

**Guidance for Rail Operators
on Licence Exemptions**

March 2008



OFFICE OF RAIL REGULATION

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1. Introduction

- 1.1 It is a criminal offence under the Railways Act 1993 (the Act) to operate railway assets without an appropriate licence or licence exemption. Railway assets are trains, stations, networks and light maintenance depots (LMDs).
- 1.2 Licensing operators is an important role for ORR. By granting licences and setting their conditions, we promote efficient working relationships on the railways and can hold operators to account.
- 1.3 But taking all of ORR's duties¹ on balance, it is not always necessary for all aspects of the licensing system to apply to all rail operators. The Act recognises this, providing a mechanism for us to grant licence exemptions.
- 1.4 This guidance should help you apply for a licence exemption. It only covers exemption from the Act's licensing system; it does not cover exemptions from the access, franchising, closure or other provisions of the Act.
- 1.5 Since 2005, European licensing rules² cover most major passenger and freight train services. ORR cannot grant exemptions from the European licensing system. You should refer to our licensing guidance instead³.
- 1.6 This guidance reflects reforms we announced in March 2008. Although the focus of licence exemption policy is now more clearly aligned with requirements under the health and safety framework for rail, the two systems are distinct and based on different laws.
- 1.7 As a general rule of thumb, however, you are likely to qualify for a licence exemption, instead of a licence, if you do not need a ROGS⁴ certificate or authorisation for the mainline railway. So this guidance is likely to be useful to you if you want to operate:
 - (a) A network (including trains, stations and LMDs) that is separate from the national mainline, such as a heritage railway.

¹ Under section 4 of the Act.

² See the Railways (Licensing of Railway Undertakings) Regulations 2005, <http://www.opsi.gov.uk/si/si2005/20053050.htm> implementing Council Directive 95/18/EC, as amended.

³ http://www.rail-reg.gov.uk/upload/pdf/278_licguid.pdf.

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

- (b) A minor network connected to the mainline, such as a goods terminal or a freight spur.
 - (c) An LMD.
 - (d) Maintenance trains used in engineering possessions.
- 1.8 If you operate tramways, guided buses, or other non-standard gauge networks you will probably already be exempt from the licensing system (see Chapter 2).
- 1.9 See Table 1 below for an 'at a glance' summary. Your particular case may be different.
- 1.10 This guidance is not a substitute for the law and is general. You may wish to refer to the relevant legislation and get your own legal advice.
- 1.11 We will be happy to hold informal discussions on any aspect. Please email us at licensing.enquiries@orr.gsi.gov.uk.
- 1.12 This guidance does not bind ORR's decision on any particular application, which will be made on its merits.

Table 1

I want to operate a...	Am I likely to qualify for a licence exemption?
Mainline passenger train	No
Mainline freight train	No
Maintenance train in an engineering possession	Yes
Mainline network	No
Rail freight terminal or sidings	Yes
Heritage, tourist, or preserved railway (with associated stations and LMDs)	Yes
Station on the mainline	No
An LMD	Yes
For the assets below you are likely to be covered by a special exemption known as the CME0. Chapter 2 has more details about this.	
Railway in a factory or industrial premises.	
Networks and LMDs named in CME0.	
Tramways, light rail, other non-standard gauge railways, guided buses, and associated stations.	
Networks in museums, amusement parks and funfairs.	
Networks, stations and LMDs built, but not operated by BRB or LRT, at privatisation.	

2. Licence exemptions

- 2.1 Licence exemptions excuse named operators from the requirement to hold a licence. A licence exemption is normally appropriate where we consider, in the light of our duties, that we do not need to make an operator participate in standard industry arrangements.

What is a railway asset?

- 2.2 Licence exemptions allow the operation of Railway Assets (assets) without a licence. Assets means any:
- Train being used on a network, whether for carrying passengers or goods or for any other purpose;
 - Network;
 - Station; and
 - LMD.
- 2.3 We classify trains as either passenger or non-passenger. Non-passenger trains include the full range of trains not used for the purposes of passenger transport, including self-propelled railway vehicles used for track maintenance and repair.
- 2.4 Most operators running train services on the mainline will need European passenger or freight train licences, and appropriate Statements of National Regulatory Provisions (SNRPs). If your operations are entirely covered by a European licence and SNRP, you do not need to apply for a Railways Act licence or licence exemption as well.
- 2.5 Networks include any railway line or combination of lines and any installations associated with any of the track comprised in those lines.
- 2.6 Stations include property and premises where passengers get on and off trains. This can include approaches, forecourts, cycle stores and car parks.
- 2.7 LMDs include facilities where trains are refuelled, cleaned or where there is regular maintenance work of a kind regularly carried out at intervals of twelve months or less. The licensing system does not cover depots used exclusively for heavy maintenance.

