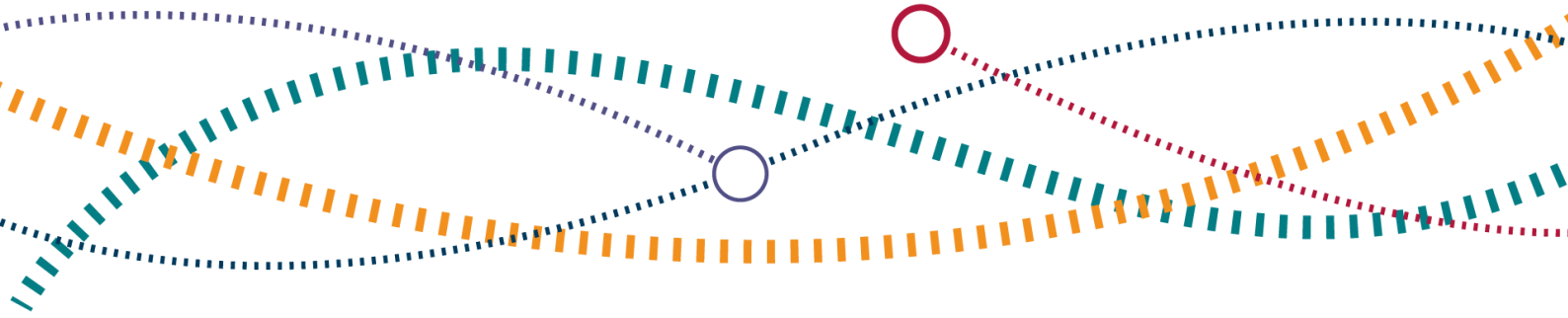
OFFICE OF RAIL AND ROAD

# Starting Mainline Rail Operations

**15 July 2024**



# Contents

# 1. Introduction

1.1 This guide provides a high-level overview of the main factors that prospective railway undertakings need to consider to operate rail services in Great Britain, as well as a summary of the relationship between the regulatory and contractual requirements that govern the economic, health and safety regulation of the rail network. 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 If you want to operate passenger or freight services on the mainline railway in Great Britain you must:

(a) hold an appropriate railway operator's licence (see chapter 2);

(b) hold a safety certificate/safety authorisation and have the relevant safety management systems in place (see chapter 3);

(c) hold the relevant vehicle and infrastructure interoperability authorisations (see chapter 4);

(d) have a track access contract with the relevant infrastructure manager(s) (see chapter 5); and

(e) have the necessary service facility access agreements in particular for stations and light maintenance depots (see chapter 6).

1.4 This guide is not a statement of ORR's policy on how we will carry out our role in regulating access to the network. We will consider any future applications for new or expanded open access services in line with our established policies and guidance, and in line with our full range of statutory duties, on a case-by-case basis.

1.5 We do not seek to cover every aspect of the legislation in this guidance. It is the responsibility of individual businesses to ensure that they are compliant with the law.

1.6 Specific regulatory arrangements exist for access to the HS1 network. This guide highlights where those requirements differ from the network in the rest of Great Britain operated by Network Rail.

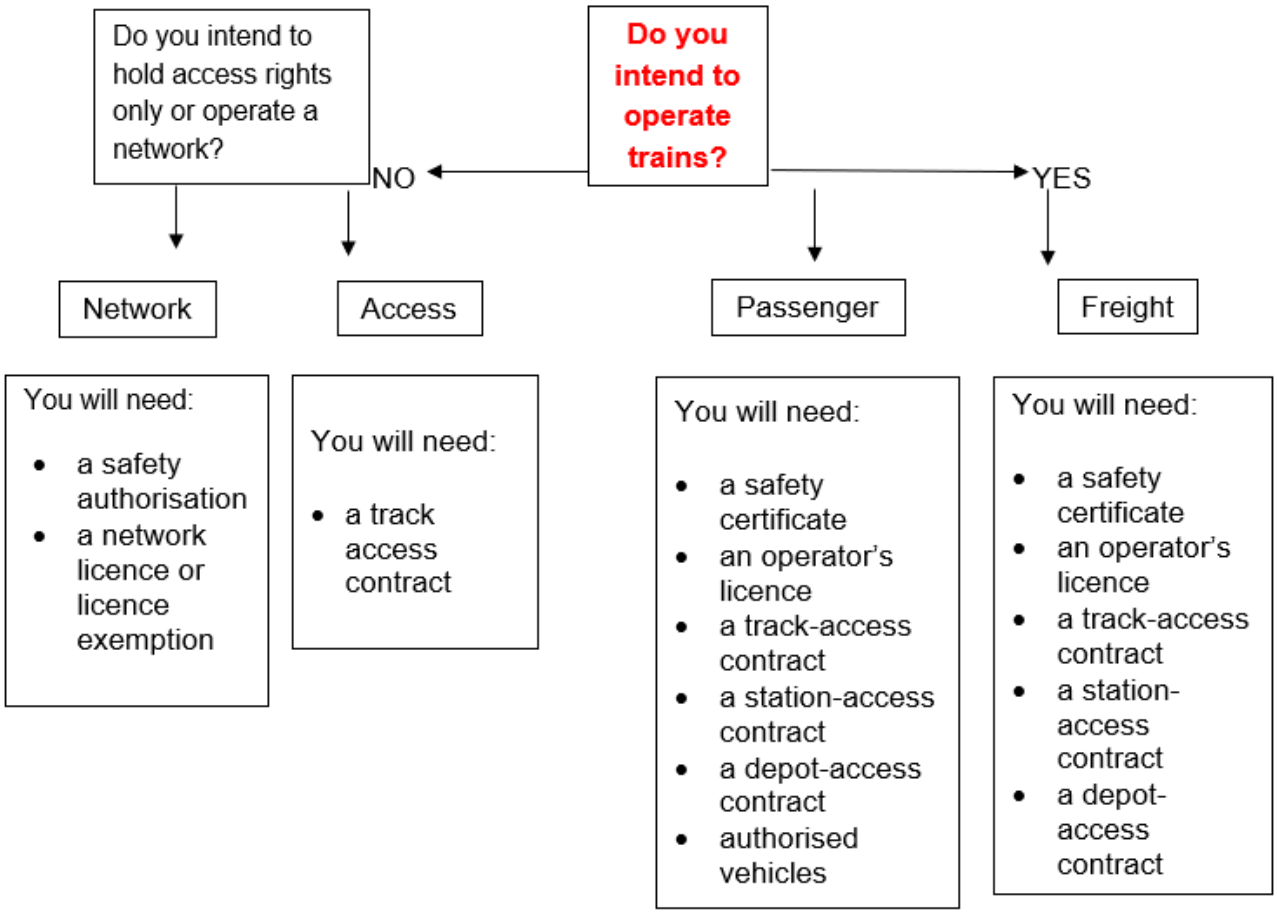
1.7 You can get more detailed information by using the links in this document or by looking at UK rail industry websites. Network Rail's website and HS1 website are also a valuable source of information, particularly Network Rail's Network Statement and HS1's network statement. We are happy to discuss any prospective rail operator's plans for new services.

## Requirements and regulatory timescales

1.8 You should also make sure you are familiar with general legal requirements. Access to the rail network, stations, depots and facilities is governed by *The Railways Act 1993 as amended* (the Act). However, access to the rail network, service facilities and services within these facilities is also governed by *The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, as amended* (the 2016 Regulations) which apply alongside the Act. It is important to understand when the Act applies and when the 2016 Regulations apply, to ensure that you follow the correct procedures.

1.9 Our economic regulation decisions are made under our legal duties (known as section 4 duties as they are found in section 4 of The Railways Act 1993 (the Act) 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. When exercising our powers under the Act we will have regard to our statutory duties, including the duty to promote competition in the provision of railway services for the benefit of users. We will need to be satisfied that proposed contracts or arrangements do not unduly limit competition in the provision of railway services, but we will not undertake a full competition assessment as would be required under competition law. We recognise the advent of Great British Railways (GBR), which is envisaged to oversee rail transport for the mainline network, introduces questions for any transition. This document will be updated when necessary to reflect any changes.

## Diagram of safety, access and licensing needs




1.10 Table 1.1 below shows the typical timescales for approval of access applications, safety certificates, interoperability authorisations and licences. It is an indicative guide only – where the typical timescale corresponds with a statutory timescale this has been indicated. We aim to conclude applications promptly. However, in some instances, approval may take longer than the timescales shown as each case is different and will depend on the specific circumstances, we are happy to discuss this with you prior to your application. Some of the key drivers affecting timeliness are the quality and completeness of information provided by applicants and the responsiveness of relevant parties, such as infrastructure managers.

1.11 Table 1.1 should not be taken as an indication that applications should be made to us in any particular order. The order in which applications are made will depend on the specific circumstances.

1.12 Table 1.1 below does not cover the time required for approvals and other processes which require you to liaise with other parties (which will often need to take place before you submit an application to us), for example:

(a) Fully developing access applications before submission to ORR, which will often require negotiation with third parties such as infrastructure managers and facility owners. Applicants may need up to 18 months to negotiate a track access contract with the infrastructure manager before sending the application to us (for wholly new operations requiring new-build rolling stock procurement, applicants can approach the infrastructure manager and then ORR to seek a track access agreement a number of years in advance of operations).

(b) Preparing applications for safety authorisations and safety certificates, and vehicle and infrastructure interoperability authorisations,

(c) Financing for rolling stock and locomotives (for example negotiating leases with rolling stock companies, known as ROSCOs).

(d) Any approvals needed for land security processes

(e) Training staff.

1.13 Timescales are further detailed in the separate chapters of the guidance.

**Table 1.1 Timescales for types of application to ORR**

| Type of application to ORR | mainline |
|---|---|
| Safety certificate and safety authorisation (issue, renew or amend) | Up to 4 months to carry out assessment, from receipt of all information<br>* Statutory timescale |
| Interoperability authorisation (sub-system/vehicle) | Within 4 weeks of receiving the complete application for authorisation |
| Train driving licence | Within 1 month of receiving all necessary information |
| Licence or licence exemption | 12 weeks |
| Track access agreement | 12 weeks for a contentious application<br><br>6 weeks from receipt of all relevant information<br>*Statutory timescale |
| Depot access agreement | 6 weeks from receipt of all relevant information |

| Type of application to ORR | mainline |
|---|---|
| | *Statutory timescale |
| Station access agreement | 6 weeks from receipt of all relevant information<br>*Statutory timescale |

# Who does what?

## Office of Rail and Road (ORR)

1.14 We were set up in 1993 to provide economic regulation for Great Britain's railways. In 2005 we were given responsibility for safety regulation. We hold Network Rail and High Speed 1 to account, and we make sure that the rail industry is competitive and fair. We are also the monitor of National Highways, and we have economic regulatory functions in relation to railways in Northern Ireland and the UK section of the Channel Tunnel.

