

	<p>RSD Internal Guidance Document</p>	<p>RIG-2018-03</p>	
<p>ROGS DUTY OF COOPERATION</p>			
<p>Date of issue/last review</p>	<p>October 2018</p>	<p>Date of next review</p>	<p>October 2020</p>
<p>RGD postholder/owner</p>		<p>Ben Watkins, Railway Safety Policy</p>	
<p>RIG cleared by</p>		<p>Martin Jones, Head of Railway Safety Policy</p>	
<p>RIG type</p>		<p>Policy_____ <input checked="" type="checkbox"/></p>	
		<p>Information_____ <input type="checkbox"/></p>	
		<p>Procedure_____ <input type="checkbox"/></p>	
<p>Target audience</p>		<p>RSD_____ <input checked="" type="checkbox"/></p>	
		<p>Policy_____ <input checked="" type="checkbox"/></p>	
		<p>Inspectors_____ <input checked="" type="checkbox"/></p>	
		<p>Admin_____ <input checked="" type="checkbox"/></p>	
<p>Keywords</p>	<p>Duty of cooperation, escalation, dispute resolution, RIS- 8270-RST, RSSB, SMS Validation, transport operators</p>		
<p>Summary</p>	<p>This RIG summarises:</p> <ol style="list-style-type: none"> 1. The dispute resolution process developed to deal with duty of co-operation disputes that are formally escalated to ORR, and how inspectors should handle disputes in their early stages; 2. how the Rail Industry Standard RIS-8270-RST will feed into the dispute resolution process; and 3. how inspectors should check co-operation arrangements in safety certificate/authorisation applications and then inspect against them as part of the Safety Management System (SMS) validation process. 		

Consultation

Detail

Introduction

1. ROGS places a duty on transport undertakings, infrastructure managers and everyone who is required to have an SMS to cooperate to ensure the railway is safe. This includes parties that are not required to hold a safety certificate or safety authorisation under ROGS.
2. ORR and the industry have worked together to produce guidance on the roles of transport operators under ROGS which you can find in ORR's guidance document '[Escalating disputes to ORR under ROGS Duty of cooperation](#)' and RSSB's '[Duty of Cooperation Guide](#)'.
3. This RIG describes the guidance, the action inspectors may need to take and how they can inspect against co-operation arrangements in safety certificate/authorisation applications as part of SMS validation.

RSSB guide on ROGS Duty of Cooperation for transport operators

4. RSSB's guide describes how transport operators should co-operate with each other in a whole range of situations, including risk assessment, developing and changing SMSs, safety improvement, emergency planning, safe day-to-day operation, investigating incidents and monitoring/review. The structure is based on HSG 65 and includes good practice from RSSB alongside requirements in ROGS.

Escalation/dispute resolution process

5. RSSB's guide also sets out an industry process for resolving disputes which culminates in the option to escalate the dispute to ORR. The industry process includes routine interface meetings, senior management meetings and a formal "reasonable request" letter between the parties. It does not include information about how to escalate disputes to ORR, so we have published guidance for this situation, based on existing ORR processes for considering appeals and disputes.
6. The guidance documents describe how transport operators should escalate their disputes to ORR and how we propose to handle them. If these disputes arise, they may cover a range of safety, technical and commercial concerns.
7. Disputes may be escalated by a joint submission or a single submission. We prefer joint submissions because we will need to gather representations from other external affected parties when we receive single submissions (including from other parties in a compatibility process). Joint submissions are more likely to trigger the full procedure, assuming they are genuinely difficult cases. If disputes have a significant commercial impact, ORR colleagues from outside RSD may take the lead. Our firm view is that the full

dispute resolution procedure should only be used as a last resort after all industry processes have been exhausted.

