

7 April 2017

To statutory consultees:

British Transport Police Authority
Department for Transport
London TravelWatch
National Assembly for Wales
Network Rail
Rail Delivery Group
Rail Safety and Standards Board
Transport Focus
Transport for London
Transport Scotland

plus
Heathrow Airport Ltd
Heathrow Express Operating Company Ltd
Abellio East Anglia Ltd
First Greater Western Ltd
London and South Eastern Railway Ltd
MTR Corporation (Crossrail) Ltd

Also published on the ORR website

Consultation on a licence exemption for the operator of the Crossrail Central Operating Section (CCOS)

The CCOS is the new, mostly tunnelled, section through central and east London of the Crossrail route. It runs from Portobello junction (at its western point) to Pudding Lane junction (its north east point) and to Abbey Wood sidings (its south east point). When the CCOS opens to passenger trains at the end of 2018, its operator will either need to have a network licence granted in accordance with section 6 of the Railways Act 1993 (the Railways Act) or hold an exemption from the requirement to hold one granted in accordance with section 7 of the Railways Act.

Following a period of engagement which began in early 2015, Transport for London (TfL) applied to us formally on 8 February 2017 requesting that its intended operator of the CCOS, Rail for London (Infrastructure) Limited (RfL(I)), should be exempted from network licensing requirements because of its particular characteristics. We have considered the case in light of the purpose and use of the network operator licence held by Network Rail, information provided to us by TfL and our duties under section 4 of the Railways Act.

As we set out in greater detail in Annex A, we generally consider that even if RfL(I) is exempted from the requirement to hold a network licence, users of the CCOS (i.e. train operators), will have adequate regulatory protection from abusive monopolistic or discriminatory behaviour by RfL(I). As a result, we are minded to exempt RfL(I) from network licensing requirements, as requested by TfL.

Attached is the background to, and our analysis of, the issues raised (Annex A), a draft exemption (Annex B) and TfL's application to us (Annex C). We would welcome your views on the consultation as a whole, and in particular on whether you agree with:

- our conclusion that we should grant a network licence exemption to RfL(I);
- our conclusion that the interests of users will be protected adequately even if RfL(I) is exempted from the requirement to hold a network licence;
- the form of exemption that we propose granting; and
- the conditions we propose, to which the exemption will be subject.



Please send your responses to me, preferably by email to les.waters@orr.gsi.gov.uk. Alternatively you can send a hardcopy response to:

Les Waters
Office of Rail and Road
One Kemble Street
London
WC2B 4AN

In either case, please mark your response "Consultation on CCOS network exemption". Please ensure your response reaches me by no later than **19 May 2017**.

This consultation will count as the statutory consultation we are required to carry out on all licence exemption proposals. As this is not a routine consultation we have extended our normal statutory timescales for comments beyond the usual 28 days to six weeks.

This consultation is also being published on our website.

Yours sincerely

A handwritten signature in blue ink that reads "Les Waters". The signature is written in a cursive, flowing style.

Les Waters

Information provided, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information to be treated as confidential, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation - but cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

We will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

So that we are able to apply web standards to content on our website, we would prefer that you email us your response either in Microsoft Word format or OpenDocument Text (.odt) format.

Background

1. The Crossrail Central Operating Section (CCOS) is the new, mostly tunnelled, section through central and east London of the Crossrail route. It runs from Portobello junction (at its western point) to Pudding Lane junction (its north east point) and to Abbey Wood sidings (its south east point). It is scheduled to open in December 2018 when passenger services will run across the entire Crossrail route from Reading and Heathrow in the west to Shenfield and Abbey Wood in the east. The CCOS will be operated, that is, managed by, Rail for London (Infrastructure) Limited (RfL(I)), which is a wholly owned subsidiary of Transport for London (TfL).
2. On opening, the CCOS will carry up to 24 trains per hour in the peak between Whitechapel and Paddington. TfL has designated the CCOS as “specialised infrastructure” under the *Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016* (the 2016 Regulations) for use by high capacity, high frequency “metro” style services.¹ This allows RfL(I) to give priority to such passenger rail services. The tunnel is not expected to carry freight traffic for the foreseeable future.
3. Network Rail Infrastructure Limited (Network Rail) is the owner and operator of the vast majority of the rail network in Great Britain. From one perspective Network Rail’s network licence can be seen as a key mechanism by which control is retained over the assets which were granted to Network Rail’s predecessor, Railtrack PLC, on privatisation. From another perspective, and in conjunction with our other regulatory powers, a network licence can also more generally help to protect users of railway services from any abusive monopolistic or discriminatory behaviour by a monopoly operator.
4. In light of the second purpose of a network licence in particular, there is an argument that any network of national and regional importance on which mainline passenger services run should be licensed. This would provide a mechanism to protect the interests of train operators, passengers and funders.
5. On an application from an operator, we can, after consultation, exempt an operator from the requirement to hold a network licence. Most network licence exemptions that we grant are issued to operators of minor networks that do not form part of the mainline and are functionally separate to it. Examples include sidings, freight terminals, ports and heritage lines. Our power to exempt operators from the requirement to hold a network licence is separate to the power which the Secretary of State for Transport has to grant exemptions.
6. While the CCOS would arguably be a type of network that could be licensed given its regional, if not national, importance, it does not have an exemption from licensing under any statutory instrument or other legislation (unlike the Heathrow spur, the Channel Tunnel or the HS1 network) that would apply once it is ready for commercial use². As a result, RfL(I) will eventually need to be licensed to operate the CCOS, unless it is exempted. The CCOS is due to be ready for commercial use and open for passenger services in December 2018.

¹ The designation followed TfL’s consultation under regulation 25(2) of the 2016 Regulations. The consultation and responses are available on TfL’s website at https://consultations.tfl.gov.uk/rail/crossrail-cos/user_uploads/ccos-specialised-infrastructure-consultation-report.pdf

² The CCOS has a time-limited exemption from Section 6(1) of the Railways Act 1993 under section 24 of the Crossrail Act 2008. However, this exemption will cease to apply once the Secretary of State for Transport has determined that the CCOS is ready for commercial use.

7. TfL has updated us as it has developed its arrangements for managing the CCOS and we have had a series of meetings to discuss its case that RfL(I) should be exempted from the requirement to hold a network licence.

8. On 8 February 2017, RfL(I) applied for a network licence exemption under section 7(4) of the Railways Act 1993 (the Railways Act). A copy of the application (redacted as appropriate), together with supplementary supporting information from TfL and a covering letter is attached at Annex C.

Consideration of a network licence exemption

9. Our starting point in considering whether a network licence exemption could be appropriate in this case was to look at the purposes for which the licence held by Network Rail can be, or has been, used. In particular, we have considered how a network licence can prevent the misuse of assets provided by its funders and can protect its users (such as train operators) from abusive monopolistic or discriminatory behaviour.

10. We have further considered the position of non-Network Rail operators who do not hold a network licence. In particular, we have looked at whether/how protections are provided through alternative means.

11. Finally, we have considered TfL's submissions on whether RfL(I) should be licensed. In particular, we have considered whether, if protections are needed, appropriate protections are already (or could be) provided through alternate means. The key issues and our conclusions are set out below.

