

Dispensations from Notified National Technical Rules

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Audience	This Helpnote is applicable to projects considering seeking a dispensation from the Competent Authority under regulation 46 of RIR 2011 to enable non compliance with a notified national technical rule (NNTR) as part of the process for obtaining an authorisation to place into service. It contains information relevant to Safety Authorities , Project Entities and Notified Bodies and Designated Bodies .
Background	Under regulation 15 of RIR 2011 the essential requirements (safety, reliability and availability, health, technical compatibility, environmental protection) are deemed to be met if the project conforms with all applicable TSIs and NNTRs.
Reg 15	NNTRs and authorisations to place into service NNTRs are developed by industry bodies before they are notified to the Commission by the DfT as the Member State , and in the majority of cases for GB mainline they are Railway Group Standards (RGSs). This Helpnote is relevant to a project entity that is going through the process of getting an authorisation to place into service. RGSs may also be relevant to a project even if it is outside of the authorisation process, for example, as a relevant rule for the operation of subsystems. In such cases there is an established process for agreeing a deviation from a RGS and the project should contact RSSB.
Reg 46 (1)	When might a dispensation from a NNTR be required? It is possible that a Project Entity needs to seek a dispensation from a NNTR in certain cases. This might arise if the technical aspects of their project are in some way inconsistent with the NNTR or an unforeseen problem arises in complying with the rule when work is underway. However, if the NNTR presents a problem the project's first recourse need not be to seek to a dispensation under RIR 2011. It is possible for the project to first engage with the Designated Body and the Safety Authority to discuss an alternative means of meeting the essential requirements instead of complying fully with the NNTR (or with a Notified Body if they are carrying out conformity assessment for NNTRs before 16 January 2013).

Using an existing industry process for a deviation from a rule

In order for the **Project Entity** to present the **Safety Authority** with enough information about meeting the essential requirements through an alternative means to compliance with the NNTR, it is advisable for the project to consider what established industry process already exists for deviating from the NNTR.

For example, there is an established industry process for projects to obtain deviations from RGSs in accordance with the RGS Code. The RGS Code is approved by ORR. If the output of this deviation process is a recommendation that the alternative means still meets the essential requirements this documentation could be included with the technical file. In most cases this may be enough to satisfy all relevant parties (ie the **Project Entity**, the **Notified Body**, the **Designated Body**, and the **Safety Authority**). Ultimately, it is the **Safety Authority** who needs to be satisfied that there is enough evidence that the alternative meets the essential requirements, so all parties are encouraged to engage as early as possible to discuss how they wish to deal with any problems with the relevant NNTRs.

Using the dispensation process

It is possible that an established deviation process does not result in enough evidence to satisfy the **Safety Authority**. Or, in some circumstances perhaps an agreement cannot be reached, e.g. if the particular standard in the NNTR is not a RGS, or the RSSB's Standards Committee is unable to agree an alternative, and the project may wish to consider using the dispensation route under RIR 2011.

Note: the **Competent Authority**, if asked to grant a dispensation, may ask the project to what extent they have explored other routes.

The **Competent Authority** may grant a conditional or unconditional dispensation from a notified national technical rule. If such a dispensation is granted they must be satisfied it is consistent with the essential requirements.

In order to apply for a dispensation from a NNTR the project entity should write to their **Competent Authority**.

Rules of a strictly local nature and the infrastructure register

In the case of a dispensation from a NNTR granted by the **Competent Authority** it is possible that a rule of a strictly local nature is created which needs to be recorded in the infrastructure register of the relevant owner.

If the project seeks a deviation from a NNTR via an industry body as described above, it is possible that this process also results in a local rule. The industry body should also consider if the relevant infrastructure owner

can be informed so that they can record the rule in their register.

Questions a project should ask itself if they have difficulty complying with a NNTR.

Is it going through an authorisation to place into service under RIRI 2011?

If the work is not new, or upgrade or renewal, then the answer is no - and there may be an industry process for a deviation from the rule, if the NNTR is a RGS they should check with RSSB (see their Code and Manual for RGSs).

If the answer is yes, then the project may consider if it is possible to agree a deviation from the NNTR - if the NNTR is a RGS they should check with RSSB. The project should also pre-engage with ORR so that they are aware.

Is the project, notified/designated body and the NSA content that the output of the deviation process is enough evidence that the essential requirements are met?

If the answer is yes, then it is not necessary to use the dispensation provision in regulation 46 - but this is still an option if the project wishes to do so, or if concerns are raised by the notified/designated body and the NSA about the output of the deviation process.

Document Control

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