

BUSINESS IMPACT TARGET NON-QUALIFYING REGULATORY PROVISIONS (NQRPs) SUMMARY REPORT

Regulator: Office of Rail and Road

Business Impact Target reporting period covered: 8 May 2015 – 8 June 2017

ORR is required by section 24A of the Small Business, Enterprise and Employment Act 2015, as amended by the Enterprise Act 2016, to publish a summary of all regulatory provisions that do not qualify for a [Business Impact Target](#) (BIT) assessment. This summary is termed non-qualifying regulatory provisions (NQRPs summary). A list of qualifying regulatory provisions, which have been verified by the Regulatory Policy Committee (RPC), is available on our website at – <http://www.orr.gov.uk/about-orr/how-we-work/better-regulation>

Excluded category	Summary of measure(s), including any impact data where available
<p>A – EU and International</p>	<p>We carried out the following reviews of our published processes or guidance for addressing specific requirements of EU railway safety legislation:</p> <ul style="list-style-type: none"> • We reviewed our risk prioritisation evidence that underpins the safety supervision strategy we are required to implement by Commission Regulation 2012/1077/EU on a common safety method for supervision and published revised parts of that strategy. • We updated our guidance on the requirements of Directive 2007/59/EC on the licensing and certification of train drivers. • We reviewed our process for certifying “entities in charge of maintenance” of rail vehicles in accordance with Commission Regulation 2011/445/EU. • We reviewed our process for producing our annual safety report to the European Railway Agency, as required by Directive 2004/49/EC. We gathered the information necessary to compile and publish two such reports in the period (September 2015 and September 2016). • We implemented Commission Regulation 2015/1136/EU, which updated one specific

	<p>aspect of an existing regulation (from 2012) on railway safety risk assessment.</p> <p>The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 which transposed EU Directive 2012/34/EU came into force in July 2016. This new legislation meant that we had to make changes to our track access guidance and economic enforcement policy.</p> <p>We published new guidance and policy on access to the rail network and infrastructure management resulting only from changes to domestic legislation implementing revised EU law (December 2016).</p> <p>Due to changes in EU Directive 2012/34/EU there is also an extension of ORR's powers to Northern Ireland (NI). Legislative changes mean that ORR now performs several broad roles in Northern Ireland; it acts as the appeal body, controls the network statement and monitors the competitive situation of rail services, overseeing the efficient management and fair and non-discriminatory use of rail infrastructure. There is also a strong duty of co-operation. We are not the safety regulator in NI. We expect to consult on further changes to our enforcement policy and guidance in 2017. Changes to domestic legislation implementing Directive 2012/34/EU also provide ORR with new powers to impose a penalty where a party fails to comply with a decision, direction or notice issued under this legislation. We consulted on changes to our economic enforcement policy and penalties statement in November 2016 to reflect this new legislation (November 2016).</p>
B – Economic Regulation	Nothing to report
C – Price Control	Nothing to report
D – Civil Emergencies	Nothing to report
E – Fines and Penalties	<p>On safety, we have no NQRPs in this category. It is not applicable to ORR's health and safety regulation as our powers of enforcement do not include the ability levy fines and penalties. Our most serious enforcement sanction (prosecution) can and does lead to fines on regulated businesses being imposed by the courts (rather than ourselves). Information about our enforcement activity is included in the casework section at L1.</p> <p>In December 2015, following consultation with stakeholders, we made changes to our economic</p>

	<p>enforcement policy and penalties statement (December 2015). Key changes to the policy included providing greater clarity on pre investigation work and our process and introducing the concept of reparations.</p> <p>We consider these changes to be out of scope as most of them relate to fines and penalties (satisfying a specific exemption); this is not guidance (as defined in the BIT guidance), not least as it relates to actions following evidence of non-compliance with other/ different regulatory provisions instead of requirements/advice on 'complying' with regulation; there were no changes made to the actual policy, just clarification of existing policy; and the policy would only ever be applied through casework, which is itself exempt</p>
F – Pro-competition	Nothing to report
G – Large infrastructure projects	Nothing to report
H – Misuse of drugs	Nothing to report
I – Systemic financial risk	Nothing to report
K – Industry codes	<p>On safety, our role in industry codes (referred to as “standards”) is limited to the approval of the independent Railway Safety & Standards Board’s (RSSB) <i>Standards Code and Manual</i> and observing at meetings of RSSB’s Board and (some of) its standard-setting committees. Because we are not responsible for the preparation, negotiation or approval of the standards themselves, we have not reported on changes to industry standards in the reporting period here. We encourage readers to consult RSSB’s website (www.rssb.co.uk) for further information.</p> <p>Approval of changes to Network Rail’s Network Code and the Delay Attribution Guide: The Network Code and the Guide are a set of rules and procedures in the industry. Network Rail manages and maintains the Network Code. ORR has an approval role for changes prepared and sponsored by other parties. A full list of cases is available on our website at: http://orr.gov.uk/rail/access-to-the-network/the-network-code/modifications. We did not initiate any changes in the period.</p>
L1 – Casework	Our safety casework falls in four key areas:

