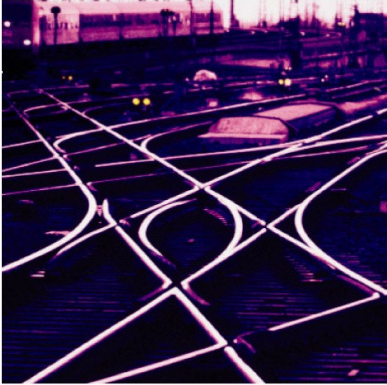


# Edinburgh Airport Rail Link



## Railway Regulation and Rail Safety Governance Paper July 2006



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Railway Regulation AND RAIL SAFETY

**GOVERNANCE PAPER**

**EDINBURGH AIRPORT RAIL LINK BILL**

**JULY 2006**

**INTRODUCTION**

1. This paper sets out the current governance framework in Scotland for railway regulation and rail safety. It details the organisations bearing responsibility for managing the rail network, rail infrastructure and the operation and timetabling of trains on the rail network.
2. This paper also describes where responsibilities lie for ensuring rail safety at present, including the changes which came into force with effect from 1 April 2006, when the Office of Rail Regulation (“the ORR”) became the combined safety and economic regulator for rail, with the transfer of health and safety responsibility from the Health and Safety Commission (“the HSC”) and the Health and Safety Executive (“the HSE”).

**RESPONSIBILITY FOR RAIL NETWORK AND INFRASTRUCTURE**

**Network Rail**

3. Network Rail is a company limited by guarantee, which owns the majority of Britain’s rail network and its associated infrastructure. It operates under a network licence issued by the Secretary of State for Transport and administered and enforced by the ORR (about which more information is provided below). It should be noted that as of 1<sup>st</sup> October 2006, Network Rail will need to have applied for a Safety Authority from ORR which replaces this part of the Network Licence. Network Rail is accountable to its members and is regulated by the Office of Rail Regulation. It is also accountable to its customers and funders through industry agreements and licence conditions, which include requirements to operate in accordance with best practice in a timely, efficient and economical manner. It must also satisfy the reasonable requirements of the train operators and funders in respect of the quality and capability of the network.
4. Network Rail has overall responsibility for operating the network, including leading industry planning, setting timetables and directing service recovery. As the holder of the network licence and owner of the asset, Network Rail is responsible for all aspects of the infrastructure from design through to maintenance, with safety as a main consideration. Network Rail publishes design standards, known as the Network Rail Company Standards. In addition, Railway Group Standards are published by the Railway Safety & Standards Board, which Network Rail is a member of. Collectively, these standards detail how all work on Network Rail’s network must be carried out. All work including design and construction must comply with the relevant standards and this compliance is ensured through a review and approvals multi-stage process. Where non-compliances are proposed,

these must be approved by Network Rail and/or any other approval body which is affected, for example, a local authority.

### **Office of Rail Regulation**

5. The ORR was established on 5 July 2004 by the Railways and Transport Safety Act 2003 (“the 2003 Act”) and replaced the Office of the Rail Regulator. The ORR is led by a Board appointed by the Secretary of State for Transport.
6. The ORR’s primary function is to oversee Network Rail’s stewardship of the rail network, to ensure that it looks after the rail network and adheres to its network licence conditions. (The Safety Authority from ORR will replace this part of the licence.) The ORR also licenses operators of railway assets, approves agreements for access by operators to track, stations, and light maintenance depots, and enforces domestic competition law. As a result of the Railways Act 2005 (“the 2005 Act”), the ORR has become the combined safety and economic regulator for rail on 1 April 2006. More information is provided below about the transfer of safety functions from HSE when Her Majesty’s Railway Inspectorate (“HMRI”) transferred to the ORR.
7. Prior to the enactment of the 2005 Act, the Secretary of State set the overall policy for Britain’s railways and provided guidance to the Strategic Rail Authority (“SRA”), which was a statutory non-departmental public body reporting to the UK Parliament and the Department for Transport. The 2005 Act abolished the SRA and transferred its strategic and financial functions to the Secretary of State as regards England and Wales and to the Scottish Ministers as regards Scotland. Under the 2005 Act, the Office of Rail Regulation receives, and must have regard to, general guidance from the Scottish Ministers on Scottish railway matters. Additionally, the Scottish Ministers, through the ORR, will specify the network outputs and the priorities that Network Rail will be tasked with delivering in respect of Scotland. The consumer protection functions of the former SRA have also passed to the ORR.

