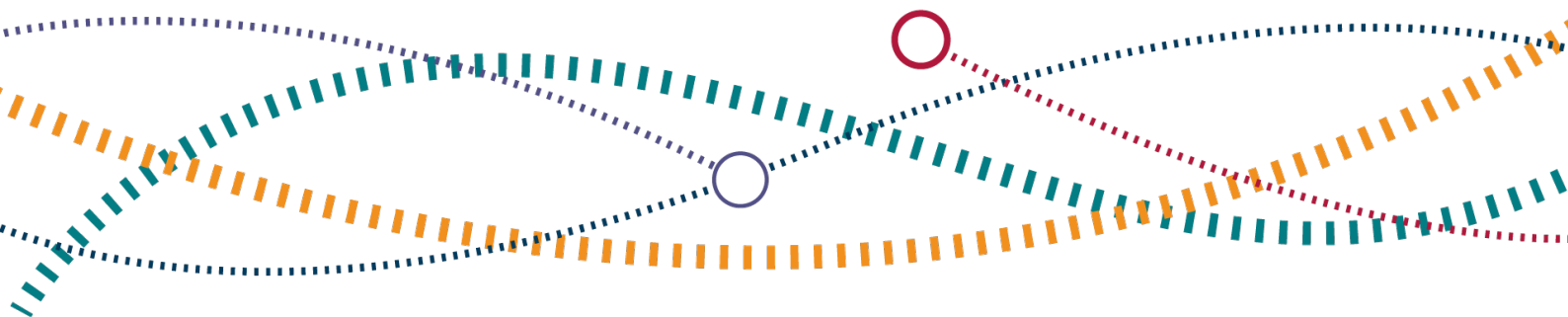




Licensing guidance

20 January 2023



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Foreword

Purpose of this document

This guidance is for operators and prospective operators of trains, stations, networks and light maintenance depots (“LMDs”). It does not commit the Office of Rail and Road (“ORR”) to making a particular decision in any individual case; this is a general overview and is not intended to cover every circumstance as we will need to consider each application on its own merits.

It will help you submit a full application for a licence or licence exemption, with supporting evidence. Where you do not follow our procedures, or give us all the information we need, or allow sufficient time, we might not be able to license you before your planned start date. We encourage anyone who needs a licence or licence exemption to discuss their proposals with us at an early stage.

We only cover licensing matters in this guidance. Applicants will also normally need to consider other issues such as health and safety obligations – and will also need to comply with wider relevant UK legislation, in particular company law.

Those applicants who will need to enter into infrastructure access agreements before starting operations, please refer to our guidance “*Starting mainline rail operations: a guide to the regulatory framework*”¹.

If anything is not clear, please let us know by contacting licensing.enquiries@orr.gov.uk.

Which chapters apply to you?

If you are applying for a licence, read chapters 2-7 of this guidance.

If you are just applying for a licence exemption, read chapters 2, 3 and 8.

¹ Available at: http://orr.gov.uk/_data/assets/pdf_file/0015/4434/starting-mainline-operations.pdf

1. The licensing system

- 1.1 Licences help ensure operators are 'fit and proper' to run a railway - applicants must satisfy requirements as to good repute, professional safety competence, financial fitness and insurance cover for civil liabilities. Through licensing we promote effective and efficient working relationships between industry parties and we can hold individual operators to account in the public interest.
- 1.2 It is an offence to operate railway assets without an appropriate licence or licence exemption and each operator must comply with the conditions and authorisation criteria once its licence has been granted.
- 1.3 There are two legislative regimes for licensing operators of railway assets. Essentially the two regimes cover: (i) operators of mainline trains; and (ii) operators of other railway assets. We explain these below.

Train operators running on the national mainline

Railway undertaking licences

Since 2005, the Railways (Licensing of Railway Undertakings) Regulations 2005 ("the 2005 Regulations") have defined the regime for licensing the operators of passenger and freight trains on the mainline railway in Great Britain.

[The Railway \(Licensing of Railway Undertakings\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) have amended the 2005 Regulations so that they continue to apply effectively as domestic law².

From 1 January 2021, under the amended 2005 Regulations, we grant two types of licence³:

- **Railway undertaking passenger licence:** This type of licence is required for most companies that wish to run passenger services on the national mainline.

² The EU Exit Regulations were made in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the European Union.

³ European licences that we granted before 31 December 2020, under the 2005 Regulations, remain valid (until revoked). Under reg. 32 of the EU Exit Regulations 2019, the licence continues to have effect as if it were a railway undertaking licence under the 2005 Regulations as amended by these Regulations (and the licence is to be read with such modifications as are necessary for it to do so).

- **Railway undertaking freight licence:** This type of licence is required for most companies wishing to run freight trains on the national mainline⁴.

Statement of National Regulatory Provisions (SNRP)

A company holding a railway undertaking licence and operating in Great Britain must also have and comply with a Statement of National Regulatory Provisions (SNRP) that we issue. We use the conditions in an SNRP to bring consistency with the obligations contained in a Railways Act licence and to promote effective and efficient working relationships between industry parties. For example, conditions can bind operators into common arrangements and standards for ticketing, complaints handling, accessible travel policies and passenger information that we can enforce.

Operators of railway assets under the Railways Act 1993

The Railways Act 1993

Section 6 of the Railways Act 1993 makes it an offence to act as the operator of a railway asset without holding a Railways Act licence (or a railway undertaking licence) or licence exemption. These licences cover some operations not covered by the 2005 Regulations.

This applies to all railway asset operators regardless of the scale of operations and includes operators of privately owned freight terminals and other minor networks. Railway assets are trains, networks, stations and light maintenance depots. An operator is “the person having management of that railway asset for the time being”.

Railways Act licences are issued on the same criteria as railway undertaking licences. However, the conditions are in the licence itself rather than in a separate SNRP.

Types of licences

There are five different Railways Act licences, one for each category of railway asset:

⁴ Excluding regional rail freight services and freight operations on privately owned railway infrastructure that exists solely for use by the infrastructure owner for its own freight operations – for which a non-passenger licence or exemption may be applicable.

