

Network Rail

Dear Grace

### **Railway Safety Levy Consultation**

Network Rail welcomes the opportunity to respond to the consultation document issued by the Office of Rail and Road (ORR) on 30 June 2016 regarding the Railway Safety Levy. No part of this response is confidential and we are content for it to be published in full.

Network Rail recognises that the Railway Safety Regulations 2006 ('the Regulations') place an obligation on railway service providers (RSPs) to pay a levy to ORR to meet the expenses it incurs in performing activities relating to railway safety. We note that the Regulations enable ORR to determine, in respect of each financial year; the total amount of the levy, the RSPs that are liable to pay the levy, when the levy is to be paid and the criteria for determining the proportion of the levy to be paid by each RSP.

ORR's consultation document specifically seeks views on the standard format (pro-forma) for the submission of RSPs financial information. We have sought to address the specific questions raised in ORR's consultation document below and have also outlined some more practical considerations regarding how ORR proposes to gather the information that it needs in order to enable it to calculate the levy payable by each RSP.

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

Network Rail agrees that, consistent with the approach adopted by other sectoral regulators, 'relevant turnover' is an appropriate means of apportioning the costs of health and safety regulation across all RSPs, so that those with a higher turnover contribute more. Turnover information should be readily available from RSPs and therefore provides a basis for ensuring that the specific fees levied by ORR can be derived from a robust (and auditable) source and are broadly proportional to the ability of the RSP to pay.

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'. Paragraph 20 of the consultation document set out the items that ORR proposes to specifically exclude from the pro-forma calculation of relevant turnover. We agree that these excluded categories do not represent income from 'relevant services' as defined in the Regulations.

More generally, Network Rail has some reservations about the proposed process for calculating the levy. Paragraph 12 of the consultation document states that at the beginning of the financial year ORR will write to all potential levy payers requesting details for relevant turnover for the year just ended. ORR states that levy payers will have at least two months to provide the information requested.

In other regulated sectors fees payable to the regulator are often calculated using turnover data for the last but one financial year rather than the last financial year. Network Rail believes that from a practicable perspective, allowing such a 'time-lag' may be a more appropriate way of collating relevant turnover information as audited information should be immediately available to RSPs to enable them to complete their pro-forma.

By way of a practical example, Network Rail's 2015/16 Annual Report and Accounts were 'signed-off' by the National Audit Office as giving a true and fair view of the Network Rail's affairs (as at 31 March 2016) on 30 June 2016 and were published on 04 July 2016. Had ORR issued its request for relevant turnover information pertaining to the 2015/16 financial year at the start of the 2016/17 financial year (6 April 2016) and given two months to respond, Network Rail would not have been able to provide the required financial information (with the appropriate level of certification) by the specified deadline. However, if ORR were to base the calculation of its 2016/17 safety levy on 2014/15 relevant turnover, Network Rail would have been able to provide this information by return. This is likely to also be the case for other RSPs noting that Companies House allows all companies nine months to file their annual accounts after the company's financial year ends. For the reasons outlined above, we therefore believe that it would be more appropriate to apportion the safety levy using relevant turnover information for the last but one financial year rather than the last financial year.

**2) How much more than usual, if anything do you think it will cost you to provide an audited pro-forma statement in 2016/17?**

At present Network Rail's 'relevant turnover' is calculated directly by ORR using the information set out in our Annual Report & Accounts and Regulatory Financial Statements - the contents of which is audited by the National Audit Office (and for aspects of the Regulatory Financial Statements, the Independent Reporter).

Given that information concerning our relevant turnover will be taken directly from our Annual Report & Accounts and Regulatory Financial Statements the cost of completing the pro-forma statement is likely to be negligible. However, it would be helpful if ORR could confirm whether it will require RSPs to provide separate certification in relation to the declaration of relevant turnover or whether RSPs can rely on the auditor option as set out in their annual accounts. If separate certification of relevant turnover is required there will be additional costs associated with providing such a statement. This will be relevant if ORR require the data before Network Rail's auditors have discharged their responsibilities in auditing the Annual Report & Accounts and Regulatory Financial Statements.

ORR's 'Rail Safety Levy – Guide for Rail Service Providers' published in April 2014 states that relevant turnover should be based on the financial year from April to March. The guide then states that ORR recognises that in many cases organisations will work to a different financial year. The following advice is then provided: 'If, for example, your financial year runs from January to December, you should compile your relevant turnover return using audited accounts for April to December 2013 and management accounts for January to March 2014.' Whilst this is guidance is useful we note that, in these circumstances, a RSP would not be able to provide ORR with certification covering the whole relevant period as required by the Regulations. As such, RSPs may be required to make a second certified declaration once audited year-end accounts are available. This is likely to increase both the cost and administrative burden of providing the relevant turnover return.

**3) Do you have any other comments on the operation of the safety levy?**

ORR last consulted on the operation of the safety levy in 2008 and in response to concerns raised at that time a flat rate charge of £5,000 was introduced in 2009 for railway service providers with reported relevant turnover of between £5 million and £10 million. Network Rail agrees that flat-rate thresholds remain an appropriate way of ensuring that the levy does not impose a disproportionate burden on smaller operators, notably in the heritage and light rail/tramway sectors. However, these flat-rate charges have not been reviewed for at least seven years. We believe the flat-rate thresholds and associated charges should be subject to annual RPI uplift so as to ensure that the overall approach to the imposition of the safety levy remains equitable.

Finally, we note that Annex B of ORR's consultation document sets out the timetable for concluding the consultation process. The Annex stipulates that 2016/17 invoices will be issued in mid-December 2016 with payment to be made by RSPs in mid-January 2019. We assume this date should actually be mid-January 2017.

Should you wish to discuss any aspect this response, please do not hesitate to contact me.

Yours sincerely,

Jon Haskins  
Head of Regulatory Compliance & Reporting