What does operator mean?

- 2.8 Only the 'operator' of an asset needs to (and can) hold an ORR licence exemption. In many instances, identifying the operator is straightforward. You are the operator if you are the person with management of that asset for the time being. We expect each asset will have a single operator.
- 2.9 In most cases the operator of a train is the person or organisation from whom the driver takes their management instructions (that is directions other than signalling instructions).
- 2.10 The operator of a station is the person with management of the provision of facilities and services at that station to passengers and train operators. For example, the control of station staff, and the provision of customer information.
- 2.11 The operator of an LMD is the person with management of the provision of light maintenance services at that LMD⁵. This includes the control of depot staff and the movement of trains within the depot.
- 2.12 The person in control of the provision of network services would usually be the operator⁶ of a network. We recommend that contracts governing the provision of network operations and services explicitly identify the network operator.
- 2.13 In some cases, including very small networks, it may be difficult to identify the operator. If this applies to you, you may want to get your own legal advice before contacting us.
- 2.14 An operator can be a company or some other form of organisation like a registered charity. For our purposes, it must be a legal person who can be named on the licence exemption. ORR licence exemptions cannot be held at group level on behalf of a subsidiary, or be granted to a division, unit or team within a company.

The regulatory framework

- 2.15 Before you apply for an exemption, you should check that you are not already exempt from the licensing system.

⁵ As set out in section 82(2) of the Act.

⁶ As set out in section 82(2) of the Act.

- 2.16 ORR can only grant licence exemptions to individual applicants. But the Secretary of State can grant licence exemptions covering a particular class or description of assets, as well as granting exemptions to individual bodies.

The Railways (Class and Miscellaneous Exemptions) Order 1994

- 2.17 The Secretary of State has made an Order called the Railways (Class and Miscellaneous Exemptions) Order 1994⁷ (CMEO). This exempts various classes of assets. As a first step please check if the CMEO covers all of your intended operations. If it does, you do not need to apply to ORR for a licence exemption.
- 2.18 Among other things, the CMEO reflects the intention at privatisation for regulation to focus on the railway previously run by the British Railways Board (BRB). The CMEO exempts from the licensing requirements many networks, stations or LMDs that:
- Were capable of operation immediately before 1 April 1994, but were *not* then operated by BRB, London Regional Transport, or their subsidiaries,
 - Are situated on the premises of an industrial or power generation undertaking, or forming part of a mine or quarry, or used solely in connection with building works,
 - Are situated on premises used as a museum or other place of public recreation and which are neither connected to any other network nor used in connection with other rail passenger services, and that
 - Are named specifically in the CMEO. For example, the Old Dalby test track in Leicestershire and freight terminals and LMDs listed in Schedules 1 and 2 of the CMEO.
- 2.19 The CMEO also exempts passenger and non-passenger train operations, but only in relation to specified networks and LMDs, and on networks within a harbour area.
- 2.20 The CMEO exempts networks, LMDs and stations where none of the associated track is capable of supporting standard gauge (1435mm) trains. If you only operate tramways, guided buses and other light rail systems that are not standard gauge, then you do not need to apply for a licence exemption.

⁷ http://www.legislation.hmsso.gov.uk/si/si1994/ukxi_19940606_en_1.htm.

- 2.21 We recommend you look at the CME0 in the light of this guidance. For example, it is important to distinguish between the ‘owner’ and the ‘operator’ of an asset. It is the operator of an asset who applies for the licence or exemption, not the owner. This is important when interpreting article 4(a) which exempts the operator (but not the owner) of facilities that were in operation immediately prior to 1 April 1994.
- 2.22 So while someone other than BRB may have *owned* a network in a port at that date, agreements were often in place that handed the operation of those networks to the BRB. Such networks are not automatically licence exempt under CME0 article 4(a).
- 2.23 The CME0 does not define ‘industrial undertaking’ for the purposes of article 4(o). But the drafting suggests that an industrial undertaking does *not* include a power generation facility, a harbour or a railway facility under construction, and that an industrial undertaking is not the same as a transport undertaking. We also consider a freight terminal is not an industrial undertaking, as specific terminals are exempted elsewhere in the CME0. So, for example, a network exempted by CME0 4(o) must be located within a factory and not just adjacent or connected to it.

