



The Railway Safety Levy 2016-17

A guide for railway service
providers

September 2016

Contents



Executive summary	3
1. Introduction	4
Funding	4
Safety levy background	4
Safety levy consultation 2016	4
2. Scope of the levy	5
3. Operation of the levy	6
Relevant turnover and proforma financial information	6
Calculating the levy	7
Thresholds	8
Audit certification	8
Annex A – Proforma for relevant turnover – to be completed by all RSPs	9
Annex B – Frequently asked questions	10
Annex C – Timetable for the 2016-17 levy round	14

Executive summary

This document provides advice and guidance on the statutory obligations on railway service providers ('RSPs') arising under The Railway Safety Levy Regulations 2006 ('the Regulations'). It also sets out the purpose of the railway safety levy, how it operates and the role of the Office of Rail and Road (ORR).

It is not however a substitute for The Railway Safety Levy Regulations 2006 and it is recommended that you read the Regulations carefully. A copy can be downloaded from the link below¹.

The railway safety levy allows for the cost of health and safety regulation to be shared across the industry, with the larger operators paying a larger share.

In Summer 2016 we consulted on a standard format ('proforma') for the submission of RSPs' financial information to us, for levy apportionment purposes. We published our conclusions² on 21 September 2016. For the 2016-17 levy round we require all RSPs to complete the proforma attached at Annex A for the period 1 April 2015 to 31 March 2016. Those RSPs with relevant turnover of £10 million or over are required to provide an accompanying audit certificate in accordance with Regulation 5(2). If the reported turnover is less than £10 million, the response may be accompanied either by an audit certificate, or by a statement by the RSP, or person authorised to sign on behalf of the RSP. The statement should state that the financial information is calculated in accordance with accounting standards.

For the 2017-18 levy round we will again use the proforma submitted for the 2016-17 levy round as the basis of apportionment. Thereafter, we will base the levy on the last but one financial year. We hope that this will reduce the audit costs of those RSPs with turnover of £10 million or more, and also speed up the process in terms of us collecting data from you.

If you are uncertain about how to interpret this guidance or have any additional queries, please email safety.levy@orr.gsi.gov.uk or contact Grace Brown on 020 7282 2025.

¹ http://www.opsi.gov.uk/si/si2006/uksi_20061010_en.pdf

² <http://orr.gov.uk/consultations/closed-consultations/railway-safety-consultations/railway-safety-levy-consultation>

1. Introduction

Funding

- 1.1 ORR is funded primarily through a licence fee and a railway safety levy. Economic regulation activities are funded through the licence fee and health and safety activities through the safety levy.
- 1.2 As part of our annual business planning process, we calculate the total resource required to fund our health and safety regulation activities for the coming year. Stakeholders are consulted on the priority activities and on the way ORR operates.

Safety levy background

- 1.3 The safety levy was introduced through the Railway Safety Regulations 2006 on 1 April 2006, when ORR took over responsibility from the Health and Safety Executive for the regulation of health and safety on Great Britain's railways.
- 1.4 In 2008 we consulted with stakeholders to seek views on the operation of the levy. The review concluded that the industry was broadly content; however, in response to concerns raised, a new flat rate charge of £5,000 was introduced in 2009-10 for railway service providers with reported relevant turnover of between £5m and £10m.

Safety levy consultation 2016

- 1.5 In July 2016 we consulted with stakeholders to seek views on a standard format for the submission of RSPs' financial information to us, for levy apportionment purposes. We concluded that we would introduce a proforma for the 2016-17 levy round, covering the period 1 April 2015 to 31 March 2016 (attached at Annex A), to ensure that the safety levy was calculated consistently and transparently across all RSPs.
- 1.6 We have also decided to adopt a different process going forward to address concerns about the timing and cost of the process in terms of obtaining the relevant audit certification. For the 2017-18 levy round we will use the proforma submitted for the 2016-17 levy round again as the basis of apportionment. Thereafter, we will base the levy on the last but one financial year, so for the 2018-19 levy round we will require a proforma covering 1 April 2016 to 31 March 2017.

2. Scope of the levy

2.1 Section 43A(1) of the Health and Safety at Work etc Act 1974 (H&SWA) provides for the Secretary of State to make regulations requiring “persons who provide railway services” to pay the levy. Section 43A(9) states that a person provides railway services if he “manages or controls, or participates in managing or controlling a transport system”, which falls within paragraph 1(3) of Schedule 3 to the Railways Act 2005. In essence this means:

- passenger train operating companies (franchised and non-franchised);
- freight operating companies;
- infrastructure managers;
- heritage railways; and
- light rail and tramway systems.

These are referred to as “relevant services” for the purpose of the levy.

