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		RSD Internal Guidance	RIG-2008-01	
The Railway Safety - Licensing Interface				
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Keywords	Licence, licence exemption, ROGS, certificate, authorisation.			
Summary	This RIG describes how ORR's Railway Safety Directorate (RSD) and Licensing teams work together in relation to licence and licence exemption applications.			
Original consultation	RSD permissioning team originally			
Subsequent consultation (reviews only)	Licensing team			

Detail

INTRODUCTION

1. Operators of railway assets in Great Britain must normally be authorised, by an ORR **licence** or a **licence exemption**. Licensing work is undertaken by the licensing team. The requirement to have a licence or licence exemption is in addition to other legal and contractual requirements, such as those under health and safety law.
2. In assessing whether to grant a licence or licence exemption, licensing case officers investigate whether an operator is fit to operate a railway asset. The licensing team will not normally grant a licence or licence exemption if there are relevant safety concerns. They rely on advice from Railway Safety Directorate (RSD) to determine if the safety competence criterion is met. This RGD sets out how the licensing team & RSD work together.

BACKGROUND

3. The licensing system is based on:
 - The Railway (Licensing of Undertakings) Regulations 2005 ("the 2005 Regulations"), as amended, which covers most freight and passenger train services.
 - The Railways Act 1993 also covers some passenger and non-passenger services (such as maintenance vehicles) outside the scope of the 2005 Regulations and operators of networks, stations and light maintenance depots.
4. The legislation sets out four criteria for ORR to consider when deciding whether to grant a licence to a freight or passenger train operator or other operators mentioned above. These are insurance, good repute, financial fitness, and professional competence (for which we read as safety competence). In assessing competence we recognise that there is separate, specialised legislation dealing with railway safety, so the licensing team needs to work with RSD.

LICENSING APPLICATIONS: GENERAL PROCESS

5. When a new **licence application** is received, the licensing case officer will contact the RSD account holder (or other relevant inspector), and send a copy of the application to briefly outline the application received. This is to check there is a common understanding of what the applicant is proposing to do. The licence application form contains a set of questions which relate to safety for the relevant inspector to review for information.
6. The inspector may consider the information provided by the applicant in the form regarding any obligations for the proposed operations under Part 2 (Safety Management, Certification and Authorisation) of the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS). The inspector may want to contact the applicant directly to clarify what they need to do and the likely timescales, especially if the applicant has misunderstood their safety obligations. In complex cases, this might involve a wider discussion with policy and legal colleagues within ORR, for example where interfaces between mainline and non-mainline operations are not clear.

WHERE ROGS CERTIFICATION/AUTHORISATION IS NEEDED

7. Licensing casework can arise because of new franchises, concessions, or service contracts for passenger train operators (as set by the government), as well as applications from, open access operators or freight companies, for example. These operators will normally need to have an appropriate safety certificate, and/or safety authorisation under Part 2 of ROGS, and once they do, this will be taken as sufficient evidence that the applicant has satisfied the licensing safety competence criteria.

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8. The licensing process includes a 28-day statutory consultation. Before the licensing case officer starts this consultation, they will normally need the relevant inspector to confirm that either (a) the applicant has any necessary ROGS certification/authorisation covering the proposed operations, or (b) that work is progressing and the account holder or inspector expects the applicant to obtain the necessary certification/authorisation in due course.
9. ORR will not normally grant a licence until an inspector has confirmed the applicant has got the necessary ROGS certification/authorisation.
10. If a mainline ROGS certificate or authorisation is required this normally indicates that a licence is more appropriate than a licence exemption.

WHERE ROGS CERTIFICATION/AUTHORISATION IS NOT NEEDED

11. Applicants may qualify for a licence exemption rather than a licence, here the test is slightly different. Licence exemptions have few or no conditions and tend to be issued where there is no need for the operator to participate in national arrangements (for example, ticketing), and typically occurs when a ROGS certificate or authorisation is not needed.
12. Licensing case officers will send a copy of the **licence exemption application** form to the relevant RSD head of inspection/principal inspector or relevant inspector (if known). S/he then decides, reflecting their own business plan and priorities, whether their team will initiate any health and safety work or inspections. The licensing team DO NOT require an inspection or site visit, a report on the information available is usually sufficient for their purposes. The RSD contact should acknowledge receipt and let the licensing case officer know if any action is proposed. Providing the relevant inspector doesn't raise any issues, and assuming there are no other outstanding issues, the case officer can start the statutory consultation.
13. Licence exemption application forms usually only have basic questions about health and safety matters. RSD inspectors may contact the applicant directly to clarify what they need to do and the likely timescales, especially if there is any apparent confusion from the forms about what safety clearances are required.
14. Examples of licence exemption cases, where no ROGS certificate or authorisation is needed (although compliance with a ROGS safety management system may still be required), include:
 - an infrastructure maintenance contractor applying for a licence exemption covering their maintenance train operations within possessions;
 - a rail maintenance company applying for a licence exemption for a new light maintenance depot;
 - a port authority applying for a licence exemption authorising the operation of new networks in ports and harbours; and
 - a new heritage railway or an established heritage railway that wants to extend its operations.
15. If the RSD contact has a reason to believe that the operator should not be authorised by way of a licence exemption, this should be discussed with the licensing case officer. For example, the applicant may have misunderstood its obligations and a ROGS certificate/authorisation is needed, also suggesting that a licence is more appropriate than a licence exemption.
16. While the granting of a licence exemption is different to getting necessary safety approvals, we do not normally grant licensing permissions if there are outstanding concerns about the safety of rail operations. The relevant inspector can also advise the licensing case officer if there are any particular safety messages it should reinforce in its dealings with the applicant.

17. In some cases where a licence exemption is granted to a minor operator, the licence exemption will be tied to specific sites or operations. This means the operator may have to make a further licence exemption application to, or notify, ORR if it plans to extend its operations.

ARRANGEMENTS OUTSIDE OF LICENCE APPLICATIONS

18. If either the licensing case officer or RSD becomes aware of significant safety concerns outside of the licensing application process, each should communicate these to the other. If RSD believes revocation of a safety certificate/authorisation is a possibility, the licensing case officer should be informed as this could also result in a failure to maintain continuous professional competence, which is an ongoing licensing requirement. In cases where there are repeated, serious breaches of health and safety legislation, ORR can consider revoking a licence.
19. The licensing and RSD teams are encouraged to share information and intelligence about operators. If RSD inspectors are concerned that an operator is not properly licensed they should raise concerns with the licensing team.
20. If an operator ceases have an ROGS certificate or authorisation the licensing team should be informed by RSD (Trevor Kent is the current RSD coordinator), as this might mean, again (as in paragraph 19), that the operator may be in breach of its licensing professional competence requirements and may need to stop its operations. Similarly the licensing team will advise RSD if a licence is revoked.

CONTACTS

Any questions or queries on this guidance should be addressed to:

licensing.enquiries@orr.gov.uk.