1.15 There are other bodies besides ORR which have responsibilities covering the operations of international rail services. The main ones are listed below.

## Department for Transport (DfT)

1.16 DfT, through the authority of the Secretary of State (SoS), 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 railway network in England and much of Wales.

1.17 DfT issues concession-style agreements (public service contracts), after a competitive bidding process, to passenger train operators providing domestic services, directly oversees some operators and funds 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.

1.18 The SoS remains the freeholder of the High Speed 1 (HS1) route including the International Stations at St Pancras, Stratford, Ebbsfleet, and Ashford. Temple Mills is a light maintenance depot, leased by Eurostar from the SoS.

1.19 DfT is responsible for exercising the UK's rights and obligations, alongside France, as Principals to the Concession Agreement concerning the Channel Tunnel Fixed Link and associated agreements, including those which relate to facilitating cross-

Channel services. Unlike for domestic services, DfT does not issue concession-style agreements to international train operators, as these operate on an open access basis. DfT also issues security directions under the Channel Tunnel (Security) Order 1994 that apply to all international operators and international station facility owners operating Restricted Zones for international rail services.

## Transport Scotland

1.20 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 Government

1.21 Under the Railways Act 2005, the Welsh Government was given powers to take on more responsibility for passenger services in Wales. Transport for Wales, a wholly owned subsidiary of the Welsh Government, is the franchising authority for many passenger services within Wales and also oversees the infrastructure of the Core Valley Lines, including developing upgrade works

## Transport for London

1.22 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, South, East and West London Lines, Gospel Oak to Barking, and Euston to Watford local services. Collectively these routes are branded as ‘London Overground’ and TfL is responsible for planning, letting, managing and funding the contract for these services. As of 2022, TfL is similarly responsible for the Elizabeth Line, known as Crossrail during its construction phase. This railway service operates on parts of the mainline network and partly on a new TfL-managed piece of railway infrastructure.

## Passenger transport executives

1.23 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.

1.24 Outside London there are six PTEs or public bodies funded by local councils. They are Transport for the West Midlands, Merseytravel in the Liverpool City Region, Metro in West Yorkshire, Nexus in Tyne and Wear, Transport for Greater Manchester (TfGM) and South Yorkshire Mayoral Combined Authority.

## Network Rail Infrastructure Limited

1.25 Network Rail owns most of the rail infrastructure 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 delivering major projects relating to the railway network and working with rail operators to develop the national timetable.

## High Speed 1 Limited (HS1)

1.26 In November 2010, HS1 Ltd was awarded the 30-year concession to operate and maintain HS1, the high speed line between the Channel Tunnel and London, as well as the four stations along the route: St Pancras International, Stratford International, Ebbsfleet International and Ashford International.

1.27 HS1 Ltd is responsible for the overall management and operation of the HS1 network. ORR has produced guidance on HS1 regulation.

1.28 HS1 was designed to be compliant with both UIC GC loading gauge and relevant European Technical Specifications for Interoperability (TSIs).

1.29 Current international passenger services between London and Paris, Brussels and Amsterdam are operated by Eurostar, while domestic passenger services are operated by Southeastern on the HS1 network. Some freight services also run on the HS1 route which includes spurs leading to and from the freight terminal at Dollands Moor (Folkestone).

# 2. Licensing

## Background

2.1 If you intend to operate a railway asset, under section 6 of 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 Under *The Railway (Licensing of Railway Undertakings) Regulations 2005* ("the 2005 Regulations") as amended and the Railway (Licensing of Railway Undertakings) (Amendment) Regulations 2021, most railway operators who provide passenger or freight train services in Great Britain must hold *a Railway Undertaking licence* together with a corresponding *Statement of National Regulatory Provisions (a "SNRP")* from ORR. A SNRP sets out certain responsibilities for operators who provide train services.

2.4 The requirement to hold a Railway Undertaking 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 Railway Undertaking 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.

2.6 This chapter does not cover every aspect of licensing that operators will need to consider, nor does it cover topics in detail. It highlights the main areas that operators will need to consider and signposts readers to relevant legislation and,

where applicable, to other ORR guidance documents that cover topics in greater detail.

# Our role

2.7 We have the authority to grant licences and licence exemptions under the Act and to grant Railway Undertaking licences and issue SNRPs under the 2005 Regulations.

2.8 Through licensing, we 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. Our policy and procedures on enforcement are set out in our economic enforcement policy and penalties statement.

2.9 More information about the licensing process can be found in our general licensing guidance.

# Types of licences

## Railway Undertaking licences

2.10 For the purpose of this chapter, the term operator is used to describe the legal entity that manages a railway asset as defined in the Act. Typically, this is the train operating company running a passenger or a freight train service.

2.11 Under the 2005 Regulations, most railway operators who provide passenger or freight train services in Great Britain must obtain from ORR a *Railway Undertaking licence* together with a corresponding Statement of National Regulatory Provisions SNRP) which contains certain industry-standard obligations, such as requiring operators to maintain third party liability insurance, binding common arrangements and standards for ticketing, complaints handling, accessible travel policies and passenger information that we can enforce.

2.12 However, this does not apply to all train operators for example on historic, stand-alone networks that are separate to the national network. For full details, see exclusions set out in regulation 4 of the 2005 Regulations.

## Railways Act licences

2.13 There are also other types of railway assets, as defined in the Act:

(a) networks (operated by infrastructure managers);

(b) stations;

(c) light maintenance depots; and

(d) train services that are out of scope for a *Railway Undertaking licence*.

2.14 Anyone intending to operate these types of assets must hold a *Railways Act licence* (or licence exemption) under section 6 of the Act.

2.15 *Railways Act licences* are issued on the same criteria as *Railway Undertaking licences*. However, the conditions are in the licence itself rather than in a separate SNRP.

2.16 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.

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

## Licence exemptions

2.18 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 Railway Undertaking licence.

2.19 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.

2.20 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.

2.21 Detailed guidance on qualifying for licence exemptions is available on our website.

# The licensing process

## Application

2.22 We have separate application forms for licences and licence exemptions on our website. Our application forms explain the information we usually need to process an application. They set out the background information we require so that we have sufficient information to understand the intended activities and allow us to determine whether the licence award criteria have been met.

2.23 Applicants should consider and allow for the time needed to obtain any necessary safety approvals or other permissions, as we need to be satisfied that the applicant meets all our requirements – including our safety requirements – before we grant a licence.

2.24 Licences are not to be held at the top-level of a 'Group' corporation and used by its subsidiaries or associated companies within the group.

2.25 Application forms for *Railways Act licences*, *Railway Undertaking licences* and SNRPs are on our website.

2.26 Each applicant must pay an application fee of £250 for Railways Act or Railway Undertaking licences. There is no fee for licence exemptions.

2.27 We have published template licences and SNRPs on our website. We update these as necessary. These templates act as a starting point. They may need to be tailored to your circumstance.

## Consideration and consultation

2.28 As an application progresses, we will ask for information about how you will comply with impending licence and SNRP conditions.

2.29 If we expect to grant a licence, we are required to publish a notice on our website stating that intention and giving our reasons. We normally allow 28 days for any interested party to comment, but occasionally we allow a longer consultation period.

## Decision and award

2.30 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.

2.31 In deciding whether to grant a licence we must be satisfied that the applicant is 'fit and proper'; that is, of good repute, financially fit, professionally competent and adequately insured.

2.32 Insurance is only considered adequate if it has been approved by ORR. Applicants must have sufficient third party liability insurance, or equivalent arrangements, covering liabilities in the event of accidents to passengers, luggage, freight, mail and third parties. Applicants will satisfy this criterion if they are consistent with our licensing guidance.

2.33 If we decide to grant the licence or licence exemption, we will normally do so within two weeks of closing our final checks. The process will take longer if the consultation raises significant regulatory or other issues.

## Timescales

2.34 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.

2.35 Applicants must allow at least 12 weeks for ORR to grant a licence. Prospective applicants may find it useful to discuss their planned operations with us before making a formal application. We welcome such early and informal dialogue; we can explain our requirements, help identify other regulatory issues and discuss timescales.

2.36 Although we can give early informal guidance, our opinion may change once we have considered a formal application. However, guidance at an early stage can be valuable, saving time and expense.

# 3. Health and safety

## Background

3.1 This chapter provides a high-level overview of the main health and safety requirements for operating on the GB mainline. It does not cover every aspect of health and safety that applicants will need to consider, nor does it cover topics in detail. It highlights the main areas for consideration and signposts readers to relevant legislation and, where applicable, to other ORR guidance documents that cover topics in greater detail.

3.2 With respect to the GB mainline, this chapter covers the following topics:

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

(b) Train driver licensing and certification; and

(c) Entities in Charge of Maintenance (ECMs).

## Our role

3.3 The Health and Safety at Work etc. Act 1974 (HSWA) provides the framework for regulating health and safety in Great Britain, General safety 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.

3.4 As the independent health and safety regulator for the railway industry, we:

(a) enforce all health and safety legislation where it applies to the railway industry;

(b) provide advice and guidance for the industry on relevant laws and how to keep to them; and

(c) assess applications for safety certificates / authorisations and issue certificates / authorisations; and inspect railway operators' arrangements for managing safety.

3.5 The Rail Accident Investigation Branch (RAIB) is a separate independent railway accident investigation organisation. RAIB's jurisdiction covers mainline and non-

mainline railway infrastructure and includes Northern Ireland Railways infrastructure. RAIB investigates accidents and incidents on the UK's railways with the aim of improving safety. RAIB is not a prosecuting body and does not apportion blame in its reports. RAIB's powers, duties, and scope of work are defined by the Railway (Accident Investigation and Reporting) Regulations 2005 (as amended). A RAIB report will usually contain recommendations which it addresses to ORR. It is our role to consider their recommendations and, if appropriate, pass them on to duty holders who are required to take them into consideration and, where necessary, act upon them.

