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Dear Stakeholder

ORR's conclusions to the consultation on the railway safety levy

1. Thank you for your response to the railway safety levy consultation, which closed on 11 August. We received 10 responses in total, largely from existing levy payers.

2. Respondents were generally supportive of introducing a proforma for the submission of railway service providers' ('RSPs') financial information to us, for levy apportionment purposes. We intend to introduce the proforma attached at Annex A for the 2016-17 levy round, therefore we will be requesting financial information for the year from 1 April 2015 to 31 March 2016 shortly. Our full response to the detailed points raised by respondents is attached at Annex B. A timetable of the process for the 2016-17 levy round is attached at Annex A.

3. Some respondents raised specific concerns about items included in and excluded from the definition of 'relevant turnover'. In particular what constitutes 'relevant services' has been the subject of a number of responses. 'Relevant services' are defined in the Railway Safety Regulations 2006 ('the Regulations') 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". We consider that the items included in the revised, final proforma at Annex A fall within the definition of 'relevant turnover' and are relevant for this calculation. As this is the first year of the new process, we reserve the right to request that additional items are included, if it becomes clear that our headings do not capture all of the items we would expect to be included in an RSP's submission.

4. Concerns were also raised about the timing and cost of the process in terms of obtaining the relevant audit certification, in particular for those companies with a year end which is not 31 March. We have taken these comments into consideration, and have decided to adopt a different process going forward to address those concerns.

5. For the 2016-17 levy round we will require a proforma to be submitted based on the financial year from 1 April 2015 to 31 March 2016. It is a requirement of the Regulations that any financial information supplied in accordance with our request by RSPs with relevant turnover over £10 million shall be accompanied by a statement signed by an auditor. It is not sufficient to rely upon the audit certificate in the annual report and accounts; the audit certificate provided to us must certify the information contained in the proforma. We will then use this as the basis for apportionment for the 2016-17 levy. For the 2017-18 levy round we will use the proforma submitted for the 2016-17 levy round again as the basis of apportionment. Thereafter, we will base the levy on the last but one financial year, so for the 2018-19 levy round we will request a proforma covering 1 April 2016 to 31 March 2017. We hope that this will reduce the audit costs for those RSPs with turnover over £10 million, and also accelerate the process in terms of us collecting the data from you.

Next steps

6. We expect to request details of relevant turnover in the proforma and provide updated guidance in the next week. In line with the Regulations, all information should be submitted within two months of our request. We plan to issue the determination notice and invoices mid-December 2016.

7. If you have any queries about the process, please contact Grace Brown at safety.levy@orr.gsi.gov.uk or on 0207 282 2025.

Yours sincerely,

Lucy Doubleday

Annex A – Proforma for relevant turnover

	£
Passenger income (passthrough)[1]	
Passenger income (retained)[2]	
Freight revenue	
Concession or management contract receipts[3]	
Commission receivable[4]	
Station access income	
Depot access income	
Government subsidy receivable[5]	
Profit share receivable[5]	
Capital grant amortisation[6]	
Track access income[7]	
Other income from relevant services[8]	
Relevant turnover	

[1]Any passenger income passed through to government (or the contracting authority). Includes railcards, penalty fares and net of refunds for unused tickets. Delay repay compensation should not be netted off.

[2]Any passenger income retained by the company. Includes railcards, penalty fares and net of refunds for unused tickets. Delay repay compensation should not be netted off.

[3]including penalty fares

[4]for sale of other rail tickets (ticket vending machines and LENNON). Excludes bus tickets and visitor attractions.

[5]amounts payable to Governments should not be netted off

[6]amortisation of capital grants provided by Governments and released to income

[7]for use by NR and HS1 only

[8]this should capture any other income arising from managing or controlling a transport system. Please ask us if unsure.

Annex B – ORR responses to detailed points raised

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

1. Nottingham Trams asked for confirmation of where their contractually fixed income receivable under a concessionaire agreement would be recorded in the proforma.

   This would go into the 'concession or management contract receipts' line.

2. Nottingham Trams also asked whether income from issuing penalty fare notices should be included.

   We would expect penalty fare income to be included. Nottingham Trams should include this in the 'concession or management contract receipts' line.

3. High Speed 1 (HS1) noted that relevant turnover for their business also includes track access income.

   The proforma notes have been updated to reflect this.

4. Transport for London highlighted that new Crossrail services would need to be incorporated into the calculation, and that the template needs to take account of this within the 'concession or management contract receipts' line.

   MTR Corporation (Crossrail) Ltd already pay a share of the levy. We would expect to see concession receipts in the 'concession or management contract receipts' line.

5. Both Stagecoach Group and West Coast Trains Limited have commented that they think that delay repay compensation should be included within refunds, therefore reducing farebox income.

   The farebox is used as a proxy for passenger activity and hence where we target our risk-based approach. We have concluded that RSPs should not be allowed to net off delay repay compensation, as this relates to journeys which have been taken, and therefore to the activity levels of the RSP. Refunds for unused tickets are for journeys that have not been taken, and these should be netted off.

6. Stagecoach Group replied that they thought GDP/LSE compensation should be included, as it replaces the revenue support mechanism in new franchise agreements.

   This would be covered by the 'government subsidy receivable' heading in the template.

7. Both Stagecoach Group and West Coast Trains Limited are of the opinion that relevant turnover should only include Farebox income net of refunds, freight income, relevant DfT grants/subsidies), concession or management contract receipts where applicable, and track access income (for Network Rail). They want to exclude track access charges, commission receivable, station access income, depot access income, profit

share receivable, performance incentives and any other income, as they do not believe these income streams arise from relevant services, under the Regulations, and have no impact on the health and safety activities of their TOCs. West Coast Trains Limited have also queried the inclusion of performance incentives.