- **Network licence:** Authorises a person to be the operator of a network, and trains being used on a network for any purpose comprised in the operation of the network.
- **Station licence:** Authorises a person to operate one or more specified stations.
- **Light maintenance depot licence:** Authorises a person to operate one or more specified light maintenance depots.
- **Passenger train licence:** Authorises a person to be the operator of a train being used on a network for the purpose of carrying passengers by railway. We usually grant Railways Act licences to non-mainline train operators, for example:
 - **Passenger services on local and regional stand-alone infrastructure**
Such as heritage railways and the Island Line (on the Isle of Wight), which are functionally separate from either the main networks operated by Network Rail or HS1; or
 - **Urban or suburban passenger services**
For example, the passenger services running on London Underground, Docklands Light Railway, Merseyrail and Nexus (the Tyne and Wear metro).

Note that operators of passenger train services that would run as part of a wider geographical franchise, such as South Western Railway or Northern Rail, on Network Rail or HS1 (etc) infrastructure, would most likely need a railway undertaking licence – see above.
- **Non-passenger train licence:** Authorises a person to be the operator of other trains being used on a network. This is the type of licence held by some rail maintenance and renewal companies.

Definition of an operator

- 1.4 The operator of a railway asset is the body with the management of that railway asset for the time being. Normally there will only be one operator of a railway asset due to the practical implications of compliance with licence conditions, and to avoid ambiguity or uncertainty.
- 1.5 Identifying the operator is usually straightforward. For example, the operator of a train gives the train driver management instructions (other than signalling instructions).

- 1.6 The operator of a station manages the provision of facilities and services at that station to passengers and train operators. This would normally include station staff management and providing customer information.
- 1.7 The operator of an LMD manages the provision of light maintenance services at that depot. For example, controlling depot staff and the movement of trains within the depot.
- 1.8 The operator of a network is normally in control of the provision of network facilities, such as signalling.

Who can be an operator?

- 1.9 The operator is usually a company or some other form of organisation such as a registered charity, but can be an individual. However, for licensing purposes, it must be a legally distinct entity. So, a division or a named individual within a company cannot be the operator. Licences or licence exemptions cannot normally be held at a group level and used by subsidiaries or associated companies in that group. This means that the licensed operator of a railway asset may not be the asset owner.

Network policy

- 1.10 Most of Great Britain's mainline network is operated by Network Rail under a licence enforced by ORR. Most smaller and non-mainline networks are exempted by legislation or will qualify for an ORR exemption (see Chapter 8).
- 1.11 Some other networks will need to be licensed by ORR. We look at each case on its merits. If the network is of strategic, national or regional importance a licence will normally be needed. The benefits from having a national rail network may need to be secured by licensing.
- 1.12 Licences provide a framework for a common set of industry rules and standards, and protect the public. The conditions in a licence will depend on the interests being protected but will normally include at least those in ORR's basic model network licence on our [website](#). In exceptional cases a licence may not be necessary where there are other means of securing the public interest.

Licence exemptions

- 1.13 Licence exemptions allow the operation of railway assets without the need for a licence. They are more straightforward than licences and usually have fewer

conditions; they often have no conditions. We will therefore consider licence exemptions for prospective operators where membership of industry arrangements is not necessary. We consider each case on its merits but, as a starting point, if you do not need a mainline safety certificate or authorisation under [ROGS](#), you are likely to qualify for a licence exemption. Our licence exemptions policy is explained in more detail in chapter 8.

- 1.14 It's also worth noting that the government exempted various classes of assets by [statutory instrument in 1994](#), so sometimes we do not need to issue a licence exemption.

Scope and duration

- 1.15 Only ORR issues licences in Great Britain. Licences, licence exemptions and SNRPs usually do not have a built-in expiry date and remain valid unless and until we revoke them.
- 1.16 Station and LMD licences authorise the operation of facilities in Great Britain. Normally the facilities covered are listed in an attached schedule. The schedule can be added to or have facilities removed.
- 1.17 Network licences normally allow the operation of any network of a type listed in the licence and its schedule. Network Rail has its own licence which has more conditions than the standard network licence.
- 1.18 Train operator licences issued under the Railways Act 1993, normally authorise the operation of trains anywhere in Great Britain. We do not grant these if it would be more appropriate to issue a railway undertaking licence.
- 1.19 Operators of mainline stations, network and trains should all expect to be licensed. This is because it is usually appropriate for them to belong to the standard industry arrangements and comply with ORR's licence conditions.

Planned and uncompleted facilities

- 1.20 The licensing system does not apply to railway assets that are under construction, but we can still start processing your application. Make sure you allow sufficient time to submit your application to us before you plan to start operating any railway assets.

Model licences and exemptions

- 1.21 We have published model (that is, template) licences, SNRPs and exemptions on our [website](#). We update these as necessary. The licences, SNRPs and licence exemptions we actually issue may be different in some cases.

2. Making an application

- 2.1 This chapter explains how to apply for a licence or licence exemption and the procedures we follow when assessing your application. Our aim is to ensure that we consider applications in a timely way consistent with our statutory duties and other obligations.

The form and content of applications

General

- 2.2 We have separate application forms for licences and licence exemptions. These specify the minimum information needed to start processing your application.
- 2.3 You can send your completed application to us by email; we don't need paper copies posted to us. We will normally acknowledge your application within two working days of receipt with the name of the person assigned to your case.
- 2.4 If we need more or clarified information to progress the application, we will let you know within one month.
- 2.5 Be aware that it is an offence to make a statement to ORR that you know to be false, or to recklessly make any statement that is false.

Applying for a licences and SNRPs

- 2.6 Application forms for Railways Act licences, railway undertakings licences and SNRPs are on our [website](#). As your application progresses, we will ask you for more information about how you will comply with impending licence and SNRP conditions.
- 2.7 The application fee of £250 must accompany every application for a Railways Act licence or railway undertaking licence. You may apply for more than one type of licence using a single application form. Only one fee of £250 applies per application form.
- 2.8 Operators based outside of Great Britain may need to adapt the form for their circumstances. If so, speak to us first. We need English translations of any foreign language documents given to us. Your nominated contact should also be in a position to speak to us and industry bodies on the full range of licensing and

operational issues. Please also see chapter 5 as you will also need third party liability insurance.

Licence exemptions

- 2.9 You should check that you are not already exempt from the licensing system, for example because all your operations are covered under the [Railways \(Class and Miscellaneous Exemptions\) Order 1994](#) (“CMEO”).
- 2.10 If you are not already exempt, you should fill in the licence exemption application form. The form includes explanatory notes. Please contact us with any questions before you submit your completed form. There is no fee for processing licence exemption forms. Please include maps or plans of your proposed operations if possible.

