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Operators and consultees

Insurance Review: Conclusions and Implementation

1. In November 2006, we consulted on possible changes to our third party liability insurance (TPLI) requirements, *Insurance Review Consultation, November 2006*¹. This letter sets out our conclusions and how we will go forward.
2. We received 34 responses to the consultation. These reflected a range of interests and views. We are grateful to everyone who responded. The 30 non-confidential responses can be viewed on our website².

Main Points

3. With effect from **1 March 2007**:
 - We will introduce a streamlined approvals process, replacing our old guidance and individual approval letters with a new general approval.
 - We will need a broker's letter or equivalent confirmation that cover is in place in line with the general approval. We will post these letters on our website. A template is attached.
 - Operators will **not** routinely need to provide auditors' letters or directors' statements covering their self-insurance arrangements.
 - We will not change the scope of cover required, save that cover for computer date change problems will be dropped as a specific requirement.
 - We are committed to the principle of giving more discretion to operators to decide their own insurance arrangements. However, we are mindful that to change the minimum now may be disruptive to the March 2007 insurance round.

¹ <http://www.rail-reg.gov.uk/upload/pdf/307.pdf>

² <http://www.rail-reg.gov.uk/server/show/ConWebDoc.8535>

- Therefore, we will leave the default minimum level of cover required at £155M per incident for now.
- Network Rail (NR) believes it could purchase enhanced catastrophe level cover for all operators at a significantly reduced whole-industry cost. We will ask NR to develop these proposals with its customers over the summer. We will make a final decision on changes to the £155M minimum in the light of those discussions, and in good time for the March 2008 renewals round.
- As now, we will consider derogations from the default requirements, case by case.

Detail

Scope of cover

4. Question 1 asked about deleting the requirement that policies cannot exclude date change risks. Some pointed out that policies are not always focused on the 'millennium bug'. However, there was general agreement that the requirement could be removed.

We will remove this requirement from 1 March 2007.

5. Question 2 asked whether ORR's requirements on the scope of policies should otherwise be left unchanged, or whether terrorism cover should be specifically included. We received several responses on this issue, although there was no consensus. Operators generally agreed it should be a matter for their own business assessment. NR and others pointed out that in theory all operators could be liable. Insurers and brokers generally adopted a middle ground. Many were concerned at the availability and affordability of cover.

On balance, we don't see a compelling argument for requiring terrorism liability cover. We will leave the decision on buying this cover to individual operators. We will keep the position under review.

Minimum level of cover

6. Question 3 suggested the default minimum level of TPLI required should be reduced to £100M per incident. This generated considerable reaction. Several operators agreed with this proposal. Others did not.
7. Most supported the principle that operators were best placed to decide an appropriate amount of cover for their businesses. However, there were mixed views on whether the minimum of £100M per incident was sensible, and concern that any savings made would be small and offset by the cost of operators completing more detailed risk analysis.



8. The main arguments for setting a lower minimum were based on experience, expert advice, European comparisons, an improving safety record and the principle of giving operators more discretion where they are best placed to assess their own risks. We are also concerned that TPLI requirements could be an unduly high barrier to new entry.
9. Some operators agreed with our proposals, some were cautiously supportive and one thought a minimum of £100M was still too high. Some had concerns about the different levels of cover that might result. Several implied that while the flexibility was welcome, they were unlikely to change their cover much as a result.
10. NR, some contractors, insurers and brokers, argued that the proposed new minimum would be too low. Arguments included the high cost of credible accident scenarios, recent claims inflation and upward pressures from NHS cost recovery and the annuitisation of long term care claims.
11. We agree that the cost pressures highlighted by respondents are all factors that operators should consider when determining what is right for their particular situation. But they are not a convincing argument against the principle of giving operators wider discretion in this area.
12. NR, the Association of British Insurers and others were concerned that making changes to the minimum requirements now could be disruptive, given the March renewals round was underway. We agree.
13. NR suggested it might be possible to buy enhanced catastrophe level cover in excess of (say) £100M per incident for all operators at a significantly reduced whole-industry cost. Below that level operators would remain responsible for their own arrangements. On balance we think it would be a missed opportunity not to investigate this proposal.

