



Elizabeth McLeod
Senior Executive, Network Regulation
Office of Rail and Road
One Kemble Street
London
WC2B 4AN

The Quadrant:MK
Elder Gate
Milton Keynes
MK9 1EN

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Dear Liz

Changes to ORR's economic enforcement policy and penalties statement to reflect The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016

Network Rail welcomes the opportunity to respond to ORR's consultation on the revisions to its economic enforcement policy and penalties statement. No aspect of this response is confidential and we are content for it to be published in full.

For the avoidance of doubt, Network Rail has not given any detailed consideration as to whether ORR's policy remains fit for purpose from a wider perspective. In this regard, we note that paragraph 147 of the updated economic enforcement policy and penalties statement states that "we [ORR] will carry out a review of this enforcement policy no later than three years after the date of publication to ensure it remains fit for purpose for industry control period cycles". This text has not been altered from ORR's existing economic enforcement policy and penalties statement dated December 2015.

Given the very limited scope of the current consultation, we assume that the reference to undertaking a review within 'three years' in the revised policy is erroneous and that ORR is still committed to completing a more detailed review of its enforcement policy (and penalties statement) prior to the start of the next control period in April 2019. We believe that it is both necessary and appropriate to undertake such a review, particularly in the context of route based regulation and reclassification and we look forward to engaging in this more detailed review before the start of CP6. We therefore suggest that paragraph 147 is updated to state that:

"we will carry out a review of this enforcement policy no later than two years after the date of publication..."

For clarity, the rest of this letter sets out Network Rail's response to the consultation questions as set out in ORR's covering letter to this consultation dated 6 December 2016.

Q1. Do you support the general revisions proposed to the policy and penalties statement to ensure it covers all relevant operators?

Network Rail recognises the need for ORR to make changes to its current economic enforcement policy and penalties statement as a consequence of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 ('the A&M Regulations') coming into force in July 2016 which replaced the Railways Infrastructure (Access and Management) Regulations 2005. In particular, we note that the A&M Regulations confer a power on ORR to consider the imposition of a penalty on a relevant operator if it breaches an ORR decision, direction or notice made under the A&M Regulations. As such, and subject to the more detailed comments set out elsewhere in this consultation response, Network Rail supports the general revisions proposed to the policy and penalties statement to ensure it covers all relevant operators.

Q2. Does the policy help you understand the impact of The Railway (Access, Management and Licensing of Railway Undertakings) Regulations 2016 on our enforcement function?

Network Rail is content that the policy adequately explains the impact of the A&M Regulations on ORR's role as the enforcing body of these regulations.

Q3. Do you have any general comments on how ORR can improve the format and style of our current published policy document to make it a more practical reference document?

The proposed revisions to ORR's economic enforcement policy and penalties statement seek to ensure that the statement reflects current legislation. As such we have no substantive comments to make on the format and style of the document. Notwithstanding this, we have three specific comments to make in relation to the revised draft document.

Firstly, we believe that the majority of the suggested new drafting contained in paragraphs 21 – 34 of the revised policy is superfluous to requirements and can be deleted as the text contained in these paragraphs merely duplicate definitions set out in the A&M Regulations. It may be more appropriate to modify paragraph 21 to read:

"For the purposes of this policy the parties deemed to be a relevant operator include:

- An infrastructure manager;
- A service provider;
- A railway undertaking;
- An applicant;
- An allocation body;
- A charging body; or
- A facility owner.

These definitions are defined in the A&M Regulations and have the same definition in this economic enforcement policy and penalties statement."

The 'in practice' definitions (e.g. as contained in paragraph 28) are however helpful and enable the reader to better understand the A&M Regulations and their context.

Secondly, the proposed addition of the words "if appropriate" in paragraph 61 seems unnecessary on the basis that it will always be appropriate for ORR to have regard to the bullet points that are subsequently listed in paragraph 61 when determining whether to take enforcement action.

Finally, following the definition of The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 as "the A&M Regulations" in paragraph 7 references are

subsequently made to the '2016 Regulations' (for example at paragraph 18). This may lead to confusion as to whether these are different regulations. We suggest removing reference to the "2016 Regulations" and referring to the A&M Regulations throughout.

Should you have any questions regarding any aspect of our response, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'J Haskins', with a long, sweeping underline.

Jon Haskins
Head of Regulatory Compliance & Reporting