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

3.6 ROGS provides the regulatory regime for railway safety in Great Britain and was introduced to implement the EU safety requirements for transport undertakings and infrastructure managers in Great Britain.

3.7 Under ROGS, a *transport undertaking* (any person or organisation that operates a vehicle in relation to any infrastructure) and *infrastructure manager* (any person or organisation that is responsible for developing and maintaining infrastructure (not including a station) or for managing and operating a station; and manages and uses that infrastructure or station, or allows it to be used for operating a vehicle), are collectively referred to as '*transport operators*'.

3.8 ROGS applies to the mainline railway and this includes HS1 infrastructure. Under ROGS, you must not operate vehicles or manage infrastructure unless you have the appropriate safety certificate (for transport undertakings) or safety authorisation (for infrastructure managers, including station operators).

3.9 ROGS also requires transport operators to maintain a safety management system (SMS). The SMS is the basis for making sure a transport system operates safely and in line with ROGS. When applying for a safety certificate, you must provide evidence that your SMS makes sure the railway can be operated safely. The SMS should demonstrate evidence that there is capability in the organisation to safely manage the operations that the applicant is to carry out. Further information on the SMS can be found in ORR's ROGS guidance.

3.10 Under the Railways (Access to Training Services) Regulations 2006 (as amended), transport undertakings applying for a safety certificate are also entitled to access training services for train drivers and staff on the train, if the training is

necessary to meet the requirements for getting a safety certificate. ORR's ROGS guidance contains further information on this.

3.11 ROGS also contains requirements for mainline transport operators to:

(a) introduce new or altered rolling stock (or infrastructure) safely;

(b) carry out risk assessments;

(c) send us an annual safety report;

(d) co-operate with other transport undertakings and infrastructure managers to reduce risks; and

(e) make sure their employees who carry out tasks where safety issues arise are suitably competent and fit to do so.

3.12 Further information on ROGS can be found in our unofficial consolidated version of ROGS. We also have a ROGS guidance document which has been updated to reflect the changes made following the UK's exit from the EU. In all instances you should consult the latest version of the legislation, as amended, for a comprehensive understanding of ROGS. We also strongly recommend that you consult our guidance or approach us with questions before applying for a safety certificate or safety authorisation.

3.13 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 be required to apply for an amended certificate. More details are provided in Chapter 29 of our Safety Certificate and Authorisation Assessment Manual on the ORR website which describes 'substantial change' in more detail.

3.14 We have published Assessment criteria for mainline railway safety certificate and safety authorisation applications (orr.gov.uk). You should consult these criteria when preparing your application.

## Train Driver Licensing and certification

3.15 The Train Driving Licences and Certificates Regulations 2010 (TDLCR) (as amended) apply to railway undertakings and infrastructure managers who employ train drivers. Under TDLCR, a 'railway undertaking' refers to organisations that hold a safety certificate issued by ORR in accordance with ROGS. 'Infrastructure manager' means an organisation that holds a safety authorisation issued by ORR in accordance with ROGS.

3.16 Railway undertakings must ensure that drivers employed to drive on the mainline meet the requirements of TDLCR. To drive a train, a person must hold a valid *train driving licence* and a complementary *train driving certificate*.

3.17 The *train driving licence* is issued to the railway undertaking by ORR, and it will then be given to the driver and is personal property of the driver until it expires or is suspended or withdrawn. A train driving licence is valid for up to ten years and remains valid even when the driver changes employer. The *train driving certificate* is issued to the train driver by the employer once the driver has been trained in relation to the type of rolling stock and specific infrastructure they are being deployed on. They are also required to be trained in relation to the railway undertaking or infrastructure manager's safety management system before they can be issued a complementary certificate. A driver must hold both a valid licence and certificate to drive a train.

3.18 Further information on train driving licences and certificates, including guidance for operators, can be found on ORR's website.

## Entities in Charge of Maintenance (ECMs)

3.19 When referring to ECMs, 'transport undertaking' and 'infrastructure manager' have the same meaning as in ROGS. ECMs are people or organisations who are responsible for the maintenance of vehicles that are used on the mainline railway.

3.20 Where a vehicle is used for domestic service in Great Britain, under ROGS (regulation 18A), the vehicle cannot be placed into service or used on the mainline railway unless it has an ECM assigned to it in the National Vehicle Register (NVR).

3.21 ECMs must ensure that, through a system of maintenance, a vehicle is safe to run on the mainline railway. The system of maintenance is maintenance of a vehicle in accordance with:

(a) the maintenance file for that vehicle;

(b) applicable maintenance rules; and

(c) applicable National Technical Specification Notices (NTSNs) as defined in the Railways (Interoperability) Regulations 2011.

3.22 All ECMs must comply with the assimilated and corrected versions of Commission Regulation (EU) 1078/2012 ("the Common Safety Method (CSM) for monitoring") and Commission Implementing Regulation (EU) 402/2013 ("the CSM for risk

evaluation and assessment evaluation"). These were corrected by the Rail Safety (Amendment etc.) (EU Exit) Regulations 2019.

3.23 The requirements apply to passenger rolling stock, locomotives, freight wagons and all other vehicles used on the mainline railway for domestic only services.

3.24 Where an ECM has responsibility for freight wagons in domestic only service in Great Britain, the ECM must hold one of the following:

(a) an ECM certificate issued in accordance with Commission Regulation (EU) 2011/445 before the UK left the EU that is valid on the terms of its original issue;

(b) a UK-issued ECM certificate to use freight wagons on the mainline railway in accordance with Schedules 9 and 10 of ROGS; or

(c) a cross-border UK-issued ECM certificate to use freight wagons on the mainline railway issued in accordance with the retained version of Commission Implementing Regulation (EU) 2019/779.

3.25 If the vehicle is a freight wagon in domestic only service, the ECM must have an ECM certificate issued by a certification body in accordance with regulation 18A(1)(b) of ROGS.

3.26 ECMs for vehicles other than freight wagons do not need an ECM certificate to operate vehicle on the mainline railway. However, voluntary certification can be obtained under Schedules 9 and 10 of ROGS or Commission Implementing Regulation (EU) 2019/779.

3.27 Further information on ECMs can be found on our website, whilst we also have a guidance document on ECMs covering requirements for both domestic services and cross-border services.

# 4. Interoperability

## Background

4.1 This chapter provides a high-level overview of the interoperability requirements for operating on the GB mainline. It does not go into detail, but instead signposts to relevant legislation and guidance documents that cover interoperability requirements in greater detail.

4.2 The interoperability regime applies to new, major, upgraded or renewed infrastructure and rolling stock. Applicants have to follow a framework and seek an authorisation from us to place the infrastructure or rolling stock into service.

4.3 The National Technical Specification Notices (NTSNs) making up the main part of the interoperability standards framework apply to the mainline, including HS1 infrastructure. However, with respect to National Technical Rules (NTRs), those NTRs defined for HS1 infrastructure differ to the NTRs for the rest of the mainline.

4.4 The Railways (Interoperability) Regulations 2011 (as amended) (RIR 2011) came into force on 16 January 2012 and implemented the EC Directive 2008/57/EC on the interoperability of the UK rail system.

4.5 RIR 2011 are likely to affect anyone who wants to build new lines or change the rail network in Great Britain, or anyone who wants to place new, renewed or upgraded rolling stock into use in Great Britain. This could cover infrastructure managers, railway undertakings, rolling stock leasing companies and manufacturers or suppliers of trains.

## Our role

4.6 ORR is responsible for enforcing the interoperability regime in Great Britain. Any 'structural subsystem' that is built, upgraded or renewed as a project within the scope of the RIR 2011 (as amended) must receive an authorisation from ORR before it can be put into service in Great Britain. The person making changes to a subsystem is known as a 'contracting entity'. The interoperability regime applies to new, major, upgraded or renewed infrastructure and rolling stock. Applicants must follow a technical standards framework and seek an authorisation from us to place the infrastructure or rolling stock into service. Without the authorisation, an applicant is unable to legally use the infrastructure or rolling stock on the GB railway.

# Mainline requirements

## Overview

4.7 RIR 2011 sit alongside UK health and safety legislation to ensure that vehicles and infrastructure are designed, manufactured, and entered into use on the railway in a consistent manner so that they are able to operate in conjunction with each other. RIR 2011 was amended, most significantly, by The Railways (Interoperability) (Amendment) (EU Exit) Regulations 2019. This ensured that, following the UK's exit from the EU, a clear and accessible domestic legal framework was established for interoperability.

4.8 A key feature of interoperability is the establishment of *National Technical Specification Notices (NTSNs).* These are UK standards defining the technical and operational standards that must be met by each subsystem in order to meet the essential requirements for interoperability. Applicants should identify which NTSNs are specific to their process and ensure they use the updated versions. The current NTSNs are published on DfT's website, whilst the Rail Safety and Standards Board (RSSB) provide more detailed information.

4.9 National Technical Rules (NTRs) supplement the NTSNs. The Secretary of State for Transport publishes all national technical rules applying in the UK on the DfT section of the government website. NTRs perform several functions:

(a) make provisions for country or network specific cases;

(b) fill an open point identified in an NTSN; and

(c) set requirements to maintain technical compatibility with assets that do not conform to the requirements of NTSNs.

4.10 Application of, and compliance with, the relevant NTSNs and National Technical Rules will ensure that the essential requirements specified in RIR 2011 are met. RIS-8270-RST (at the time of writing, issue 1.1, September 2022, is the latest version) provides a process for the assessment of technical compatibility at route level for both vehicles and infrastructure as described. HS1 has adopted a different standard based on the previous standard GE/RT8270 (Issue 02), and modified it to address requirements on Infrastructure Registers. Further details on standards can be found on the website of RSSB.

## Application process

4.11 Under regulation 4(1), a structural subsystem, as defined in section 1(a) of section 1(a) of Schedule 3 of RIR 2011 (as amended) cannot be put into service unless:

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

4.12 You need to decide whether the type of project concerned falls within the scope of interoperability regulations, i.e. if it is an upgrade or renewal or one that has undergone a 'major upgrade or major renewal. Regulation 13 of RIR 2011 enables an applicant to make an application to DfT, as the competent authority, when it considers itself to meet the definition of an upgrade or renewal project. The purpose of the application is to seek a decision as to whether an authorisation to place into service is required for the work and the extent to which the NTSNs should apply to the project. This is not a mandatory application process, so in most circumstances, the upgrade or renewal project should simply proceed to comply with the NTSNs and seek authorisation if there are not any problems achieving compliance.

