

Graham Richards

Director, RPP

6 December 2016

Dear Stakeholder,

ORR's economic enforcement policy and penalties statement

I am writing to inform you of, and invite comments on, proposed changes to our existing economic enforcement policy and penalties statement. We have a separate enforcement policy for Highways England¹.

Changes to legislation concerning access to rail infrastructure and service facilities, allocation of railway infrastructure capacity and the levying of charges mean we have had to make minor changes to our existing document.

The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 ('the A&M Regulations')² came into force in July 2016 and replaced the Railways Infrastructure (Access and Management) Regulations 2005. You may already be familiar with the A&M Regulations through our recent consultation on its guidance³ and our consultation on guidance for our approach to monitoring and reviewing markets⁴.

Previously our enforcement policy and penalties statement applied to licence enforcement only. The A&M Regulations confer a power on ORR to impose a penalty on a relevant operator if it breaches an ORR decision, direction or notice made under the A&M Regulations. To accommodate this change our revised policy now refers to 'relevant operators' as well as 'licence holders'.

In practice the entities potentially affected include:

- **Infrastructure managers** – for example Network Rail Infrastructure Ltd, HS1 Ltd, Heathrow Airport Ltd (in respect of the Heathrow Spur), Rail for London (Infrastructure Ltd) in respect of Crossrail's Central Operating Section or Channel Tunnel Group Limited and France-Manche S.A. in respect of the Channel Tunnel;
- **Service providers** – could include refuelling stations, passenger stations, freight terminals, marshalling yards or maintenance facilities;
- **Railway undertakings** – i.e. licensed freight or passenger train operators;
- **An applicant** – which could include any party with an interest in procuring infrastructure capacity, for example but not limited to shippers, freight forwarders or combined transport operators;
- **Facility owners** - which could include any party that owns sections of track, stations or maintenance depots.

¹ Enforcement policy for Highways England: http://orr.gov.uk/data/assets/pdf_file/0005/20003/enforcement-policy-for-highways-england.pdf

² Recast of the first railway package: <https://www.gov.uk/government/consultations/recast-first-railway-package>

³ Guidance on The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016: <http://orr.gov.uk/consultations/closed-consultations/policy-consultations/guidance-on-the-railways-access-management-and-licensing-of-railway-undertakings-regulations-2016>

⁴ ORR's approach to monitoring and reviewing markets: <http://orr.gov.uk/consultations/closed-consultations/competition-consultations/orr-approach-to-monitoring-and-reviewing-markets>

The above examples of 'relevant operators' are for illustrative purposes only and do not reflect all the parties that are in scope of our revised document. Should you wish to read more about whether or how the A&M Regulations may affect you, we recommend you read our guidance on The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 as referred to above.

For clarity, ORR's power to impose a penalty only applies when there has been a breach of a decision, direction or notice made under the A&M Regulations. Our policy includes definitions of the parties listed above and Annex B of our policy aims to help illustrate the circumstances when a penalty might be imposed.

We have also made some minor changes to ensure this document continues to be fit for purpose. All changes are highlighted.

The Northern Ireland Department for Infrastructure has consulted on its own version of the A&M Regulations in Northern Ireland. We may need to make further changes to our economic enforcement policy and penalties statement to reflect the Northern Ireland regulations once they are in force.

We are inviting views on our revised document. While we welcome any comments on this policy, we would be grateful if you could consider the following questions in particular:

Q1. Do you support the general revisions proposed to the policy and penalties statement to ensure it covers all relevant operators?

Q2. Does the policy help you understand the impact of *The Railway (Access, Management and Licensing of Railway Undertakings) Regulations 2016* on our enforcement function?

Q3. Do you have any general comments on how ORR can improve the format and style of our current published policy document to make it a more practical reference document?

Please reply by 7 February 2017. Please send responses to Elizabeth McLeod at Elizabeth.Mcleod@orr.gsi.gov.uk.

In the meantime if you have any questions or would like to meet with us to discuss the changes to our policy please contact Elizabeth McLeod on 020 7282 3916.

Your responses may be placed on our website unless marked as confidential.

We will publish our revised policy after we have taken your feedback into account.

Yours faithfully

Graham Richards