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Director, RPP

21 August 2017



Dear Stakeholder,

Consultation on draft guidance for The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016 and Economic Enforcement Policy and Penalties Statement

I am writing to inform you of, and invite comments on, draft guidance for The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016 (the NI Regulations) and proposed changes to our existing economic enforcement policy and penalties statement (ORR's enforcement policy).

For clarity, the draft guidance and proposed changes to ORR's enforcement policy are required to reflect the NI Regulations and as such primarily affect stakeholders in Northern Ireland (NI) and users of the cross-border railway only.

Background

The purpose of the NI Regulations is to give effect to European Commission Directive 2012/34/EU. This Directive requires a single national regulatory body for the railway sector in each Member State. ORR became the regulatory body for the railway sector in Northern Ireland in January 2017, taking over that role from the Department for Infrastructure in Northern Ireland¹.

The NI Regulations came into force in Northern Ireland on 23 January 2017. Under these regulations, ORR now performs several broad roles in Northern Ireland; it acts as the appeal body, controls the network statement and monitors the competitive situation of rail services, overseeing the efficient management and fair and non-discriminatory use of rail infrastructure.

We recently published a consultation on the Great Britain (GB) equivalent of these Regulations² asking for comments on our guidance³ and guidance for our approach to

¹ In relation to the law concerning access to rail infrastructure and service facilities and allocation of railway infrastructure capacity.

² The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, which came into force in July 2016.

³ Guidance on The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016: <http://orr.gov.uk/consultations/closed-consultations/policy-consultations/guidance-on-the-railways-access-management-and-licensing-of-railway-undertakings-regulations-2016>

monitoring and reviewing markets⁴. In December 2016 we also consulted on changes to ORR's enforcement policy to reflect the GB Regulations⁵.

For the NI Regulations we have decided to produce separate guidance to help summarise the provisions of the NI Regulations and explain the rights and responsibilities of those considered in scope. The guidance also sets out ORR's interpretation of key provisions, and the process for submission and consideration of appeals.

The NI Regulations give ORR a new power to impose a penalty where a party has failed to comply with a decision, direction or notice issued under the NI Regulations. We must therefore revise the current enforcement policy to reflect these new powers.

The draft guidance and changes to ORR's enforcement policy are discussed in turn below.

Consultation - Draft guidance for the NI Regulations

This consultation is for proposed new guidance on the NI Regulations.

The purpose of ORR's guidance is to help you understand:

- The meaning and implications of the provisions of the NI Regulations;
- The obligations of infrastructure managers and service providers;
- ORR's role as an appeal body and power to make directions; and
- Where to find further guidance on specific issues.

We welcome any comments that you have, we would be grateful if you could consider these specific questions in particular:

Q1. Does the guidance help you understand the impact of the NI Regulations?

Q2. Is it clear what your rights and obligations are?

Q3. Is it clear how and when to appeal to ORR?

Q4. How can we improve the guidance? What areas need to be developed, if any?

Consultation - Economic Enforcement Policy and Penalties Statement

In December 2016 we consulted on revisions to ORR's enforcement policy to take account of the GB Regulations. At that time we highlighted that we may need to make further changes to reflect the NI Regulations once they were in force.

The NI Regulations confer a power on ORR to impose a penalty on a relevant operator if it breaches an ORR decision, direction or notice made under those Regulations. To

⁴ ORR's approach to monitoring and reviewing markets: <http://orr.gov.uk/consultations/closed-consultations/competition-consultations/orrs-approach-to-monitoring-and-reviewing-markets>

⁵ Changes to ORR's economic and enforcement policy: <http://www.orr.gov.uk/rail/consultations/closed-consultations/policy-consultations/changes-to-orrs-economic-enforcement-policy-and-penalties-statement>

accommodate this change our revised policy now refers to ‘relevant operators’ as well as ‘licence holders’.

In practice the entities potentially affected include:

- **Infrastructure managers** – *for example NIR Networks Ltd;*
- **Service providers** – *could include refuelling stations, passenger stations, freight terminals, marshalling yards or maintenance facilities. In practice this would be NIR Networks Ltd;*
- **Railway undertakings** – *i.e. licensed freight or passenger train operators. In practice, this means that Northern Ireland Railways (NIR) or Enterprise Northern Ireland Railways Operations Limited would fall within the definition; or*
- **An applicant** – *which could include any party with an interest in procuring infrastructure capacity, for example but not limited to shippers, freight forwarders or combined transport operators. In practice, as there is currently no freight operating on the NI network, only NIR or Enterprise Northern Ireland Railways Operations Limited would fall within the definition.*

The above examples of ‘relevant operators’ are for illustrative purposes only and do not reflect all the parties that are in scope of our revised document.

For clarity, ORR’s power to impose a penalty only applies when there has been a breach of a decision, direction or notice made under the NI Regulations. Our policy includes definitions of the parties listed above and Annex B of our policy aims to help illustrate the circumstances when a penalty might be imposed.

We are inviting views on our revised document. While we welcome any comments on this policy, we would be grateful if you could consider the following questions in particular:

Q5. Do you support the general revisions proposed to ORR’s enforcement policy to ensure it covers all relevant operators?

Q6. Does ORR’s enforcement policy help you understand the impact of the NI Regulations on our enforcement function?

Q7. Do you have any general comments on how ORR can improve the format and style of its enforcement policy document to make it a more practical reference document?

Responses

Please reply by 29 September 2017. Please send responses to Elizabeth McLeod at Elizabeth.Mcleod@orr.gsi.gov.uk or by post to:

Elizabeth McLeod
Office of Rail and Road
Tara House
46 Bath Street
2nd Floor (west)
Glasgow
G2 1HG

In the meantime if you have any questions or would like to meet with us to discuss the draft guidance or revisions to ORR's enforcement policy please contact Elizabeth McLeod on 020 7282 3916.

Your responses may be placed on our website unless marked as confidential.

Next Steps

We will publish our guidance and revised enforcement policy after we have taken your feedback into account.

Yours faithfully

Graham Richards