Other exemptions

- 2.24 The Secretary of State has granted specific licence exemptions to other operators, including Heathrow Express⁸ and Transport for London’s subsidiaries⁹.

Transport and Works Act Orders

- 2.25 Orders under the Transport and Works Act 1992 and Transport and Works (Scotland) Act 2007 cannot authorise the operation of railway assets for the purposes of ORR’s licensing system. You may still need to apply to ORR for a licence or licence exemption.

Our licence exemption policy

- 2.26 Operators of mainline railways, and passenger and freight trains on them, should normally expect to be licensed. As should operators of stations on the

⁸ http://www.england-legislation.hms0.gov.uk/si/si1994/ukxi_19940574_en_1.htm

⁹ http://www.opsi.gov.uk/si/si1994/Uksi_19940573_en_1.htm

national mainline network. It is usually appropriate for them to belong to the standard industry arrangements and comply with ORR's licence conditions.

- 2.27 We have a duty under section 4 of the Act to impose only the minimum restrictions on railway operators consistent with our licensing duties. We will therefore consider applications for individual licence exemptions from operators where membership of the standard industry arrangements is not necessary.
- 2.28 As a helpful starting point and practical guide, if you do not need a safety certificate or authorisation for the mainline railway under ROGS you are likely to qualify for a licence exemption. But we consider each case on its merits, and there will be exceptions.

Common exemption scenarios

Networks

- 2.29 An operator of a minor network that is a spur off the mainline or functionally separate to the mainline might qualify for a licence exemption. This would include operators of sidings, rail freight terminals and ports.
- 2.30 Similarly, heritage, preserved and tourist railways that are physically or operationally separate from the mainline are likely to qualify for a licence exemption.

Maintenance trains

- 2.31 Much of the track equipment operated by maintenance and renewal contractors are 'trains' for licensing purposes. So operators of this equipment need to be licensed or exempted.
- 2.32 Where maintenance or renewal activities are confined within engineering possessions¹⁰, operators can apply for a licence exemption.
- 2.33 However, given the continued risk of interaction with the national network, even within a possession, licence exemptions would usually be conditional upon having appropriate third party liability insurance arrangements¹¹.

¹⁰ Here, a possession means where engineering work requires the closure of the line to normal traffic.

¹¹ (see paragraph 3.7 below).

- 2.34 If maintenance activities occur outside a possession or you move equipment using the national network, you will need a licence.

Stations

- 2.35 We would usually only consider exemption appropriate for stations where they are used as part of a licence exempt network.

Light Maintenance Depots

- 2.36 Most LMD operations will qualify for a licence exemption. In a very limited number of complex cases a licence may be appropriate.

Extending operations exempt under the CME0

- 2.37 Where an extension is proposed to operations covered by the CME0, you will need to make sure that the *new* operations are covered by an appropriate licence or licence exemption.

Case-by-case consideration

- 2.38 We will consider each application on its merits and in the light of the evidence presented.

3. What is in a licence exemption?

3.1 Most standard licence exemptions granted by ORR include:

- The details of the operator.
- Details of what assets are and can be included.
- Any conditions.
- The date the exemption takes effect.
- Details of when the exemption can be revoked.

Scope

3.2 Your licence exemption only allows you to operate the assets covered in the scope. If you want to operate other assets outside the scope of your exemption you must apply for a new licence or licence exemption.

Additional assets

3.3 The scope of many licence exemptions is flexible so in principle they can cover the operation of additional assets beyond those known about when the exemption was granted. Examples include network extensions (including associated stations and LMDs) for some heritage railways, or an LMD operator taking on extra LMDs.

3.4 Where this applies you should tell us before you start operating the additional assets¹². Please allow reasonable time (at least 30 days) between telling us of the additional assets and your planned date for starting operations. We may not consent to the assets being covered by the licence exemption if we have reasonable grounds, such as if a licence would be more appropriate.

3.5 Where we do consent, we will put the details of the additional assets covered on our public register. Where appropriate we will also give you a new schedule of assets covered by your exemption. If we object, we will discuss our reasons with you.

3.6 We may consent but with additional conditions, if they are appropriate. This could be the case, for example, where:

¹² An email or letter is sufficient but it should describe the changes taking place.

- An exempt railway plans to expand operations to run very close to the mainline;
- A licence exempt network is to be used for scheduled passenger services;
- An exempt railway starts running scheduled passenger services that connect with the mainline or stop at mainline stations.

3.7 You cannot extend the scope of your operations beyond that described in the exemption. If you have any doubts, contact us.