Network licence - comparison with obligations on Network Rail

12. A key function of Network Rail's network licence is that it supports our setting of charges and enforcing the delivery of outputs in a periodic review. Like other non-Network Rail operators, CCOS is not subject to a periodic review under the Railways Act. As a result, we consider that the support that a network licence could give in this area is not necessary for the CCOS. TfL will have its own contractual mechanism to review RfL(I)'s charges, and those charges will be subject to oversight from ORR in accordance with powers under the 2016 Regulations. In particular, the 2016 Regulations require us to set the charging framework and specific charging rules for the fees to be charged by RfL(I). In addition, we are required to act as the appeal body in the event of an appeal in relation to the level and structure of infrastructure charges. Further, in support of our role under the 2016 Regulations we have powers to collect, monitor and/or control, a wide range of information (e.g. in relation to business plans, network statements, charges and costs).

13. Network Rail's network licence has also been the tool through which we ensure that it provides accurate and timely information in relation to timetable changes caused by renewal, maintenance and enhancement of the network, or any known restriction of use. This in turn enables train operators to meet their information obligations to passengers and prospective passengers, including when there is disruption.

14. Granting an exemption to RfL(I) would not reduce information obligations on train operators. Equally, in addition to requiring the network operator to have in place a performance regime to minimise disruption, the 2016 Regulations require the network operator to take all such steps as are necessary to restore the normal operation of the network and have in place a contingency plan listing the various bodies who are required to be informed in the event of a serious incident or serious disruption to train movements.

Under the 2016 Regulations, ORR can hear an appeal in relation to these processes and we consider that this should enable us to protect the interests of users in broadly the same way.

15. As the operator of the national mainline, Network Rail has a licence obligation to protect third parties from unduly discriminatory treatment. Although in the short-term at least, there will be no third parties using the CCOS other than TfL's own concessionaire, MTR Corporation (Crossrail) Limited (MTR Crossrail), RfL(I) remains bound by the 2016 Regulations, which require it to grant, on equitable, non-discriminatory and transparent conditions, access rights to the CCOS. An appeal mechanism exists under the 2016 Regulations if access rights are not granted in this way. Our powers under consumer and competition law with regard to the railways will also continue to apply.

16. There are restrictive conditions in Network Rail's network licence around financial ring-fencing and land disposal. These conditions reflect the use of Network Rail's network licence as a mechanism to prevent the misuse of assets, whether those assets take the form of funding provided to Network Rail, or the form of land that was granted to Network Rail's predecessor, Railtrack PLC, on privatisation. These are not restrictions we place on other non-Network Rail operators, and our view is that policing these matters can be properly left to TfL, which is the parent company of RfL(I), the owner and funder of the CCOS and subject to control by the Mayor of London via the Greater London Authority Act 1999 (the GLA Act).

17. The 'heart' of Network Rail's network licence is condition 1: network management. It broadly requires Network Rail to operate, maintain, renew, replace and enhance the network in accordance with best practice and in a timely and economical manner. This is in order to meet the reasonable requirements of its customers and funders. A similar obligation exists under the concession agreement between the Secretary of State and HS1 Limited. Like Network Rail, HS1 Limited was not originally subject to the regulations which became the 2016 Regulations. Apart from Network Rail and HS1 Limited, no other operator is subject to a similar condition.

18. We consider that a condition set out in the terms of Network Rail's condition 1 will not be necessary in the case of the CCOS. There are several reasons for this. TfL will be able to protect its own interest as funder through its direct control of RfL(I). Equally, train operators using the CCOS will be able to protect their interests through the provisions of the 2016 Regulations. These include a requirement for network operators to have a performance scheme, the purpose of which is to encourage train and network operators to minimise disruption and improve performance of networks. In addition, timetabling, performance and possession arrangements will be set out in access contracts and RfL(I)'s own Network Code. Although ORR will not be a party to those contracts and will not be able to take action directly under them, the contracts will be subject to ORR's approval under the Railways Act, as RfL(I) will not be exempt from the access provisions contained in section 17 or 18 of the Railways Act.

19. The Network Rail network licence contains conditions on governance and management incentive plans. These do not apply to non-Network Rail network operators. In the case of RfL(I), to the extent that TfL sees these provisions as necessary, we agree that these matters can be properly left to TfL, which is subject to control via the GLA Act and it will want to align such arrangements across TfL's interests.

20. Finally, there are conditions that are common to all types of licences (for example, passenger and station licences) that are not specific to the network licence held by Network Rail. These relate to insurance, membership of the Claims Allocation & Handling Agreement

(CAHA), the need for an environmental policy, compliance with Railway Group Standards and membership of the Rail Safety and Standards Board (RSSB) and Rail Delivery Group (RDG).

21. In respect of these other conditions, TfL has told us that it will insure RfL(I)'s activities under its own insurance arrangements and that RfL(I) will become a party to and member of CAHA. We can ensure that RfL(I)'s activities are insured to our requirements through conditions in track and station access contracts. While we will not be able to take action directly under the contracts, our role in approving the contracts will allow us to ensure that contractual obligations could be enforced by train operators. TfL, as a public body, already has its own environmental policies which would also apply to RfL(I). In addition, this requirement will also be captured in the RfL(I) Network Code. Rail for London Limited (a sister company to RfL(I)) is a member of RSSB and envisages transferring this membership to RfL(I) in due course. Full membership of RDG is limited to passenger and freight train operators, but TfL has stated RfL(I) will aim to become an associate member.

Accountability of TfL

22. TfL's case is that exempting RfL(I) from having a network licence will not reduce RfL(I)'s accountability to train operators, passengers or others in any way. We note several points in relation to this argument.

23. First, the 2016 Regulations will apply to RfL(I). The 2016 Regulations allow ORR to hear appeals in relation to access and other disputes, as well as issue directions to correct (among other things) undesirable developments in railway service markets.

24. Secondly, sections 17 and 18 of the Railways Act, which deal with access contracts, will apply to RfL(I). As a result track access contracts between RfL(I) and any party seeking access to its infrastructure will be subject to our approval. This allows us to include conditions in the track access contracts that would otherwise be included in a network licence. We do note however, that enforcement would be treated differently as ORR would not be a contractual counterparty.

25. Finally, as set out above, RfL(I) is a wholly owned subsidiary of TfL – a public body with statutory responsibility for transport to and from the London area. TfL is held accountable for its actions by the Mayor of London and the Greater London Authority (GLA) who in turn have their own responsibilities and duties and are democratically accountable. TfL argues that ORR's regulation of network licence obligations in line with Railways Act duties could potentially conflict with TfL's duties under the GLA Act (see TfL's attached supporting information for more detail).

Consumer protection

26. We have looked at whether licence exemption might affect a passenger making an end-to-end journey across the Crossrail route, and traversing Network Rail, RfL(I) and Heathrow infrastructure in the process.

27. Consumer, health and safety and competition law will all apply to journeys along the full length of the Crossrail route, including the CCOS. Most consumer-facing elements of Crossrail services are planned to be provided by MTR Crossrail, which already holds a passenger licence and a station operator licence for the stations along the route which it operates. Those licences contain the full range of consumer protection conditions i.e. the

three conditions relating to complaints handling, disabled passengers and passenger information. They also contain standard conditions requiring liaison with Transport Focus, participation in approved ticketing arrangements and membership of CAHA. These conditions will apply to MTR Crossrail, just as the same conditions apply to the concessionaire which operates passenger services on the East London Railway (ELR) infrastructure. We would expect to licence any other passenger train operator (whether or not it is a TfL concessionaire) which uses the CCOS in the same way.

28. There will be ten stations on the CCOS. Five will be new stations constructed as part of the Crossrail project: Paddington CCOS (which is separate to the national mainline station), Canary Wharf Station, Custom House Station, Woolwich Station and Abbey Wood Station. There is no direct interface with the London Underground train network and they will be operated by MTR Crossrail under its station licence.

