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30 June 2016

Dear Stakeholder

RAILWAY SAFETY LEVY CONSULTATION

Aims of the consultation

1. Our health and safety regulation activities are funded by the railway safety levy, introduced through the Railway Safety Levy Regulations 2006 (the Regulations¹). In line with these Regulations, railway service providers (RSPs) have an obligation to pay a share of the safety levy annually.
2. **We are consulting you on a standard format ('proforma') for the submission of RSPs' financial information to us**, for levy apportionment purposes.
3. This review is undertaken within the existing legal framework. **We are not proposing to make any changes to the Regulations themselves.**
4. Any changes arising from this consultation will take effect for the 2016-17 levy round, and in order to accommodate those changes, the timetable will run approximately four months later than normal. We expect to request details of relevant turnover and provide updated guidance in September, and issue the determination notice and invoices in December 2016.

How to respond to the consultation

5. The proposed proforma is at Annex A. A detailed timetable of the consultation process is at Annex B.
6. The consultation period will run until **11 August 2016**. Please submit your responses to the questions below, by email or letter to:

¹ Found at <http://www.legislation.gov.uk/ukxi/2006/1010/contents/made>

Grace Brown

Office of Rail and Road, One Kemble Street, London WC2B 4AN

Email: safety.levy@orr.gsi.gov.uk

Telephone: 020 7282 2025

7. When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents, and, where applicable, how the views of the members were assembled.

Freedom of Information

8. Information provided in response to this consultation, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.
9. If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
10. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.
11. ORR will process your personal data in accordance with the Data Protection Act and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Calculation of levy

12. As part of our annual planning process, we calculate the total resources required to fund our health and safety regulation activities for the coming year. Stakeholders are consulted on our planning priorities. At the beginning of the financial year we write to all potential levy payers requesting details of 'relevant turnover' for the year just ended. Levy payers have at least two months to provide the information requested.
13. We currently use the relevant turnover figures to apportion the cost of health and safety regulation across all RSPs, dividing those costs between RSPs so that those with a higher turnover contribute more. Once all details of relevant turnover have been received, we calculate the individual levy payments due, with the amount varying in

proportion to relevant turnover. We then publish our determination notice as required under Regulation 3(4) of the regulations, and issue invoices to each RSP.

14. Those RSPs falling below a minimum relevant turnover threshold pay a flat rate. The thresholds for 2015-16 were:

Relevant turnover < £1 million	no fee charged
Relevant turnover £1m - £5m	flat rate £1,000
Relevant turnover £5m - £10m	flat rate £5,000
Relevant turnover > £10m	apportioned based on relevant turnover

Proforma for relevant turnover

15. All RSPs must calculate their relevant turnover so that they can identify which levy band they fall into. For RSPs with a turnover greater than £10 million the relevant turnover is used to apportion the amount of safety levy not funded by flat rate charges.
16. The format in which we request and accept financial information from RSPs in order to apportion the levy is not defined by the Regulations or by our current guidance². The statements we receive from RSPs therefore vary in detail. In order to ensure that the safety levy is calculated consistently and transparently across all RSPs, we intend to provide a proforma request for relevant turnover, which we expect all RSPs to complete and return to us with the appropriate level of certification, as required by the Regulations.
17. The proposed proforma is at Annex A. We do not intend this to be an onerous requirement, and would expect that this level of detail is already available from your current financial reporting systems. The proforma is intended for use by all RSPs, therefore we would not expect all lines to be relevant to all RSPs.
18. Relevant turnover is defined in the Regulations as “turnover of the railway service provider derived from the provision of relevant services in Great Britain during a financial year after deduction of trade discounts, value added tax, and any other taxes directly related to turnover”.
19. Relevant services are defined as “services provided in the course of managing or controlling, or participating in the management or control of, a transport system falling within paragraph 1(3) of Schedule 3 to the Railways Act 2005”. Turnover from the provision of relevant services³ includes, in particular, amounts derived from:

² http://orr.gov.uk/_data/assets/pdf_file/0007/12202/rsl-2014-15-guidance.pdf

³ See Regulation 2(2)(b)

- aid granted to the railway service provider by a public sector operator as defined in section 25 of the Railways Act 1993, if the aid facilitates or promotes the provision of relevant services by the railway service provider;
- fares paid in respect of railway passenger services; and
- fees paid in respect of services for the carriage of goods.