Informal discussions

- 2.11 We welcome early and informal dialogue before an application is made. We can explain our requirements, help identify other regulatory issues and discuss timescales.
- 2.12 Although we can give early informal guidance, our opinion may change once we have considered a formal application. But guidance at an early stage can be valuable, saving you time and expense.

Consultations

- 2.13 We will consult certain bodies before deciding whether to grant you a licence or licence exemption. We will normally inform the Department for Transport (“DfT”) of any applications that we receive.
- 2.14 Before we grant a railway undertaking licence, Railways Act licence or a licence exemption, we will publish a notice saying that we propose to do so and giving our reasons. We must allow 28 days for representations or objections to be made. Occasionally a longer consultation period may be appropriate. The notice will include your details such as company name, company number, address, and company officer names⁵.

⁵ See template statutory notice at Annex A.

2.15 The notice will be published on our website. Copies will also be sent to you and interested parties, normally selected from:

- The Department for Transport
- Network Rail Infrastructure Ltd (“Network Rail”)
- Railway Safety and Standards Board
- British Transport Police Authority
- Rail Delivery Group
- Transport Focus
- London TravelWatch
- Transport Scotland
- Welsh Government/Transport for Wales
- appropriate local representative bodies.

2.16 There should be as short a time as possible between the end of the consultation period and the grant of any licence. Where more than nine months have passed between the consultation and the grant of the licence, we will normally repeat the consultation.

Timescales

2.17 We need sufficient time to reach an informed decision on every application. If your application is not complete and you need to do further work, you should also allow time for that. For example, we will need to consider your third party liability insurance arrangements before issuing you with a licence.

2.18 You should normally allow at least 12 weeks between making a licence application and when you want to start operations. Allow at least eight weeks for a licence exemption application. You should also factor in the time needed to obtain any necessary safety approvals or other permissions. You should allow longer if you think your application is complex, raises new issues, or is likely to result in concerns from other parties. In any event, we will aim to make a decision about whether to grant an authorisation within one month of receiving all the information we need. However, please do not apply too early, or speculatively, as we may ask you to reapply at a later date. Timescales can be discussed with us beforehand.

- 2.19 We cannot grant interim or temporary licences to cover operations during the application process. You must not start operations until any necessary licence or licence exemption has been granted.

Confidentiality and the Freedom of Information Act

- 2.20 ORR is committed to openness and transparency, but we appreciate that during an application we may receive information that is commercially sensitive. You should ask us to treat sensitive information as “confidential”. Please indicate clearly where this is the case. The Railways Act limits the information we may disclose but we may release information under certain defined circumstances.
- 2.21 Also, the Freedom of Information Act 2000 (“FOIA”) gives any person the right to request information from us. There are certain exemptions from the FOIA relevant to information held by us through the exercise of our licensing duties. Where information obtained by us in the course of a licence application falls within the prohibition on disclosure in section 145 of the Railways Act, it would be exempt from disclosure under the FOIA⁶. If we receive an FOIA information request covered by the prohibition on disclosure in the Act, we will consider whether it is appropriate to seek your consent to disclose that information. We must have your permission before disclosing it.
- 2.22 We must, however, publish certain high level information about applicants and proposed operations on our website during the statutory consultation stage. We also send a redacted copy of the licence application form to DfT.
- 2.23 Additional information on the way we process personal data and how we may use that information in accordance with the General Data Protection Regulation and Data Protection Act 2018, can be found on our [website](#).

⁶ The FOIA says that where the disclosure of information is “prohibited by another enactment” it is exempt information for the purposes of the FOIA.

3. Authorisation Criteria

- 3.1 In deciding whether to grant a licence we have to be satisfied that you are ‘fit and proper’; that is, of good repute, financially fit, professionally competent and adequately insured.
- 3.2 All licence applicants must meet these criteria at the application stage to get a licence. Railway undertaking licence holders must also be able to demonstrate compliance on an ongoing basis.
- 3.3 If you are only applying for a licence exemption, you do not need to read the rest of this chapter.

Good repute

- 3.4 We will only grant you a licence if you are of good repute. You should provide us with details of any:
- bankruptcy orders (in the UK or elsewhere) which have been made against any company officers;
 - current or pending legal proceedings against company officers or major shareholders; prosecutions or enforcement orders made by ORR, environmental agencies, or local authorities; and
 - any breaches of customs law.
- 3.5 We may also undertake our own enquiries with other bodies or agencies or ask you for further information. A declaration under this section does not necessarily mean that we won’t grant you a licence.

Financial fitness

- 3.6 You will meet the required standard of financial fitness when you can show that you can meet your likely obligations, established under realistic assumptions, for the next 12 months.
- 3.7 If you are submitting a business plan, please ensure you disclose the following:
- available funds (including bank balance, pledged overdraft provisions and loans)