29. The remaining five stations on the CCOS, namely Bond Street, Tottenham Court Road, Farringdon, Liverpool Street and Whitechapel, form part of existing London Underground stations and will be operated by London Underground Limited (LUL). On the wider Crossrail route, two stations, namely Heathrow Airport Terminals 1, 2, 3 and Heathrow Airport Terminal 4 are owned by Heathrow Airport Limited (HAL) and operated by Heathrow Express Operating Company Limited (HEOC). Both LUL and HEOC have pre-existing exemptions from the requirement to hold a station operator licence. While this does not affect our consideration in relation to whether RfL(I) requires a network operator licence for the CCOS, we are considering any implications that this might have for passengers, and in particular disabled and older passengers, travelling the entire Crossrail route.

30. If an exemption is granted, we will not have licence enforcement powers in relation to passenger information. However, we understand the technology used by all Crossrail services will support the provision of passenger information along the whole route. MTR Crossrail's trains will have visual electronic indicator displays to display real-time information and the in-train public address system will allow drivers to announce delays or other information. Stations along the CCOS will have electronic update boards which will provide updates on all TfL rail and underground travel modes. Information about services on the whole Crossrail route will be available from the TfL website and call centre, as well as the National Enquiries website. In addition, information will also be provided through Twitter streams.

Precedents

31. To date, the Secretary of State has routinely exempted TfL companies from the need to hold a network licence (or other licences) where only TfL companies provide regular, scheduled services on the relevant infrastructure.³ Almost all LUL passenger and infrastructure operations are licence-exempt on this basis.⁴ The main exceptions are around 30 stations that are shared by heavy rail passenger trains and tube trains, such as Farringdon, Kentish Town and Harrow on the Hill. LUL is required to hold a station licence that covers those stations.

³ *The Railways (London Regional Transport) (Exemptions) Order 1994*. This was amended in 2009 by the *Railways (Transport for London) (Exemptions) Order 2009* to exclude Crossrail services, which were then expected to run entirely on Network Rail network, from the exemption.

⁴ Under *The Railways (Class and Miscellaneous Exemptions) Order 1994*.

32. The amendments to the *Railways (London Regional Transport) (Exemptions) Order 1994* made by the *Railways (Transport for London) (Exemptions) Order 2009* have most recently exempted the ELR infrastructure from network licensing. The exemption is subject to the proviso that there are no regular scheduled railway passenger services provided other than by a TfL company or an ELR concessionaire (each as defined in that exemptions order).

33. Part of the ELR previously formed the eastern branch of the London Underground Metropolitan line before becoming the London Underground East London Line. The East London Line infrastructure remained owned and managed by TfL after London Underground train services ended in 2007. The ELR (including the former East London Line) now forms part of the network over which passenger services for London Overground operate.⁵ The ELR does *not* form part of Network Rail's network, although the other lines forming the London Overground network *are* owned and operated by Network Rail and connect to the ELR. TfL's compensation scheme for London Overground train delays applies consistently, irrespective of the network traversed on the journey. This is very similar to the CCOS arrangements. TfL ultimately owns the infrastructure, RfL(I) will operate the infrastructure, Network Rail's network connects to the CCOS and the HAL infrastructure to provide the overall Crossrail route, and a TfL concessionaire will provide passenger services over the entire connected infrastructure. Again, it is expected that TfL's compensation scheme for train delays will apply across the whole of the network traversed (irrespective of ownership, management or operation of the infrastructure).

34. TfL's Docklands Light Railway (DLR) infrastructure is also exempted from network licensing by statute, under the *Railways (Class and Miscellaneous Exemptions) Order 1994*. That legislation specified the (then) extent of the DLR assets and we have supported this approach by issuing specific exemptions to cover later extensions to the DLR network. The DLR passenger services are again operated under contract to TfL (this time through a franchise agreement), with the same TfL compensation scheme for train delays applying across the network.

35. There are therefore precedents for exempting the operation of infrastructure (such as the CCOS) from the requirement to be licensed, while it is operated by a TfL company and particularly when the only regular scheduled services on it would be provided by a TfL company, franchisee or concessionaire.

36. It is not our intention in proposing a network licence exemption for RfL(I)'s operation of the CCOS to imply or set a precedent for similar treatment of any major infrastructure project which is not operated by TfL or a TfL subsidiary (for example, HS2). The legislative framework (in particular, that provided by the GLA Act) around TfL and its operations makes its situation very different from that of other operators. Other infrastructure projects will be considered on their own facts and merits.

Fees

37. TfL rightly notes in its application that arrangements will need to be made to fund ORR's activities as they relate to CCOS. If we were minded to grant a licence to RfL(I), section 9(1)(b) of the Railways Act would explicitly allow us to include a condition related to the payment of fees in its licence.

⁵ Services are currently provided under concession by Arriva Rail London Limited.

38. When granting a licence exemption, as we are minded to do here, section 7(3)(b) of the Railways Act also allows us to include *such conditions as we may specify*. Although there is no explicit limitation on what conditions could be set, unlike section 9(1)(b), the section is silent on whether those conditions can or cannot include conditions requiring the payment of a fee. We consider that the power in section 7(3)(b) of the Railways Act does not in principle prevent us inserting a condition into the exemption requiring the payment of a fee, but this is an approach that has never been tested. In light of the considerations set out below, we have chosen not to insert a fee payment condition at this stage.

39. ORR believes that RfL(I) should pay a proportionate contribution to funding ORR's regulatory work and TfL has indicated that it is content with this principle. Regulatory costs would include those arising from fulfilling functions under the 2016 Regulations, such as the annual review of RfL(I)'s network statement.

40. However, the funding of ORR is an issue more generally across the industry and a co-ordinated approach with stakeholders (including HM Treasury) will be required before we change our current approach. This is important as the number of network operators we regulate is likely to increase. Our aim is to resolve this without requiring RfL(I) to hold a network licence as we consider it undesirable to issue a licence solely for the purpose of including a fee payment condition. If, after further discussions with stakeholders, this does not prove possible, this is a scenario in which we would consider revoking the exemption and (for example) issuing RfL(I) with a licence containing a fee condition.

Conclusion

41. Under section 7 of the Railways Act, we have the power to exempt operators of railway assets from the need to hold a licence. We carry out this function in the manner we consider is best calculated to meet our duties. In this case we consider that, given its particular circumstances, RfL(I) can be exempted from the need to hold a network licence. We believe that the following duties are especially relevant:

- protecting the interests of users of railway services;
- imposing on the operators of railway services the minimum restrictions which are consistent with the performance of our functions; and to
- have regard to the ability of the Mayor of London and Transport for London to carry out the functions conferred or imposed on them by or under any enactment.

42. There is already precedent for exempting TfL companies from the requirement to have a network licence where the exemption falls away if a non-TfL company secures access. We propose including a condition to this effect in the CCOS exemption. This will ensure consistency with TfL's other licence exemptions and enable us to review the licensing position should the nature of CCOS operations change.

43. Ultimately, if we find that exempting RfL(I) from the requirement to hold a network licence is inappropriate, we have the power to revoke the whole or any part of the exemption. This may happen, for example, if we consider that the arrangements that TfL/RfL(I) has told us it will put in place do not provide sufficiently equivalent protections to those that we would normally secure through a network licence. Equally, we may have to consider revocation if suitable alternative arrangements to ensure that RfL(I)'s proportionate contribution is made to the funding of ORR's regulatory work cannot be agreed.