Conditions

3.8 ORR may grant licence exemptions that are subject to compliance with such conditions we may so specify.

3.9 We have discretion in our approach to licence exemptions policy and procedure. Exemptions may be flexibly designed with different provisions or conditions for different cases, and we may ask you to provide whatever information we need to decide your application properly.

3.10 Conditions are included in licence exemptions on a case-by-case basis, at ORR's discretion and in accordance with our duties under the Act.

3.11 Conditions can cover issues such as ticketing, timetabling, or insurance. If conditions are a requirement of the licence exemption, we will not normally issue an exemption until they have been met to our satisfaction.

Insurance

3.12 Some licence exemption holders are required by us to have third party liability insurance on terms approved by us¹³. This might be the case where an operator could potentially have a significant impact on mainline activity. Where this applies, the operation of railway assets is not allowed before we have approved the insurance arrangements. Our Guidance on Third Party Liability Insurance gives more information¹⁴.

¹³ This is separate from any insurance required by Light Railway Orders and Transport and Works Act or Transport and Works (Scotland) Act Orders.

¹⁴ <http://www.rail-reg.gov.uk/upload/pdf/249.pdf>

4. Applying for a licence exemption

How to apply

- 4.1 You should fill in the licence exemption application form¹⁵. The form includes explanatory notes. Please contact ORR's Licensing Team with any questions before you send us your application.
- 4.2 The application form sets out the *minimum* information that we need to understand your proposed activities for a properly informed decision to be made. We may ask you for more.
- 4.3 It is a criminal offence to make a statement to ORR that you know to be false, or to recklessly make any statement that is false¹⁶.
- 4.4 There is no fee for processing licence exemption applications. You can apply for a licence exemption that exempts more than one category of asset.

When to apply

- 4.5 Applying for a licence exemption is straightforward. It will usually take around 12 weeks to complete the process. However, you may find it useful to discuss the application process and intended operations well in advance of making the formal application. We advise that you contact us six months or so in advance of your intended start date, if possible.
- 4.6 If you do not need a safety certificate and/or authorisation, you do not need to make any separate 'safety approval' application to the HMRI part of ORR. However, HMRI will be consulted on safety information in your exemption application and you should factor into your plans any time needed to address any concerns that may arise from this.
- 4.7 If you do need a safety certificate or authorisation for any part of the operations your application relates to, you must tell us. There is space to do this in the application form.
- 4.8 There is no need to wait until construction works are underway or completed before submitting an application. We will not normally grant a licence exemption for the operation of assets that are still at the proposal or planning

¹⁵ http://www.rail-reg.gov.uk/upload/doc/licap_frm.doc

¹⁶ See [section 146](#) of the Act, in addition, any licence exemption granted on the basis of false information is void.

stage: construction of any track, stations or LMDs requiring licence exemption must normally be completed before the licence exemption can take effect. So please indicate the timescales for completing construction of any new assets.

- 4.9 Operations should not begin until the licence exemption application process has been *successfully* completed.
- 4.10 The *minimum* timescale for concluding a straightforward licence exemption application is 8 weeks from the submission of a complete application, which includes all of the necessary supporting information, to making a final decision. Where insurance or other conditions are required, the process of approving these arrangements could mean that the application takes longer.

Confidentiality

Confidentiality and the Freedom of Information Act

- 4.11 The Freedom of Information Act 2000 (FOIA) gives any person the right to request information from ORR. ORR, as an organisation, is committed to openness and transparency. However, we appreciate that we may get information during an application that should not be disclosed to other people. You should ask us to treat sensitive information as “confidential”. Please indicate clearly where this is the case.
- 4.12 There are certain exemptions from the FOIA relevant to information held by ORR through the exercise of our licensing duties. Where information obtained by us in the course of a licence exemption application falls within the prohibition on disclosure contained in section 145 of the Act, it would be exempt from disclosure under the FOIA. (The FOIA says¹⁷ that where the disclosure of information is “prohibited by another enactment” it is exempt information for the purposes of the FOIA.)
- 4.13 If we get a request under the FOIA for information that is covered by the prohibition on disclosure in section 145 of the Act, we will consider whether it is appropriate to seek a third party’s consent to disclose that information. We must have permission before disclosing it.

ORR procedures

Acknowledgement

- 4.14 We will normally acknowledge your application within two working days of receipt. At this stage we may also copy part or all of your application to the

¹⁷ [Section 44](#)

Department for Transport, Transport Scotland or The Welsh Assembly Government.