8. We recognise that inspectors may become involved in advising on safety risks underlying a dispute at a relatively early stage. They may handle safety issues as a formal complaint and where appropriate may take enforcement action under HSWA or refer matters back to accepted industry processes. This means encouraging further high level meetings and/or reasonable request letters between the parties. Inspectors may also call preliminary meetings of the parties to discuss the issues and attempt to broker a solution. Inspectors should alert the Strategic Risk and Competency team (see contact details below) to disputes that may be escalated. The parties should be directed to use the web form if they escalate their dispute to ORR.
9. We expect that only the most serious cases, usually when jointly escalated, will use the ORR dispute resolution process. In some of these cases, especially those with a significant commercial implications, inspectors may decide not to give anything beyond urgent safety advice so as to remain impartial. If the full procedure is triggered, any early inspector advice will be taken into consideration, but it may be decided not to involve the original inspector in the case team.

Checking cooperation in the safety certificate application and during SMS validation

10. Inspectors should ensure that cooperation arrangements are described adequately in safety certificate/authorisation applications and check that these are operating as described when validating SMSs. Inspectors will know that, while there are specific assessment criteria on co-operation (an example is provided at Annex 1), there is no specific part of the ROGS SMS validation structure that deals directly with co-operation. It is an integral and implied part of several elements of a ROGS SMS – Annex 1 identifies the elements and what the co-operation aspects are.
11. There are various ways of checking co-operation arrangements:
 - a. Checking that safety certificate/authorisation application (including for substantial changes) covers co-operation under the relevant criteria, and that duty-holders have consulted appropriate affected parties on interface risks;
 - b. Checking co-operation aspects as part of SMS validation (see Annex 1) and asking whether duty-holders are aware of the RSSB guide. For example, interface risks and control measures should form part of transport operators' risk assessments carried out under ROGS (see [RSSB's guide](#)).

	<p>Inspectors should check these during inspection/validation and ensure that interface risks are identified and control measures described. They should also encourage consultation on interface risks as an ongoing task in relation to continuous improvement of SMSs and duties in relation to communication;</p> <p>c. Identifying specific issues on cooperation between dutyholders i.e. ensuring they are following the RSSB guidance on cooperation and the industry process for resolving issues before escalating to ORR for resolution. If inspectors become aware of a dispute developing, it would be helpful to alert the Strategic Risk and Competency Team (contact details below) to this, so that it can prepare for a possible escalation. Any insight account holders can give into possible disputes would be greatly appreciated.</p>				
<p>Action</p>	<p>Inspectors should:</p> <ol style="list-style-type: none"> 1. Familiarise themselves with this RIG and the various documents linked to it; 2. Check on cooperation arrangements as part of the SMS validation process for the transport operators for which they are responsible; 3. Where disputes are developing, check the RSSB industry dispute resolution process is being followed and alert the Strategic Risk and Competency Team to the developing dispute. Be aware of the need for careful handling of disputes, particularly where significant commercial issues are involved; and 4. Where appropriate, hold a preliminary meeting to facilitate a solution before any formal escalation is considered. It may be useful to involve economic colleagues. 				
<p>Contacts</p>	<table border="0"> <tr> <td style="vertical-align: top;"> <p>Ben Watkins Paul Hooper</p> </td> <td style="vertical-align: top;"> <p>Senior Policy Adviser, Railway Safety Policy Ext 2101 Interoperability and Standards Manager (for RIS-8270-RST enquiries) Ext 2191</p> </td> </tr> <tr> <td style="vertical-align: top;"> <p>Matthew Farrell</p> </td> <td style="vertical-align: top;"> <p>Principle inspector, Strategic Risk and Competency Team</p> </td> </tr> </table>	<p>Ben Watkins Paul Hooper</p>	<p>Senior Policy Adviser, Railway Safety Policy Ext 2101 Interoperability and Standards Manager (for RIS-8270-RST enquiries) Ext 2191</p>	<p>Matthew Farrell</p>	<p>Principle inspector, Strategic Risk and Competency Team</p>
<p>Ben Watkins Paul Hooper</p>	<p>Senior Policy Adviser, Railway Safety Policy Ext 2101 Interoperability and Standards Manager (for RIS-8270-RST enquiries) Ext 2191</p>				
<p>Matthew Farrell</p>	<p>Principle inspector, Strategic Risk and Competency Team</p>				

EXAMPLE CRITERION ON COOPERATION**MAINLINE TRANSPORT UNDERTAKING (MTU)****MTU Criterion 12: Co-operation***Legal duty*

Regulations 5(2) and 22(1)

Reg. 5(2) The requirements in paragraphs (1)(a) and (d) shall be met where the safety management system of a transport operator or of an applicant for a safety certificate or a safety authorisation (“the first operator”) taken with that of any relevant transport operator is capable of meeting the requirements of the paragraph in question.