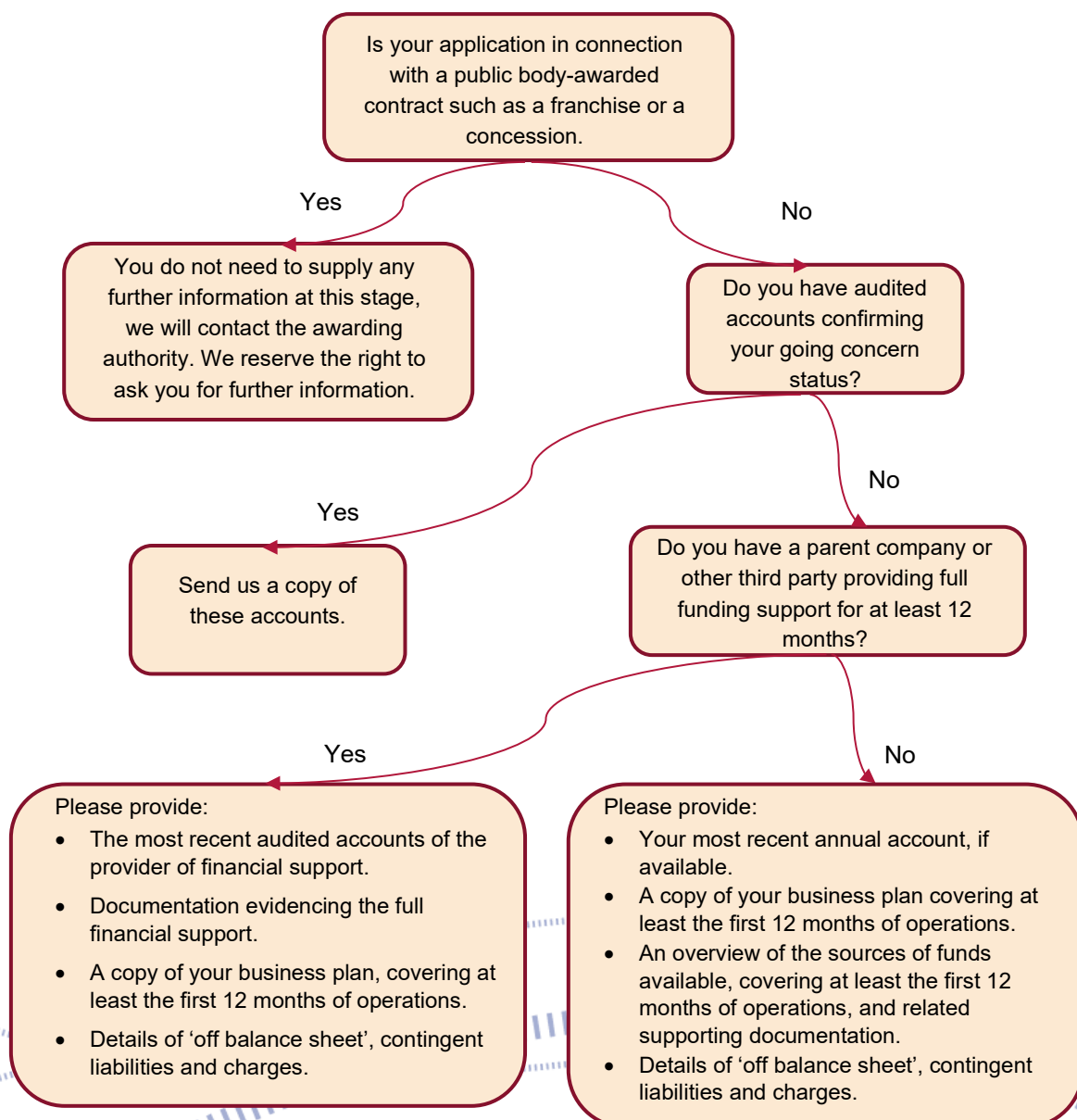
- funds and assets available as security
- working capital
- relevant capital costs
- charges on assets
- taxes and social security contributions

3.8 If it is not possible to supply this information, you should contact us at an early stage.

3.9 We do not grant licences where an applicant has substantial arrears of taxes or social security payments.

3.10 In considering the financial fitness information you provide, ORR is not providing any form of assurance which third parties may rely on, for any purpose.

3.11 The chart below is a guide to help you decide what information to send to us. We assess the information received in the context of each case, on a case by case basis:



Professional competence

- 3.12 We will consider that you are professionally competent if we are satisfied that you meet all the necessary requirements of health and safety law, so we will liaise with our health and safety inspectors as necessary. We have published separate guidance on health and safety regulation on our website.

Third party liability insurance

- 3.13 You need to have adequate third party liability insurance, or equivalent arrangements, covering your liabilities in the event of accidents to passengers, luggage, freight, mail and third parties. Insurance is only considered adequate if it has been approved by ORR. Therefore, you will meet this criterion if you comply with the condition for having third party liability insurance as explained in chapters 4 and 5.

4. Conditions

4.1 The Conditions we normally include in licences and SNRPs are tabulated below:

	Standard condition	Passenger licence/ SNRP	Non-passenger licence	Freight SNRP	Station licence	LMD licence	Network licence
1	Insurance against third party liability	Yes	Yes	Yes	Yes	Yes	Yes
2	Claims allocation and handling	Yes	Yes	Yes	Yes	Yes	Yes
3	Passenger rights, through tickets and network benefits	Yes					
4	Information for passengers	Yes			Yes (reduced scope)		
5	Accessible travel policy	Yes			Yes		
6	Complaints handling	Yes			Yes		
7	Liaison with the PC and LTUC	Yes			Yes		
8	RSSB membership	Yes	Yes	Yes			
9	Safety and standards	Yes	Yes	Yes	Yes	Yes	Yes
10	Environmental matters	Yes	Yes	Yes	Yes	Yes	Yes
11	Payment of fees	Yes	Yes	Yes	Yes	Yes	Yes
12	Change of control	Yes	Yes	Yes	Yes	Yes	Yes
13	Non-discrimination				Yes	Yes	Yes
14	Emergency access				Yes	Yes	Yes
15	Co-operation with TfL				Yes		
16	Changes to the schedule				Yes	Yes	
27	*Station asset information				Yes		
28	Rail Delivery Group	Yes		Yes			
29	Delay compensation	Yes					

* only for station operators with stewardship responsibilities.

Conditions 17-26 are not standard conditions and only apply to certain operators.

Conditions

- 4.2 Licences help ensure operators are 'fit and proper' to run a railway - applicants must satisfy requirements as to good repute, professional safety competence, financial fitness and insurance cover for civil liabilities. Through licensing we promote effective and efficient working relationships between industry parties and we can hold individual operators to account in the public interest. Each operator must comply with the conditions we impose, in the public interest.

Insurance against third party liability

- 4.3 All operators are required to hold and maintain third party liability insurance on terms approved by ORR. See chapter 5.

Claims allocation and handling

- 4.4 All operators must join and comply with approved industry arrangements governing the allocation of liabilities amongst operators and the handling of claims. The only approved arrangements are those in the Claims Allocation and Handling Agreement ("CAHA"). You should sign up to CAHA before your licence or SNRP comes into effect.

Passenger rights, through tickets and network benefits

- 4.5 Most passenger train operators are required to join and comply with industry arrangements approved by the Secretary of State about the sale and validity of through tickets and the operation of a national telephone enquiry service. The Rail Delivery Group ("RDG") manages approved schemes that deal with these and other matters. These arrangements are the Ticketing and Settlement Agreement and the National Rail Enquiry Scheme. Membership of these schemes will normally meet our requirements.
- 4.6 Railway undertaking passenger operators will also need to comply to the relevant Passenger Rights Obligations listed in its licences.
- 4.7 This condition is not imposed on passenger train operators who only offer charter services.