## **TRAIN OPERATION AND TIMETABLING**

### **Train Operating Companies**

8. Train Operating Companies (“TOCs”) provide passenger train services throughout Britain under franchise agreements. In order to operate a passenger train service a TOC must, generally, have:
  - a licence to operate from the ORR;
  - a franchise to provide the passenger services;
  - access to the network via a Track Access Agreement with Network Rail; and
  - a safety certificate issued by the ORR.

### **Licence to Operate**

9. The Railways Act 1993, as amended, established a statutory licensing regime which regulates the operations of all railway assets, i.e., trains, stations, networks and light maintenance depots. There are currently

around 60 licensed operators holding about 160 different licences between them.

10. A network licence gives authority to a person to be an operator of a train being used on the network with the primary purpose of carrying passengers. A non-passenger licence gives authority to a person to be an operator of a train being used on the network for any purpose other than for carrying passengers.
11. In January 2006, following a review by the ORR of all standard licence conditions throughout 2005, the ORR announced various simplifications to licences. New, streamlined model licences are now being used in licences issued to new operators, with existing licence holders to be asked for their consent to bring their licences into line with the new model of licence.
12. Licences granted by the ORR will be valid throughout Europe. To remain valid, four criteria (professional competence, third party liability insurance, good repute, financial standing) must be met on an ongoing basis. Matters included in licence conditions under the Railways Act have been incorporated in a Statement of National Regulatory Provisions for affected operators.

### **Passenger Franchise**

13. The 2005 Act provides that Scottish Ministers are responsible for letting, monitoring and managing Scottish franchises. The current Franchise Agreement, between Scottish Ministers and First ScotRail, runs until October 2011 and aims to improve performance and customer satisfaction.
14. In order to meet the above objectives, the Scottish Ministers set out in the Franchise Agreement the minimum level of service that the TOC must provide, known as the service level commitment ("SLC"). The SLC outlines the parameters within which the timetable must be made and, on an individual route-basis, specifies service characteristics, such as the level, frequency, maximum journey times and stopping patterns of railway passenger services. The TOC may operate additional services over and above the SLC but will be penalised if they operate below.
15. The Scottish Ministers are now responsible for the monitoring role previously undertaken by the SRA, to ensure that the contracted level of service and performance is provided.

### **Track Access Agreement**

16. The Railways Act 1993, as amended, provides the ORR with the power to oversee and control the consumption of the capacity of railway assets. A track access agreement ("TAA") is an agreement between Network Rail and a TOC which governs the rights and obligations in relation to access to the network. The TAA requires the approval of the ORR. If a TOC fails to achieve a satisfactory result by negotiation with Network Rail, the ORR has the power to compel Network Rail to enter into a contract on terms determined by the ORR. This power ensures fair access to the national rail network for all.
17. The TAA determines the rights of the TOC over:

- the number of train paths in any specified period
  - timing (including departure and arrival times, clock-face requirements, first and last train paths, intervals between train paths, journey time and turnaround times);
  - routing;
  - specified equipment (including maximum length of train, route availability code and loading gauge); and
  - calling pattern.
18. In relation to services, the TOC also has the right to use any equipment registered with Network Rail's rolling stock library which has performance characteristics identical to or better than the equipment specified by the TAA.

## **RAILWAY SAFETY**

19. There are four main aspects to the current health and safety legal framework as it applies to the railways:
- Health and Safety at Work etc Act 1974 ("the 1974 Act")
  - The Railways and Other Guided Transport Systems (Safety) Regulations 2006 (commonly referred to as "ROGS")
  - The Railways (Interoperability) Regulations 2006
  - The Railways (Accident Incident and Reporting) Regulations 2005<sup>1</sup>.

Each of these aspects is outlined below.

### **Health and Safety at Work etc Act 1974**

20. A basic principle of health and safety law at work is the principle that responsibility for health and safety rests with those who own, manage and work in the business undertaking that work. Employers have a duty to assess risks involved in the work and to manage them effectively, so far as is 'reasonably practicable'. This means following established good practice and taking precautions up to the point where to do any more would be grossly disproportionate to the residual risk.
21. The HSC and its operational arm, the HSE, regulate almost all the risks to health and safety arising from work activities in the UK, including the requirements that apply to much new railway construction work. However, HMRI within ORR regulates the risks to health and safety on the operational railway, including modification works to the railway.
22. In terms of the application of the 1974 Act to railways, the role of HMRI is to secure proper control by 'dutyholders' of risks to the health and safety of employees, passengers and others who may be affected by the operation of railways. By agreement between the ORR and the HSC, HMRI fulfils this role within an overall strategy produced by the HSC, developed and delivered by inspectors and policy advisers. In relation to railway health and safety, the term 'dutyholders' means railway operators such as Network Rail, train operating companies such as First ScotRail in Scotland and EWS

