

		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 which covers most freight and passenger train services.
- The Railways Act 1993 covers the operators of other railway assets, such as other trains (including maintenance vehicles), 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. These are insurance, good repute, financial fitness, and professional competence (for which we read 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

6. When a new **licence** application is received, the licensing case officer will contact the RSD account holder (or other relevant inspector) to briefly outline the application received, and check that 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 competence. The case officer will forward the responses provided by the applicant to the relevant inspector for information.

7. 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

8. Licensing casework can include new TOC franchises, open access operators or freight companies. 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.

9. 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

NOT PROTECTIVELY MARKED

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.

10. ORR will not normally grant a licence until an inspector has confirmed the applicant has got the necessary ROGS certification/authorisation.

11. Normally needing a mainline ROGS certificate or authorisation is a marker that a licence is more appropriate than an exemption.

WHERE ROGS CERTIFICATION/AUTHORISATION IS NOT NEEDED

12. 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.

13. Licensing case officers will send a copy of the licence exemption form to the relevant RSD head of inspection/principal inspector. 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.

14. Licence exemption 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.

15. 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.

16. 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.

17. 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.

18. 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

19. 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. In cases where there are repeated, serious breaches of health and safety legislation, ORR can consider revoking a licence.

20. 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. And 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), similarly the licensing team will advise RSD if a licence is revoked.

CONTACTS

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

licensing.enquiries@orr.gsi.gov.uk.