4.13 Even where you consider that the project does not represent a major renewal or major upgrade, you need to consider whether you need to apply the CSM REA to your project. This applies when any technical, operational or organisational changes are being made to the rail system that could have an impact on safety.

4.14 Where authorisation is required, the applicant should appoint an Approved Body (ApBo) to carry out an independent assessment of the project and certify conformity against any relevant NTSNs. You will also need to appoint a Designated Body (DeBo) to carry out the assessment and certify conformity against any relevant NTRs, following which you, as the applicant, will receive a certification of verification from the ApBo and/or the DeBo.

4.15 You must draw up a verification declaration and seek an authorisation from ORR before you can use the vehicle or infrastructure on the railway. We review the technical file to make sure due process has been followed and the subsystem meets the essential requirements of the relevant NTSNs and any NTRs that apply.

4.16 After we receive an application for authorisation, we may authorise use of the subsystem or refuse the application. Where the essential requirements have not

been met, we expect the applicant to carry out additional work to ensure they meet the essential requirements.

## Timescales

4.17 You need to appoint an ApBo either before you complete the design stage or before the manufacturing stage.

4.18 We strongly recommended that you send us the complete technical file in good time to avoid any delays to getting authorisation. There is no mandatory time limit for us to determine an application for authorisation; however ORR commits to providing a decision within 4 weeks of receiving the application for authorisation.

4.19 You do not need permission from ORR before you carry out tests that are required to support your application for authorisation. You should speak to the relevant duty holder or infrastructure manager in order to obtain track access for testing purposes.

4.20 Further information on interoperability requirements for the mainline can be found below:

(a) ORR's interoperability webpage; and

(b) ORR's guidance for applicants.

# 5. Track Access

## Background

5.1 If you want to operate trains on the mainline network, you must have a track access contract with Network Rail. For other owners of railway networks in Great Britain, such as HS1 Ltd, Rail for London (Infrastructure) Ltd, Heathrow Airport Ltd, heritage rail operators and operators of freight terminals, you would also need an access contract with them to operate trains on their networks. 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. Access to track is regulated under the Act and the 2016 Regulations and most track access agreements have to be approved by ORR.

5.2 For the purposes of this guidance, the term “agreement” will be used to describe either an access contract, an access agreement, or framework agreement (as defined in the 2016 Regulations).

5.3 In this chapter, the term ‘railway undertaking’ is used to describe an entity whose principal business is to provide services for the transport of goods and/or passengers by rail.

5.4 Further information on applying for access to the network managed by Network Rail can be found in Network Rail’s Network Statement. We have also produced a series of guidance modules on our website describing regulation of access.

5.5 Further information on applying for access to the network managed by HS1 Ltd can be found in HS1’s Network Statement and in ORR’s guidance HS1 Criteria and Procedures.

5.6 The table below summarises the requirements for railway undertakings who want to operate services on those different networks.

**Table 5.1 Summary of the main requirements for railway undertakings that want to operate services on those different networks**

| | Network Rail infrastructure | HS1 infrastructure |
|---|---|---|
| **Contracts / authorisations needed** | Track access agreement | Track access agreement |
| **Approved by** | ORR | ORR |
| **Applicable legislation** | Railways Act | 2016 Regulations |

# Our role

5.7 To have access to track on the mainline, a railway undertaking must have a track access agreement. Regulated track access agreements and amendments to them are void if we have not approved them. This role of overseeing access agreements provides protection against unfair contract terms. It also provides protection to third parties who might be affected by the terms of an agreement between a railway undertaking and a facility owner.

5.8 Not all track access agreements require ORR approval and not all track access agreements are regulated under the Act. However, if a track access agreement is not regulated under the Act (for instance as shown in table 5.1 and you cannot get fair terms for access, you can appeal to ORR (where the 2016 Regulations apply).

5.9 The access requirements in the Act do not apply to networks that ORR 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.

5.10 We have developed model agreements that contain standard provisions. These can be found on our website.

5.11 Using model agreements reduces costs as fewer resources are needed to negotiate each provision and it also ensures consistency. Each model agreement sets out aspects of train operation such as each party's rights and obligations relating to charging and the rights to run services.

5.12 Model agreements refer to a set of common rules that apply to users of the network, the Network Code. They concern areas where common processes are

necessary or desirable, such as regulating changes, environmental damage, performance monitoring, operational disruption and dispute resolution. The Network Code forms part of the track access agreement. Network Rail's Network Code can be found on Network Rail's website.

5.13 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 how we will handle appeals made under the Network Code.

5.14 If you want access to a terminal or port, you need to enter into a 'facility access contract' with the facility owner. A separate guidance module is available on our website.

## Access to the Network Rail network

5.15 Access agreements for access to the Network Rail network are regulated under the Act and require ORR approval.

5.16 If you intend to operate scheduled passenger services and you do not have an agreement with the DfT, we would still expect you to use the passenger model contract as a starting point and make any necessary changes. Network Rail will work with you on this.

5.17 Other types of track access contract relate to moving equipment for network maintenance and charter trains. Model contracts have not been issued for these. However, we would expect any draft contracts to reflect as far as possible the provisions used in the model track access contracts.

5.18 There may be circumstances where another entity other than a railway undertaking, such as a logistics company or terminal owner, may want to enter into a track access contract but not operate the trains itself. This would be because the applicant 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 and have their own freight operating company customer track access contract with Network Rail.

5.19 Applications are made to ORR under the Act. 'Agreed' applications to approve new agreements are under section 18 of the Act, and 'agreed' applications to approve amendments to agreements are under section 22 of the Act. 'Disputed' applications for new agreements are made under section 17 and 'disputed' applications for amendments to agreements are made under section 22A. Applications under section 22A to amend an agreement can only be made if you want to use the network or facility more extensively.

5.20 We have published application forms for railway undertakings to use, and the process of applying for approval of a track access agreement with Network Rail is set out in our guidance module: making an application.

5.21 Sections 18(1)(c) and 22(3) of the Act enable ORR to give its prior approval for certain types of new access agreements and to certain types of amendment to existing agreements. This prior approval is known as a General Approval and we have issued General Approvals for passenger and freight railway undertakings. Railway undertakings may find that new track access contracts, or an amendment to an existing track access contract, could be approved in this way.

5.22 We do not routinely check the accuracy of agreements and amendments to agreements made using the General Approval. It is the responsibility of the parties concerned to make sure their agreements are suitable and comply with the relevant legislation and the terms of the General Approval.

5.23 The General Approval does not apply where HS1 or Eurotunnel is the infrastructure manager.

5.24 Changes to a regulated agreement need ORR approval. The process for obtaining approval for an amendment is set out in more detail in our guidance on making an application.

# Access to HS1 network

5.25 There are two types of track access agreement for HS1:

(a) Track access agreements covering the reservation of capacity for more than one timetable period. These agreements **are** subject to ORR pre-approval and are referred to as Framework Agreements (the term used in the 2016 Regulations).

(b) Track access agreements covering the reservation of capacity for up to one timetable period, which **are not** subject to ORR pre-approval.

5.26 Information about the processes for dealing with applications and appeals is set out in ORR's guidance, HS1 Criteria and Procedures. Where HS1 Ltd is the infrastructure manager, applications for approval are made to ORR under the 2016 Regulations. We have provided application forms to be completed when submitting an application to us. The process for applying for ORR approval of a framework agreement with HS1 Ltd, including the information that ORR needs, is set out in our guidance document.

5.27 If a railway undertaking has agreed an access agreement with HS1 Ltd, they should apply to ORR for approval. However, if they have not been able to agree terms with HS1 Ltd, they should appeal under the 2016 Regulations.

5.28 HS1 Ltd has also developed standard agreements which are in a form that we are content to approve. These can be found on HS1 Limited's website. These agreements refer to a set of common rules that apply to users of the network (the Network Code). They concern areas where common processes are necessary or desirable, such as regulating changes, environmental damage, performance monitoring, operational disruption and dispute resolution. The Network Code forms part of the track access agreement. HS1's Network Code can be found on HS1's website. The HS1 Network Code applies to HS1 Ltd and parties who have entered into an agreement for access to HS1.

5.29 If a railway undertaking wants to make changes to their access agreement, they will need ORR approval. The process for obtaining approval for the different types of amendment is set out in more detail in HS1 Criteria and Procedures. HS1 has been declared Specialised Infrastructure under regulation 25 of the 2016 Regulations. This means that ORR has to have regard to the effect of the declaration in consideration of access applications. The effect of the declaration is that HS1 is designated for use by specified types of rail service and may give priority to that specified type of rail service in the allocation of capacity.

## Open access

5.30 Open access passenger train operators are those who operate services purely on a commercial basis, that is not under a public service contract. These are companies who identify an opportunity to run a service which is not currently being provided, and they need track access rights and train paths in the timetable.

5.31 ORR conducts the "Not Primarily Abstractive" test in cases where a new open access service may compete with a franchised service and so impact on the public sector funder's budget. We have made further guidance available about this test and access decision making on our website.

## General considerations for track access applications to ORR

5.32 In summary, railway undertakings first need to negotiate the terms of a track access agreement with the relevant infrastructure manager. If terms are agreed, the relevant infrastructure manager will then consult with those who could be affected by the requested access rights and will try to resolve any issues arising from that consultation. In most cases, the infrastructure manager expects to complete its consultation in the six weeks before a railway undertaking sends an application to us for approval. If significant issues arise in the consultation, this period may be longer.

5.33 Generally, the railway undertaking and the infrastructure manager successfully negotiate most track access contracts and any 'supplemental agreements' (agreements which change the original access agreement).

5.34 However, if the terms of the agreement cannot be agreed you can apply to us and ask us to direct the infrastructure manager to enter into an agreement. This is either an application under section 17 of the Act or an appeal under regulation 32 of the 2016 Regulations (covered in more detail in Chapter 8 of this guidance).

5.35 You can still ask the infrastructure manager to carry out the consultation and then apply directly to ORR and, if no satisfactory consultation has been carried out, ORR will consult people who might be affected by the new agreement, as well as carrying out the consultation we must carry out according to our own legal obligations.

