



The Licensing-Safety Interface

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RGD cleared by		Caroline Wake – HMRI Policy - Legislative Development Team	
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<u>Keywords</u>	Licence, licence exemption, ROGS, certificate, authorisation, port, heritage, maintenance contractor, maintenance depot		
<u>Summary</u>	This RGD describes how ORR Licensing and HMRI will work together, particularly in relation to licence and licence exemption applications.		
<u>Consultation</u>	ORR policy, ORR Licensing, HMRI Ops. (GMs 2-4), ORR Legal, HMRI Account Manager Metro, Light Rail & Heritage, HMRI Account Manager Contractors		

Detail

INTRODUCTION

1. The operators of railway assets in Great Britain must be authorised, either by a licence or a licence exemption. One of ORR's statutory economic functions is to grant these authorisations, which is undertaken by ORR Licensing. The requirement to have a licence or licence exemption is in addition to an operator's other legal and contractual obligations, such as those under health and safety law.

2. In deciding whether to grant a licence or licence exemption, ORR Licensing considers several factors, including the applicant's safety competence. ORR Licensing relies on advice from HMRI to decide if this safety competence criterion is met. This RGD sets out how ORR Licensing and HMRI work together in practice.

BACKGROUND

3. The licensing system is based on two pieces of legislation: The Railway (Licensing of Undertakings) Regulations 2005 deal with major freight and passenger train operators. The Railways Act 1993 deals with the operators of other railway assets, defined as other trains (including maintenance vehicles), networks, stations and light maintenance depots.

4. The Regulations set out four criteria ORR must consider when deciding whether to grant a licence to a major freight or passenger train operator. The criteria deal with insurance, good repute, financial fitness and safety competence.

5. For reasons of consistency, ORR licensing policy takes these four criteria as the starting point for all licensing applications, but there is wide discretion in how they can be applied; this is done in a proportionate way that recognises (a) our economic focus on mainline operators, and Network Rail in particular, and (b) that there is separate, specialised legislation dealing with railway safety.

LICENSING APPLICATIONS: GENERAL PROCESS

6. When a new licence or licence exemption application is received, the ORR Licensing case officer will contact the HMRI 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 licensing application form contains a set of questions which relate to safety competence. The licensing case officer will forward the responses provided by the applicant to the relevant inspector for information.

7. The relevant inspector should consider the information provided by the applicant in their 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. A lot of licensing casework deals with new franchisees, 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

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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 ORR Licensing starts this consultation, they will normally need the relevant inspector to confirm that either (a) the applicant has any necessary ROGS certification/authorisation covering the proposed operations, or (b) that work is progressing and HMRI expects the applicant to obtain the necessary certification/authorisation in due course.

10. ORR Licensing will not normally grant the licence(s) until the relevant inspector has confirmed the applicant has got the necessary ROGS certification/authorisation.

WHERE ROGS CERTIFICATION/AUTHORISATION IS NOT NEEDED

11. Often in these situations, applicants may ask for a licence exemption rather than a full licence, reflecting the limited scale and scope of their operations. Licence exemptions have fewer conditions than full licences, and tend to be issued where there is no need for the operator to participate in national arrangements (for example, ticketing arrangements.)

12. Examples of licensing 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 for a new light maintenance depot;
- A port authority applying for a licence authorising the operation of networks in ports and harbours;
- A new heritage railway, or an established heritage railway that wants to extend its operations, applying for a licence or licence exemption.

13. Where an applicant does not need a ROGS safety certificate or authorisation for their planned operations, the licensing application forms go on to ask:

- (i) If the planned operations have a SMS according to ROGS (although not requiring certification/authorisation) and accord with ORR published guidance on minor railways¹?
- (ii) If the applicant plans to operate a light maintenance depot and has a SMS according to ROGS for other parts of its operation, would its depot operations be covered by the same SMS;
- (iii) If the applicant plans to operate maintenance vehicles within possessions, and if so whether they have (or have applied for) appropriate authorisation from Network Rail?

Where none of the above apply, applicants are asked to supply a brief statement about how they will manage the safety of their planned operations,

¹ [Safety guidance - : Office of Rail Regulation](#)

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and how they will meet their safety obligations e.g. under the Health and Safety at Work Act 1974.

14. When the licensing case officer is assessing the application, they will contact the relevant inspector to:

- confirm everyone has a clear understanding of what the applicant is planning to do; and to
- confirm whether the applicant appears to have properly understood the likely safety position of their new operations.

Once the relevant inspector has confirmed these points, ORR Licensing can normally start their statutory consultation.

15. The relevant inspector should also advise ORR Licensing if there are any particular safety messages it should reinforce in its dealings with the applicant.

16. In many cases where a licence exemption is granted to a minor operator, the licence exemption will be tied to specific operations. This means the operator may have to make a further exemption application to, or notify, ORR if it plans to extend its operations. This will be a further opportunity to consider the operator's safety competence.

17. If any safety concerns are raised during the statutory consultation carried out by ORR Licensing, it will discuss these with the relevant inspector, case by case. Similarly, if ORR Licensing receives any other safety related information of wider interest, it will share this with HMRI. For example, operators sometimes provide details of their approach to risk management in connection with their insurance arrangements.

ARRANGEMENTS OUTSIDE OF LICENCE APPLICATIONS

18. If either ORR Licensing or HMRI becomes aware of significant safety concerns outside of the licensing application process, each should communicate these to the other. If HMRI believes revocation of a safety certificate/authorisation is a possibility then ORR Licensing should be informed. In cases where there are repeated, serious breaches of health and safety legislation, ORR Licensing may be able to consider revoking a licence.

CONTACTS

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

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