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To: Network Rail, track access contacts, trade associations, and other stakeholders

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ORR guidance: Implementing Regulation on Service Facilities

On 24 May 2019 we consulted on proposed updated guidance¹, reflecting the European Commission's *Implementing Regulation (EU) 2017/2177 of 22 November 2017 on access to service facilities and rail-related services* (the Implementing Regulation). This letter sets out our conclusions and also serves as a reminder about Service Facility Descriptions and compliance with the legislation. We also explain here the changes we have made to reflect *The Railways (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations 2019*.

Service Facility Descriptions

One important legal obligation introduced by the Implementing Regulation is that service providers² must produce and maintain Service Facility Descriptions (SFDs) covering each of their service facilities. These include freight terminals, stations, light maintenance depots, sidings, marshalling yards, stabling yards and other such facilities. This applies to most service facilities, including those connected to Network Rail national network and other major infrastructure networks, such as HS1 and in future Crossrail and HS2. SFDs, or hyper-links to them, must be sent to Network Rail, or other infrastructure managers as appropriate, for inclusion in their network statements. As potentially the most significant change affecting large number of service providers, I highlight this point upfront.

Responses

We had four formal responses, from Network Rail, Bootham Network Solutions, GB Railfreight and London TravelWatch. Copies of the responses are available on our consultation webpage.

I received other informal feedback that there should be more clarification of certain terms. We have done this where possible, recognising that the European and domestic legislation to which the guidance refers, is already in place. Our guidance is limited to our processes and policies. We are not in a position to set thresholds or alter definitions. It is for each service provider and other relevant parties to ensure

¹ <https://orr.gov.uk/rail/consultations/open-consultations/consultation-on-updating-orr-guidance-on-access-to-service-facilities>

² Technically, referred to in the Implementing Regulation as *operators of service facilities*.

they understand and comply with the law as it applies to them and not to solely rely on ORR's guidance.

The main points covered in the consultation responses are summarised in the attached table.

A common template

Network Rail confirmed that it has engaged with other European railway infrastructure managers to develop a common template³ for service facilities in line with the Implementing Regulation. Network Rail has been requesting updates from service providers for its next Network Statement⁴. The template may be adapted to reflect the services offered. If you would like advice on completing the template we suggest you contact Network Rail, or your relevant trade association/rail body.

Network Rail has invited operators of service facilities connected to its network to send their ready-to-publish information, or hyperlink to their service facility information, to NetworkStatement@networkrail.co.uk.

Updated guidance

We have revised our guidance in the light of comments received. It is now available on our website⁵. All of the new guidance is likely to be relevant to infrastructure managers and many train operators. The chapter on service facilities is going to be particularly relevant to other service providers. We have produced, and consulted on separately, distinct guidance for Northern Ireland.

We had proposed splitting our current guidance entitled *ORR's guidance on The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016*, into three modules covering infrastructure managers; service facilities; and ORR appeals. On reflection, we have decided not to do this. It could result in some duplication, as some regulations are closely related or different topics overlap.

2019 Regulations

We have also taken the opportunity to make some other changes to the existing guidance, to reflect *The Railways (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations 2019* which also came into effect earlier this year but which will be sunset in December 2020. Incorporating these changes have meant that it has taken us longer than originally intended to issue our revised guidance.

Yours faithfully

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Gordon Herbert

³ Available here:

http://www.rne.eu/rneinhalt/uploads/Common_template_for_service_facility_information_clean.pdf

⁴ <https://www.networkrail.co.uk/industry-and-commercial/information-for-operators/network-statement/>

⁵ <https://orr.gov.uk/rail/access-to-the-network/track-access/guidance>

Summary of main comments about ORR's guidance

Response	ORR position
It would be helpful: • for definitions to be in alphabetical order; • to include a definition of "Service Facility".	We will reorder the definitions. We will include a definition of service facilities, taken from the legislation.
The definition of "service facility" is not clear or wide-ranging enough....There should be equivalent access rights for all FOCs into all terminals and facilities whether they be privately-owned or publicly-owned.	Service facility is defined in Directive 2012/34/EU and the 2016 Regulations. The definition of a service facility and access rights are not dependent on whether they are privately or publicly owned.
Services should be provided on an equivalent basis.....	Under the 2016 Regulations service providers must supply to all railway undertakings, in a non-discriminatory manner, access to facilities and services. This is already referenced in our guidance. It is not affected by the Implementing Regulation.
The DfT and ORR guidance should be consolidated in to one, definitive document.	We will keep the ORR and DfT guidance separate. They serve different purposes. ORR is an independent regulator.
The module should provide definitive guidance, with examples, on what is, and is not, within the scope of the regulations.	Our guidance provides advice and some general examples. However it is for each service provider to secure compliance with the regulations according to their circumstances.
"Situated within a factory/mine/Quarry [etc]". Can this be interpreted as meaning all track beyond the Connection Point?	The definition is similar to that used in the Railways (Access and Miscellaneous Exemptions) Order 1994. ORR's interpretation is that 'within' a particular facility does not necessarily include all track beyond the Connection Point.
Network Rail's 2020 Network Statement includes a link which claims to be to a list of Service Facility descriptions. However the link does not work, and takes the reader back to the Network Statement webpage.	We have brought this comment to Network Rail's attention. Network Rail told us that there has been an issue with some of its published documents. The spreadsheet with service provider information has been restored to its network statement webpage.
There should be clear mechanisms for ensuring non-discriminatory access and charging regimes. All facility operators should be required, if necessary, to explain and justify their charging regimes.....	The 2016 Regulations set out the requirements for charges for access and services. We have not specifically consulted on changing our chapter on charges. We already expect service providers to be able

	to demonstrate how their charges reflect relevant costs and to be transparent about charging criteria.
One of the proposed reasons for refusal of access is that a facility operator might need to make 'investment'. There needs to be clarity on this topic. Contributions by the party requesting the service are not even contemplated... This needs amending....legislation mustn't block other options.	Regulation 6 of the 2016 Regulations is not affected by the Implementing Regulation. Please note however that the legislation envisages that additional investment may be offered by the train operator.
Train operators should use their reasonable endeavours to co-operate with one another, for the overall benefit of passengers, particularly at times of disruption.	We note this.
Typing errors and formatting.	Corrections made as necessary.