of receiving the final piece of information we need.

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 managing 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 17 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 [station access contract templates](#) 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 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 templates for the 17 major stations managed directly by Network Rail (independent stations).

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 17 independent 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 agreement under which you 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 force the facility owner to enter into a station access contract with you under section 17. If you and the facility owner agree amendments to an existing station access contract, we approve those under section 22. But if you cannot agree you can apply to us under section 22A for us to give directions for the amendments to be made. In the cases of applications under section 18 and section 22, you may find that you can get [general approval](#) of your application. You should get advice on this if necessary.

Exemptions

7.12 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

7.13 You should know that getting access to track does not automatically give you access to stations. Station access contracts are different contracts, and are normally with different facility owners, and so need to be approved separately.

7.14 If you want to operate a station you will also need to have a licence.

Application process

7.15 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.

7.16 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 template, any charges proposed (for example, for exclusive services), and any potential effect on third parties.

7.17 For section 17 and section 22A applications there is a separate approval process, as set out in Schedule 4 to the Act.

General approval (station access)

7.18 Sections 18(1)(c) and 22(3) of the Railways Act 1993 allow us to specify certain types of contract or amendments to contracts which do not need to be specifically approved by us. This is known as a general approval. You may find that your new station access agreement, or an amendment to an existing station access agreement, could be approved in this way.

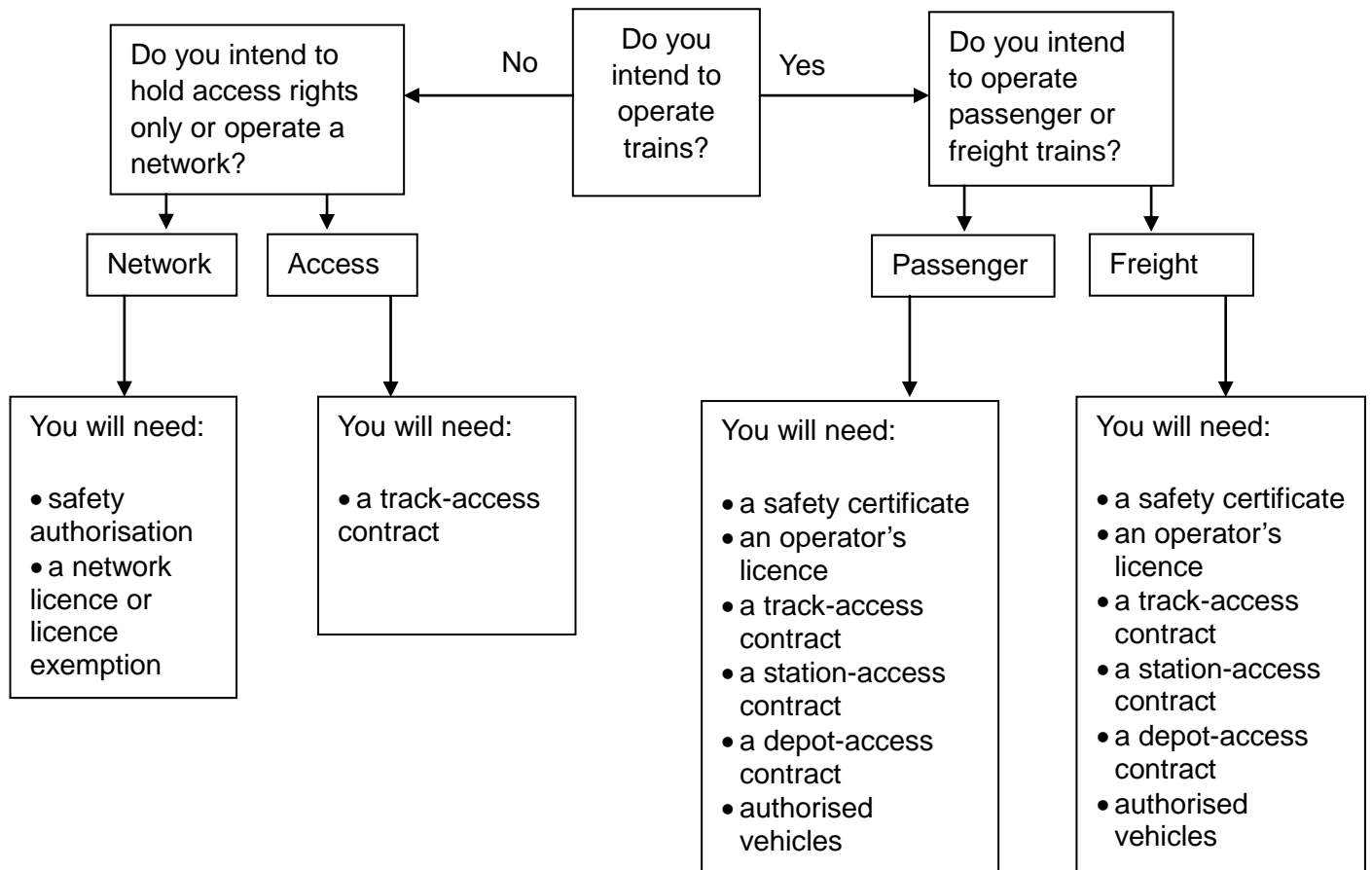
7.19 We rely on operators and Network Rail to make sure the documents they send for approval are accurate and within the scope of the general approval. We regularly check general approvals to identify any party that misuses the process.

