

HERITAGE RAILWAY ASSOCIATION

GUIDANCE NOTE

ROLLING STOCK HIRE AGREEMENTS

Purpose

This document describes good practice in relation to its subject to be followed by Heritage Railways, Tramways and similar bodies to whom this document applies.

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Supply

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1. Introduction

a. General

This Guidance has been issued in order to assist member railways and rolling stock-owning groups in arriving at a comprehensive legal agreement regarding the hiring of such vehicles. A model form of such an agreement with this objective has also been prepared by the Association for Steam Locomotive Hire (HGR-P0111) and others may be added later.

The term 'railway' should be taken to include heritage tramways and similar bodies where appropriate.

For the avoidance of doubt, the term 'rolling stock' should be taken as including locomotives.

The term 'staff' in this Guidance note should be taken to include unpaid volunteer workers as well as paid staff.

b. Types of Rolling Stock Covered

The Guidance may be taken to apply in general to the hire of coaches as well as to both steam and diesel locomotives, but where the particular characteristics of the means of traction makes it necessary to do so, specific reference is made to the mode in question.

c. Parties to Agreement

The Guidance assumes that the parties to any agreement will be companies or other incorporated bodies, but by making the necessary adjustments the Guidance and the model form of agreement may be adopted by trustees of unincorporated bodies or by individual persons. The Guidance may also be applied in cases where one party is not a member of the Association.

2. Recommendations

This Guidance Note is issued as recommendations to members.

Many railways already have agreements in place, which, in some cases, are to a higher standard than those set out in this Guidance Note. This highlights the fact that it is the responsibility of the duty holder, having undertaken the necessary risk assessments, to implement a level of risk assessment and controls that are applicable and necessary relative to the operating conditions on its railway.

Where railways decide to take actions that are not in conformity with these recommendations, following appropriate risk assessments or for other reasons, it is recommended that those decisions are reviewed by the senior management body of the organisation and a formal minute is recorded of both the decision reached and the reasons for reaching it.

3. Basic Principles

The following are the most likely factors needing to be taken into account when drafting a rolling stock hire agreement.

a. Date of Agreement

The agreement needs to be dated. This is usually the date when both parties have signed the agreement but that date does not have to be the date that the agreement takes effect.

b. Parties to Agreement

The parties to the agreement need to be identified. These will normally be the owner or owning organisation and the hirer or hiring railway, but could include third parties.

c. Addresses of Parties

Use the registered office as the address of each organisation involved if the parties concerned are incorporated. Ensure correct names and addresses are used.

d. Identification of item of Rolling Stock

Include correct identification of the item(s). As an example where any locomotive is concerned: locomotive number and (if applicable) the tender number plus any other information (eg class) which may add clarity. This should extend to details of any support coach if included in the hire.

e. Period of Hire

A clear statement is needed regarding the dates on which the hire commences and terminates: usually first and last dates on which the vehicle may be used. There could also be a clause covering provision for an extension of the period of the hire.

f. Calculation of Fees

Fees may be calculated on the basis of (a) a rate per day, (b) a rate per mile, or (c) some other agreed basis of charging. There should also be an allowance for any supplements to be charged such as if the vehicle is used in a film or television contract or if used on driving experience courses. Consideration should also be given to any arrangement to cover storage of the vehicle when not in use.

g. Transport, Delivery and Collection

Identify who is to pay for delivery of the vehicle prior to commencement of the hire and for collection or return following completion of the hire. It is important to note that the owner should have the right to select an appropriate haulier for both delivery and return of the vehicle.

h. Insurance

There should be clear agreement regarding insurance cover of the vehicle and of the parties. The scope and limits should include consideration of:

- Who is to bear the “excess” in the event of a claim
- Cover for third party liabilities
- Indemnities
- Breakdown cover
- Protection for any business interruption
- When cover is to commence and cease
- Cover for damage due to frost or vandalism
- Any special provisions or exclusions required.