- Giving regulatory approvals for regulated businesses' operational safety arrangements (we call this "safety certification" or "safety authorisation");
- Granting approvals (or exemptions) against requirements in railway-specific technical safety legislation, for example around train protection and level crossings;
- Enforcing compliance with health and safety law through proactive inspection of regulated businesses and reactive investigation of incidents;
- Licensing of train drivers on the mainline railway.

We provide details of these activities and their extent in our annual reports, which are laid before Parliament and published on our website at – <http://orr.gov.uk/rail/publications/corporate-publications/annual-report> .

Our economic casework activities:

- Licensing:
 - We issued licences to 8 operators of railway assets. All licences that are in force can be found on our website at <http://orr.gov.uk/rail/licensing/licensing-the-railway/current-licences>
 - We granted licence exemptions to 8 operators of railway assets. All licence exemptions in force can be found on our website at <http://orr.gov.uk/rail/licensing/licensing-the-railway/licence-exemptions>
 - We revoked 5 licences/exemptions. Copies are available on our public register: <https://sites.google.com/a/orr.gov.uk/orr-public-register/>

- Stations and depots

We gave our specific approval to the following:

- 58 new agreements.
- 93 amending agreements
- We ratified the closure of one station.

Track Access

We approved several new track access contracts and amendments to existing contracts, which facilitate access to the rail network:

Framework agreements of Train Operating Companies (TOCs) and Freight Operating Companies (FOCs) with Network Rail:

- Specific approvals: 196
- Notices of consent: 43

Connection contracts, where networks between different parties meet:

- Specific: 15 cases

Facility access contracts between TOCs/FOCs and facility owners:

- Specific: 5

Our decisions were published here: <http://orr.gov.uk/rail/access-to-the-network/track-access/track-access-decisions>

Parties were also able to use General Approvals for a number of other contracts.

We also made decisions on one appeal under Access and Management Regulations 2005 [October 2015](#) and five appeals under [Part M](#) of the Network Code – concerning disputes between industry parties.

On 3 July 2015, ORR published an open letter to GB rail franchised TOCs and owner groups, Rolling Stock Companies (ROSCOs), and funders setting out its findings from the review of compliance with the Rolling Stock Leasing Market Investigation Order 2009. ORR found that in the majority of cases the Order was being complied with, and in light of that, ORR did not intend to commission an audit of ROSCO compliance.

On 18 December 2015, ORR published its decision to accept commitments from Freightliner following an investigation into a suspected abuse of a dominant position in the provision of deep

	<p>sea container rail transport services between ports and key inland destinations in Great Britain.</p> <p>We consulted on an interpretation of the Railways (Interoperability) Regulations 2011, as amended in January 2017. This was to develop a staged approach to authorisations. The relevant documents are available at – http://www.orr.gov.uk/rail/consultations/closed-consultations/railway-safety-consultations/approach-to-authorisations-under-the-railways-interoperability-regulations-2011</p> <p>In the period from 8 May 2015 to 8 June 2017, we have issued 45 authorisations to place in service of new, upgraded or renewed rolling stock.</p>
<p>L2 – Education, communications, promotion</p>	<p>We introduced or updated seven factsheets on railway health and safety issues, including electrical safety and effluent discharge.</p> <p>We updated our Licensing Guidance to reflect the 4-week response timescales as required by EU legislation. The guidance is available at – http://orr.gov.uk/_data/assets/pdf_file/0011/2216/licensing-guidance.pdf</p> <p>We reformatted our track access guidance</p>
<p>L3 – Policy development</p>	<p>We carried out a statutory post-implementation review of the Railways & Other Guided Transport Systems (Safety) Regulations 2006, which included a public consultation (including of affected regulated businesses).</p>
<p>L4 – Changes to management of regulator</p>	<p>Nothing to report</p>