5.36 We will consider any application in line with our policy and guidance and taking account of our duties (mostly set out in section 4 of the Act). For applications that

raise significant issues, ORR may hold a hearing or meetings with the railway undertaking, the infrastructure manager or those likely to be affected by the proposed agreement.

5.37 The 2016 Regulations require ORR, at the request of a competent authority or interested railway undertaking, to determine whether the principal purpose of a new passenger service is to carry passengers between stations located between the United Kingdom and a Member State. ORR has published guidance on how we intend to carry out this assessment. Similarly, at the request of a relevant party, we will assess whether, based on evidence, we expect a new international passenger service competing with a public service contract to compromise that public service contract's economic equilibrium. This issue is only likely to arise if an international operator proposes to run services which could affect an operator providing services under a public service contract awarded by DfT; currently, the only existing public service contract on the HS1 network that may be impacted by international service is a domestic-only service, held by Southeastern.

5.38 The duration of access agreements is regulated by the 2016 Regulations. The vast majority of track access agreements in Great Britain are for a duration period of five years, but we can approve a longer term in some circumstances. Regulation 21(8) states that track access agreements for a period longer than five years must be justified by the existence of commercial contracts, specialised investments or risks.

5.39 Usually, railway undertakings apply for track access agreements and 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 want to enter into an access agreement but nominate a railway undertaking to move their goods by rail. In these circumstances, ORR has published a model freight customer track access agreement and a model freight customer specific track access agreement for freight railway undertakings, which can be found on our website. Further detail can be found in our guidance.

## Timescales

5.40 The time we require to consider an application will depend on its impact on the network and other railway undertakings, its complexity and the extent to which it departs from the relevant model agreement. Even an agreed supplemental agreement concerning relatively few services can raise significant issues where, for example, network capacity is constrained.

5.41 To give us time to give proper consideration to an application before reaching and publishing our decision, and allow us to manage our workload, applicants should allow up to:

(a) twelve weeks from receipt for a contentious contract (including those that are not agreed and those meeting any of our criteria for focused regulatory scrutiny which can be found in our guidance on making an application; and

(b) six weeks from receipt for a more straightforward application (one that does not meet any of our criteria for focused regulatory scrutiny).

5.42 Where we are dealing with major applications from multiple applicants which potentially compete for the same capacity, our review may take significantly longer.

5.43 These timescales are indicative only. We may be able to complete our review and come to a decision sooner than the timescales mentioned above. But there will inevitably be applications that require longer, particularly if a hearing is required.

5.44 For applications that are not agreed, we have a statutory requirement under the 2016 Regulations to make our decision within six weeks of receipt of all relevant information. Our policy is to reach decisions on all access decisions (including agreed applications) in the same timescale. It will be for ORR to decide when we have all relevant information.

# 6. Access to service facilities

## Background

6.1 To operate rail services in Great Britain, you will not only need access to the track network, but also to come on and off the network to access other rail related facilities and services, such as stations, light maintenance depots, freight terminals, ports and stabling points. Collectively, these are all referred to as service facilities in this chapter.

6.2 Access to service facilities, in particular stations and light maintenance depots, is generally regulated by the Act. Where the Act does not apply, it is governed by the 2016 Regulations which apply alongside the Act. Specific exemptions are provided for in relation to both the Act and the 2016 Regulations.

6.3 The Act does not apply to the stations on the HS1 network and some other service facilities are exempt (mainly through the Railways (Class and Miscellaneous Exemptions) Order 1994 (the CMEO). A railway undertaking seeking access to a service facility needs to consider whether access to the service facility is governed by the Act.

6.4 Please note that, 'privately owned' facilities do fall within the scope of the legislative requirements.

6.5 For services provided in a competitive market, alongside our powers under the Act and the 2016 Regulations, we may also consider our powers under the Competition Act 1998, potentially to direct access. For further information, please refer to our guidance.

6.6 For the purposes of this guidance, the term "agreement" is used to describe either an access contract or an access agreement.

6.7 The table below summarises the applicable legislation in Great Britain for access to the main service facilities. It also indicates whether ORR approval is required.

**Table 6.1 The applicable legislation and ORR pre-approval for access to the main service facilities**

| | International stations on Network Rail Network | International stations on HS1 Network | Light Maintenance Depots | Rail Freight Terminals and other rail related facilities |
|---|---|---|---|---|
| **Applicable legislation** | The Act and 2016 Regulations | 2016 Regulations | The Act and 2016 Regulations | The Act and 2016 Regulations |
| **ORR pre-approval under the Act** | Yes | No | Yes | Yes |

## Access to service facilities under the Act

6.8 If you want your trains to call at a service facility and use the specified facilities or services, you will need to enter into an access agreement with the relevant service facility owner. This access agreement defines, among other things, the conditions, standards and charges under which access is provided. This agreement must be approved by us before you can enter the relevant facility or use the relevant services.

6.9 The Act sets out the regulatory framework for access agreements. Sections 17, 18, 22 and 22A of the Act set out an approval role for ORR in relation to access to railway facilities. This covers all of Network Rail's mainline network, other infrastructure managers' networks as well as the facilities connected to them like ports and terminals.

6.10 In this section of the guidance, we have used the term 'facility owner', which is defined in the Act as:

*"any person –*

*(a) who has an estate or interest in, or right over, a railway facility; and*

*(b) whose permission to use that railway facility is needed by another before that other may use it"*

## Our role

6.11 Our role in overseeing and approving access agreements provides protection against unfair contract terms. It also protects third parties who might be affected by the terms of a contract.

6.12 ORR approval under the Act is required for service facility access agreements and amendments to them to be legally valid.

6.13 Access to stations and light maintenance depots is regulated under the Act, and access agreements need to be approved by us. All access agreements, and any amendments to them, are void if we have not approved them.

6.14 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.

6.15 If you and the facility owner can reach agreement on a draft 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. You may find that a general approval applies to your application.

6.16 If you cannot agree satisfactory terms with the facility owner, you can ask us to direct the facility owner to enter into a new depot access contract with you, under section 17 of the Act.

6.17 If you have an existing approved access agreement and are seeking amendments to this agreement which will permit more extensive use of the facility in question, such as accessing a greater number of depot services, and are unable to agree the amendments with the facility owner, you can ask us to direct the facility owner to make amendments to the agreement under section 22A of the Act. Please note that section 22A cannot be used to extend the duration of a depot access agreement.

## Consideration and approval of access agreements under the Act

6.18 If you can agree a new access agreement with the facility owner, you should send this to us for consideration for our approval under section 18 of the Act.

6.19 If you cannot agree a draft agreement, you can ask us to give directions that require the facility owner to enter into an access agreement with you under section 17.

6.20 If you and the facility owner agree amendments to an existing access agreement, we approve those under section 22.

6.21 If you cannot agree amendments to an existing access agreement which will permit more extensive use of the facility in question, you can ask us to direct the facility owner to make amendments to the agreement under section 22A of the Act. Please note that section 22A cannot be used to extend the duration of an access agreement.

6.22 When we consider applications to approve access agreements, we must take account of our duties set out in section 4 of the Act. We will generally have to make sure that the agreements set clear and appropriate obligations, remedies and incentives.

6.23 In the cases of section 18 and section 22 applications, you may find that a General Approval applies to your application (see below).

6.24 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 model agreements, any charges proposed (for example, for exclusive services), and any potential effect on third parties.

6.25 For section 17 and section 22A applications there are additional requirements set out in Schedule 4 to the Act. Further information about ORR's approval process is set out in our guidance documents, which can be found on our website. Further guidance on applications under sections 17 and 22A can be found in our Criteria and procedures for the approval of station access agreements.

## General approval

6.26 Sections 18(1)(c) and 22(3) of the Act enable us to give our prior approval for new access agreements and to the amendment of existing agreements. This prior approval is known as a General Approval and you may find that your access agreement, or an amendment to an existing access agreement, could be approved in this way.

6.27 We rely on the industry to ensure the documentation it submits for approval is accurate and within the scope of the General Approval. We regularly audit submissions made to us under the General Approval.

6.28 An access agreement that does not fall wholly within the terms of the General Approval must be submitted to ORR for consideration under our specific approval.

6.29 For further detail, please refer to:

(a) The General Approval for stations (2017) and General Approval for stations (2017) Guidance;

(b) The General Approval for depots (2017) and General Approval for depots (2017) Guidance; and

(c) The General Approval for Facility Access Agreements.

### Timescales

6.30 On receipt of all relevant information, we will reach a decision on whether to approve an agreement within six weeks, although we will always try to complete the approval process in as short a time as possible.

## Access to stations

### Stations on the Network Rail network

6.31 Access agreements for stations on the Network Rail network require our pre-approval under the Act.

6.32 Network Rail owns the freehold to most of the railway stations in Great Britain. However, it leases most of these to railway undertakings. The party who operates a station, and whose permission is needed for access to the station, is known as the station facility owner. Network Rail is the station facility owner and licensed operator for some of the biggest and busiest stations in Great Britain.

6.33 The station facility owner is normally (but not necessarily) the operator of the station (that is, the person operating 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 a number of major stations

6.34 We have produced a number of model station access agreements to reflect a variety of access relationships. These are as follows.

(a) A single station access contract between a station facility owner and the operator of regular scheduled passenger-train services

(b) A multiple station access contract between a station facility owner and the operator of regular scheduled passenger-train services

(c) A freight operator station access contract between a station facility owner and a freight company

(d) A charter station access contract between a station facility owner and the operator of passenger-train services that do not follow a scheduled timetable

(e) 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

6.35 Each station access agreement 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 stations where Network Rail is the station facility owner, the Independent Station Access Conditions apply.

6.36 The station annexes 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 collateral agreement under which the beneficiary of a station access contract can enforce Network Rail's obligations to it.

6.37 Further information, including details of the process for applying for approval of station access agreements is set out in our criteria and procedures for the approval of station access agreements.

6.38 The Stations and Depots team are happy to discuss any station access queries and can be contacted at StationsandDepots@orr.gov.uk.

6.39 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.

6.40 You should know that there are different contracts for getting access to stations. Securing access to track does not also give you access to stations. Station access contracts have a different purpose, and are normally with different facility owners,

and so need to be approved separately. If you want to operate a station you will also need to have a licence (see chapter 2)

### Stations on HS1 network

6.41 Station access agreements for stations on HS1 are not regulated under the Act and are not subject to approval by us. Access to the stations and services within the stations (as described in Schedule 2(2) of the 2016 Regulations) is governed by the 2016 Regulations.