NB. The haulier’s own cover whilst the vehicle is being loaded, transported and unloaded is likely to be very limited unless specially negotiated or specified at the time.

i. Record Keeping

Specify what records are to be kept. For example:

- Pre-delivery fitness to run, including any previous defects
- Days or miles operated
- Maintenance – service and repairs
- Returns to enable the issue of invoices – agree frequency (monthly suggested).

j. Pre-delivery Inspection

Specify arrangements for the hirer to undertake a pre-delivery inspection of the item, any locomotive to be inspected both when cold and in steam or in engine-running mode and for a list of any known defects to be recorded in the agreement. Arrangements should also be made for a copy of any boiler insurance certificate to be supplied and a copy of any written scheme of inspection and a fitness to run certificate should also be provided.

k. Standards of Operation

It is highly desirable that provision is made to ensure that the vehicle is moved only when under the control of competent persons. In the context of a steam locomotive, consider specifying persons who are competent and authorised to clean, fire, drive, carry out boiler washouts, inspect and carry out repairs to the locomotive. It should also be a requirement that the vehicle is at all times operated in accordance with the hirer's safety management system.

l. Standards of Maintenance and Repair

Specify standards to be observed in the following instances:

- Owner's maintenance, repair and overhaul policy
- Hirer's safety management system
- Hirer's fitness to run requirements
- For diesel locomotives – manufacturer's or BR handbook
- Other appropriate standards.

m. Responsibility for Maintenance and Repairs

The respective responsibilities of the parties for maintenance and repairs to the vehicle should be specified as, for example, in respect of the replacement of items such as fusible plugs, corks, firebars and brake blocks.

n. Responsibility for Consumables

Define what are considered to be consumables.

Identify who is to be responsible for ordering and paying for such items as coal or fuel oil, lubricants, etc.

o. Boiler Treatment

With steam locomotives specify arrangements for boiler water treatment and intervals between boiler washouts. (NB. These may need to be very different as between the vehicle's home base and the hirer's railway, depending on the quality and content of the source of water.)

p. Responsibility for Tools and other Equipment

A schedule should specify what equipment the owner is to provide with the vehicle, such as lamps, fire irons and tools, and the agreement should state who is to be responsible for any lost or damaged items.

q. Maximum Weight of Trains

The weight of trains to be hauled by a locomotive should be specified in the following instances:

- Fully-fitted trains
- Partially-fitted trains
- Unfitted loose-coupled trains.

r. Livery

Specify who is to be responsible for selecting the livery, lining out and paint finishes. Also specify if any temporary change of livery and/or identity is permitted.

s. Cleaning

Set out any restrictions or specifications for cleaning materials and minimum period between cleaning.

t. Publicity

Record the owner's right to be acknowledged in any publicity relating to the vehicle.

u. Owner's Authorised Representatives

Identify by name and/or job title representatives authorised by the owner for whom the hirer will be expected to provide:

- Access to records for inspection
- Access to the vehicle whilst in service
- Access to footplate of a locomotive whilst it is in service
- Facility to discuss any repairs
- Facility to discuss any financial matters
- Facility to discuss any other matter relating to the hire.

v. Footplate Passes

Identify the arrangements for the owner of a locomotive to obtain footplate passes from the hirer – frequency and for whom.

w. Driving Experience Courses

There should be a clause which specifies the owner's agreement, or otherwise, for any locomotive to be used for driving experience courses.

x. Arrangement / Concessions for the Owner

Specify any free travel arrangements for the owner's representative on the hirer's railway.

y. Break Clause

Consideration should be given to including a break clause together with any special conditions that might apply in the event of such termination of the agreement.

z. Dispute Resolution

A mediation or arbitration clause should be included, together with a statement of the national law to govern the agreement.

aa. Authorised Signatories

The name and position held in the organisation by each signatory to the agreement should be given.

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