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All rail operators

A More Focused Approach to Licence Exemptions: Conclusions

1. In November 2007, we consulted on possible changes to our policies and procedures for considering applications for licence exemptions¹. This letter sets out our conclusions and how we will go forward. The new and updated documents referred to are on our website².
2. We received 20 replies. These reflected a range of interests. We are grateful to everyone who responded. The 19 non-confidential responses are on our website³. They were all generally supportive.

Main Points

3. With effect from **1 April 2008**:
 - We will be using a new, shorter and more flexible format for the exemptions we grant. In most cases this will mean new railway assets can be added later to an exemption just by telling us, rather than making a whole new application. We will need to consent to additions like the extension of an exempt network.
 - We have updated the exemptions guidance to emphasise that our decision about whether to grant an exemption depends mainly on the type of operations proposed, and whether it is necessary for the operator to be bound into the national industry arrangements normally covered by a licence.
 - In practice this means we will normally exempt operators who do not need a safety certificate or authorisation for the mainline railway under ROGS⁴. Other operators can still apply, and we will consider those case by case.
 - Light Maintenance Depot (LMD) operations will not normally need to be licensed.

¹ <http://www.rail-reg.gov.uk/upload/pdf/345.pdf>

² <http://www.rail-reg.gov.uk/server/show/nav.196>

³ <http://www.rail-reg.gov.uk/server/show/ConWebDoc.9065>

⁴ The Railways and Other Guided Transport Systems (Safety) Regulations 2006



- We have introduced a shorter, more focused application form. We have stopped asking for information about an operator's good repute. But we will still have the option to act if serious concerns about fitness come up, for example during the statutory consultation.
- We will discuss ideas for further modernising the licensing system with the Department for Transport (DfT), as other priorities allow.
- There is no need to change or update licences and exemptions that are currently in force; these are all still valid. But we will apply the new approach to applications we are working on. We welcome applications from anyone who would like to exchange their old authorisation for one in the new format.

Detail

4. Question 1 dealt with the publication of responses.

Alignment with ROGS

5. Question 2 asked if we should better align our licence exemption policy with the ROGS safety certification and authorisation arrangements for mainline railways. There was broad support for this idea.
6. We have amended our guidance to make clear that where an operator does not need a ROGS certificate or authorisation for the mainline railway, they can normally assume they will also qualify for a licence exemption. This includes freight spurs, most heritage railways and Network Rail contractors working in possessions. It will also extend to LMDs. But if you operate mainline infrastructure or trains you will normally need a licence.

LMDs

7. Question 3 asked if we should now treat all LMDs the same, as exemption candidates. Most people agreed that new access rules⁵ and industry developments meant all LMDs should now be treated consistently as licence exemption candidates.
8. Network Rail pointed out that an LMD operator who switched from a licence to an exemption, would lose the licence obligations to join the industry Claims Allocation and Handling Agreement (CAHA), and to have third party liability insurance approved by ORR; this might have knock-on effects.
9. CAHA parties must bind their independent contractors into the CAHA arrangements where it is reasonably possible to do so, and our general approval for third party liability insurance has similar terms. In any event, we would expect any licence

⁵ The Railways Infrastructure (Access and Management) Regulations 2005



holder who chose to apply for a licence exemption instead, to resolve any contractual issues with their customers and suppliers in advance.

Increased flexibility

10. Question 4 asked if we should extend the exemptions we grant to cover a wider range of railway asset. Most people supported this proposal, noting the additional flexibility it would bring.
11. We have developed new, shorter and more flexible model exemptions to use. In particular, we have developed an exemption that would cover both a network and later extensions to that network. So, for example, a heritage railway company with this type of exemption would just need to tell us about the extension and get our consent before the new operations could begin. There would be no need to make a separate, new application for a fresh exemption.
12. Please contact the licensing team if you already have an exemption covering specific assets but would prefer one with broader scope⁶.
13. One operator said it would be useful to be able to keep track of what assets are licence exempt. We agree. We will make a page on our website to summarise 'at a glance' what exemptions we have granted and what assets they cover.

Reputation

14. Question 5 proposed we stop considering reputation as part of the routine application process. This would remove the need for operators to declare any legal action they are or have been involved in.
15. A few respondents thought these questions were a useful way of checking that everyone who operates is of good character. But most agreed they did not add value. One operator argued that other legislation already provides sufficient protection.
16. Many operators have never been checked because they were covered by exemption orders made at privatisation. And where we do make checks they are only made at the application stage. We have never refused an exemption application on grounds of good repute.
17. We will therefore no longer routinely consider reputation issues during the application process. However, we will still have the option to act if serious concerns about repute come up, for example during the statutory consultation.
18. We have streamlined our application forms and removed the questions about legal action. A new, shorter application form is on our website.

⁶ licensing.enquiries@orr.gsi.gov.uk



Impact and further work

19. Question 6 suggested there may be scope to further modernise this area of the law. Several people liked the idea of updating the exemption orders made at privatisation and associated legislation. But others noted there would probably be more pressing tasks. We will develop ideas for discussion with DfT as other commitments allow.
20. Questions 7 and 8 asked what, if any, effect our proposals would have on operators, and whether anyone had any other ideas for reform of the exemption arrangements.
21. Most operators thought the proposals would save time and money and reduce uncertainty. A few made general suggestions for further reform, for example, focusing on the legislative framework. We will take these forward as per question 6.
22. Please contact my colleague Gordon Herbert (020 7282 3964) or me if you want to discuss any part this letter. Or you can email licensing.enquiries@orr.gsi.gov.uk.
23. Thanks again to everyone who contributed to this review.

Yours sincerely
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