7.20 Further details on the criteria and procedures for getting general approval for new station access agreements and amendments to station access agreements can be found on our [website](#).

Timescales

7.21 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 relevant information. Section 17 and section 22A applications have their own timetable, but you should expect this process to take at least two months from the date of your application. Under the Access and Management Regulations we must make our decision within two months of receiving the final piece of information.

Annex A: Diagram of safety, access and licensing needs



Note: if you are operating a station or light-maintenance depot you will need a licence where appropriate.

Annex B: Legal framework and duties

Legal framework

- 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

- 2 We were established under this Act (the 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 licence. Section 4 of this act also contains most of the statutory duties which shape our decision making.

Railways and Transport Safety Act 2003

- 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

- 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.

Railways Infrastructure (Access and Management) Regulations 2005

- 5 [These regulations](#) came into force on 28 November 2005. They apply to the use of available capacity and charges, and provide for open access to all types of rail freight services. The regulations introduce the European Directives (see paragraphs 14 to 17 below) which open up access to facilities that the access requirements of the Act did not previously apply to (such as ports and terminals), and to other freight depots and networks, into UK law. Through these regulations, people applying for access have the right to appeal to us if they cannot agree satisfactory terms on access or charges relating to these facilities. However, this appeal procedure is only used if the provisions of sections 17 and 22A of the Act for disputed applications do not apply.

The Railway (Licensing of Railway Undertakings) Regulations 2005

- 6 [These regulations](#) make us responsible for granting, withdrawing or suspending European licences. European licences are granted to applicants if they meet the requirements of having a good reputation, are financially secure, are professionally qualified and have insurance to cover their liabilities.

Health and Safety at Work etc Act 1974 (HSWA)

- 7 [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)

- 8 [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)

- 9 [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) Regulations 2006

- 10 [These regulations](#) make the High Speed and Conventional rail interoperability EU directives part of UK law. Under these regulations, we are responsible for enforcing the TSIs.

Competition Act 1998

- 11 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 OFT 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

- 12 This act gives us the power to refer a railway market to the Competition Commission if we think that there are signs that the market is not running effectively. The Competition Commission will then carry out a Market Investigation. If it finds any damaging effects 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, the Railways Act and the Access and Management Regulations.

EU law

- 13 The structure of rail regulation, and our responsibilities, changed when EU Directives forming the first Railways Package and parts of the Second Railways Package become part of UK law.
- 14 [The First Railways Package](#) became UK law under the Access and Management Regulations and the Railways (Licensing of Railway Undertaking) Regulations 2005 and the package set out the principles for access to the rail network and charges, as well as setting out the role of the regulatory body. The main task of the regulatory body is to make sure there is fair and equal access to the rail network and services, to monitor competition in rail services, and deal with appeals on access and charges. The regulatory body must also monitor competition in rail services, including the rail freight market. We can decide on appropriate measures to correct unwanted developments in these markets.
- 15 [The Second Railways Package](#) became UK law under the Railways and Other Guided Transport Systems (Safety Regulations) 2006 (ROGS), the Railways (Interoperability) Regulations 2006, and the Railways (Access to Training Services) Regulations 2006. These regulations established a framework for safety regulation, introduced similar technical standards for operating networks and trains, and provided open access to the rail freight market across the EEA.
- 16 [The Third Railway Package](#) became law under The Railways Infrastructure (Access and Management) (Amendment) Regulations 2009. It frees up the international passenger services market, introduces a licence for train drivers, and gives rail passengers more rights relating to insurance, ticketing and access for passengers with mobility problems.

Statutory duties

Section 4 of the Railways Act 1993

17 [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 OFT 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 Competition Commission under the Enterprise Act.

Safety regulation

18 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.

19 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

20 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

21 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.

22 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.

© Crown copyright 2013

You may reuse this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit

www.nationalarchives.gov.uk/doc/open-government-licence/version/2/
or email: psi@nationalarchives.gsi.gov.uk

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

OGL