2.2 Those outside the scope include infrastructure contractors and vehicle manufacturers or testers. Whilst these organisations provide essential services, they do not manage or control “transport systems” within the meaning of the H&SWA.

2.3 Whilst the scope is reasonably clear in respect of the mainline railway, we recognise that this is not always the case for the light rail/tramway sector, where services may be provided under a variety of different arrangements. In these cases the scope issue is essential in identifying the RSP who is liable to pay.

2.4 For example, a 30 year concession to build and operate a local tramway is awarded to Company A, owned by four members of a consortium. Company A in turn contracts construction and operation back to the consortium partner Company B, who operate and maintain the tramway. In this situation it is Company B that provides the railway services and hence pays the levy based on turnover received.

3. Operation of the levy

Relevant turnover and proforma financial information

- 3.1 The safety levy is apportioned based on 'relevant turnover'. For the 2016-17 levy round this will be based on relevant turnover arising in the period from 1 April 2015 to 31 March 2016. The proforma for relevant turnover at Annex A must be completed by all RSPs.
- 3.2 Relevant turnover is defined in the Regulations as “turnover of the railway service provider derived from the provision of relevant services in Great Britain during a financial year (this is the year from 1 April to 31 March) after deduction of trade discounts, value added tax, and any other taxes directly related to turnover”.
- 3.3 Relevant services are defined as “services provided in the course of managing or controlling, or participating in the management or control of, a transport system falling within paragraph 1(3) of Schedule 3 to the Railways Act 2005”.
- 3.4 The items we would expect to find included in relevant turnover are set out in the proforma in Annex A. This includes:
- fares paid in respect of railway passenger services, including railcards, penalty fares and net of refunds for unused tickets. Delay repay compensation should not be netted off;
 - fees paid in respect of relevant services for the carriage of goods;
 - concession or management receipts;
 - income from access charges to third parties in respect of network, station and light maintenance depots;
 - commission receivable for rail ticket sales;
 - aid granted to the RSP by a public sector operator (eg revenue support grants, subsidies, profit share);
 - track access income (for infrastructure providers); and
 - amortisation of capital grants provided by government and released to income (see Annex B FAQs for further description).
- 3.5 Whilst we would expect the above list to cover most types of relevant turnover, there may be other relevant items which should be included. These should be reported in the 'other income from relevant services' line. As this is the first year of the new

process, we reserve the right to request that additional items are included if it becomes clear that our headings do not capture all of the items we would expect to be included in an RSP's submission.

3.6 Relevant turnover does not include:

- revenue from catering services (whether provided at stations or on trains);
- revenue from car parking charges;
- revenue from the disposal of land or interests in land;
- fees paid for entrance to museums or other attractions;
- receipts from retail outlets;
- advertising income;
- services provided to other industry partners eg sublease of rolling stock, maintenance income;
- Schedule 4 and Schedule 8 income; and
- grant or subsidy payments made to a public sector operator (eg Department for Transport) ie these must not be netted off.

3.7 Potential levy payers have two calendar months to provide the information requested, in line with regulation 4(5)(b).

Calculating the levy

3.8 For the 2016-17 levy round we will use relevant turnover figures for 2015-16 to apportion the cost of health and safety regulation across all RSPs, dividing those costs between RSPs so that those with a higher turnover contribute more.

3.9 Once we have received all required turnover information we will calculate the amounts due and publish a determination notice (as required under Section 3(4) of the levy regulations). The notice states how the levy has been determined and provides details of the total amount recoverable. It will be distributed with the invoices.

3.10 We endeavour to complete our calculations within two weeks of the date on which we receive the last required relevant turnover return and we will liaise with RSPs to facilitate this process. Based on this assumption we aim to issue invoices in December this year.

3.11 For the 2017-18 levy round we intend to use the 2015-16 financial information already submitted as the basis for apportionment. If there are new operators who

started providing relevant services in 2016-17, we will ask the RSP to provide financial information and an audit certificate for the 2016-17 financial year. This information will then be added to total relevant turnover for all RSPs for 2015-16 and the levy will be apportioned accordingly.

Thresholds

3.12 We are keen to ensure that the levy does not impose a disproportionate burden on smaller operations, notably in the heritage and light rail/tramway sectors. Thresholds enable us to apportion costs fairly. The payment bands are:

Relevant turnover < £1m	no fee charged
Relevant turnover £1m - £5m	flat rate £1,000
Relevant turnover £5m - £10m	flat rate £5,000
Relevant turnover > £10m	apportioned based on relevant turnover

Audit certification

3.13 Where relevant turnover is £10m or greater the proforma return must be accompanied by a statement signed by an auditor confirming that the information is calculated correctly in accordance with the relevant accounting standards. This is a requirement of the Regulations, and is key to giving us assurance over the information reported to us. The only exception may be where a franchise changes hands and it is impractical to obtain an audit certificate from the predecessor. Further information is set out in Annex B. These situations will be dealt with on a case by case basis by agreement with ORR only. Please contact us if you are in this situation.

