



OFFICE OF RAIL REGULATION

# Consultation on the Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations

July 2012

# Contents

<b>Foreword</b>	<b>4</b>
<b>Executive summary</b>	<b>5</b>
<b>1. Introduction</b>	<b>7</b>
Implementation of the revised Railway Safety Directive	7
The first stage of implementation	7
The second stage of implementation	7
The consultation	8
<b>2. Background to the revised Railway Safety Directive</b>	<b>9</b>
European Common Transport Policy	9
Purpose of the revised Railway Safety Directive	9
Desired outcome of implementing the revised Railway Safety Directive	10
Scope of the revised Railway Safety Directive	10
Overview of proposals for the United Kingdom	10
<b>3. Certification of entities in charge of maintenance of freight wagons</b>	<b>12</b>
ECM certificate	12
ECM Accreditation Scheme	12
Certification body	13
Assessment of applications for ECM certificates	14
<b>4. Proposals for Regulations giving effect to the ECM Regulation</b>	<b>15</b>
Introduction	15
Citation, commencement and interpretation	15
Amendments to the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006	15
Amendments to the Railways and Other Guided Transport Systems (Safety) Regulations 2006 ("ROGS")	16
Amendments to the Train Driving Licences and Certificates Regulations 2010	25
Statutory review of EARR and TDLCR	25
<b>5. Impact assessment</b>	<b>26</b>
<b>6. Summary of questions</b>	<b>27</b>
<b>7. How to respond</b>	<b>28</b>
The consultation	28

Responses	28
Next steps	28
<b>8. List of those consulted</b>	<b>29</b>
<b>9. Glossary of terms</b>	<b>39</b>
Annex A: ECM Regulation 445/2011	
Annex B: Draft Regulations	
Annex C: ROGS consolidated with proposed amendments	
Annex D: European Directive 2008/110/EC	
Annex E: List of exclusions from the mainline railway	
Annex F: Application for removal from scope	
Annex G: Impact assessment	
Annex H: Government Code of Practice	

# Foreword

The Office of Rail Regulation (“ORR”) has a duty to the Secretary of State under paragraph 2(5) of Schedule 3 of the Railways Act 2005 to submit from time to time such proposals, as ORR considers appropriate, for the making of Regulations for railway safety purposes. The Secretary of State has agreed a protocol between the Department for Transport and ORR with a view to ORR preparing draft Regulations for these purposes, which are then submitted to the Secretary of State for approval and making.

This consultation proposes draft Regulations that give effect in Great Britain to Commission Regulation 445/2011 in Great Britain. The Commission Regulation sets out a system of certification of entities in charge of maintenance of freight wagons. As well as giving effect to the Commission Regulation, ORR has taken the opportunity to propose some better regulation amendments to the existing safety regime and clarify some of the definitions used in the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

The proposed draft Regulations aim to bring the certification regime for entities in charge of maintenance within the scope of ORR’s existing enforcement remit, remove some regulatory overlap and reduce administrative burdens on some duty holders.

I hope that all interested parties will contribute their views on these proposals over the coming months. We look forward to hearing from you.

**Ian Prosser, Director of Railway Safety**

**30 July 2012**

# Executive summary

## **Certification of entities in charge of maintenance of freight wagons**

This consultation document sets out proposals for introducing the certification regime for entities in charge of maintenance (“ECMs”) of freight wagons required under European Directive 2008/110/EC (“the revised Railway Safety Directive”) in Great Britain. The revised Railway Safety Directive, which amends the Railway Safety Directive (2004/49/EC), requires that an ECM for freight wagons obtains a certificate from a certification body to show that it has a satisfactory system of maintenance. The Office of Rail Regulation (“ORR”) will initially be a certification body for ECMs.

An ECM certificate will provide assurance to railway undertakings that an ECM is able to safely maintain the freight wagons for which it has responsibility.

The European Commission adopted Regulation 445/2011 on a system of certification of ECMs for freight wagons (“the ECM Regulation”) on 10 May 2011 (Annex A) and ORR has developed draft regulations (Annex B) to give effect to the ECM Regulation in Great Britain and bring the enforcement of it in line with ORR’s existing enforcement remit.

