

Liz McLeod  
Office of Rail and Road  
1 Kemble Street  
London  
WC2B 4AN

Your ref:

Our ref:  
EEP/CON

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## **Response to the consultation on the ORR`s economic enforcement policy and penalties statement**

Thank you for the opportunity to comment on the ORR`s consultation on an update to its economic enforcement policy and penalties statement following the introduction of The Railway (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (“the A&M Regulations”). We have set out below some general points that we would wish the ORR to reflect on as well as some more detailed comments on some of the issues raised in the consultation.

Transport Scotland`s view is that the economic regulation of the railway must be undertaken in a manner that is fair, transparent, proportionate to specific circumstances, and which provides consistency of treatment for all parties engaged in relevant railway undertakings whilst serving the wider public interest. The provision of clear, concise guidance from the ORR in regard to its approach towards economic regulation and enforcement is therefore welcome in providing certainty and transparency to the many varied actors within the railway industry.

We acknowledge that the main purpose of this update is to broaden the scope of the ORR`s economic policy and penalties statement to include not only licence holders but also “relevant operators” as defined in Regulation 38 of the A&M Regulations. Nonetheless we support the ORR`s undertaking to review this enforcement policy no later than three years after the date of its publication to ensure that it remains fit for purpose for industry control period cycles.

We note that the broad thrust of the ORR`s approach to its discretionary enforcement activities will remain unchanged with a priority focus on potential breaches of compliance which concern aspects that are most important for passengers, freight customers and funders and where non-compliance would cause most harm, thus ensuring resources are targeted towards proportionate investigatory and enforcement activity in the greater public interest. This is something that we strongly support, particularly given that the number of organisations falling within the ambit of the ORR`s regulatory sphere has increased following the introduction of the A&M Regulations.

On the subject of proportionality, we welcome the ORR`s view that the owners of heritage railways are not infrastructure managers for the purposes of the A&M Regulations. Our view is

that it would be entirely disproportionate to classify heritage railway operators as an infrastructure manager in the context of these Regulations.

Thank you for the opportunity to respond to this consultation. We look forward to our continued engagement and collaboration with the ORR and others across the railway industry on these and other regulatory matters.

Yours sincerely,

**Bill Reeve**  
**Director of Rail**