3.14 Where relevant turnover is less than £10m, the proforma return should be accompanied either by an auditor's statement (as above) or by a statement signed by the RSP, or someone authorised on behalf of the RSP, to certify that the information provided has been calculated accurately in accordance with the relevant accounting standards.

3.15 "Accounting standards" and "international accounting standards" are defined terms as used in the Companies Act 1985 (see section 256(1) and section 262(1) respectively). "Auditor" means an auditor who is eligible for appointment as a company auditor under section 25 of the Companies Act 1989.

Annex A – Proforma for relevant turnover – to be completed by all RSPs

	£
Passenger income (passthrough) ¹	
Passenger income (retained) ²	
Freight revenue	
Concession or management contract receipts ³	
Commission receivable ⁴	
Station access income	
Depot access income	
Government subsidy receivable ⁵	
Profit share receivable ⁵	
Capital grant amortisation ⁶	
Track access income ⁷	
Other income from relevant services ⁸	
Relevant turnover	<hr/> <hr/>

¹Any passenger income passed through to government (or the contracting authority). Includes railcards, penalty fares and net of refunds for unused tickets. Delay repay compensation should not be netted off.

²Any passenger income retained by the company. Includes railcards, penalty fares and net of refunds for unused tickets. Delay repay compensation should not be netted off.

³including penalty fares

⁴for sale of other rail tickets (ticket vending machines and LENNON). Excludes bus tickets and visitor attractions.

⁵amounts payable to Governments should not be netted off

⁶amortisation of capital grants provided by Governments and released to income - see Annex B FAQs

⁷for use by infrastructure providers only

⁸this should capture any other income arising from managing or controlling a transport system. Please ask us if unsure.

Annex B – Frequently asked questions

Who is the railway service provider (RSP)?

The railway service provider is the entity which provides railway services. An entity provides railway services if it “manages or controls, or participates in managing or controlling a transport system”. In most cases the entity which manages or controls the transport system is the operator. For example, in the case of a train, this would normally be the entity from whom the driver takes ‘management’ instructions, rather than ‘signalling’ instructions.

Those outside the scope include infrastructure contractors and vehicle manufacturers or testers. Whilst these organisations provide essential services, they do not manage or control “transport systems” within the meaning of the Health and Safety at Work etc Act 1974 (H&SWA).

If you are unclear as whether you are the RSP we recommend that you get in touch with us and we will be happy to discuss each individual case.

What if my financial year does not run from April to March?

We are asking for relevant turnover for that period. However we recognise that in many cases organisations will work to a different financial year. If, for example, your financial year runs from January to December, you should compile your relevant turnover return using audited accounts for April to December 2015 and management accounts for January to March 2016. We would expect the audit certificate (if required) to cover the full period from 1 April 2015 to 31 March 2016.

What happens if we do not submit the required information?

Regulation 6 allows ORR to make assumptions relating to the required information where a railway service provider has failed to provide the details requested. Any assumptions will be subject to a reasonableness test and as a matter of policy, we intend to make every effort to engage with railway service providers before falling back on the power to make assumptions.

If ORR determines that it is necessary to make assumptions we will notify the railway service provider in writing of those assumptions as soon as reasonably practicable. Our

expectation is that assumptions will relate to an organisation's turnover and will be formed by financial information from publicly available sources or from ORR's regulatory contacts with the railway service provider.

What right do I have to challenge any assumptions made?

If you receive notification of assumptions, you may make written representations to ORR. These representations must be received within 21 calendar days of the date of the notification.

We will then consider the representation and may either apply the assumption as originally proposed or apply it with modifications.

When will I know how much I have been charged?

We will endeavour to complete our calculations within two weeks of the date on which we receive the last required relevant turnover return and we will be liaising with railway service providers to facilitate this process. On that basis we aim to issue the invoices in December this year.

What is amortisation of capital grants and why is it included?

It is a requirement of the Regulations to include all aid granted to RSPs. Where an RSP has received a government grant for a capital project, the grant should be amortised over the life of the asset, in accordance with accounting standards. Only the amount of the grant released to the income statement should be recognised as relevant turnover.

For example if an RSP receives a grant from government of £100 million to fund the construction of a new line and associated infrastructure, with an asset life of 50 years, the relevant turnover figure for the grant would be £2 million (assuming straight line depreciation) and not £100 million.