44. Normally, we can revoke a licence exemption without notice. Recognising the importance of the CCOS and the disruption that revocation of the exemption without notice would cause, we propose to amend the revocation terms to align them more closely with those in Network Rail's network licence. In particular, we are proposing that a notice period should apply prior to revocation of the exemption. We have considered the amount of formal notice that would be appropriate to serve on the CCOS operator in the event that revocation was necessary. Since the operator will not own the assets, we consider that the appropriate notice period is three months.

Licence Exemption 2017 Number []

1. ORR *exempts* under section 7(3) of the 1993 Act:

Each TfL company

listed in column (1) of the exemption table

from the requirement in section 6 of the 1993 Act to be authorised by licence to operate the corresponding railway asset or assets listed in column (2) of the exemption table.

2. ORR may, if it considers appropriate:
- (a) following consultation, amend the exemption table to include additional TfL companies and corresponding railway assets; and/or
 - (b) amend the description of any exempt network to include any subsequent extension to that network, which has been notified to ORR.
3. Each exemption relating to a railway asset listed in column (2) of the exemption table is valid from the corresponding effective date listed in column (3) of the exemption table until it is revoked.
4. ORR may revoke the whole or any part of any exemption in the exemption table on not less than three months' notice to the exemption holder.
5. Without limiting the generality of paragraph 4, ORR may revoke the whole or any part of any exemption in the exemption table on not less than three months' notice to the exemption holder if:
- (a) the exemption holder ceases to be a TfL company; or
 - (b) any person that is not a TfL company or TfL concessionaire operates or secures the right to operate a train on the relevant exempt network; or
 - (c) ORR suspects on reasonable grounds that the exemption holder has operated a railway asset without a necessary licence or exemption; or
 - (d) the exemption holder is granted a licence or another exemption for the operation of all or some of the railway assets to which the relevant exemption applies; or
 - (e) the exemption holder ceases to be the operator of all or some of the railway assets to which the relevant exemption applies; or
 - (f) all or some of the railway assets to which the relevant exemption applies are not used for at least one year; or
 - (g) ORR agrees in writing with the exemption holder that the relevant exemption should be revoked.

6. In this exemption:

“1993 Act” means the Railways Act 1993;

“concession agreement” means an agreement entered into by Transport for London or any of its subsidiaries, pursuant to which another person, not being a TfL company, agrees to provide a railway passenger service for Transport for London or the subsidiary concerned;

“exempt network” means any railway asset that is a network listed in column (2) of the exemption table;

“exemption holder” means the relevant TfL company listed in column (1) of the exemption table;

“exemption table” means the exemption table in the schedule to this exemption;

“ORR” means the Office of Rail and Road;

“PPP agreement” and “PPP company” have the same meaning as in Chapter VII of Part IV of the Greater London Authority Act 1999;

“qualifying activities”, in relation to a PPP company, means light maintenance services, network services or station services carried out by the PPP company in fulfilment of obligations imposed on the company by a PPP agreement;

“TfL company” means:

- (a) Transport for London or any subsidiary of Transport for London; or
- (b) a PPP company, so far as carrying out qualifying activities;

“TfL concessionaire” means any person who, in relation to a railway passenger service provided for Transport for London or for any subsidiary of Transport for London, has agreed by a concession agreement for the time being to provide that service.

7. Except where a definition in paragraph 6 applies, expressions used in this exemption have the meanings given by the 1993 Act.

Signed by authority of ORR

[Day Month Year]



Schedule

Exemption table

Column 1 Exemption holder	Column 2 Exempt railway asset	Column 3 Exemption effective date
Rail for London (Infrastructure) Limited Registered at Windsor House, 42-50 Victoria Street, London, England, SW1H 0TL with number 09366341	(a) the network forming the Crossrail Central Operating Section between Portobello Junction and Pudding Mill Lane and Abbey Wood sidings (the CCOS network); and (b) any train providing network services on the CCOS network.	[date]

Transport for London



Les Waters
Licensing Team
Office of Rail and Road
One Kemble Street,
London, WC2B 4AN

Transport for London
Crossrail - Operations

25 Canada Square
Canary Wharf
London
E14 5LQ

tfl.gov.uk

8 February 2017

BY POST AND BY EMAIL (les.waters@orr.gsi.gov.uk)

Dear Les,

Application for a licence exemption

I am writing on behalf of Rail for London (Infrastructure) Limited (RfL(I)) to apply for an exemption from the obligation to hold a licence under the Railways Act 1993. An application form in the prescribed form is attached, together with supporting Schedule and Appendices.

In summary, based on the information provided with this application, we believe that RfL(I) should be granted an exemption because:

- (a) the Greater London Authority Act 1999 (“**GLA Act**”) already contains appropriate measures to ensure TfL (including its subsidiaries such as RfL(I)) is held to account;
- (b) a licence potentially creates confusion in overlapping provisions with the GLA Act, which could be detrimental to the efficient and effective running of the railway system;
- (c) there is a risk that the application of a licence would be incongruous with the Mayor’s duties and accountability under the GLA Act; and
- (d) relevant provisions from the Network Rail network licence (in particular) are either already dealt with by TfL/RfL(I) or TfL/RfL(I) has provided robust proposals as to how these obligations will be performed.

We are confident as a result that our proposals afford sufficient protections for passengers and customers through clear and robust accountabilities that TfL/RfL(I) will meet.

Please let us know if it would be helpful to discuss or if you require any further information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Hatch', with a stylized flourish at the end.

Stephen Hatch

Regulation Manager

for and on behalf of

Rail for London (Infrastructure) Limited

Licence exemption application form

Details of the day-to-day contact

1.1 Name	<i>Stephen Hatch</i>
1.2 Position/Job title	<i>CCOS Regulation Manager</i>
1.3 Address	<i>25 Canada Square, Canary Wharf, London E14 5LQ</i>
1.4 Telephone	██████████
1.5 E-mail	████████████████████
1.6 Name, e-mail and phone of alternative contact	<i>N/A</i>

Company information

2.1 Registered company name	<i>Rail for London (Infrastructure) Limited</i>
2.2 Company registration no.	<i>09366341</i>
2.3 Trading name(s)	<i>RfL(I); RfL(I)L</i>
2.4 Date and place of incorporation	<i>23 December 2014; England</i>
2.5 Address of registered office	<i>Windsor House, 42-50 Victoria Street, London, England, SW1H 0TL</i>
2.6 Website address	TBC – not yet established
2.7 Telephone	TBC – not yet established

Your planned operations

3.1 What railway asset or class of railway asset operations do you want the exemption to cover? Tick the relevant boxes.

Network* Light maintenance depot

Passenger train Station

Non-passenger train

or

All types of asset

****TfL/RfL(I) notes that it will also have engineering trains for maintenance of the CCOS and it assumes the operation of such trains will be covered by a Network Licence exemption.***

3.2 Please describe your planned operations. Attach any maps, diagrams etc that help explain your plans:

Please find attached a document which provides supporting information for this application ("Supporting Information").

3.3 When do you plan to start these operations?

As set out in the Supporting Information, Crossrail passenger transport operations are expected to commence on the CCOS in December 2018, however there will be earlier testing and trial operations from late 2017.

3.4 Do you plan to expand your operations later on (eg. acquire new assets)?

~~YES~~ / NO

If yes, please outline your plans.

As ORR will be aware, plans are at an early stage in relation to Crossrail 2, but there is no certainty as to if, when and how this infrastructure will be built or if RfL(I) will be the infrastructure manager.