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<sup>1</sup> As amended by the Railways (Accident Incident and Reporting) (Amendment) Regulations 2005 SI 2005/3261

and contractors, who all have responsibilities under health and safety law. The organisations which manage the business of the railways have direct responsibility for health and safety, but HMRI works with the rail industry to help identify common problems and agree actions and priorities.

23. As the independent safety regulator, HMRI is currently responsible for ensuring compliance with railway health and safety law and for taking enforcement action to ensure that those who have duties under the law are held accountable for any failures to comply with the law in safeguarding health and safety. Enforcement action could involve prosecution for serious contraventions of the law. Inspectors can also issue formal enforcement notices, which require action within specified timescales and serve prohibition notices to stop dangerous activities.
24. Within the ORR, HMRI promotes compliance with health and safety law.<sup>2</sup> Its duties include:
- assessing whether railway operators and railway infrastructure managers maintain suitable Safety Management Systems (SMS) to control health and safety risks effectively, including management of competence for safety critical workers, and management of safety verification for new works and new vehicles;
  - issuing safety certificates (to operators) and authorisations (to infrastructure managers) where the SMS meet the assessment criteria;
  - inspections and audits;
  - inspection programmes, targeting areas of particular concern;
  - investigations of complaints and non-movement accidents (Under the Railways (Accident Incident and Reporting) Regulations 2005 movement accidents are investigated by the Railway Accident Investigation Branch, which is an independent organisation);
  - providing the guidance and support on legal obligations under the safety case and the approval process; and
  - enforcement of the law through prosecution and the issuing of notices
25. ORR also provides support for the Railway Industry Advisory Committee (RIAC), which has cross-industry and passenger group representation, and whose purpose is to advise on rail health and safety issues.

### Approvals regime

26. The Approvals Regime applies to the introduction of new and altered railway works, plant and equipment. HMRI has been involved in approvals work on the railways since 1840, as an independent authority aiming to ensure public confidence. HMRI currently enforces the provisions of three different legal processes that control new and modified works on transport systems. These are:

**ROTS** - the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994. These Regulations confirmed the continuing importance of the approval role of HMRI and extended the approval regime to include, for the first time, approval of railway rolling

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<sup>2</sup> HMRI became part of the HSE in 1990, when transferred from the Department of Transport, and was later transferred to ORR in 2006.

stock. The Regulations also lowered the baseline for approvals. These Regulations meant that railway operators (*ie* holders of a Railway Safety Case) had to gain approval from the HSE, via HMRI, before bringing any new and altered railway works, plant and equipment into use. ROTS have now been superseded by ROGS but there is provision for some schemes to be processed under the ROTS procedure in the changeover period to ROGS. This transition period is from 1 October 2006 to 30 September 2008. (Therefore EARL will be ROGS)

- b. **Level crossings.** Almost all level crossing works require some form of approval either in accordance with the Level Crossings Act 1983 as amended by the Level Crossings Regulations 1997, or under ROTS.
- c. **ROGS – the Railways and Other Guided Transport Systems (Safety) Regulations 2006.** These Regulations implement the European Rail Safety Directive and came into force on 10 April 2006. ROGS covers Light Rail as well as Heavy Rail.
- d. **Railways (Interoperability) Regulations 2006.** These Regulations came into force on 2 April 2006. They apply to new or upgraded subsystems on parts of the UK rail network that have been defined as high-speed lines of the Trans European Network (“TEN”) or other main lines. For the purposes of these Regulations the “Safety Authority” is the Department for Transport in London.

### **Safety Case Regime**

27. The Railways (Safety Case) Regulations 2000, as amended in 2003, required rail operators, such as Network Rail, the station operators and the train operators, to prepare a comprehensive safety case, to be accepted by the HSE, before the operator was allowed to operate their business. The ORR would not grant a licence to a railway operator without an accepted safety case, or an exemption being in place. These Regulations are now superseded by ROGS but there are transitional arrangements.