Information for passengers

- 4.8 Passenger train operators are required to provide appropriate, accurate and timely information to enable railway passengers and prospective passengers to plan and make their journeys with a reasonable degree of assurance, including when there is disruption. They must also cooperate with other train operators and Network Rail, to enable Network Rail to carry out appropriate planning of train services and to establish or change appropriate timetables to enable it to satisfy its timetabling obligations.
- 4.9 Station operators should cooperate with train operators so far as is reasonably necessary to enable them to meet their obligations to provide information to passengers.
- 4.10 Passenger train and station operators should also develop, publish and follow a [code of practice](#).

Provision of services for passengers with accessible travel needs

- 4.11 Passenger train and station operators are normally required to produce an Accessible Travel Policy (“ATP”). The requirements are set out in guidance. Please contact ORR for further information at ATP@orr.gov.uk.

Complaints procedure

- 4.12 Passenger train and station operators must establish a complaints handling procedure (“CHP”) and become members of the Relevant ADR Scheme⁷. Please contact ORR for further guidance at CHP@orr.gov.uk.

Liaison with the PC and LTUC

- 4.13 Passenger train and station operators must engage in reasonable liaison with the Passengers’ Council (“PC”) and the London Transport Users Committee (“LTUC”). They are also known as Transport Focus and London TravelWatch respectively. This includes attending meetings and providing information reasonably required.

⁷ “Relevant ADR Scheme” means - the alternative dispute resolution scheme (or alternative dispute resolution scheme) procured by Rail Delivery Group (the Rail Ombudsman)

RSSB membership

- 4.14 Licensed train operators should become members of the Railways Safety and Standards Board (“RSSB”). They should complete the formal and legal documentation associated with membership within three months of the licence coming into force. You should comply with the associated obligations of membership from the date your licence comes into force. A turnover threshold applies and smaller operators may not need to join RSSB straightaway. See the [RSSB constitution agreement](#).
- 4.15 The RSSB’s principal objective is to lead and facilitate the rail industry’s work to achieve continuous improvement in railway health and safety performance. This requires the involvement of as wide a range of industry parties as possible and, in particular, all those that operate trains on Network Rail’s network.
- 4.16 The RSSB constitution also allows membership to cease under certain circumstances; however, the obligation in licence/SNRP conditions stipulates the requirements to become and remain members of RSSB.

Safety and standards

- 4.17 Operators are required to comply with Railway Group Standards (“RGS”) or Rail Industry Standards (“RIS”) that apply to their operations. The RGS and RIS are set by the RSSB.

Environmental matters

- 4.18 All operators are required to produce an environmental policy within six months of their licence or SNRP coming into effect. There is separate [ORR guidance](#) to help and you should take it into account when preparing your policy.
- 4.19 You should send us a copy of the policy, with details of your supporting objectives and management arrangements, both when they are first developed and when any material changes are made. We will review your policies to check that they conform with our guidance. This is to ensure that they comply with our requirements for policies to be established. However, we do not assess and approve the policies themselves.

Payment of fees

- 4.20 This condition gives us the option to recover our costs from operators (and in some situations costs incurred by the Competition and Markets Authority).

However, we currently recover most of the costs of economic regulation through Network Rail.

Change of control

4.21 All licence holders must tell us about any changes of control. Please see chapter 6 for details.

Non-discrimination

4.22 All station, LMD and network licences include a condition that the holder should not unduly discriminate between individual parties or groups as part of its licensed activities. In most cases where a licence holder complies with relevant legislation concerning access rights and competition law, they will not breach this condition. However, this condition is retained for exceptional cases related to our duties under section 4 of the Act.

Emergency access

4.23 Station, network and LMD operators should give access to any other person where necessary or expedient to alleviate the effect of an emergency, so far as they are legally and practically able.

Co-operation with Transport for London

4.24 Station operators must co-operate with Transport for London for the purpose of ensuring the efficient operation of railway services and the provision of railway facilities, and co-ordinating, where possible, anticipated investment projects.

Changes to the schedule

4.25 This condition provides a mechanism for station, LMD and some network operators to change the licence schedules listing the assets that they are authorised to operate, as needed.

Station asset information

4.26 Station licence holders shall provide to ORR such information as ORR may reasonably require about the station assets, including their condition, capability and capacity. *This condition is only for station operators with stewardship responsibilities given to them under a public sector contract, for example through a franchise or concession.*

Rail Delivery Group

- 4.27 All licensed passenger and freight operators using Network Rail's network must become Licensed Members of the Rail Delivery Group ("RDG"). You must comply with the associated obligations of membership. These obligations are set out in the RDG articles of association. A turnover threshold for membership applies which, if met, requires licence holders to ensure that an executive director or senior executive of their group should be nominated as director and alternate to sit on the RDG leadership group.
- 4.28 The purpose of RDG is to be the leadership body for Great Britain's rail industry, and to develop, promote and establish policies, strategies and plans aimed at reducing industry costs and improving value for money for passengers and taxpayers. To achieve this, RDG requires the engagement and support of key industry parties. Further information about membership can be obtained from the RDG at info@raildeliverygroup.com or from its [website](#).

Delay Compensation Code of Practice

4.29 The Delay Compensation Code of Practice (CoP) sets out requirements with regards to delay compensation for passengers. The CoP applies to all passenger train companies in Great Britain whose passenger train licence or SNRP includes condition 29 (this does not include Eurostar's international services, charter operators or 'small scale' passenger operations of limited coverage of the national mainline railway).

5. Third party liability insurance

- 5.1 All licensed operators, and some licence exemption holders, are required to maintain third party liability insurance (“TPLI”) on terms approved by ORR. We do not require any other type of insurance.
- 5.2 We must approve your TPLI arrangements before we will grant you a licence (or in some cases a licence exemption).

Scope of policies

- 5.3 In addition to other insurance required by law, if you are covered by this obligation, you must effect and maintain insurance in respect of third party risks which cover you, your employees, and any other person expressly required to be included as an insured, in respect of any legal liability which may be incurred in the event of death or bodily injury to any person and loss or damage to property arising from licensed activities. Your arrangements should also fulfil the relevant requirements of the Passenger Rights and Obligations Regulations⁸.

The General Approval

- 5.4 Once we have given you a licence, your subsequent TPLI policy renewals should qualify for our general approval rather than require our specific approval. This means that ORR approval will be deemed to apply to the insurance arrangements of relevant operators, to the extent that the policies meet the requirements of the general approval. In summary, these are:
- Provide cover of no less than £155m in respect of all liabilities.
 - Ensure that any exclusion of damage to property in the care, custody and control of the operator shall not apply to accompanied personal luggage.
 - Include as an insured any other party to the extent that such party is required to be insured or indemnified in any underlying contract or agreement with the operator.
 - Provide cover for any difference between its contractors or sub-contractors third party liability cover and our required level of cover.