3.5 What other licences and licence exemptions do you hold or have you applied for?

RfL(I) does not currently hold any licence exemptions, however, TfL does hold licence exemptions for it and its subsidiaries pursuant to the Railways (London Regional Transport) (Exemptions) Order 1994 and the Railways (Transport for London) (Exemptions) Order 2009.

Safety competence

4.1 Will your planned operations covered by this application require a safety certificate/authorisation under the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS)?

Yes. **Go to 4.2**

No. **Go to 4.3**

4.2. Have you been granted the ROGS certificate/authorisation that you need for your planned operations? Tick the relevant box:

Yes.

No.*

***TfL/RFL(I) Notes that although there is not a current ROGS certificate/authorisation, CCOS will have any such certificates and/or authorisations prior to commencement of operations.**

4.3 Will you operate vehicles within mainline possessions?

No

Yes*

***RfL(I) may carry out maintenance activities in possessions on a short sections of Network Rail managed infrastructure extending from the respective Network Rail / CCOS boundary point**

If Yes, do you have the necessary authorisation from Network Rail?

Yes (please enclose copy)

No*

***RfL(I) will have any such authorisation prior to operating vehicles in mainline possessions**

Go to 4.4

4.4 Who is your main contact regarding railway safety at ORR?

Keith Atkinson

Declaration

I apply for an exemption from the requirement to be licensed to operate railway assets as specified in Section 3 above. I am aware that it is an offence to make a statement that I know is false in a material particular, or recklessly to make a statement which is false in a material particular.

I declare that, to the best of my knowledge and belief, the statements given in this application are true and complete

No information in this form or the accompanying Supporting Information is confidential or commercially sensitive.

Signed: S. Hatch

Name: Stephen Hatch

Position of signatory: Regulation Manager
(Director or authorised person)

Date: 8/2/17

Schedule

Supporting Information in relation to an application for exemption from licensing pursuant to section 7 of the Railways Act 1993

24 January 2017

1 Background and Introduction

- 1.1 This Schedule contains further information to support an application by Rail for London (Infrastructure) Limited ("**RfL(I)**") for an exemption from the obligation to hold a licence pursuant to the Railways Act 1993 in relation to its Crossrail infrastructure operations.
- 1.2 The Crossrail infrastructure will be used to operate a new railway service (on a line to be named the Elizabeth Line) that will connect Reading and Heathrow to the West of London with Shenfield and Abbey Wood to the east. The service will run through a new 13 mile (21km) twin-bore tunnel under central and east London. The largely tunnelled under London section (and associated infrastructure) will be the Crossrail Central Operating Section (or the "**CCOS**"). The CCOS runs from Portobello Junction (in the West) to the Pudding Lane Junction (in the North East and to Abbey Wood Sidings (in the South East).
- 1.3 The CCOS has been designed to facilitate high capacity metro passenger rail services, moving high numbers of people more easily, more quickly and more directly across London.
- 1.4 Transport for London ("**TfL**") is currently the ultimate owner of the majority of the land comprising the CCOS and the infrastructure affixed to it. TfL has established a new wholly-owned subsidiary, RfL(I), which it intends to be responsible for the day-to-day operation and management of the CCOS. Services through the CCOS are expected to commence from December 2018, with a full service across London expected to be from December 2019. There will also be earlier testing and trial operations on the CCOS from early 2018. Initially, services will be operated along the Crossrail route (including the CCOS infrastructure) by TfL's concessionaire, MTR Crossrail, who will be licensed pursuant to the Railways Act 1993 to operate passenger services. TfL and RfL(I) are not requesting any exemption from the train operating licencing regime for MTR Crossrail as part of this application.
- 1.5 There will be 10 stations on the CCOS.
 - 1.5.1 Five of those will form part of existing London Underground stations and will be operated by London Underground under existing industry arrangements. These stations are: Bond Street, Tottenham Court Road, Farringdon, Liverpool Street and Whitechapel; and
 - 1.5.2 The other stations are new stations constructed as part of the Crossrail project and are Paddington (CCOS), Canary Wharf Station, Custom House Station, Woolwich Station and Abbey Wood Station. There is no direct interface with the London Underground network (the "**CTOC Stations**"). These will be operated by the Crossrail concessionaire (currently MTR Crossrail) who will have a stations licence pursuant to the Railways Act

1993. TfL and RfL(I) are not requesting any exemption from the stations licencing regime for MTR Crossrail as part of this application.

- 1.6 A diagram of the Crossrail route showing the CCOS infrastructure is contained at Appendix 1 to this Supporting Information.

2 Further Supporting Information for Licence Exemption Application

- 2.1 The remainder of this note sets out supporting information in relation to the application for exemption from the licensing provisions of the Railways Act 1993 (section 7) and RfL(I)'s reasons for seeking such an exemption in relation to the CCOS ("**Supporting Information**"). As noted above, RfL(I) (being the infrastructure manager of the CCOS) is a subsidiary of TfL and, as such, is subject to the same legislative framework as TfL. References to TfL in this document should also be read to include subsidiaries such as RfL(I).
- 2.2 The primary reason for RfL(I) seeking exemption is that the Greater London Authority Act 1999 (the "**GLA Act**") already contains appropriate measures to ensure TfL (including its subsidiaries such as RfL(I)) is held to account (being one of the key purposes of a licence). See paragraphs 3.1 to 3.7 below.
- 2.3 RfL(I) also considers that a licence, which would necessarily sit alongside the provisions in the GLA Act, could actually be unhelpful to the running of an efficient and effective railway system, bringing in duplication of provisions. Further, there is a risk that the application of a licence potentially creates a tension with the Mayor's accountability under the GLA Act which could mean that the obligations, rights and duties of a democratically elected official are fettered by another public body (and vice versa). This could result in: (a) delays in decision-making; (b) costs associated with resolving any disparity; (c) ambiguity around regulated outputs/outcomes, which could diminish incentives and reduce the likelihood of outputs being met; (d) double-jeopardy; and/or (e) actions taken by one party undermining the actions of the other. See paragraphs 3.8 to 3.13 below for more information.
- 2.4 TfL and RfL(I) has also considered where standard industry provisions from the standard industry licences (in particular Network Rail's network licence) would be covered by TfL and RfL(I) if it did not have such licence(s). The table in Appendix 2 summarises the relevant provisions from the Network Rail network licence and sets out the proposal by TfL/RfL(I) as to how each of these provisions is dealt with.
- 2.5 TfL/RfL(I) have discussed the contents of this paper with the ORR over a number of years and months. There are areas in the current licensing regime that TfL considers would not be applicable to TfL/RfL(I) and others that could be covered elsewhere in access documentation and many not need to be in a TfL/RfL(I) licence. Where this is the case, RfL(I)'s proposal is to include these provisions in its access documentation which will be the subject of a separate consultation. TfL/RfL(I) also understands that if it is granted an exemption from the licencing provisions in the Railways Act 1993, that such licence exemption may contain conditions.

3 GLA Act

- 3.1 In this section of the Supporting Information, TfL/RfL(I) sets out a summary of how it is accountable to the Mayor of London (the "**Mayor**") and how the Mayor is accountable to the Secretary of State for Transport (the "**Secretary of State**") under the GLA Act. TfL/RfL(I) remains of the view that there are sufficient existing lines of accountability to not require the imposition of one or more Railways Act licences.