### **RECENT CHANGES IN RAILWAY REGULATION**

28. The railway industry has recently undergone substantial structural alteration. On 19 January 2004, the Secretary of State for Transport announced a review of the rail industry across Britain. The purpose of the review was to develop proposals for a simplified structure and organisation for Britain’s railways. The outcome of the review, agreed jointly in relation to Scotland between Scottish and UK Ministers, resulted in proposals outlined in a White Paper entitled ‘The Future of Rail’.
29. The transfer on 16 October 2005 of new rail powers to Scottish Ministers allows the Scottish Ministers to:
  - determine the long term future for rail in Scotland;
  - manage and monitor the performance of the rail franchise, with responsibility for securing future franchise agreements ensuring services meet passengers needs; and

- fund and specify Scottish rail infrastructure, through ORR, ensuring all parts of the rail system are integrated.

### **Transfer of Responsibility for Rail Safety**

30. The 2005 Act provided for the transfer of the current policy functions of the HSC in respect of “railway safety purposes” to the ORR. “Railway safety purposes” means the proper construction and safe operation of rail transport systems, locomotives, rolling stock or other vehicles used on such systems. This transfer of functions took place on 1 April 2006, when the ORR became the combined railway safety and economic regulator.
31. Other provisions in the 2005 Act also came into force, such as the ORR’s responsibility for:
  - providing advice and assistance to the Secretary of State, the Welsh Assembly and the Scottish Ministers;
  - promoting improvements in railway service performance;
  - protecting the interests of rail users; and
  - conditions in operator licences covering consumer protection (transferred from the SRA).
32. In addition, the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (“the 2006 Regulations”), made under the 2005 Act, came into force on 1 April 2006. These transferred responsibility for the enforcement of railway-specific and general health and safety provisions on the railway from the HSE to the ORR. HMRI retains its responsibility for enforcing health and safety law, as outlined above, in respect of operational railways, but does so from within the ORR.
33. The 2006 Regulations are founded on the following principles:
  - the ORR takes enforcement responsibility for all rail activities previously undertaken by the HSE, unless there are overriding reasons for it not to do so;
  - there is therefore a single railway industry enforcing authority as far as possible, minimising the need for rail duty holders to deal with both the ORR and the HSE; and
  - the lead authority for any part of the rail industry is determined by the expertise within the ORR and HSE and in accordance with the principal risk involved in a particular case.
34. A Memorandum of Understanding has been agreed between ORR and HSE.
35. The ORR has created a new Safety Policy Directorate, to develop rail safety policy, options and recommendations, in terms of investment and legislation, with the overall objective of improving rail safety. The ORR will provide advice to funders, such as the Scottish Ministers, on safety-related options in order to deliver high-level objectives of Government.

36. The HSC took advice from the RIAC. The ORR has made arrangements to continue with the RIAC, chaired by Jim O’Sullivan (ORR Non-Executive Director)

### **Replacement of Railway Safety Case Regime and ROTS Regime**

37. Apart from transitional arrangements, the Safety Case Regime<sup>3</sup> and ROTS within the Approvals Regime<sup>4</sup> have been replaced by a system of safety certificates and authorisations issued by the ORR and by certificates of conformity issued by Notified Bodies.
38. The ROGS Regulations replace the three previously existing sets of rail safety regulations (on safety cases, safety critical work and approval of works, plant and equipment) with a single, coherent, proportionate set of regulations developed to implement the EU Railway Safety Directive, to reflect ‘Better Regulation’ considerations and to implement outstanding recommendations made by Lord Cullen, following the Ladbroke Grove Inquiry.<sup>6</sup>
39. Broadly, the changes may be summarised as follows:
- ROGS cover the ongoing operations and maintenance issues through the assessment by HMRI of the Safety Management Systems (SMS) of operators and infrastructure managers.
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  - For railways which have been designated as parts of the TEN, for new railways (major schemes) which are joined to the TEN, and for major modifications which affect railways of the TEN, the Interoperability Regulations cover the initial design integrity of new works through reference to Notified Bodies which check against European Technical Standards for Interoperability (“TSIs”) and other approved national standards where no European standards yet exist.
40. The Edinburgh Airport Rail Link is planned to join up to railways which have been designated as belonging to the TEN main lines.

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<sup>3</sup> Operated under the Railways (Safety Case) Regulations 2000.

<sup>4</sup> Operated under the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994

<sup>6</sup> The Ladbroke Grove Rail Crash Inquiry Report: Part 2, Health and Safety Commission, 2001