⁸ Regulation (EC) No 1371/2007 and [The Rail Passengers’ Rights and Obligations 2010](https://www.legislation.gov.uk/ukxi/2018/1165/contents/made), No.1504 as amended by the Rail Passengers’ Rights and Obligations (Amendment) (EU Exit) Regulations 2018: <https://www.legislation.gov.uk/ukxi/2018/1165/contents/made>

- Ensure cover is on an ‘occurrence’⁹basis.
- Ensure cover is on a ‘costs exclusive’ basis.
- Ensure that where an aggregate limit of indemnity applies, the limit will be reinstated at least once if the limit is exhausted.

5.5 Other points to consider are:

- You must have a reasonable expectation of meeting your self-insurance liabilities.
- Insurance must be taken out with regulated insurers of good repute.
- Insurance cover must apply at all times that operations are undertaken.
- Insurance policies may contain clauses concerning rights to cancel or change terms. But each policy must require at least 30 days’ notice to be given to ORR by the insurer of any lapse, cancellation or material change to the policy.

5.6 The obligation to have cover in place whenever operations are undertaken means insurance policies should not contain clauses allowing the insurer to avoid its obligations retrospectively for any reason, including non-payment of premium. If insurers could avoid their obligations retrospectively this would not provide the required level of third party protection. Policies must remain valid during the 30 days’ notice period, but the cancellation or changes can take effect after that.

5.7 Not meeting the terms of the general approval could result in enforcement action.

Self-insurance

5.8 We must approve any element of self-insurance proposed as part of your TPLI cover before we will grant a licence or SNRP. Self-insurance means your financial capability to meet any liability to a third party for which you don’t have insurance cover. This includes any excess or deductible in policies.

5.9 You must be able to demonstrate that the level of self-insurance is appropriate and you have the ability to meet any consequent obligations. Factors to include are:

- A quantification of the potential third party liability risk.
- An aggregate cap on self-insured liabilities; you should provide a statement of the amount provided for in the cap, evidence that the cap is in place from

⁹ See Annex B.

the date of commencement, and details of any types of losses which might not be covered by the cap.

- Confirmation of your ability to meet your potential self-insured liabilities, in the form of either:
 - a statement signed by a company director certifying that s/he has considered the potential liabilities and costs in the light of the company's business plan, and confirming that s/he has a reasonable expectation of meeting such liabilities for 12 months from the date of the certificate (see Annex B); or
 - where you believe such a statement to be inappropriate, other evidence of sufficient provisions as agreed with us.

5.10 ORR does not set a limit, but self-insurance layers significantly above normal market levels may be questioned. We reserve the right to question any levels of self-insurance and to ask you to change the amounts associated with your insurance programme if we believe that they are excessive. Self-insurance layers should be reasonable, realistic and not excessive.

Broker letters

5.11 We expect all operators with a TPLI obligation to arrange for us to receive confirmation that adequate insurance is in place which complies with the general approval. You must also make sure that we are notified if you change your TPLI arrangements. Do not just wait for the renewal dates to tell us.

5.12 We have designed a template broker's letter that can be used by your brokers to make sure that all the relevant information we need is provided every time that TPLI cover is renewed or altered. Some brokers may prefer to send confirmations on their own letter headed paper.

5.13 The broker should include the names of the operators covered by its letter with their company numbers. Each broker's letter should clearly state the period the TPLI cover is effective. If you are part of an insurance facility, the broker should include a reference to this. Network Rail contractors entirely covered by Network Rail's TPLI which do not need separate insurance, may rely on the letter provided by Network Rail to us. Broker letters are available to anyone who requests a copy and we may place them on our website.

New applicants

5.14 Applicants must provide us with certificates of insurance. Certificates must be binding, irrespective of a change in circumstances prior to inception or renewal of the insurance. Each certificate must:

- identify each insurer and the proportion of cover each has taken;
- indicate the period of the policy;
- summarise the scope of the policy and each of its exclusions; and
- state the governing law under which the policy is to be interpreted (for example, English law).

5.15 As with current operators, your broker should complete a letter confirming compliance with ORR's general approval, as described above. Your broker should also complete the checklist at Annex C. You should send the letter and checklist as part of your application to the person handling your case.

5.16 If the insurance programme you are joining has already been approved by ORR, you should still send us a copy of the amended certificate showing your company's name. This might occur, for example, where a group already has several insured licence holders and new companies are added to the group's policy.

Variations

5.17 If you want to request approval for a type or level of cover different from that set out in the general approval you should, at an early stage, submit a fully argued case for our consideration. A request for a variation can be made at the same time as a licence application.

5.18 All requests for a variation from the general approval must be made in writing. You can discuss this with us before you apply.

5.19 Variation requests:

- should normally be made on the basis of a risk assessment;
- could extend our normal licence application timescales;
- may be made public and subject to consultation.

5.20 Major variations, including all variations to the £155 million minimum level of cover, should be supported by a full risk assessment provided by independent consultants - usually with railway engineering experience. A request for a variation should also include information and description about the:

- nature, size, scale and scope of operations
- physical and operational controls
- condition, upkeep and maintenance of the track, stations, infrastructure

- plans and potential for change
- interaction with other networks, operators and other third parties
- risks, the likelihood of them happening and the consequences.

5.21 We do not normally grant variations to the following parts of the general approval: sections 3e, 3h, 3j, 3k and any part of section 4 or 5. We may grant variations to the amount of TPLI cover required at 3a, 3d, 3f, 3g, and 3i.

5.22 Variation requests will be reviewed by our external insurance advisers for robustness. A request for a variation may be posted on our website for consultation. Any variations we grant will be posted on our public register and on our third party liability insurance webpage where appropriate

6. Change of control

6.1 You should tell us about any changes of control to your company. This chapter covers the procedures to follow.

What is a change of control?

6.2 Licences and SNRPs set out when a change of control must be notified to us. Essentially, where a person's shareholding, or direct or indirect voting rights, of a licence holder increases to 30% or more of the total, this will normally be a change of control. Refer to your licence for the full definition.