6.42 HS1 Ltd owns and is the service provider for the following stations:

(a) St Pancras International Station. This station houses Eurostar's international services as well as domestic services from Southeastern, East Midlands Railway and Thameslink. Annex 10 of the HS1 St Pancras International Station Access Conditions (available on the HS1 Limited website) sets out the common station amenities and services provided in the International Zone of the station.

(b) Stratford International Station;

(c) Ebbsfleet International Station; and

(d) The international section of Ashford International Station. This station serves the Eurostar departures and arrivals on the high speed line and is connected to the Ashford station on the domestic line. Depending on how you access Ashford International Station, you may also need a track access agreement with Network Rail.

6.43 As service provider HS1 Ltd is responsible for the maintenance, repair, renewal of station buildings and facilities, cleaning and security at those stations.

6.44 HS1 Ltd station access conditions and annexes can be found on its website. Further information about the services provided at the HS1 Stations and other arrangements can also be found in HS1 New Operator Guide and HS1 Network Statement and HS1 new operator guide. . You should contact HS1 Ltd for more information.

## Access to light maintenance depots

6.45 Access agreements for light maintenance depots (LMDs) must be pre-approved by us, under the Act.

6.46 The Act defines "light maintenance services" as "services of any of the following descriptions, that is to say – (a) the refuelling, or the cleaning of the exterior, of locomotives or other rolling stock; (b) the carrying out to locomotives or other rolling stock of maintenance work of a kind which is normally carried out at regular intervals of twelve months or less to prepare the locomotives or other rolling stock for service" (section 82(2)).

6.47 The operator of a LMD is known as a depot facility owner (DFO). Other railway undertakings, or third parties procuring depot services on behalf of a railway undertaking (known as beneficiaries), who want to use the LMD must enter into an access agreement with the depot facility owner.

6.48 ORR has published the following LMD access template documents:

(a) a standard Depot Access Agreement which covers general access;

(b) a non–TOC beneficiary Depot Access Agreement, for use when a third party is procuring depot services on behalf of another party;

(c) Depot Access Conditions; and

(d) Depot Specific Annexes.

These and other template documents can be found on ORR's website.

6.49 Each LMD Access Agreement contains LMD access conditions and annexes specific to each LMD. The LMD access conditions are standard rules which govern the relationship between all those who have access contracts for the LMD, covering matters such as the process for agreeing changes to the LMD, and the remedies available when things go wrong. It is usually the National Depot Access Conditions that are in the contract, but other access conditions can be agreed if necessary. LMD access agreements (depot access agreements) approved by ORR can be found on ORR's public register.

6.50 The annexes specific to an LMD cover the details relevant to the specific LMD (such as an LMD plan and a description of the LMD's facilities).

6.51 The majority of LMDs in Great Britain are owned by Network Rail and leased to another party to operate as DFO. The template documents listed in paragraph 0 are drafted to capture the ownership and operation arrangements that apply at most LMDs. ORR does not regulate leases.

6.52 When preparing modified versions of LMD access documentation, we request that parties start from the existing published templates and make only those modifications that are required and necessary to reflect the ownership and operation arrangements at the LMD(s) in question. This includes, for example, annotating unused provisions as “not used” rather than deleting them. In our experience, this ensures that all LMD access documents follow broadly the same format and include broadly the same provisions. In turn, this facilitates ease of use and understanding for all parties negotiating access.

6.53 Agreeing modified LMD access documents is an iterative process. The time required to finalise the documents will depend on the number and nature of the modifications proposed.

6.54 There are currently two LMDs available to passenger trains using HS1. For further information on technical compatibility and detailed access conditions to these depots, you should contact the relevant facility owner. Please refer to the HS1 Network Statement and HS1 new operator guide for information.

(a) Temple Mills is operated by Eurostar International Limited and is regulated under the Act. Applicants will be required to enter into a depot access agreement with Eurostar. Such an agreement is likely to contain additional provisions covering compatibility with Temple Mills infrastructure, technical security requirements, agreed specification of services etc.

(b) Ashford Depot is operated by Southeastern, for rolling stock complying with GB loading gauges.

6.55 For further information please refer to our criteria and procedures for the approval of depot access agreements

6.56 The Stations and Depots team are happy to discuss any depot access queries and can be contacted at StationsandDepots@orr.gov.uk.

## Exemptions

6.57 A number of depots do not need to have depot access agreements approved by us before you can enter into them either because we have granted a specific exemption or they fall under one of the categories for exempt facilities in 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

6.58 You should know that there are separate contracts for getting access to depots. Securing access to track does not also mean you have access to depots. Depot access contracts have a different purpose, and are normally with different facility owners, and so need to be approved separately.

6.59 If you want to operate a depot you will also need to have a licence (see chapter 2).

### Application process

6.60 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 available model depot access contracts.

6.61 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 model contract, the charges proposed, and any potential effect on third parties.

6.62 Applications under sections 17 and 22A have a separate approval process. This is set out in schedule 4 to the Act. Further guidance on applications under sections 17 and 22A can be found in our Criteria and procedures for the approval of depot access agreements

## The General Approval for depots 2017

6.63 Sections 18(1)(c) and 22(3) of the Railways Act 1993 enable ORR to give its prior approval for new access agreements and to the amendment of existing agreements. This prior approval is known as a General Approval and you may find that your new depot access agreement, or an amendment to an existing depot access agreement, could be approved in this way.

6.64 We rely on the industry to ensure the documentation it submits for approval is accurate and within the scope of the General Approval. We regularly audit submissions made to us under the General Approval.

6.65 Further detail on the General Approval for depots (2017) can be found in our General Approval for depots (2017) guidance.

### Timescales

6.66 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 the

information we need. You should expect applications under sections 17 or 22A to take longer to process. Under the Access and Management Regulations, we must make our decision within six weeks of receiving the final piece of information we need.

6.67 Further detail on the criteria and procedures for the approval of Depot Access Agreements can be found in our Criteria and procedures for the approval of depot access agreements document.

6.68 The Stations and Depots team are happy to discuss any depot access queries and can be contacted at StationsandDepots@orr.gov.uk

## Service facilities and the 2016 Regulations

6.69 Where the Act does not apply, access to service facilities is governed by the 2016 Regulations. You will still need to enter into an agreement with the relevant service facility provider, ORR does not pre-approve such agreements.

6.70 The general legal requirements of the 2016 Regulations also apply where access is primarily governed by the Act. Paragraphs 6.69 to 1.1 summarise some of the key elements of these requirements; for further information please refer to our guidance on the 2016 Regulations.

6.71 In this section of the guidance, we have used the term 'service provider', which is defined in the 2016 Regulations as:

*"a body or undertaking that supplies any of the services:*

*(a) to which access is granted by virtue of regulation 6; or*

*(b) listed in paragraphs 2,3 or 4 of Schedule 2,*

*or which manages a service facility used for this supply, whether or not that body or undertaking is also an infrastructure manager".*

6.72 Although this chapter focuses on service providers, it should be noted that the 2016 Regulations also describe obligations on infrastructure managers which relate to service facilities, such as in relation to the publication of the network statement.

6.73 Service providers must provide the infrastructure manager with sufficient information on access conditions in respect of their relevant service facility (covering technical, access and charging arrangements) to be included in the

infrastructure manager's network statement, or details of a website where such information is available free of charge in electronic format.

6.74 Regulations 6(2) to 6(12) of the 2016 Regulations deal with access to, and the supply of, services for railway undertakings. Service providers are required to supply non-discriminatory access to all railway undertakings. This includes track access, and access to service facilities and the supply of services described in paragraph 2 of Schedule 2 which includes refuelling, passenger stations (including buildings and other facilities such as travel information display and a suitable location for ticketing services), marshalling yards, storage sidings and freight terminals.

6.75 Railway undertakings seeking access to a service facility should consider whether it falls within the scope of the 2016 Regulations. Further information can be found in chapter 4 of our guidance on the 2016 Regulations.

6.76 We are aware that applicants may wish to access facilities which are not explicitly listed in paragraph 2 of Schedule 2. It is likely that some such facilities may fall within the scope of the 2016 Regulations and other facilities (for example if they are entirely unconnected to the operation of the freight or passenger service) may fall outside of the scope of the 2016 Regulations. We encourage early dialogue with us about such issues, as we will need to consider each matter on a case-by-case basis, in light of our legal duties and the relevant legislation. We are currently exploring this issue to see where we can provide more guidance.

6.77 The 2016 Regulations provide that service providers may only refuse access to a service facility where a viable alternative exists. The definition of a viable alternative is "access to another service facility which is economically acceptable to the railway undertaking, and allows it to operate the freight or passenger services concerned". Our approach to viable alternative is further detailed in our guidance on the 2016 Regulations.

6.78 In most cases we would expect service providers to provide access where they are able to accommodate requests for their services (taking into account technical compatibility). This reflects the underlying market opening principles and purpose of the 2016 Regulations. In the case of conflicting requests, service facility providers must attempt to meet all requests as far as possible.

6.79 Service providers are not obliged to invest in their facilities in order to meet all requests. Accordingly, where there is a non-conflicting request which would

require such investment, we consider that a service provider may refuse a request without having to consider if a viable alternative exists.

6.80 Requests for access to service facilities, and the supply of services must be answered within a reasonable time limit as set by ORR. We consider a reasonable time limit to be ten working days in most cases, commencing on the first working day after the request has been made. However, where there is a short-notice request (such as ad hoc requests for unplanned access), we would expect service providers to deal with such requests within a shorter timescale where it is reasonable to do so.

6.81 The 2016 Regulations require a service provider to justify, in writing, a decision to refuse a request for access to, and the supply of, services in specified situations. We expect all service providers to ensure refusals for any of the services referred to in paragraph 2 of Schedule 2 of the 2016 Regulations are in writing, fully reasoned and objectively justified. Therefore, whenever a service provider is refusing access, we expect the service provider to explain why it is refusing access and, where applicable, why it considers the alternative facility it has identified is a viable alternative for the railway undertaking. This is because all such decisions are subject to appeal to ORR and may be subject to our scrutiny in due course.