Reg. 22(1) Every person to whom this regulation applies shall co-operate as far as is necessary with a transport operator to enable him to comply with the provisions of these Regulations.

Criterion

The applicant shall provide an overview of how it co-operates with other transport operators to ensure that all parties operate safely and in accordance with rules and standards.

Purpose

A key national safety rule (NSR) comes from another part of the Railway and Other Guided Transport Systems (Safety) Regulations 2006. Regulation 22, which requires transport operators to co-operate as far as is necessary with other transport operators.

A significant proportion of risk occurs at the interfaces between operators, such as those between wheel and rail or train and signal. The control of risk on the mainline railway therefore depends upon co-operation between duty holders. It is not possible for a single duty holder to operate safely without reference to other train operators or infrastructure managers and a dialogue must be maintained between them on how each proposes to manage the risks within its control which affect the other. The infrastructure manager has a key role, in that it determines and manages the environment within which trains operate, and to that extent the infrastructure governs the safe design and operation of trains. The dialogue with the infrastructure manager is therefore particularly important. This criterion seeks evidence of the way this takes place.

Narrative summary: expected evidence

An overview of:

- How the applicant communicates its safety needs to the infrastructure manager(s), including those for meeting TSIs, national safety rules, other relevant safety requirements (including RGSs) and requirements of its safety management system;
- The liaison arrangements between the infrastructure manager and transport undertakings for managing interface risks, including procedures for resolution of disputes;

NOT PROTECTIVELY MARKED

- The arrangements for liaising with other transport undertakings operating on the same infrastructure (which should have provision for updating these arrangements whenever there is a change in a franchise.)

The above should include reference to:

- Any relevant agreements or industry norms which govern these relationships; and
- Documents which give details of the agreements reached.

Potential inspection issues

- examination of agreements governing relationships with interfacing operators, and/or practical examples of the working relationships;
- detail of interface risk issues, such as between wheel and rail or train and signal;
- information about any recent change initiated by a transport undertaking, where effective liaison enabled the infrastructure manager to assist the transport undertaking to comply with industry standards, TSIs or other rules;
- detail of provisions to ensure safe operation during a recent period of degraded operations (eg. extreme weather conditions or major engineering works.)

Other 3 criteria;

MAINLINE INFRASTRUCTURE MANAGERS (MIM)

NON-MAINLINE UNDERTAKINGS (NTU)

NON-MAINLINE INFRASTRUCTURE MANAGERS (NIM)

SMS VALIDATION ELEMENTS THAT INCLUDE COOPERATION

d	Procedures and methods for carrying out risk evaluation and implementing risk control measures when— (i) there is a change in the way in which the operation in question is carried out; or (ii) new material is used in the operation in question, which gives rise to new risks in relation to any infrastructure or the operation being carried out;
---	--

NOT PROTECTIVELY MARKED

f	Arrangements for the provision of sufficient information relevant to safety— (i) within the operation in question; and (ii) between the operator in question and any other transport operator or an applicant for a safety certificate or a safety authorisation who carries out or who intends to carry out operations on the same infrastructure.
j	Provision of plans for action, alerts and information in the case of an emergency which are to be agreed with any public body, including the emergency services, that may be involved in such an emergency.

Other elements that may include cooperation:

i	Procedures to ensure that accidents, incidents, near misses and other dangerous occurrences are reported, investigated and analysed and that necessary preventative measures are taken.
---	---