Constitution and responsibilities of TfL

- 3.2 TfL is a statutory body created by section 154 GLA Act. Section 154(3) GLA Act requires TfL to exercise its functions to facilitate the discharge of the general transport duty set out in section 141. This duty includes:
- 3.2.1 in respect of the Mayor, a requirement to develop and apply policies to promote and encourage safe, integrated, efficient and economic transport facilities and services to, from and within Greater London; and
 - 3.2.2 in respect of the Greater London Authority, an obligation to use its powers to secure the transport facilities and services mentioned in paragraph 3.2.1 above.
- 3.3 Section 154 also provides that TfL must secure or facilitate the implementation of the Mayor's transport strategy required to be published under section 142 GLA Act (discussed in paragraph 3.4.1 below), as well as in accordance with such guidance or directions as may be issued to it by the Mayor (discussed in paragraphs 3.4.4 and 3.4.5 below).

Accountability of TfL to the Mayor

- 3.4 The GLA Act provides for the Mayor to hold TfL to account in a number of ways:

Transport strategy

- 3.4.1 Section 142 GLA Act states that the Mayor is required to prepare and publish a transport strategy containing his or her proposals and policies for discharging the general transport duty.
- 3.4.2 Section 41(5) GLA Act provides that in setting such strategy the Mayor must have regard to the resources available for the implementation of the strategy.

Budgetary powers of the Mayor

- 3.4.3 The Mayor is required, under sections 85, 86 and 122 GLA Act, to set budgets and budget requirements for TfL. TfL and its subsidiaries are therefore bound by statute to implement the Mayor's transport strategy in accordance with the budget which is set for it by the Mayor.

Directions of the Mayor

- 3.4.4 Section 154(3)(a) GLA Act provides that TfL must exercise its functions in accordance with any guidance or directions that the Mayor may issue to it

under section 155 GLA Act. Such guidance or directions may concern the manner in which TfL:

- (a) performs any of its duties; or
- (b) conducts any legal proceedings (section 155(3)).

3.4.5 The Mayor therefore has very wide powers of direction over TfL which extend beyond TfL's duties in respect of the transport strategy and its budget.

Control of TfL's Board

3.4.6 Schedule 10 GLA Act provides certain powers for the Mayor in respect of TfL's Board. Under paragraph 3, the Mayor may opt to Chair TfL's Board and paragraph 2(1) allows him or her to appoint the Board members (having regard to the skills and experience requirements set out in paragraph 2(3)). The Mayor therefore has substantial influence over the management and operations of TfL which is another method by which TfL is held to account.

Accountability of the Mayor to the Secretary of State

3.5 The Mayor is also directly accountable to the Secretary of State. Section 143 GLA Act provides that the Secretary of State may direct the Mayor to revise the transport strategy if he or she considers it to be inconsistent with national transport policies and the inconsistency is detrimental to any area outside Greater London. This means that the Secretary of State can impose his or her own views/position on the Mayor (and thereby TfL) through the transport strategy.

Accountability of TfL to the Secretary of State

3.6 The Secretary of State has various powers to hold TfL to account (see for example section 44 GLA Act under which he/she may issue a direction to the Mayor in relation to the preparation of the transport strategy; section 395 GLA Act which requires TfL to provide the Mayor with such information he may request; and section 396 which provides that the Secretary of State may make regulations regarding the investigation into, or the collection of information relating to any matters concerning Greater London). The Secretary of State also provides the level of funding for TfL (section 101 GLA Act) and has the power to influence and control TfL directly by virtue of his/her authority under the GLA Act (section 143) to amend the transport strategy.

3.7 We are aware that the Department for Transport has confirmed to the ORR that it is content to follow the decision of the ORR in relation to a licence exemption for RfL(I).

Conflict between requirement for TfL to have a licence and TfL's duties under the GLA Act

3.8 As TfL is directly accountable to the Mayor under the GLA Act, it considers that some of its statutory duties thereunder could be inconsistent with the requirement for a Railways Act licence (or the enforcement of such a licence).

3.9 Additionally, a Railways Act licence could constrain the exercise by TfL of its statutory duties or premeditate the taking of certain decisions by both TfL and the Mayor,

which may fetter or conflict with the discretion of TfL/the Mayor.

3.10 Particular examples of where the GLA Act could conflict with the Railways Act licences include the requirements:

- 3.10.1 to prepare a Delivery Plan and long term plans (as set out in paragraphs 1.10 and 1.14 of the Network Rail network licence) to the extent that these requirements are not satisfied by or are inconsistent with the Mayor's transport strategy or directions;
- 3.10.2 to review and revise asset management policies if so directed by the ORR (paragraph 1.19 of the Network Rail network licence) as this could be inconsistent with the Mayor's or TfL's determination of strategy or policy and could also adversely impact on the budgets established by the Mayor for TfL;
- 3.10.3 to provide information to passengers in a required fashion (paragraph 2 of the Network Rail network licence) as section 162 GLA Act provides for TfL to make such information available as it sees fit (requiring it to make a determination, rather than having one imposed upon it, which could be inconsistent with its overall passenger and travel information strategy);
- 3.10.4 to obtain ORR consent to the disposal of any land (paragraph 7 of the Network Rail network licence) as section 163 GLA Act already provides a mechanism for TfL to obtain the consent of the Secretary of State prior to a disposal of operational land;
- 3.10.5 to comply with the corporate governance arrangements set out in the network licence (paragraph 15 of the Network Rail network licence) as Schedule 10 GLA Act sets out corporate governance arrangements with which TfL must comply (including a right of the Mayor to appoint members of TfL which could be inconsistent with the network licence requirement);
- 3.10.6 to maintain and implement an Employee Scheme (paragraph 16 of the Network Rail network licence) as this could conflict with the Mayor determining TfL's budget (see sections 85, 86 and 122 GLA Act), the role of TfL in implementing its obligations in accordance with the budget prescribed for it and also have a material impact on the resources available to the Mayor (to which s/he must have regard under section 41(5) GLA Act); and
- 3.10.7 to undertake certain financial obligations (paragraphs 3, 4, 6, 11 and 12 of the Network Rail network licence) to the extent that these could impact on the budget to be determined by the Mayor (as described in paragraph 3.10.6 above).

Summary in relation to the GLA Act

3.11 For the reasons set out in this paragraph 3, TfL considers that there are sufficient and robust processes already in place to hold TfL (and the Mayor) to account.

3.12 This position is supported by a number of the findings in the recent Credo report commissioned by ORR on Incentivising Better Capacity Management in GB Rail which

found, amongst other things, that "Transport for London is directly accountable to the Mayor of London and is responsible for implementing his transport plan."⁶ The report also finds that "Direct accountability to the electorate gives the Mayor a strong motivation to provide a quality transport system; a motivation that is communicated straight to TfL as his executive body."⁷