20. The following items have been specifically excluded from the proforma calculation of relevant turnover, as we do not consider that they represent income from 'relevant services', as defined above:

- revenue from catering services (whether provided at stations or on trains);
- revenue from car parking charges;
- revenue from the disposal of land or interests in land;
- fees paid for entrance to museums or other attractions;
- receipts from retail outlets;
- heavy maintenance income;
- advertising income;
- Schedule 4 and Schedule 8 income; and
- no netting off of amounts paid to Government.

Question 1: Are there other items which you think should be included in or excluded from 'relevant turnover'? Why do you think this?

21. We are aware that the introduction of a new proforma calculation may impose additional administration costs in terms of audit fees in 2016-17 for those RSPs with turnover greater than £10 million, due to the calculation being outside of the normal reporting cycle, and are keen to understand what this additional cost would be.

Question 2: How much more than usual, if anything, do you think it will cost you to provide an audited proforma statement in 2016-17?

Other aspects of the levy

22. The original stated policy aims for the safety levy were to introduce a funding system which:

- was part of a framework that encouraged effective engagement on health and safety matters;
- was fair and transparent;
- was broadly cost reflective;
- was cost effective;
- avoided any significant windfall gains and losses;

- was consistent with ORR's independence;
- was compatible with DfT regulations implementing EU rail directives; and
- was stable over time, facilitating forward planning with a reasonable degree of assurance.

23. We firmly believe that these should continue to be the aims of the levy.

24. We have been challenged by one of our levy payers on whether we should allow RSPs to deduct amounts paid to Government from relevant turnover, prior to the apportionment of the levy between RSPs.

25. We consider that the current calculation used for apportionment still meets the stated aims of the policy, and do not intend to change this. Allowing RSPs to deduct amounts paid to Government from relevant turnover would reduce the link between the scale of some train operating companies' operations and the levy they pay. This would weaken the link between the levy and the health and safety activity it funds. We consider that relevant turnover continues to be the best proxy for activity.

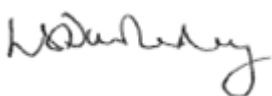
26. If we were to allow RSPs to deduct amounts paid to Government from the relevant turnover calculation, the impact of the change would be a financial gain to some train operating companies, which would not have been anticipated at the time of the relevant franchise tenders, and so not priced into the franchise bids. It would shift more of the levy to those organisations who do not make such payments to Government. In particular, the public sector infrastructure providers, as the largest levy payers, would bear the greatest cost increase, which would ultimately be funded by taxpayers. Based on 2015-16 levy data collected, all RSPs with turnovers over £10 million who did not make payments to Government could have expected to pay around 10% more if we had adopted this policy in 2015-16.

27. We consider that, proforma aside, all other aspects of the levy continue to work well. We do not intend to make any further changes, but would welcome your views on this.

Question 3: Do you have any other comments on the operation of the safety levy?

28. We look forward to hearing your views on our proposals. We thank you in advance for your time taken in doing so.

Yours sincerely,



Lucy Doubleday

Annex A – Proforma for relevant turnover

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Passenger Farebox income¹
Freight revenue
Commission receivable²
Station access income
Depot access income
Revenue support receivable³
Profit share receivable³
Concession or management contract receipts⁴
Performance incentives
Capital grant amortisation
Track access income⁵
Other income receivable from relevant services

Relevant turnover

¹including railcards, and net of refunds

²for sale of other TOC tickets

³receivable from Governments

⁴receivable by LOROL, MerseyRail, Northern Rail

⁵for use by NR only

Annex B – Timetable

Action	Date
Consultation document issued	30 June 2016
Consultation responses due in	11 August 2016
Responses and conclusions published	mid-September 2016
Requests for net relevant turnover issued along with new guidance	end-September 2016
2016-17 levy calculated and apportioned	end-November 2016
Determination and invoices issued	mid-December 2016
Payment made by RSPs	mid-January 2019