The draft Regulations include amendments to the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (“ROGS”) (S.I. 2006/599) to require ECMs for freight wagons to obtain an ECM certificate from a certification body. They also provide an appeal mechanism if applicants for ECM certificates are unhappy about the decision of a certification body. ORR has also taken the opportunity to consider the current legislative framework in light of lessons learned from operating under the current regime and other changes in European provisions. Accordingly, the draft regulations also contain the following additional amendments:

### **Changes to the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (“EARR”) (S.I. 2006/557 as amended by S.I. 2008/2323)**

Extending the powers of ORR inspectors to give them jurisdiction to enter, and undertake enforcement in certain premises that are currently excluded from their remit (such as warehouses and factories). This amendment ensures that ORR inspectors have the necessary powers to inspect and enforce, on railway operational matters only, in premises where an ECM may have maintenance facilities.

### **Changes to ROGS**

Removing the current requirement for mainline operators to carry out safety verification in light of the introduction of the common safety method (“CSM”) on risk evaluation and assessment (Commission Regulation 352/2009). This will avoid duplication by removing the need for mainline duty holders to carry out the existing safety verification requirements in ROGS as well as applying the CSM on risk evaluation and assessment.

Amending the definition of “mainline railway” in ROGS to clarify what systems are within scope and ensure that operators of heritage and light rail systems can be excluded from the requirements applicable to mainline operators where appropriate. ORR proposes to maintain an Approved List of exclusions (Annex E), which will be published on ORR’s website.

Other proposed changes to ROGS include:

- removing the requirement for non-mainline operators to send annual safety reports to ORR thereby reducing their administrative burden;
- clarifying that controllers of ‘safety-critical work’ must have suitable and sufficient monitoring arrangements in place;
- ensuring that the 28-day ‘affected parties’ consultation period runs concurrently with ORR’s four month processing time for applications for safety certificates and safety authorisations, thereby reducing the time taken for applicants to receive a safety certificate or safety authorisation; and
- amending the definitions of “national safety rules” and “placed in service” to clarify their meaning.

### **Changes to the Train Driving Licences and Certificates Regulations 2010**

The draft Regulations also contain proposals to amend the Train Driving Licences and Certificates Regulations 2010 (“TDLCR”) (S.I. 2010/724) to clarify the meaning of “in code form” in relation to medical restrictions in train driving licences and reflect the changes made to the definition of “mainline railway” in ROGS.

# 1. Introduction

## Implementation of the revised Railway Safety Directive

1.1 This consultation document sets out proposals for introducing the certification regime for entities in charge of maintenance (“ECM”) of freight wagons required under European Directive 2008/110/EC (“the revised Railway Safety Directive”) in Great Britain. The revised Railway Safety Directive, which amends the Railway Safety Directive (2004/49/EC), requires that an ECM for freight wagons obtains a certificate from a certification body to show that it has a satisfactory system of maintenance.

1.2 The revised Railway Safety Directive aims to improve market opening and to develop and improve safety on the European Union’s railways. It requires that an ECM is assigned to a vehicle and registered in the National Vehicle Register (“NVR”) before the vehicle is placed in service or used on the network. These provisions are already in place but it is necessary to make further amendments to recognise the provisions of European Regulation 445/2011 (“the ECM Regulation”) (Annex A), which sets out a certification system for ECMs for freight wagons.

1.3 Since the ECM Regulation was only published in May 2011, it has been necessary for the UK to have a two-stage implementation plan to transpose the requirements of the revised Railway Safety Directive and give effect to the ECM Regulation. The approach, which is explained in more detail below, is in accordance with UK law-making practice and prevents subsidiarity issues by not sub-delegating legislation to the European Union without Parliamentary scrutiny.

## The first stage of implementation

1.4 The first implementing instrument, the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011 (S.I. 2011/1860) (“ROGS (Amendment) 2011”), came into force in Great Britain on 26 August 2011.