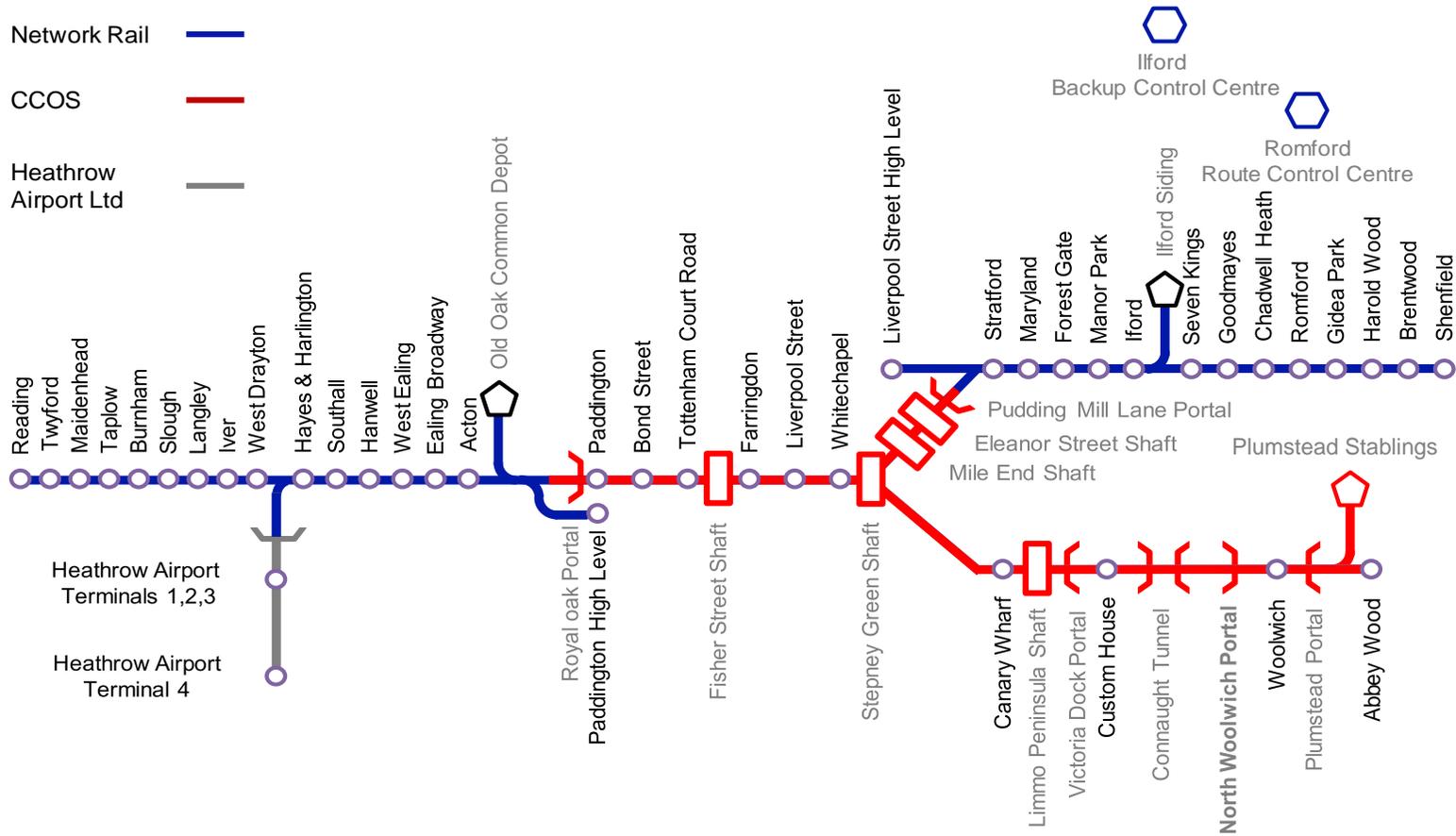
- 3.13 Therefore, there is not the same requirement for a licence in relation to the CCOS as there may be for other pieces of infrastructure.

⁶ *Incentivising better capacity management in GB rail: Case study evidence from other industries and railways: ORR/CT/14-63*, prepared by Credo Business Consulting LLP, 27 March 2015 (http://orr.gov.uk/_data/assets/pdf_file/0007/18745/incentivising-capacity-report-2015-03-27.pdf) at page 13

⁷ See footnote 1, at page 66

Appendix 1

Crossrail Route Showing the CCOS Infrastructure



Appendix 2

Standard licence provisions from the Network Rail Network Licence and TfL/RfL(I)'s proposal as to the relevant provisions are dealt with

Subject	Standard provisions in Network Rail Licence	TfL/RfL(I) proposal
Information for passengers	<p>General provision of appropriate, accurate and timely information relating to planned and actual movements of trains on the licence holder's network to enable train operators to meet their information obligations to passengers and prospective passengers, including when there is disruption. Specific obligations re co-operation, information for National timetable and information for enquiry services</p>	<p>The ORR will already be aware of the existing customer protection, information processes and passenger information provision on other parts of the TfL network (e.g. the "severe delays/minor delays" mechanism) which will be extended to the operation of the CCOS. This often provides considerably better information for passengers than elsewhere on the national rail network.</p> <p>TfL also already facilitates third party access to the passenger information data, meaning network licence conditions are not necessary to incentivise the appropriate behaviours.</p> <p>Within the TfL group, there is already a long established policy of reimbursement of passengers in the event of disruption. TfL expects this arrangement to also apply to Crossrail.</p> <p>MTR Crossrail will also have this requirement contained in its operating licence and therefore there will be sufficient information for passengers, meaning a specific requirement on RfL(I) is not required.</p>
Interests in railway vehicles	<p>Restriction on the network operator being interested in the ownership or operation of any railway vehicle in Great Britain (other than a railway vehicle for use in CCOS infrastructure management activities) unless ORR consent given</p>	<p>It is not appropriate to include this restriction on TfL. Other parts of the TfL Group own or have an interest in rolling stock - this is vital given the nature of the wider TfL Group's operations and its nature as a public body securing transport in London. In practice, RfL(I) will only deal with infrastructure management and will not itself have an interest in railway vehicles (other than vehicles used for network maintenance, enhancement and renewal).</p> <p>This restriction was originally included in Network Rail's licence as part of privatisation and is not relevant to TfL/RfL and therefore would not be applicable.</p>
Cross subsidy	<p>The standard licence provisions in the Network Rail Network Licence are designed to prevent cross subsidy between infrastructure management and other duties.</p> <p>Requirement for maintenance of separate accounting records for the infrastructure management activities and such other accounting records as ORR may reasonably require for the purpose of monitoring compliance with this condition.</p> <p>ORR approval of accounting policies and the ability to request records and information is to be audited (at the expense of the licence holder) by their nominee.</p>	<p>Regulation 9(2) of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the "Access and Management Regulations") already requires accounts for IM activities/railway undertaking activities to be kept in such a way to reflect the prohibition on cross-subsidy. TfL/RfL(I) will operate and prepare accounts which comply with these requirements - it is not necessary for such an obligation to be repeated in a network licence.</p> <p>Further, there will be a review of the charges that RfL(I) proposes to charge for access to the CCOS. This will provide ORR with the oversight of charges and provide comfort that there is no cross subsidy.</p>