6.82 Regulation 32 of the 2016 Regulations provides all applicants for access with a general right of appeal to ORR if they feel they have been unfairly treated, discriminated against or are in any other way aggrieved. Such an appeal may be in relation to facilities that are otherwise exempt from the access regulation provisions of the Act, provided that these facilities have not themselves been identified as excluded from the scope of the 2016 Regulations (as outlined in regulation 4 of the 2016 Regulations). Further information about appeals under the 2016 Regulations can be found in Chapter 8 and in ORR's updated guidance.

6.83 "Applicants" are defined as: a railway undertaking or an international grouping of railway undertakings or other persons or legal entities, such as competent authorities under the Public Service Obligations in Transport Regulations 2023 and shippers, freight forwarders and combined transport operators, with a public service or commercial interest in procuring infrastructure capacity. In effect, this means any person with a demonstrable interest in obtaining access to the infrastructure or a service facility may have a right of appeal. You do not need to be a licensed operator or an existing holder of access rights in order to appeal.

# 7. Appeals and disputes

7.1 Parties can appeal to ORR if they are unhappy with the decision taken by an infrastructure manager, facility owner or service provider if they feel that they have been unfairly treated or discriminated against.

7.2 There are several appeal mechanisms available;

(a) A party can appeal to us under the infrastructure manager's Network Code against any determination made by an infrastructure manager or the relevant panel of the Access Disputes Committee which it considers to be wrong or unjust because of serious procedural or other irregularity.

(b) An applicant can appeal to us under the 2016 Regulations if it believes it has been unfairly treated, discriminated against or is in any other way aggrieved. In particular it can appeal against decisions of an infrastructure manager, allocation body, charging body, service provider or a railway undertaking.

(c) Where the matter of an appeal is one where directions may be sought from ORR under the Act, an application must be made under the provisions of the Act, rather than the appeal mechanisms available under the regulation 32 of the 2016 Regulations.

7.3 Once we have all the information, we need we will make a decision on the appeal based upon the evidence and information provided by the parties, and any information or evidence gathered by ORR. To the extent relevant, we will consider our section 4 duties under the Act when we make our decision on the appeal.

## Network Code appeals

7.4 Infrastructure managers' Network Code contains the Access Dispute Resolution Rules (the ADRR), which set out the process for dispute resolution to be used by the parties. Separate guidance on Network Code appeals is also available on our website.

7.5 The dispute process is managed by the Access Disputes Committee. Under the ADRR, beneficiaries can either refer a dispute through mediation and early neutral evaluation, or through determinative processes such as the timetabling panel (TTP), access disputes adjudication (ADA), expert determination and arbitration. These are all in addition to the option of referring the dispute to court. Further information can be found on the Access Dispute Committee website.

7.6 Where the matter of an appeal is one where directions may be sought from ORR under the Act, an application must be made under these provisions, rather than the appeal mechanisms available under the regulation 32 of the 2016 Regulations.

## 2016 Regulations

7.7 Regulation 32(1) of the 2016 Regulations provides applicants (a term defined in the Regulations) with a general right of appeal to ORR if they feel they have been unfairly treated, discriminated against or are in any other way aggrieved.

7.8 In particular, an applicant can appeal against decisions of an infrastructure manager, allocation body, charging body, service provider or a railway undertaking concerning any of the following matters (see regulation 32(1) and 32(2)):

(a) the network statement in its provisional and final versions;

(b) the information that must be included in the network statement;

(c) the allocation process and its results;

(d) the charging scheme, the charging system and the Channel Tunnel Fixed Link charging framework;

(e) the level or structure of railway infrastructure charges which the applicant is, or may be, required to pay;

(f) the arrangements for access; and

(g) access to and charging for services.

7.9 We have published guidance on the 2016 Regulations, which focuses on access to infrastructure and service facilities, infrastructure managers' responsibilities and appeals to ORR. The guidance describes in particular how to make an appeal under regulation 32, the process we will follow once we have accepted an application for appeal, the information we expect to receive in connection with the appeal, and some appeal specific issues.

## Consideration and decision

7.10 Once we have accepted an application for appeal under regulation 32, we will then follow the process set out in our guidance. This includes, as appropriate, initiating a consultation with relevant parties and requesting representations from the respondent, requesting further written representations from the applicant, and

inviting any further information, clarification, or representations from the parties involved. In complex cases involving several parties we may decide it is necessary to hold a hearing.

7.11 Once we are satisfied that we have received all relevant information, we will, within a predetermined and reasonable time, and, in any case within six weeks of the date of receipt of all relevant information:

(a) make a decision;

(b) inform the relevant parties of our decision and our reasons for that decision;

(c) where appropriate, issue a direction to the infrastructure manager, allocation body, charging body, service provider or, as the case may be, railway undertaking, to remedy the situation from which the appeal arose; and

(d) publish the decision.

7.12 The applicant can withdraw its appeal at any time by writing to us with a short explanation. We will inform all other relevant parties that the appeal has been withdrawn.

# Annex A: Legal framework

## Legal framework

A.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

A.2 We were established under this 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 network licence. Section 4 of this Act also contains most of the statutory duties which shape our decision making. Where the Act applies, service providers should follow the established ORR procedures, such as for contesting access to a rail facility under section 17 of the Act.

## Railways Act 2005

A.3 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 (Access, Management and Licensing of Railways Undertakings) Regulations 2016

A.4 The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 apply alongside the Railways Act 1993 (the Act). The 2016 Regulations describe entitlements and obligations in respect of access to the rail network and service facilities, infrastructure management and appeals. The 2016 Regulations reflect most rules introduced by Directive 2012/34/EU. The 2016 Regulations were amended several times to account for the departure of the UK from the European Union.

## Health and Safety at Work etc Act 1974 (HSWA)

A.5 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)

A.6 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)

A.7 These regulations introduce certain EU safety requirements to transport undertakings and infrastructure managers operating in Great Britain. 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) (Amendment) (EU Exit) Regulations 2019 (RIR 2019)

A.8 These regulations amend the RIR 2011 which had governed rail interoperability deriving from EU directives Under these regulations, we are responsible for enforcing NTSNs.

## Competition Act 1998

A.9 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 CMA 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 on our website.

# Enterprise Act 2002

A.10 This Act gives us the power to refer a railway market to the CMA if we think that there are signs that the market is not running effectively. The CMA will then carry out a Market Investigation. If it finds any damaging effects on completion it will order or propose remedies which it considers to be reasonably possible. Our website details our approach to monitoring and reviewing markets.

# Annex B: ORR responsibilities and statutory duties

A.11 ORR's responsibilities include:

(a) Regulating the safety procedures for railways, metro systems, tramways and heritage railways.

(b) Setting HS1 and Network Rail's income every five years through an access charges review. Further information relating to Network Rail and HS1 can be found on our website .

(c) Making sure Network Rail complies with its network licence and modifying it if necessary.

(d) Issuing licences to operators of passenger and freight services, stations, light maintenance depots and network (see chapter 2).

(e) Making sure the requirements of interoperability are met (see chapter 4)

(f) Approving access granted in Great Britain to track, light maintenance depots, stations and other facilities, except where an exemption applies (see chapters 5 and 6).

(g) Acting as the appeal body for applicants who believe they have been unfairly treated, discriminated against, or are in any other way aggrieved, including regarding any information included in network statements (see chapter 7).

(h) Making sure that the different markets for railways are working for the benefit of rail users and taking action where we find competition rules have been broken.

(i) Controlling the matters referred to in the network statements of relevant infrastructure managers on our own initiative, and checking that they do not contain discriminatory clauses or create discretionary powers for the infrastructure manager that may be used to discriminate against applicants.

(j) Acting as the concurrent competition authority for the railway industry (see ORR's website) alongside the Competition and Markets Authority (more information on the CMA's role on competition and consumer law can be found on its website).

## Section 4 of the Railways Act 1993

A.12 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 under the Act and the relevant parts of the 2016 Regulations, 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 CMA 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 CMA under the Enterprise Act.

## Safety regulation

A.13 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.

A.14 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

A.15 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

A.16 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.

A.17 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.

## Confidentiality and the public register

A.18 We are required by section 72 of the Act to maintain a public register. Section 72 sets out what we must enter in the register. This includes every direction to enter into an access contract, every access contract and every amendment of an access contract under the Act. We must have regard to the need for excluding from the register, so far as practicable, any matter which relates to the affairs of an individual or body of persons, where publication would, or might, in our opinion, seriously and prejudicially affect the interests of that individual or body.

A.19 Although the Act does not apply to regulation of HS1, and we have no statutory duty to do so, we would still expect to enter all framework agreements and amendments to framework agreements into the public register, in the interests of openness and transparency, with any appropriate redactions having been made.

A.20 Applicants must provide relevant reasons to support any request for excluding any confidential material from entry on the public register or publication generally.

A.21 Once an agreement has been entered into, the parties will, if necessary, be invited again to identify any parts of the agreement they want us to redact from the copy we will enter into the public register. We will not redact material we have already published. However, subject to being satisfied with the justification provided, in appropriate cases we may be prepared to redact certain material derived from what has already been published. Any enquiries regarding this publication should be sent to us at contact.pct@orr.gov.uk.