Profit share should be included, as this is analogous to aid granted to the RSP. Commission receivable on rail ticket sales, station access income and depot access income should all be included as they are all relevant services. We have decided to exclude performance incentives, as across levy payers these net to zero. Track access charges also do not form part of the calculation.

8. West Coast Trains Limited have also asked us to consider some sort of calibration mechanism so that Network Rail's share of the safety levy does not bounce around from one year to the next, or from one control period to the next.

   Our new approach of using the previous year's financial information for apportionment purposes should provide RSPs with more certainty of their share of the levy for budgeting purposes.

9. Go-Ahead Group plc and Govia-owned operators Southeastern, GTR and London Midland responded jointly (referred to as "Govia"). Govia has asked for clarity on the treatment of the profit share mechanism and government subsidy.

   Both government subsidies receivable and profit share receivable by the franchisee should be taken into account.

10. Govia has queried how farebox income should be reported for GTR, stating that as the franchise passenger income passes through to Government with nil retained by the operator, this should be reported as zero.

    The share of the levy payable reflects the size of the activities of the operator, not the income retained by the operator. Since farebox income is a proxy for passenger activity, pass-through income should be reported in the appropriate line.

11. Govia has also asked for clarification on the definition of relevant services, and has asked specifically on clarity over the treatment of sales to Network Rail, sublease of rolling stock, maintenance income and other services to industry partners.

    Services provided to other industry partners are under their management and control. Since only activities under the operator's own management and control fall within the scope of the regulations, none of these other items should be included.

12. West Coast Trains, Stagecoach and Govia have asked for clarification of capital grant amortisation.

13. It is a requirement of the Regulations to include all aid granted to RSPs. The treatment of capital grants has previously been set out in guidance issued to RSPs. Where an RSP has received a Government grant for a capital project, the grant should be amortised over the life of the asset, in accordance with accounting standards. Only the

amount of the grant released to the income statement in a particular year should be recognised as relevant turnover.

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?

14. Three respondents answered this question and indicated that the additional cost could be up to £5,000 per train operating company.

15. Heathrow Express has commented that because they have a December year end, they need to pay more for the certification covering the correct period, and have asked if this cost could be avoided.

    We do not believe this can be avoided for the 2016-17 levy round, however, under the new process, there should be no additional cost in 2017-18 and reduced costs going forwards as a result of the time lag introduced, which will enable the certificate to be audited at the same time as the annual accounts.

16. Network Rail has asked for clarification on whether we require RSPs to provide separate certification in relation to the declaration on relevant turnover or whether RSPs can rely on the auditor opinion as set out in the annual report. They go on to note that if the RSP has a different financial year from April to March, they may be required to make a second certified declaration once audited year end accounts are available, increasing cost and administrative burden.

17. We require separate audit certificates, as turnover reported in the annual report and accounts may not be the same as 'relevant turnover' for levy apportionment purposes. We require the audit certificate to cover the year from April to March, even if the RSP has a different year end. This will mean that the RSP will need to ask the auditors to review periods outside of the normal financial year. We already receive such certificates from most RSPs with different year ends, so we do not see this as a significant issue. It is a requirement of the Regulations that "any financial information supplied in accordance with that request shall be accompanied by a statement signed by an auditor". In particular, the new timing of the process will assist this in future years.

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

18. Network Rail raised some concerns over the timing of the calculation of the levy. They believe that it would be more practicable to calculate the levy based on the previous year's turnover, rather than the year just ended, as audited information should be readily available to RSPs to enable them to complete the proforma.

    We are in favour of this suggestion. However to ensure that we are starting from a consistent basis, we intend to use relevant turnover for the 2015/16 financial year as the basis of apportionment for 2016/17. We will then also use 2015/16 data again for apportionment for 2017/18. Therefore there should be no audit fees in 2017/18, and we would expect this to reduce costs of providing the audit certificate in future as the certificate should be obtained at the same time as the previous year's audit.

19. Nottingham Trams asked for clarification on the period covered by the proforma and the basis of calculation.

    The period covered by the first proforma should be 1 April 2015 to 31 March 2016. Turnover should be calculated in line with accounting standards on an accruals basis, and not on a cash basis.

20. Pre Metro Operations noted that other railway levies such as CAHA, BTP and CIRAS are also based on turnover, and that they would look to ORR to secure consistency across all such declared figures across the rail industry.

    Our definition of 'relevant turnover' is set out in the Regulations, and may not be the same as the definitions used by other organisations. We therefore do not consider that it would be appropriate for us to do this.

21. Govia commented that if the changes arising from the consultation took effect in 2016/17 this would present challenges as budgets have already been set based on the previous methodology.

    We appreciate this, but feel that consistency and transparency are extremely important, and we intend to introduce this for the 2016-17 levy round. Going forwards under the new process RSPs will have more certainty over their share of the levy, which will assist budgeting.

22. Network Rail considers that the flat-rate threshold for those RSPs with a turnover less than £10 million should be subject to an annual RPI uplift to ensure that the overall approach to the imposition of the safety levy remains equitable.

    We do not intend to introduce this. The total safety levy has fallen in real terms in recent years, therefore uplifting the flat rate would disproportionately disadvantage smaller RSPs.

Annex C – Timetable

Action	Date
Consultation document issued	30 June 2016
Consultation responses due in	11 August 2016
Responses and conclusions published	23 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 2017