1.5 These Regulations transpose the revised Railway Safety Directive except for those Articles that relate to the certification of entities in charge of the maintenance of freight wagons. They therefore implement the requirement to assign an ECM to a vehicle and register details of the ECM in the NVR before a vehicle is placed in service or used on the network. ROGS (Amendment) Regulations 2011 also implement the requirement for ECMs to set up a system of maintenance.

## The second stage of implementation

1.6 The European Commission published the ECM Regulation on 11 May 2011 (Annex A). It is directly applicable in each Member State. The revised Railway Safety Directive requires that an ECM for freight wagons obtains a certificate from a certification body to show that it has a satisfactory system of maintenance and the ECM Regulation sets out the certification regime. We have therefore developed an instrument to amend the ROGS regime further to:

(a) make the requirement that ECMs for freight wagons possess ECM certificates (as required in both the revised Railway Safety Directive and the ECM Regulation) an enforceable obligation under the Health and Safety at Work etc. Act 1974; and

(b) ensure that decisions made in respect of ECM certificates by certification bodies can be appealed (as required in the ECM Regulation).

1.7 In light of lessons learned from operation under the current regime and other changes in European provisions, ORR also proposes to take the opportunity to propose some further amendments to the safety regime (see Chapter 2).

## **The consultation**

1.8 This consultation document includes a draft of the Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations (“the Miscellaneous Amendments Regulations”) (Annex B) and a commentary to explain the requirements is in Chapter 4. We are seeking your views on any of our proposals. There are specific questions throughout the text and a list of all the questions is in Chapter 6. A consolidated version of ROGS, which includes the amendments made by ROGS (Amendment) 2011 and the proposed amendments by the draft Miscellaneous Amendments Regulations, can be found at Annex C.

1.9 We are consulting on these proposals from 30 July 2012 to 23 October 2012. Please ensure that your response reaches us by 23 October 2012. Details of how to respond can be found in Chapter 7.

## 2. Background to the revised Railway Safety Directive<sup>1</sup>

### European Common Transport Policy

2.1 The Railway Safety Directive is one of a number of directives introduced under the European Union's Common Transport Policy. Through this policy, the European Union ("EU") is seeking to revitalise the railways by creating a single market, and improving access to the market for railway services.

2.2 In December 2006 the European Commission tabled a package of revisions, primarily to improve cross acceptance for rail, the process of mutual recognition by Member States of each other's national rules, processes, and authorisations. This is to allow free movement of rail vehicles in an integrated common railway area. The legislative package comprised:

- *a recast Interoperability Directive*: merging three directives into one and simplifying and harmonising provisions;
- *amendments to the Railway Safety Directive*: introducing the identification of an ECM for all vehicles, responsible for ensuring that the system of maintenance keeps all the vehicles in a safe state of running; and
- *a revised Regulation governing the European Railway Agency*: providing the Agency with a larger mandate and, in particular, an enhanced role in cross acceptance.

### Purpose of the revised Railway Safety Directive

2.3 The revised Railway Safety Directive establishes a common system for maintenance arrangements across the EU. Under its requirements, all vehicles need to be assigned an ECM before they are placed in service or used on the network. The ECM must be registered on the NVR of the Member State in which it is first placed in service. The ECM must also establish a system of maintenance, which ensures that the vehicles for which it is responsible are safe to run on the network. These requirements were implemented through ROGS (Amendment) Regulations 2011.

2.4 In respect of the maintenance of freight wagons, the ECM will need to hold an ECM certificate from a certification body. The ECM certificate will provide assurance that the maintenance requirements of the Railway Safety Directive are being met for any freight wagon for which the ECM has responsibility. This certificate will be valid throughout the EU.

2.5 The certification body can either be the national safety authority (in Great Britain this is ORR) or an accredited or recognised body.

---

<sup>1</sup> The full text of Directive 2008/110/EC on vehicle maintenance is at Annex B.

## Desired outcome of implementing the revised Railway Safety Directive

2.6 An ECM certificate will provide assurance to railway undertakings and the national safety authority that an ECM is able to safely maintain the freight wagons for which it has responsibility. The ECM certificate is intended to reduce the burden on railway undertakings in terms of time and cost involved in ensuring that freight wagons have been properly and safely maintained. By obtaining an ECM certificate, the need for the current system of further checks and audits of the ECM by the railway undertaking will be removed.