Impact of a change of control

- 6.3 A change of control of a company that already holds a licence does not mean a new licence must be issued. This is because the legal identity of the authorised company remains the same, even if the owners have changed. However, the changes may have an effect on the operator's ability to properly discharge its obligations. Therefore, the type of information we require in the event of a change of control is similar to that requested of new applicants. We do not require a fee for this post-grant work.
- 6.4 It is possible that the change of control could affect an operator's ongoing suitability to be authorised, so the licence holder should notify us as soon as practicable after any change of control.
- 6.5 We do not normally issue comfort letters before a change of control. However, if you wish to discuss a potential or forthcoming change of control please do ask us for a meeting. Any discussions will be in confidence.
- 6.6 This guidance only relates to licensing matters. There may be other considerations elsewhere, for example under health and safety legislation, or merger law, or relating to the procedures of public authorities who award train service contracts such as franchises or concessions. Operators should refer to the DfT, Transport Scotland and/or other bodies as appropriate.

Notifying ORR

- 6.7 Following a change of control, the licence holder must notify us in writing as soon as practicable that a change of control has taken place. We recommend you use the form on our [website](#).

Completing the form

- 6.8 Complete a form for each new controller you have. The document is in both Microsoft Word and the Open Document format, so you can edit with any word processor. If you consider it useful, include an explanatory covering letter. In sections 1 and 2 please enter details about the licence holder and the new controller. If the new controller is a subsidiary of another company, or if the licence holder is now part of a wider company group, please enclose an organisation chart showing the new structure.
- 6.9 In sections 3, 4 and 5 please explain any effects on the licence holder's ability to meet its financial fitness, insurance or safety competence obligations. You may state 'no change' if that is the case. Attach the details referred to in section 6 as necessary. You do not need to tell us about minor legal proceedings clearly unrelated to your fitness to hold a licence.
- 6.10 An appropriately authorised representative must sign the form. Send us the form electronically or by post to the address given. We will acknowledge receipt.

ORR assessment

- 6.11 We will assess any notified change of control in the light of all the information available. We will write to you if we need more information. Our assessment may take up to four weeks but will usually be quicker where there are no changes in circumstances. If we decide not to approve a change of control we will tell you and then consider any representations.

Confidentiality

- 6.12 We respect that notifications may contain commercially sensitive information. Please clearly indicate where any information is supplied in confidence. We do not normally discuss these cases with third parties. But note we may check what you tell us with other public bodies if appropriate. See the section in chapter 2 on confidentiality.

Other parties

- 6.13 If you are aware of a change of control of another operator then please feel free to let us know, especially if you have any concerns about it.

7. Compliance

- 7.1 You must comply with any conditions associated with your licence, licence exemption or SNRP at all times. This chapter sets out how we monitor compliance.
- 7.2 Railway undertaking licence holders must also, at all times, satisfy the four authorisation criteria (see chapter 3). These are: insurance, financial fitness, good repute and professional competence. If we have serious doubts about whether you comply with any of these criteria, we may make further enquiries.

Ongoing compliance with licence/SNRP conditions

- 7.3 You must comply with all the licence, licence exemption and SNRP conditions relevant to you at all times. Failure to do so may result in enforcement action. If we have concerns that you are not complying with your obligations we may investigate. Conditions relevant to most licensed operators, as examples, will include membership of CAHA, membership of approved through-ticketing arrangements and maintaining TPLI.
- 7.4 You must also act within the scope of your licence or licence exemption. It is an offence to conduct railway operations without authorisation. You may be prosecuted if you do.

Ongoing compliance with third party liability insurance

- 7.5 We may on occasion undertake checks on individual operators or a sample of operators to make sure TPLI cover is adequate, even where broker letters have been supplied. You should maintain records about how your insurance arrangements meet the terms of the general approval. You should therefore keep copies of all TPLI policy documents and certificates. You should request these from your brokers if they are not sent to you automatically.
- 7.6 We may ask you at any time for copies of this documentation. You should supply it without delay. Reasons for ORR inspection could include:
- a risk-based assessment by us of which operators to audit
 - random selection

- a trigger event, such as a cancellation notice being issued or other concerns such as financial fitness
- complaints, press reports, information received (from brokers and others).

7.7 You must not operate railway assets unless you have appropriate insurance approved by ORR. If you wish to maintain a licence or SNRP while not operating for a short period and without full TPLI then you should apply to us in advance for a variation (see chapter 5).

Ongoing financial fitness

7.8 Railway undertaking licence holders are considered to meet the required standard of financial fitness if they can demonstrate that they can meet actual and potential obligations, established under realistic assumptions, for a period of twelve months. Under no circumstances however does ORR provide any form of assurance which third parties may rely on for any purpose.

7.9 You should keep records that demonstrate your ongoing financial fitness. You should also make timely and appropriate returns to Companies House, or other regulatory bodies as required.

7.10 We will not normally investigate the financial fitness of train operators franchised by, or under contract to, public authorities. This is because those authorities already closely monitor these operators. We expect them to tell us if they have concerns.

7.11 We will look to suspend or revoke a railway undertaking licence if we are satisfied that you no longer meet the necessary standard of financial fitness. We shall revoke a railway undertaking licence, in certain circumstances, if proceedings have been commenced to wind the company up; or if an application has been made for a railway administration order on the grounds that the operator cannot pay its debts. We may grant a temporary licence in some cases.

Maintaining professional competence

7.12 You will normally be considered to be professionally competent if we are satisfied that you have a management organisation possessing the knowledge or experience necessary to exercise safe and reliable operations. If we find evidence that you do not have all the relevant safety authorisations, or are otherwise not complying with health and safety law, we may investigate whether you should

continue to hold a railway undertaking licence. This would be in addition to any other ORR action taken under health and safety legislation.

Continuance of good repute

- 7.13 We expect railway undertaking licence holders to continue to be of good repute. We will investigate any concerns or complaints, on their own merits and in context of the legislation.

Enforcement

- 7.14 ORR is responsible for the enforcement of licensing conditions and investigating compliance with authorisation criteria. The purpose of licence enforcement is to ensure delivery and secure compliance with public interest obligations. Our policy and procedures on enforcement are set out in our [Economic enforcement policy and penalties statement](#).
- 7.15 The statement explains that we choose between different enforcement mechanisms where more than one applies. It also sets our principles and the way in which penalties are calculated.
- 7.16 If you do not comply with your licensing obligations we will consider enforcement action. This may ultimately result in the suspension or revocation of your authorisation.