We will leave the minimum level of cover required at £155M per incident, for now. We will ask NR to develop proposals for an industry-wide excess layer with its customers over the summer.

14. Operators are reminded that, as now, we will consider requests for derogation from our default minimum TPLI requirements, case by case. Derogations will be posted on our website.

ORR's procedures

15. We received a favourable reaction to the proposals at questions 4 and 5, that we replace our lengthy insurance guidance³ with a shorter general approval, and progressively introduce a simpler licence condition. We will continue to assess all new operators in detail, and will update our licensing guidance for new entrants accordingly.

³ <http://www.rail-reg.gov.uk/upload/pdf/249.pdf>



16. We will reissue derogations currently in force as derogations from the new general approval. These derogations will continue to apply, and will be posted on our website.
17. A revised general approval is attached at annex A. This reflects the many helpful comments we received on the detailed drafting.

The current ORR insurance guidance will be withdrawn from 1 March 2007. Instead, the attached general approval will apply. We will introduce the new, shorter licence condition for new operators, but there is no need to change existing licences.

18. We also received broad support for the proposals at question 6 and 7. Many respondents said that the process of routinely submitting their insurance details to ORR is unnecessarily bureaucratic. Most felt the process of providing auditors' statements was expensive and time consuming given the limited benefits.

From 1 March 2007, operators will not need to provide auditors' letters covering their self-insurance arrangements.

19. Some respondents were concerned our withdrawal from detailed checking of arrangements might cause them to have to check their counterparts' arrangements themselves, and this could be less efficient.
20. Several respondents suggested a good way to mitigate this risk would be for brokers to confirm to ORR that cover was in place in accordance with the general approval (or any applicable derogation), whenever arrangements were updated. We would not necessarily check the details of these confirmations, but we would make them available through our website.
21. We think this approach has merit, and would mirror similar arrangements in civil aviation. We have prepared a simple broker's confirmation that we would accept (annex B). Commercially sensitive information should be redacted before submission. If brokers already have other documents that include the same information, they can be submitted instead.

From 1 March 2007, operators should ensure their brokers confirm to us that cover has been put in place in accordance with the general approval (or any applicable derogation), whenever arrangements are changed. We will post those letters on our website.

22. We will implement the proposal (question 7) to target our work on new operators, with a programme of risk-based monitoring for other operators. We will develop our monitoring approach through the spring.





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23. Some respondents sought clarification about what records operators should keep for our monitoring purposes. This is mainly a matter for operators, and we do not want to be unduly prescriptive. But we would expect operators to have records demonstrating their compliance with the general approval (or derogation if they have one), such as certificates, full policies, correspondence with their brokers, and some internal documentation that demonstrates they have considered their potential self-insurance liabilities and have a reasonable expectation of being able to meet them.
24. We will update our licensing guidance with further advice in the light of our monitoring activities.

Other matters

25. Our review only covered operators whose TPLI is subject to ORR approval as a condition of a licence, licence exemption or Statement of National Regulatory Provisions. The review does not affect any other insurance obligation, such as those arising under a Transport and Works Act Order.
26. Please contact my colleague Gordon Herbert (020 7282 3964) or me if you need clarification on any aspect of the announcements in this letter. Or you can email licensing.enquiries@orr.gsi.gov.uk .

Yours sincerely

A handwritten signature in black ink that reads 'Robert M. Plaskitt'. The signature is fluid and cursive, with a large, sweeping flourish at the end.