Subject	Standard provisions in Network Rail Licence	TfL/RfL(I) proposal
Land disposal	ORR consent is required for land disposals	<p>In the context of Network Rail, this was designed to ensure that railway land which may have a use in future was not disposed of without appropriate consent - particularly relevant for a private company. This will not be the case for CCOS and is ultimately a Mayoral decision under the GLA Act (with appropriate public law remedies available to a disaffected party). Section 163 GLA Act 1999 also provides a statutory restriction on TfL in relation to certain land disposals without the consent of the Secretary of State. Accordingly it would not be appropriate to impose an equivalent obligation on RfL(I) through a licence.</p> <p>We note that this requirement was originally included in Railtrack's licence to address a particular concern regarding quite extensive railway land/railway property and Railtrack being a privately owned company. The same considerations do not apply to a central operating section/tunnel that is more constrained in nature.</p>
Stakeholder relationships	Requirement for code of practice or similar to demonstrate how Licence Holder will deal with stakeholders efficiently, economically, promptly and with due skill and care	<p>Clearly certain parts of the Network Rail licence are not relevant for RfL(I) (e.g. cooperation with the Mayor of London). However, in any event, TfL/RfL(I) has numerous obligations in relation to engagement with stakeholders and already undertakes this in other areas (which would be extended to encompass RfL(I)), meaning this would be unnecessary. Engagement with stakeholders is particularly relevant as a public body (which TfL already undertakes regularly through, for example, its consultations hub). Specific obligations are also included in the Freedom of Information Act and Environmental Information Regulations, both of which TfL/RfL(I) is subject to.</p> <p>We note that the extent of the obligation on Network Rail arises as a result of the scale of Network Rail's network – covering a multitude of stakeholders across the whole country that all have a legitimate interest in what Network Rail is doing. This is not the case for TfL that has a smaller number of stakeholders that it is used to dealing with and consulting on a regular basis.</p>
Non-discrimination	The Licence Holder shall not in its activities unduly discriminate between particular persons or between any classes or descriptions of person.	<p>TfL/RfL(I) accepts that this is a fundamental principle upon which the railway structure and operations are based. As a public body, TfL is already required by law to act in a manner which complies with law and not to unduly discriminate. Its behaviours and actions can be challenged in a court. Indeed, TfL/RfL(I) will be more directly accountable given the Mayor (an elected position) sets its strategy and can issue directions. A licence provision is neither required nor appropriate.</p> <p>The Railways Acts and the Access and Management Regulations are also designed to prevent discrimination in relation to the terms and charging for access. If a body feels aggrieved in relation to any matters, then there are always appeals available to the ORR pursuant to those laws and regulations – a network licence is not required to enforce those requirements.</p>
Information for ORR	Requirement to provide ORR with any information it may require to fulfil its function	<p>TfL acknowledges that ORR will require information from it in relation to various areas of operation to enable it to meet its functions including to provide comparative data across the industry, benchmarking and maintenance costs.</p> <p>As a public body, TfL/RfL(I) is already subject to numerous obligations in relation to information disclosure - including under the Freedom of Information Act, Environmental Information Regulations and the Local Government</p>

Subject	Standard provisions in Network Rail Licence	TfL/RfL(I) proposal
		<p>Transparency Code of Practice. This means that information in relation to RfL(I)'s management of CCOS is and will be made available. This could also be set out in a Regulatory Statement by the ORR in relation to CCOS and/or as part of the Network Code/Track access arrangements. Indeed, TfL/RfL(I) proposes to follow a similar arrangement on information as was agreed in relation to Rail for London Limited (RfL) stations and the Station Stewardship Measure (which was implemented by way of a specific agreement between TfL and the ORR).</p>
Accounting and reporting provisions	<p>There are various accounting and reporting provisions contained within the network licence</p>	<p>TfL's governance and accounting arrangements/requirements are set out as part of the GLA Act. RfL(I) will also file annual accounts in accordance with Companies Act requirements. Therefore, it will already be preparing accounts and it would not be appropriate to introduce potentially conflicting requirements if equivalent arrangements to Network Rail were to be imposed. TfL/RfL(I) recognises that a periodic review process will be in place and that the ORR may require oversight of its performance (including financial performance) and reports. This is something which TfL/RfL(I) will share with the ORR as appropriate - however, the need for a network licence to impose this on a public body seems unnecessary. The Network Rail network licence provision is very wide and is tailored to the business environment in which it operates - the appropriate approach for TfL/RfL(I) is the one required by statute.</p> <p>See also the points above on information generally, which also apply to financial and accounting information where relevant.</p>
Governance and management	<p>There are various provisions relating to governance of Network Rail and constitution of the board of the company etc.</p>	<p>Many of the requirements regarding governance for Network Rail were designed to ensure that on the transfer from Railtrack to Network Rail, that Network Rail still acted in the same way as a listed company (including compliance with the UK Corporate Governance Code). These are not relevant to TfL/RfL(I).</p> <p>Matters which relate to corporate governance are prescribed by the GLA Act and are taken into account when appointing board members. TfL has a code of corporate governance, which it would be happy to share with the ORR. It would not be appropriate or required to have a network licence to mandate other requirements.</p>
Fees	<p>Provision for payment of ORR fees. All ORR economic regulation activities funded by Network Rail</p>	<p>TfL/RfL(I) notes that arrangements will need be made to fund the ORR's activities as they relate to CCOS – as well as various fees to other organisations such as the Competition and Markets Authority. TfL believes that this is not something for which a network licence is required and instead alternative arrangements could be made to ensure RfL(I)'s proportionate contribution is made – for example by a separate agreement between the ORR and RfL(I). We understand that funding of the ORR and related functions is an issue more generally across the industry and that a co-ordinated approach may be required.</p>
Change of Control	<p>Notification of change of control. ORR can revoke the licence if it is not satisfied with the new controlling person or body.</p>	<p>Whilst we can understand the rationale for including this for a private sector company, this will not be relevant for RfL(I) as a public sector company and a subsidiary of TfL. In any event, ORR can always provide in any licence exemption for such an exemption to be withdrawn if RfL(I) goes outside of the TfL group.</p>

Subject	Standard provisions in Network Rail Licence	TfL/RfL(I) proposal
Insurance	Maintenance of third party liability cover and ORR consent thereto	TfL/RfL(I) does not consider it necessary for these provisions to be included by way of a network licence. There are alternative arrangements which will equally apply - for example, these will be conditions to track access being granted and so will form part of the track and station access contracts which the ORR will be required to approve under the Railways Act 1993. TfL acknowledges that this concept will have to be captured - and it will do so in its track and station access documentation.
Claims allocation and handling and disputes resolution	Participation in industry arrangements	Please see our comments in relation to insurance above, which apply equally in respect of the industry arrangements relating to claims allocation and disputes resolution. TfL/RfL(I) would propose to capture this in its track and station access documentation. TfL/RfL(I)'s current proposal is that it will accede to the industry CAHA and the standard industry arrangements will apply.
Safety and Standards; Systems Code	Membership of RSSB and compliance with Railway Group Standards; provision of a systems code	<p>RfL is a member of RSSB and envisages transferring this membership to RfL(I) in due course, although it believes that this is something which should not be mandated by way of a network licence provision and could be covered either in the track access arrangements or through a separate agreement between TfL and ORR. RfL(I) would also propose to have a systems code based on the Network Rail version and would propose to capture this in its track and station access documentation. There will also be extensive interface requirements between CCOS and Network Rail on the systems code and otherwise. RfL(I) will enter into interface arrangements (from both a regulatory and commercial perspective) with Network Rail to cover these issues.</p> <p>TfL has decided that RfL(I) will adopt Railway Group Standards (with any necessary derogations).</p> <p>As Railway Group Standards are to be adopted with any necessary derogations, TfL considers that compliance with those standards can be mandated in a different way – perhaps by way of separate agreement or condition to any exemption from the licensing regime.</p>
Environment	Requirement to have a policy (potentially informed by ORR guidance) which is shared with ORR	TfL has its own environmental policies which would also apply to RfL(I)/CCOS. This is something which it has in place in any event as a public body. This is something which will also be captured in the RfL(I) Network Code and TfL/RfL(I) do not believe that this is something which should apply by way of a network licence - the Network Code will give sufficient assurance. HS1 Ltd takes a similar approach to environmental matters and is not the subject of a network licence.
Rail Delivery Group (RDG)	Membership of RDG	TfL would be willing to become a full member of the RDG, but understands that the current constitution of RDG would prevent it from becoming a full member and may have to be an associate member. TfL/RfL(I) therefore do not think a network licence obligation is required to compel membership.