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26 July 2016

Dear Stakeholder

## **ORR's guidance on The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016**

### **Introduction**

1. The law concerning access to rail infrastructure and service facilities, allocation of railway infrastructure capacity and the levying of charges has been consolidated and, in part, changed as a result of the Recast of the First Railway Package<sup>1</sup>.
2. We are amending our guidance to reflect these changes. We are also widening its scope to cover infrastructure and charges, in addition to access and appeals. We invite your comments on this draft guidance.

### **Background**

3. Implementation of these changes in Great Britain is through *The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016* (the 2016 Regulations)<sup>2</sup>, which revoke and replace *The Railways Infrastructure (Access and Management) Regulations 2005*. However, the access system established under the Railways Act 1993, which covers most track access contracts (including Network Rail) is unchanged.
4. The Department for Transport has also published its own updated guidance on the scope of the 2016 Regulations, to explain who is affected<sup>3</sup>. We recommend that you read the DfT guidance on scope alongside the ORR draft guidance.
5. ORR is the independent safety and economic regulator for the railways, and the appeals body for disputes relating to access, charging and other matters under the 2016 Regulations. We exercise this function to help prevent unfair treatment, in accordance with UK and EU law.

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<sup>1</sup> <http://orr.gov.uk/about-orr/what-we-do/the-law/eu-law>

<sup>2</sup> <https://www.gov.uk/government/consultations/recast-first-railway-package>. Similar regulations are expected for Northern Ireland.

<sup>3</sup> <https://www.gov.uk/government/publications/recast-first-railway-package-guidance-on-scope-of-2016-transposition-regulations>



## ORR guidance

6. The purpose of ORR's guidance is to help you understand:
  - The meaning and implications of the provisions of the 2016 Regulations.
  - The obligations of infrastructure managers and service providers.
  - ORR's role as an appeal body, and power to make directions.
  - Where to find further guidance on specific issues.
7. This new guidance replaces our 2006 guidance *Appeals to ORR under the Railways Infrastructure (Access and Management) Regulations 2005*. It will complement the other guidance already on our website<sup>4</sup> about track access and the procedures already established under the Railways Act 1993.
8. Our draft guidance is in five modules:
  - Overview.
  - Access.
  - Charges.
  - Infrastructure.
  - Appeals.
9. In addition to the guidance, we have revised the form for submitting an appeal<sup>5</sup>.

## Consultation

10. We are inviting views on all five guidance modules, and the new form. These are available on our consultation webpage<sup>6</sup>. Although we welcome any comments that you have, we would be grateful if you could consider these specific questions in particular:
  - Q1. Is there value in ORR providing guidance on these regulations; is there an alternative to ORR providing guidance?
  - Q2. Does the guidance help you understand the impact of the 2016 Regulations?
  - Q3. Is it clear what your rights and obligations are?
  - Q4. Is it clear how and when to appeal to ORR?
  - Q5. How can we improve the guidance? What areas need to be developed, if any?

## Responses

11. Please reply by **13 October 2016**. Please send your replies to [track.access@orr.gsi.gov.uk](mailto:track.access@orr.gsi.gov.uk). In the meantime if you have any questions please

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<sup>4</sup> <http://orr.gov.uk/what-and-how-we-regulate/track-access/guidance>

<sup>5</sup> New Form R32 will replace Form R29.

<sup>6</sup> <http://orr.gov.uk/consultations/open-consultations>



contact Gordon Herbert on 020 7282 3964, or Matt Westlake on 020 7282 0117. Your responses may be placed on our website unless marked as confidential<sup>7</sup>.

**Next steps**

12. We will publish our guidance after we have taken your feedback into account.
13. The Rail Freight Industry Code of Practice<sup>8</sup> will subsequently be reviewed in light of the 2016 Regulations.

Yours faithfully



**Rob Plaskitt**

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<sup>7</sup> See our consultations page for full details.

<sup>8</sup> [http://orr.gov.uk/data/assets/pdf\\_file/0015/6414/freight-access-code-of-practice.pdf](http://orr.gov.uk/data/assets/pdf_file/0015/6414/freight-access-code-of-practice.pdf)