Rob Plaskitt
Head of Licensing



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Annex A

General Approval

for third party liability insurance arrangements

1. This general approval applies to operators of railway assets who hold licences, Statements of National Regulatory Provisions (SNRPs), or licence exemptions with an obligation to establish and maintain certain insurance arrangements approved by the Office of Rail Regulation (ORR).
2. The obligation arises under sections 7 and 8 of the Railways Act 1993 (the Act), and regulation 11 of the Railway (Licensing of Railway Undertakings) Regulations 2005 (the Regulations).
3. ORR approves the insurance arrangements of relevant operators to the extent that:
 - a. Total cover, including self-insurance, of not less than £155M per incident is provided in respect of all liabilities to third parties.

Policies are not required to cover:

- Liabilities covered under other statutory or standard classes of insurance, such as motor insurance or employer's liability insurance; or
 - Liability in respect of damage to goods carried for hire or reward, except as provided for in this general approval or under the provisions of COTIF or other relevant international law.
- b. Where an aggregate limit of indemnity applies, this limit will be reinstated at least once if the limit is exhausted.
 - c. Any exclusions of damage to property in the care, custody and control of the operator shall not apply to accompanied personal luggage.
 - d. Cover is on an 'occurrence' basis.
 - e. Cover is on a 'costs exclusive' basis.
 - f. The operator shall include as an insured any other party, to the extent that that party is required to be insured or indemnified in any underlying contract or agreement with the operator.
 - g. The operator will provide cover for any difference between its contractors' or sub-contractors' cover and that required by this general approval.



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- h. The operator has a reasonable expectation of being able to meet any excess or deductible that applies to its insurance policies.
 - i. Each policy shall require 30 days' notice to be given to ORR by the insurer of any lapse or cancellation of or material change to the policy.
 - j. Insurance policies are taken out with regulated insurers of good repute.
 - k. Insurance cover will apply at all times that operations are undertaken.
4. This general approval is subject to the following conditions:
 - a. The operator will arrange for ORR to receive confirmation that adequate insurance is in place, as soon as reasonably practicable, after cover is commenced, renewed or materially altered.
 - b. The operator will maintain for a minimum of seven years appropriate records setting out its particular arrangements, the rationale for those arrangements and how the arrangements meet the terms of this general approval.
 - c. The operator will submit these records to ORR for review upon request.
 - d. The operator will modify the arrangements covered by this general approval within 60 days, if reasonably required to do so by ORR.
 - e. ORR can amend or revoke this general approval at any time.
5. Failure to comply with the terms of this general approval could leave an operator liable to enforcement proceedings under sections 55 to 57 of the Act and regulation 8 of the Regulations.
6. For further information about this approval, please contact:
The Licensing Team
Office of Rail Regulation
One Kemble Street
London WC2B 4AN
Email: licensing.enquiries@orr.gsi.gov.uk
7. Terms defined in ORR's Licensing Guidance shall have the same meaning in this general approval.
8. This general approval has effect from 1 March 2007.

Date:

**Signed by authority of the
Office of Rail Regulation**



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Annex B

BROKER'S CONFIRMATION OF DETAILS OF THIRD PARTY LIABILITY INSURANCE MAINTAINED BY:

<i>Name of operator</i>	<i>Company Number</i>
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1. We confirm that the Third Party Liability Insurance policy coverage for the above company, that we have arranged, comprises a total level of indemnity of not less than £155 Million {*other amount if appropriate*} per incident in respect of liabilities which arise out of the rail operations of the above company.

2. We confirm that the policy arrangements meet the requirements set out in ORR's general approval dated (as amended by any relevant derogation).

<u>Policy number(s):</u>	<u>Date effective from:</u>	<u>Date of next renewal:</u>

Note: where part of any level of indemnity is provided by an industry facility, the broker should name that facility.





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Signed:	Name:
On Behalf of:	Position of signatory:
Date:	(Director or authorised person)

This confirmation will be placed on the ORR website
(<http://www.rail-reg.gov.uk/server/show/nav.1553>).



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