8. ORR's licence exemption policy

- 8.1 Operators of stations and trains on the mainline network should normally expect to be licensed. It is usually appropriate for them to belong to the standard industry arrangements and comply with ORR's licence conditions.
- 8.2 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 the standard industry arrangements.
- 8.3 As a helpful starting point and 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. You do not need an exemption if your operations are completely covered by an existing exemption as explained in this chapter.
- 8.4 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.

Secretary of State exemptions

The Railways (Class and Miscellaneous Exemptions) Order 1994 ("CMEO")

- 8.5 The Secretary of State has made an order which 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.
- 8.6 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.

8.7 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.

8.8 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.

8.9 We recommend you look at the CMEO 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.

8.10 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 CMEO article 4(a).

8.11 The CMEO 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.

8.12 We also consider a freight terminal is not an industrial undertaking, as specific terminals are exempted elsewhere in the CMEO. So, for example, a network exempted by CMEO 4(o) must be located within a factory and not just adjacent or connected to it.

Extending operations exempt under the CMEO

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

Other exemptions

- 8.14 The Secretary of State has granted specific licence exemptions to other operators, including Heathrow Express and Transport for London's subsidiaries.

Transport and Works Act Orders

- 8.15 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. So you may still need to apply to ORR for a licence or licence exemption.

Common exemption scenarios

Networks

- 8.16 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.
- 8.17 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

- 8.18 Much of the track-running equipment operated by maintenance and renewal contractors are considered to be non-passenger trains, so operators of this equipment need to hold either a non-passenger train licence or an exemption.
- 8.19 Where maintenance or renewal activities are confined within engineering possessions, operators can apply for a licence exemption. If maintenance activities occur outside a possession, or you move equipment using the national network, you will need a licence.

Stations

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

Light maintenance depots

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

Annex A: Statutory Notice template

Insert ORR Logo

Notice of proposal to grant [a] licence[s]

[The Railways Act 1993 (the Act)] [and] [the Railway (Licensing of Railway Undertakings) Regulations 2005 (the Regulations)] [delete as appropriate]

Application by:

[Company name] (the applicant)

Company Registration Number:

[Company number]

Registered Address:

[Company address]

Company Officers:

[Insert name of company officers]

The Office of Rail and Road gives notice in accordance with [regulation 6(9) of the Regulations and/or section 8(4) of the Act] that it proposes to grant the applicant [a] [Enter licences on which we are consulting].

The [licence/s] will authorise the applicant to [description of operations], subject to all legal requirements being fulfilled by the applicant.

We propose to grant the [licence/s] on the grounds that the applicant has shown itself to be a fit and proper person.

Please send any comments on this proposal by [date] to:

[Enter your name]
Office of Rail and Road
25 Cabot Square
London
E14 4QZ

[licensing.enquiries@orr.gov.uk]

Date of Publication: [Date]

Office of Rail and Road

Annex B: Director's statement

[Company letterhead

Company address and number etc]

Senior Manager, Licensing
Office of Rail and Road
25 Cabot Square
London
E14 4QZ

[date]

Third party liability insurance

Director's statement – insurance arrangements

I have considered [name of licence/exemption holder]'s potential self-insured liabilities; which are [£value] for each and every claim, with an aggregate cap at [£value] per annum [add details of any other criteria] and the overall likely insurance costs in light of the company's business plan. Having undertaken this review I confirm that we have a reasonable expectation of meeting such insurance liabilities for 12 months, from [date] to [date], in respect of all operations under our [show all types of licence/exemptions held].

We will of course continue to act prudently to limit all such potential risks.

Yours sincerely

[Name]

[Managing Director/Company Secretary]

Annex C: Insurance checklist

When submitting documentation on third party liability insurance arrangements for the Office of Rail and Road (“ORR”)’s approval, a copy of the following check list should be provided, with each box ticked to confirm that the required documents and information have been provided and the final confirmation signed and dated:

- Certificates of insurance signed by the licence holder/applicant’s Broker or Lead Insurer in respect of each of the relevant policies.
- Each certificate must specify the governing law under which the policy is to be interpreted.
- Each certificate must identify all of the Insurers and their proportions.
- Each certificate must specify the inception date of cover and the expiry date.
- Each certificate must specify the Limit of Indemnity provided and whether it is per occurrence or in the aggregate for the policy or other period. If any limit is in the aggregate for the policy or other period, the certificate must state the provisions for reinstatement. If an additional premium is required, the licence holder must confirm by separate letter its intention to pay such additional premiums when due so as to maintain the minimum limit required by ORR. Each certificate in respect of any excess layer must state the attachment point.
- Each certificate must summarise the scope of the policy (including geographical scope and types of services) and each of its exclusions.
- Each certificate must confirm that cover is on a ‘costs exclusive’ basis.
- Each certificate must confirm that the policyholder provides cover on an ‘occurrence’¹⁰ basis.
- Each certificate must confirm that the policy described provides specifically that 30 days’ notice will be given to ORR by the insurer of any lapse or cancellation of or material change policy.
- Each certificate must confirm that the policy covers:

¹⁰ i.e. the policy covers claims that arise from events during the period covered by the policy, irrespective of when they are filed.

- the licence holder;
- its employees; and
- any other person expressly required to be included as an insured.
- An explanation as to what steps the licence holder has taken to satisfy itself on the selection of insurers duly authorised and of good repute.
- If self-insurance by excess or other means is proposed, provide evidence of the ability of the licence holder to meet its obligations.
- Confirm date by which full copies of all policies will be lodged with ORR (if previously unseen by ORR).
- Confirmation that any exclusion of damage to property in the care, custody and control of the licence holder shall not apply to accompanied personal luggage.
- If ORR's requirements have not been met an explanation must be provided as to why ORR should approve the alternative proposed.
- Directors' Statements for self-insurance.
- Each certificate must confirm that the policy described does not contain a territorial exclusion which means that any provision in any policy is not in accordance with the law of any of the countries in which the licence holder operates or proposes to operate and does not exclude liabilities under the provisions of COTIF and other relevant international law.
- The operator shall include as an insured any other party, to the extent that that party is required to be insured or indemnified in any underlying contract or agreement with the operator.
- The operator will provide cover for any difference between its contractors' or sub-contractors' cover and that required by this general approval.
- Supply evidence that insurance cover will apply at all times that operations are undertaken



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