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11 June 2019

Company Secretary
Freightliner Limited
3rd Floor
90 Whitfield Street
Fitzrovia
London
W1T 4EZ

E-mail and post

Dear sir/madam,

Notice of statutory consultation on changes to Condition 3 (*Railway Group Standards*) of the network licence held by Freightliner Limited

ORR hereby gives notice under Section 12(2) of the Railways Act 1993 of its proposal to modify Condition 3 (*Railway Group Standards*) of the network licence held by Freightliner Limited ("Freightliner").

Effect of and reasons for Proposed Modifications

In connection with our 2018 periodic review of Network Rail's outputs and funding ("PR18"), ORR has consulted on the changes we propose to make to Network Rail's network licence at the start of control period 6 ("CP6"), on 1 April 2019. Some of the conditions we are changing also appear in licences for operators of trains¹, stations, light maintenance depots and other networks. This statutory consultation is in relation to Condition 3 (*Railway Group Standards*) of the network licence held by Freightliner.

On 26 February 2019, we launched our statutory consultation² that included changes to the licence condition on Railway Group Standards - usually Condition 9 in licences issued under the Railways Act 1993. Although the obligations in Condition 3 of Freightliner's network licence is substantively the same as other network licences, the precise wording is different and we are therefore conducting a separate statutory consultation to implement the modification.

Our proposed modification would require Freightliner to comply with applicable Rail Industry Standards or to consult with affected parties should it propose to depart from a Rail Industry Standard (in full or in part) and to deploy equally effective means of achieving its purpose. We also propose to modify the condition heading to reflect the broader coverage of the condition.

¹ For holders of EU train operator licences, the conditions appear in their corresponding Statements of National Regulatory Provisions (SNRPs).

² See <https://orr.gov.uk/rail/consultations/open-consultations/statutory-consultation-on-changes-to-licence-conditions-relating-to-rsb-membership,-safety-and-standards,-and-disabled-peoples-protection-policies>

The effect of this modification would be that Rail Industry Standards are recognised in addition to Railway Group Standards, but that there is the potential to depart from their content in particular cases. This was developed with the support of RSSB's Industry Standards Coordination Committee to recognise the introduction of Rail Industry Standards, which define functional or technical requirements for railway compliance where there is no application of Railway Group Standards.

We propose to make this modification with the intention of reflecting the development of the railway technical standards regime since this condition was first put into place, clarifying the status of Rail Industry Standards as accepted best practice and more accurately reflecting the licence holder's safety management duties to identify and apply a broader range of relevant technical and operational standards than just Railway Group Standards.

Our proposed changes to the existing text of Condition 3 of Freightliner's network licence are shown in red at Annex A.

We request the written consent of the licence holder in order to make the modification. Alternatively, any representations or objections, should be sent by 9 July 2019, addressed to:

Licensing Team
Office of Rail and Road
One Kemble Street
London
WC2B 4AN
licensing.enquiries@orr.gov.uk

This Notice is also being published on our website.



Les Waters

Information provided to us may be subject to publication or disclosure in accordance with the access to information regimes. Any personal data you provide will be used for the purposes of this statutory consultation and will be handled in accordance with our [privacy notice](#) which sets out how we comply with the General Data Protection Regulation and Data Protection Act 2018.

If you wish any information you provide to be treated as confidential, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we 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

If you prefer to make a response in confidence, please annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

So that we are able to apply web standards to content on our website, we would prefer that you email us your response either in Microsoft Word format or the OpenDocument Text (.odt) format.

Annex A: Proposed Modification relating to safety and standards

We propose to make the changes shown in red to the current text below:

Condition 3: ~~Railway Group Standards~~Safety and standards

1. The licence holder shall comply with:
 - (a) ~~the such~~ Railway Group Standards ~~as are~~ applicable to ~~its~~ licensed activities; ~~and~~
 - (b) subject to paragraph 2, such Rail Industry Standards (or parts thereof) as are applicable to its licensed activities.
2. The licence holder is not required to comply with an applicable Rail Industry Standard (or part thereof) where:
 - (a) it has, following consultation with such persons as it considers are likely to be affected, identified an equally effective measure which will achieve the purpose of the standard; and
 - (b) it has adopted and is complying with that measure.
3. In this Condition:

"Railway Group Standards" means: standards authorised pursuant to the Railway Group Standards Code prepared by RSSB;

"Rail Industry Standards" has the meaning set out in the Standards Manual, established by RSSB; and

"RSSB" means Rail Safety and Standards Board Limited (a company limited by guarantee and registered in England and Wales under number 04655675).

~~(a) technical standards with which railway assets or equipment used on or as part of railway assets must conform; and~~

~~(b) operating procedures with which the operators of railway assets must comply;~~

~~in each case as authorised pursuant to the Railway Group Standards Code prepared pursuant to the network licence held by Railtrack PLC or its successor.~~