Checking the application/initial decision

- 4.15 Within the first two weeks of the process we check applications for completeness and to make sure there is enough information to make an initial decision on whether to proceed with the application.

Initial decision

- 4.16 Where there are gaps in the information requested, or where further information is needed, we will let you know as soon as possible.
- 4.17 If you have provided details of your third party liability insurance arrangements (where that is appropriate), we will seek advice from independent advisers.
- 4.18 After the complete application has been received and reviewed, we will make an initial decision on whether to approve or reject it. If our initial view is that the application should be rejected, you will normally be given at least four weeks to make further representations and to hold discussions, then we will reach a final decision¹⁸. A decision not to grant a licence exemption does not stop you making another application later.

Statutory consultation

- 4.19 Otherwise, we are required under the Act¹⁹ to publish a statutory notice saying that we propose to grant a licence exemption, giving reasons and specifying a period of at least 28 days for representations to be made.
- 4.20 The notice will normally outline the licence exemption you have applied for. The specified notice period is usually 28 days but it can be longer.
- 4.21 Before we start the statutory consultation, you will be asked to review a draft of the statutory notice. This is to ensure that details are correct and that the description of the proposed operation is accurate.
- 4.22 The notice will be published on the ORR website²⁰. Copies will also be sent to relevant interested parties, normally selected from the following list:
- Network Rail Infrastructure Limited (Network Rail)

¹⁸ ORR's licensing decisions are, of course, open to judicial review.

¹⁹ [Section 7\(4\)](#).

²⁰ <http://www.rail-reg.gov.uk/server/show/nav.00100b001006>

- Railway Safety and Standards Board (RSSB)
 - British Transport Police Authority (BTPA)
 - Department for Transport (DfT), Welsh Assembly Government and/or Transport Scotland
 - Passenger Focus and London Travelwatch.
- 4.23 The public consultation must be both meaningful and timely. There should be as short a time as possible between the end of the consultation period and the grant, if appropriate, of the licence exemption. A consultation exercise is therefore considered 'current' where the licence exemption is granted no more than nine months after its conclusion. Delays can arise for various reasons, such as problems in obtaining the necessary safety clearances, arranging insurance, or changes to your business requirements.
- 4.24 Where we anticipate a gap of more than nine months between the statutory consultation and the grant of the licence exemption, we will normally repeat the consultation. So we will look for indications that good progress is being made on all issues before starting a consultation.

Representations

- 4.25 We will consider any representations made as a result of the consultation.
- 4.26 Where representations raise significant regulatory or other issues, ORR may hold discussions with you and relevant third parties, or give third parties the opportunity to respond to your comments.
- 4.27 We do not ask you about your reputation, propriety or financial fitness in our forms. But if as part of the statutory consultation or for any other reason, we receive information that raises serious doubts about your fitness to operate railway assets we will discuss this with you and any regulatory bodies we consider relevant. That could affect our decision to grant a licence exemption.

Final check

- 4.28 We will normally ask you to confirm that there have been no material changes to any of the information you have given us.

Starting Operations

- 4.29 To operate a service on a network operated by another party, train operators will normally also need the benefit of formal access rights. Separate guidance

notes on access agreements are available on ORR's website²¹. Remember, the safety, licensing and access arrangements are separate (such as in terms of application procedures, compliance, enforcement and legislation). The grant of a licence exemption does not fetter ORR's discretion in respect of decisions in other areas.

Public register

4.30 We keep a **public register** detailing granted and revoked exemptions²²

²¹ <http://www.rail-reg.gov.uk/server/show/nav.201>

²² <http://www.rail-reg.gov.uk/server/show/nav.274>

5. Revocation

- 5.1 Licence exemptions set out how they can be revoked. The standard wording allows ORR to revoke the whole or part of a licence exemption:
- If we grant you another licence or exemption.
 - If we suspect on reasonable grounds that you do not have a licence or exemption required by section 6 of the Act.
 - If you do not start operations within a year, or you stop for a year.
 - If we agree with you that revocation is appropriate.
- 5.2 Also, under the Act²³, we can revoke an exemption if you break a condition of the exemption.
- 5.3 If you don't start operating or, if you stop some or all exempt activities, you should contact the Licensing Team to arrange a revocation.
- 5.4 Where the licence exemption is to be revoked by agreement, we will send you a form to sign. When both ORR and you have signed the agreement the revocation will take effect.
- 5.5 We will tell interested parties including the DfT, Transport Scotland, BTPA, RSSB and Network Rail about a revocation. We will also put details on our Public Register.

²³ section 7(6)