

Safety-related approvals required under Transport and Works Act Orders, Light Railway Act Orders and Private Acts of Parliament

Office of Rail Regulation (ORR) process

Introduction

1. This guide describes how ORR will process applications for safety-related approvals that have been delegated to ORR by the Secretary of State for Transport. The Department for Transport (DfT) retain non safety-related approval powers under the terms of an Agency Agreement agreed between DfT and ORR. The Agency Agreement can be found on ORR's website at:

http://www.rail-reg.gov.uk/upload/pdf/mou_ORR_DfT.pdf

2. ORR has designed this process to minimise bureaucracy. Duty holders should not have to generate any more documentation than would normally be produced as part of a robust safety management system. This principle applies whether an application is made by a duty holder using safety verification (SV) or using the change management processes in their safety management system.

Outline

3. On receipt of notification from the duty holder of proposed works, ORR will consider the relevant piece of legislation, which should be provided by the duty holder, to determine the specific scope of approval required.
4. ORR will decide, after discussion with the duty holder, on the evidence required to allow it to determine whether the works / procedures within the scope of the approval can be brought into operation.
5. ORR will assess the evidence it needs to process the application. In doing so, it may conduct reviews, inspections or audits.
6. ORR inspectors allocated to the scheme will prepare a report setting out the findings of their work.
7. On the basis of the report, ORR's Director of Railway Safety will send a letter to the duty holder approving the specific works / procedures covered by the legislation, or setting out the reasons why ORR cannot give approval.
8. It is for the duty holder to demonstrate that a proposed scheme will comply with standards / be a sensible change etc and risks are controlled (whether they are non-safety or safety related) and it is for ORR to authorise on behalf of DfT.

The process in more detail

Stage 1 – deciding on the scope of the approval

Note: Acts and Orders use a variety of terms for consents that the Secretary of State may give. The term ‘approval’ is used in this guide to cover the various consents. If in a particular case further clarification is required, then ORR should be consulted for advice.

9. If an approval is required, the duty holder should provide ORR with a copy of the relevant Act or Order and any related statutory instruments.
10. The duty holder should also provide a supporting document outlining the proposed scope of the activities it is seeking approval for. This document should detail all other approvals the duty holder is seeking. This may be from the Secretary of State, or other agencies with who ORR might share enforcement responsibilities e.g. the Health and Safety Executive; Environment Agency; local authorities; highways or roads authorities. This is because ORR may specify that approvals or letters of no objections from other regulators will form part of the evidence it wishes to gather.
11. These notification documents should be submitted as follows:
 - a minimum of 6 weeks in advance of work beginning on site for minor works. For example, construction of a simple new station on an existing line.
 - a minimum of 12 weeks in advance of work beginning on site for major works. For example, a significant extension of a route, including new stations and signalling controls.
12. Duty holders can contact ORR in advance of these timescales to discuss proposed projects if they wish. ORR advises that duty holders should contact their local inspector as early as possible when they believe that an approval may be required to agree timescales for gathering information. A template is attached at **Annex 1**.
13. If the project will take place in Wales or Scotland, a check will be needed on whether any of the actions in the legislation are devolved to the relevant Welsh or Scottish administrations. If they are, ORR would notify the relevant devolved administration so that they can deal with those aspects of the application for which they are responsible. ORR would continue to progress any non-devolved issues.
14. ORR will write to the duty holder, within 10 working days, to confirm which approvals it will give.

Stage 2 - decide on the level of evidence required

15. ORR now decides for each approval what level of evidence is required. At this stage, ORR will agree a timetable with the duty holder. The timetable

will cover dates for submission of evidence by the duty holder and timescales for ORR's decision.

16. Acts and Orders generally cover a standard set of approvals, for example:

- Use of a section of the system being used;
- a particular form of motive power;
- a particular maximum speed of operation;
- a requirement to give approval to a particular maximum axle load;
- the use of particular types of rolling stock (including tramcars).

17. ORR will consider safety implications for each of these issues, unless the particular legislation gives more specific direction.

18. ORR will normally review the process for the work and may discuss with the transport undertaking (or responsible person), or the Independent Competent Person (ICP) if one has been appointed, the standards applied and tests undertaken.

19. ORR will review the duty holder's risk assessments to ensure that the significant health and safety risks in a scheme have been identified and reduced so far as is reasonably practicable and that any residual risk is tolerable.

20. In any situation where the duty holder is using the SV process in the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS), then ORR will, where appropriate, take into account any evidence from this when making a decision on an approval. Where SV is not being used, a duty holder's change management system will generate evidence that will be used where appropriate.

21. ORR may also carry out sampling to establish whether best practice has been applied in certain high-risk areas. Examples might include steam boiler safety, wheel-rail interface, interlocking checking, electrical safety and braking systems.

22. ORR will write to the duty holder setting out its proposals on the level of investigation it believes is required to enable it to make a decision on approval. This letter will be issued within 4 weeks of confirming that an approval is required (see stage 1).

Stage 3 - ORR assessment

23. ORR will collect appropriate evidence throughout the duration of the project, as discussed with the duty holder. Where possible, evidence gathered in the duty holder's SV scheme, if one exists, will be used.

Example of evidence generated by SV scheme that could be used in the approval process:

- Initial risk assessments by duty holder to decide if SV applicable
- Revision of risk assessments after discussions with ICP, and proposed mitigation measures
- Standards / principles of risk management
- Results of tests at agreed time periods
- Evidence of liaison with outside agencies, such as highway authorities, or police and fire and rescue service.