# Annex C: Glossary of terms

| Term | Definition |
|---|---|
| 2016 Regulations | The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (as amended). |
| Access contract | The Act defines access contract as:<br>*"(a) a contract under which—*<br>*(i) a person (whether or not the applicant), and*<br>*(ii) so far as may be appropriate, any associate of that person,*<br>*obtains permission from a facility owner to use the facility owner's railway facility; or*<br>*(b) a contract conferring an option, whether exercisable by the applicant or some other person, to require a facility owner to secure that—*<br>*(i)a person (whether or not the applicant or that other), and*<br>*(ii)so far as may be appropriate, any associate of that person, obtains permission from the facility owner to use his railway facility;"* |
| Access agreement | For the purposes of this guidance, the term 'agreement' is used to describe either an access contract (as defined in section 17(6) of the Act), an access agreement (as defined in section 83(1) of the Act), or a framework agreement (as defined in the 2016 Regulations. |
| Act | The Act refers to the Railways Act 1993 and any subsequent amendments |
| Applicant | In this guidance the term 'applicant' is used broadly to describe the party making an application to ORR. However, for certain specific functions you will need to consider whether you fall within the defined category of applicants in the 2016 Regulations<br>The 2016 Regulations defines applicant as "*a railway undertaking or an international grouping of railway undertakings or other persons or legal entities, such as competent authorities under The Public Service Obligations in Transport Regulations 2023 and shippers, freight forwarders and combined transport operators, with a public service or commercial interest in procuring infrastructure capacity*". |

| Term | Definition |
|---|---|
| Beneficiary | A person who obtains permission from a facility owner to use a railway facility or has the benefit of an option to require a facility owner to secure the same. |
| Channel Tunnel Fixed Link | The Channel Fixed Link between the United Kingdom and France consists of two railway tunnels plus a service tunnel, each 50 km long (37 km of which are under the sea). |
| CMEO | The Railways (Class and Miscellaneous Exemptions) Order 1994 (CMEO) sets out some categories of facilities that are excepted from the access regime in the Railways Act 1993. |
| Depot facility owner | The depot facility owner operates the depot. Most depots are operated by a train operating company operating in accordance with an agreement awarded by DfT or Scottish Ministers. Some depots, however, are operated by train manufacturers or other third parties. |
| Duty holder | In this guidance, the person responsible for carrying out a particular duty under the various regulations |
| Facility owner | The Act defines facility owner as:<br>*"any person –*<br>*(a) who has an estate or interest in, or right over, a railway facility; and*<br>*(b) whose permission to use that railway facility is needed by another before that other may use it".* |
| Framework agreement | The 2016 Regulations use the term framework agreement to describe both access contracts regulated under the Act; and other legally binding agreements setting out the rights and obligations of an applicant and the infrastructure manager or, as the case may be, allocation body in relation to the infrastructure capacity to be allocated and the charges to be levied over a period in excess of one working timetable period.<br>In this guidance, we have used the term 'access agreement' to describe both access contracts and framework agreements. |
| GB mainline | Where this guidance document refers to the GB mainline, it includes both the Network Rail network and the HS1 network.<br>Railways & Other Guided Transport Systems (Safety) Regulations 2006 defines mainline. All railways are mainline railways unless: |

| Term | Definition |
|---|---|
| | • ORR determines that it falls within one or more of these categories:<br>  ○ metros and other light rail systems;<br>  ○ networks that are functionally separate from the rest of the mainline railway system and intended only for the operation of local, urban or suburban passenger services, as well as transport undertakings operating solely on these networks;<br>  ○ heritage, museum or tourist railways that operate on their own networks; or<br>• ORR determines that heritage vehicles that operate on the mainline railway and comply with national safety rules are deemed not to operate on the mainline railway; or<br>• it is privately owned infrastructure that exists solely for use by the infrastructure owner for its own freight operations. |
| General Approval | Sections 18(1)(c) and 22(3) of the Railways Act 1993 enable ORR to give its prior approval for new access agreements and to the amendment of existing agreements. This prior approval is known as a General Approval. Details of the General Approvals can be found on ORR's website. |
| Infrastructure | This guidance uses the term 'infrastructure' in different contexts. There are two main definitions of infrastructure to be aware of:<br>The 2016 Regulations define railway infrastructure as *"the items described as "network", "station" and "track", in section 83 of the Act, but excludes such items—*<br>*(a) which consist of, or are situated on, branch lines and sidings whose main operation is not directly connected to the provision of train paths;*<br>*(b) within a maintenance or goods depot, or a marshalling yard;*<br>*(c) within a railway terminal, port, factory, mine, quarry, nuclear site or site housing electrical plant;*<br>*(d) which consist of, or are situated on, networks reserved mainly for local, historical or touristic use; and*<br>*(e) within a military establishment;"* |

| Term | Definition |
|---|---|
| | ROGS defines infrastructure as *"fixed assets used for the operation of a transport system which shall include, without prejudice to the generality of the foregoing—*<br><br>*(a) its permanent way or other means of guiding or supporting vehicles;*<br><br>*(b) any station; and*<br><br>*(c) plant used for signalling or exclusively for supplying electricity for operational purposes to the transport system;*". |
| Infrastructure manager | This guidance uses the term 'infrastructure manager' in different contexts. There are several definitions to be aware of:<br><br>Infrastructure manager is defined in the 2016 Regulations as:<br><br>*""infrastructure manager" means any body or undertaking that is responsible in particular for—*<br><br>*(a) the establishment, management and maintenance of railway infrastructure, including traffic management and control-command and signalling; and*<br><br>*(b) the provision with respect to that infrastructure of network services as defined in section 82 of the Act, but, notwithstanding that some or all of the functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings, the obligations in respect of those functions remain with the infrastructure manager except where the functions and obligations pass to an allocation or charging body by virtue of regulations 19(4) and 14(9) respectively*;"<br><br>For the purposes of the 2016 Regulations, we consider that infrastructure managers include in particular: Network Rail Infrastructure Limited, HS1 Limited (in respect of High Speed 1), and Eurotunnel in respect of the Channel Tunnel Fixed Link.<br><br>In the context of health and safety, ROGS defines an infrastructure manager as any person or organisation that:<br><br>● is responsible for developing and maintaining infrastructure (not including a station) or for managing and operating a station; and<br><br>● manages and uses that infrastructure or station, or allows it to be used for operating a vehicle.<br><br>Under the Train Driving Licences and Certificates Regulations 2010 (TDLCR) infrastructure manager means an organisation that holds a safety authorisation issued by |

| Term | Definition |
|---|---|
| | ORR in accordance with ROGS, or a safety authorisation issued by the IGC. |
| Light maintenance depot (LMD) | The Act defines light maintenance depot as "*any land or other property which is normally used for or in connection with the provision of light maintenance services, whether or not it is also used for other purposes*".<br>"Light maintenance services" mean "*services of any of the following descriptions, that is to say – (a) the refuelling, or the cleaning of the exterior, of locomotives or other rolling stock; (b) the carrying out to locomotives or other rolling stock of maintenance work of a kind which is normally carried out at regular intervals of twelve months or less to prepare the locomotives or other rolling stock for service*". |
| Mainline railway system | ROGS defines mainline railway system as *"the mainline railway and the management and operation of the mainline railway as a whole".* |
| Network | Where this guidance uses the term network it is referring to the definition in the 2016 Regulations unless stated otherwise.<br>Network is defined in the 2016 Regulations as meaning:<br>"*Except in those cases where the context otherwise requires, the entire railway infrastructure managed by an infrastructure manager*".<br>The effect of this definition is to capture for the purposes of the 2016 Regulations:<br>• All of the items included in the definition of network under the Act (as set out below); and<br>• Every other item included in the definition of 'railway infrastructure'. Network is therefore a broad concept under the 2016 Regulations.<br>Network is defined in the Act as:<br>*"(a) any railway line, or combination of two or more railway lines, and*<br>*(b) any installations associated with any of the track comprised in that line or those lines,*<br>*together constituting a system of track and other installations which is used for and in connection with the support, guidance and operation of trains."* |

| Term | Definition |
|---|---|
| Operator | The Act defines operator in relation to any railway asset, as, "*the person having the management of that railway asset for the time being*".<br><br>In Chapter 2 of this guidance, the term operator is used to describe the legal entity that manages a railway asset as defined in the Act. Typically, this is the train operating company running a passenger or freight train service. |
| Rail system | The Railways (Interoperability) Regulations 2011 define rail system as "*the structure composed of lines and fixed installations of the existing rail system in the United Kingdom plus the vehicles of all categories and origin travelling on that infrastructure*". |
| Railway asset | The Act defines railway asset as<br>*"(a) any train being used on a network, whether for the purpose of carrying passengers or goods by railway or for any other purpose whatsoever;*<br>*(b) any network;*<br>*(c) any station; or*<br>*(d) any light maintenance depot"* |
| Railway facility | The Act defines railway facility as any track, station, or light maintenance depot. |
| Railway undertaking | The 2016 Regulations use the term railway undertaking to describe "*any public or private undertaking licensed according to the Railway (Licensing of Railway Undertakings) Regulations 2005, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking ensure traction; this also includes undertakings which provide traction only*".<br><br>Under the Train Driving Licences and Certificates Regulations 2010 (TDLCR) a railway undertaking refers to organisations that hold a safety certificate issued by ORR in accordance with ROGS, or Part B safety certificate issued by the IGC. |
| ROGS | The Railways & Other Guided Transport Systems (Safety) Regulations 2006. |

| Term | Definition |
|---|---|
| Service facility | Service facility is defined in the 2016 Regulations as: *"the installation, including ground area, building and equipment, which has been specially arranged, as a whole or in part, to allow the supply of one or more of the services listed in paragraph 2, 3 or 4 of Schedule 2".* |
| Service provider | The 2016 Regulations define service provider as *"a body or undertaking that supplies any of the services:*<br>*(a) to which access is granted by virtue of regulation 6; or*<br>*(b) listed in paragraphs 2,3 or 4 of Schedule 2*<br>*or which manages a service facility used for this supply, whether or not that body or undertaking is also an infrastructure manager;"* |
| Station facility owner | The party who operates a station and whose permission is needed for access to the station. Generally, this is the leaseholder or if there is no leaseholder, the freeholder |
| Structural subsystem | Rolling stock, infrastructure, energy or control and command and signalling. |
| Subsystem | A categorisation of the rail system into separate elements for convenience in the context of interoperability. The term is used to refer to the whole, or any part of 'structural' or 'functional' subsystems. |
| Supplemental agreement | An agreement which amends an existing access agreement. |
| Transport operator | ROGS defines 'transport operator' as any transport undertaking or infrastructure manager. |
| Transport system | Transport system mainly means a railway (mainline or non-mainline), a tramway, or any other guided transport system used wholly or mainly to carry passengers. The exceptions to this are listed in ORR's Guide to ROGS. |
| Transport undertaking | ROGS defines transport undertaking as any person or organisation that operates a vehicle in relation to any infrastructure. People or organisations that only carry out work in 'engineering possessions' (this means sections of track that are closed to normal traffic for maintenance work) are not included in the term transport undertaking. |

| Term | Definition |
|---|---|
| TSIs | Technical specifications for interoperability (TSIs) define the technical standards required to satisfy the essential requirements set out in the Directive to achieve interoperability. These requirements include safety, reliability and availability, health, environmental protection and technical compatibility along with others specific to certain subsystems. The development process for TSIs is managed and published by the European Rail Agency (ERA) and they are governed by European Union law. |
| Viable alternative | The 2016 Regulations define viable alternative as *"access to another service facility which is economically acceptable to the railway undertaking and allows it to operate the freight or passenger services concerned".* |