Does the safety levy apply to start-up operations?

For start-up operations where the railway service provider has yet to run any services, the relevant turnover will be "nil", as the railway service provider has yet to engage in "managing or controlling or participating in the management or control of a transport system" as laid down in the levy regulations.

For start-up operations where the operation has started to run services, no levy is payable in the first year of operation. In the second year of operation, the levy will be calculated according to relevant turnover.

For example, if a new freight operating company commences services on 1 June 2015, no levy will be payable for 2015-16. When calculating the levy fee payable for 2016-17 the relevant turnover will be the amount from 1 June 2015 to 31 March 2016 ie ten months. For 2017-18, the relevant turnover figure for 2015-16 will be calculated on a pro-rata basis for twelve months. For 2018-19 the relevant turnover figure will be the full turnover figure for 2016-17.

What happens if a franchise changes hands?

(a) If it changed in 2015-16

If an operation changed hands in 2015-16 (ie the year in which the relevant turnover figure is calculated) the current operator is required to provide turnover data for the *whole* of the 2015-16, obtaining the necessary information from the previous operator(s).

Example

Company A runs relevant services under an existing franchise from 1 April 2015 – 10 December 2015. Company B takes over this franchise and runs services from 11 December 2015. For the 2016-17 safety levy round, it is the responsibility of company B to provide turnover details for the whole period (1 April 2015 – 31 March 2016), obtaining necessary information from the predecessor franchisee (company A). B is also responsible for full settlement of our invoice.

We would expect B's audit certificate to at least cover the period from 11 December 2015 to 31 March 2016. If it is not practical to obtain an audit certificate for the period when A was running the franchise (eg if B is not part of the same group as A), we will consider either accepting A's information without an audit certificate, or pro-rating B's 2015-16 data for a full year. However, both of these arrangements will be strictly by agreement with ORR, on a case by case basis. If you are in this position, please contact us.

The same approach would apply where franchise migration means that a company operates a franchise consisting of more than one "predecessor" element. Therefore, if company A and B both run relevant services under different franchises from 1 April 2015 to 8 November 2015 and company C takes over the running of these services under a new combined franchise from 9 November 2015, company C should provide a relevant turnover figure *for the whole period* (1 April 2015 to 31 March 2016). This would be made up of the relevant proportions of the two predecessor franchises (ie for 1 April 2015 to 8

November 2015) plus company C's relevant turnover for the new combined franchise for the period from 9 November 2015 to 31 March 2016.

(b) If it changes in 2016-17

Where the operation changes hands during the current financial year (ie the year in which the safety levy is payable) the current incumbent *at the time the invoice is issued* will be required to pay for the whole year, and will be required to obtain data for 2015-16 from the predecessor. The current operator may wish to reclaim the appropriate amount from the preceding or (as the case may be) succeeding operator.

Example

Company D takes over a franchise from company E on 1 July 2016. The levy invoice is issued on 10 December 2016. Here company D will be required to obtain financial information from E for 2015-16 and meet the levy payment for the whole of 2016-17. Our expectation however, would be that company D would request reimbursement from company E for the appropriate proportion of the levy (in this case 3/12 representing the period from 1 April 2016 to 30 June 2016).

We would expect an audit certificate to cover the full year 2015-16. Please contact us if this would cause practical difficulties, and we will consider on a case by case basis.

(c) If it changes in 2017-18

We intend to base the 2017-18 levy apportionment on 2015-16 financial information. If an operation changes hands in 2017-18, the current incumbent *at the time the invoice is issued* will be required to pay for the whole year. We will base the new operator's share of the levy on the 2015-16 financial information which we should have received from the predecessor in 2016-17. The current operator may wish to reclaim the appropriate amount from the preceding or (as the case may be) succeeding operator.

Example

Company F takes over a franchise from company E on 1 May 2017. The levy invoice is issued on 4 August. Company F will be required to meet the levy payment for the whole of 2017-18. ORR should already have E's financial information 2015-16, therefore the charge to Company F will be based on this. Company F may wish to request reimbursement from Company E for the appropriate proportion of the levy (in this case 1/12 representing the period from 1 April 2016 to 30 April 2016).

Annex C – Timetable for the 2016-17 levy round

Action	Date
Consultation document issued	30 June 2016
Consultation responses due in	11 August 2016
Responses and conclusions published	23 September 2016
Requests for proforma completion issued along with new guidance	28 September 2016
Proformas due in, with audit certificates where required	28 November 2016
2016-17 levy calculated and apportioned	beginning December 2016
Determination and invoices issued	mid December 2016
Payment made by RSPs	mid January 2017



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