At the early stages of a SV project the duty holder should show that an appropriate ICP (or persons) has been employed. The ORR assessment criteria are available at:

<http://www.rail-reg.gov.uk/upload/pdf/SV-guidnce-07.pdf>

ORR may examine any records of discussions between the duty holder and the ICP and in some instances ORR may wish to attend meetings with the ICP.

24. Where SV is not being applied, ORR will specify the evidence it requires to make a judgement on an approval.

ORR will need sufficient information to establish the nature of the existing system, what the change is and what the safety implications are.

Evidence from the duty holder could include:

- A written description of the proposed works / change of use;
- An outline of any standards or specifications to be applied;
- A summary of deviations from standards;
- A statement on the level of safety provided by the proposal;
- Location plans, site plans, arrangement drawings;
- Layout plans for signalling related works;
- Statements of the validation processes used for software based systems;
- Description of the method of operation of the works.

25. ORR may review the hazard log/risk register at intervals through the project lifecycle and discuss with the duty holder how issues are being addressed and closed out.

26. Once the duty holder (with the ICP if undertaking SV) has identified the tests it will carry out, this information should be shared with ORR who can then decide if its attendance would be useful.
27. Where ORR considers there are areas in which a failure could lead to catastrophic risk (i.e. death or multiple serious injuries) then more detailed reviews of designs, installations and tests may be requested / conducted in order to confirm that risks have been reduced so far as is reasonably practicable and that residual risks are tolerable.
28. In some circumstances, ORR will expect to see evidence of liaison with the relevant police body and fire and rescue service and other relevant emergency services, and may take into account other approvals that the duty holder is required to obtain. These requirements would be set out in stage 2.

Stage 4 - ORR reports on its findings

29. An inspector will be allocated to review the project. Having carried out the review, the inspector will summarise the findings in a report. This report will set out the approval that ORR is required to give and the evidence that has been taken into consideration by the inspector. The report will recommend whether the approval should or should not be given. This report will be sent to the duty holder.
30. Where the inspector advises against giving approval, the report must clearly set out why this is the case. This should allow the duty holder the opportunity to take effective action to resolve the inspector's concerns before a decision is taken.

Stage 5 - ORR decides whether to approve

31. On the basis of the inspector's report, the Director of Railway Safety will decide whether to give approval on behalf of ORR. ORR will issue a letter, referring to the particular legal provision under which the approval is being given, to the duty holder to inform it of the Director's decision. Where approval is withheld, the reasons for this will be given.
32. The inspector's report will be copied to the duty holder for information.
33. ORR will copy its decision to other regulators or statutory bodies where appropriate.

Conditions on approvals

34. In some cases, ORR may not be able to agree to a full approval due to the particular circumstances of a project. For example, if the legal provision in question allows it, restrictions on use may be placed on a particular piece of infrastructure pending further testing.
35. In those cases, the inspector concerned will discuss any restrictions with the duty holder. In some situations, the duty holder may be able to seek approval but with self-imposed conditions which would be set out in the letter of approval.
36. If the duty holder wishes to have the conditions of the approval altered, it will need to make a specific application to ORR.

37. In some legislation, the Secretary of State is given powers to put requirements on duty holders for the purposes of safety. If it is appropriate to consider taking this action, ORR will discuss it with the duty holder in advance and, as far as possible, apply the principles of ORR's Enforcement Management Model available at: <http://www.rail-reg.gov.uk/server/show/ConWebDoc.7822>

Information that may need to be submitted to ORR to assist in deciding on scope of approvals required

The information submitted at the initial stage should be brief. ORR needs only enough information to decide if the proposed works fall within the scope of the approval provided for in the specific legislation.

1. *A general description of the works.*

This should be a short summary of the scope of the works – ORR will seek more detail if required.

2. *A copy of the legislation under which approval is being sought.*

Please note that not all legislation is easily available hence the need for ORR to ask the duty holder for a definitive copy.

If legislation has been amended, then either a consolidated copy of the amended version should be provided or the original version should be provided, along with copies of all the items of amending legislation.

3. *A statement on why the work is believed to be in the scope of approval.*

Some cases should be a straightforward statement, but other cases may require the duty holder to set out how the works fall under the legislation.

4. *Location of the works.*

For other than rolling stock matters, at the initial stage this should include a general location plan to allow ORR to understand the approximate location of the proposed work.

5. *Programme.*

ORR should be advised of the general programme that is proposed for the works including, for example, the date at which design is to be completed, the date at which works are to start on site, the date on which it is intended to bring the works into operation.

This information will help ORR plan future involvement.

6. *Other consents.*

A list of other consents obtained or being pursued should be included for example, planning permissions or drainage water discharge consents.

Please draw attention to any level crossing in or affected by the proposals. This may require action by ORR under a separate process.

This information is required to allow ORR to co-ordinate with other regulators where appropriate.

Applicants are advised to use the following format:

Application for Secretary of State Approval under Private Acts or Orders

Name of Applicant: *[normally the name of the company]*

Contact Name: *[name of person to whom ORR should direct correspondence]*

Address:

Telephone:

Email Address:

Proposal Title: *[title of the proposed works]*

Description of work: *[the applicant may give either a short description here or should refer to an attached document]*

Title of Legislation: *[the title of the legislation that the consent is being sought under – reminder: a copy must be provided to ORR]*

Supporting Information:

[The applicant should then list all the items of supporting information that are being provided to ORR for the initial consideration]