2.7 The introduction of an ECM certification scheme for freight wagons will improve the competitiveness of the freight sector in the UK and across the EU by reducing the administrative costs associated with establishing freight wagon safety.

2.8 The ECM certification regime will also assist in establishing a consistent European Union-wide maintenance regime to replace the multiple regimes operated by each individual railway undertaking at present.

## Scope of the revised Railway Safety Directive

2.9 Article 2(2) of the revised Railway Safety Directive permits Member States to exclude from its scope:

- (a) Metros, trams and other light rail systems;
- (b) Networks that are functionally separate from the rest of the railway system and intended only for the operation of local, urban or suburban passenger services, as well as railway undertakings operating solely on these networks;
- (c) Privately owned railway infrastructure that exists solely for use by the infrastructure owner for its own freight operations;
- (d) Heritage vehicles that run on national networks provided that they comply with national safety rules and regulations with a view to encouraging safe circulation of such vehicles; and
- (e) Heritage, museum and tourist railways that operate on their own network, including workshops, vehicles and staff.

## Overview of proposals for the United Kingdom

2.10 ORR is proposing the Miscellaneous Amendments Regulations to give effect to the ECM Regulation in Great Britain and require ECMs for freight wagons to obtain an ECM certificate from a certification body. The Department for Regional Development (Northern Ireland) is preparing separate Regulations for Northern Ireland.

2.11 As a result, amendments are proposed to the Railways and Other Guided Transport Systems (Safety) Regulations 2006 ("ROGS") (S.I. 2006/599).

2.12 ORR has also taken the opportunity to consider lessons learned from operating under the current regime and other changes in European provisions and proposes further amendments to ROGS and the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 ("EARR") (S.I. 2006/557 as amended by S.I. 2008/2323), and changes to the Train Driving Licences and Certificates Regulations 2010 ("TDLCR") (S.I. 2010/724).

2.13 The Miscellaneous Amendments Regulations therefore propose to:

- amend EARR to give ORR inspectors jurisdiction to enter, and have enforcement powers, in certain premises that are currently excluded from their remit. This will allow ORR inspectors to carry out enforcement, on railway operational matters only, in premises where an ECM performs maintenance;
- remove from ROGS the requirement for mainline operators to carry out safety verification in light of the introduction of the common safety method (“CSM”) on risk evaluation and assessment (European Regulation 352/2009). This will avoid duplication by removing the need for mainline duty holders to carry out the existing safety verification requirements in ROGS as well as applying the CSM on risk evaluation and assessment;
- amend the definition of “mainline railway” in ROGS to ensure that operators of heritage and light rail systems are excluded from the mainline requirements;
- remove the requirement in ROGS for non-mainline operators to send annual safety reports to ORR thereby reducing their administrative burden;
- clarify that controllers of ‘safety-critical work’ must have suitable and sufficient monitoring arrangements in place;
- ensure that the 28-day ‘affected parties’ consultation period runs concurrently with ORR’s four month processing time for applications for safety certificates and safety authorisations, thereby reducing the time taken for applicants to receive a safety certificate or safety authorisation
- amend TDLCR to clarify the meaning of “in code form” in relation to medical restrictions in train driving licences and reflect the changes made to the definition of “mainline railway” in ROGS; and
- amend the definitions of “national safety rules” and “placed in service” in ROGS to clarify their meaning.

# 3. Certification of entities in charge of maintenance of freight wagons

## ECM certificate

3.1 The revised Railway Safety Directive requires that for freight wagons the ECM must obtain an ECM certificate from a certification body. A certification body can be a national safety authority, an accredited body or a recognised body. The ECM certificate provides evidence that an ECM has established a maintenance system, as set out in the ECM Regulation, which ensures that the freight wagons for which it is responsible are safe to operate. Once issued, an ECM certificate is valid throughout the European Union.

3.2 The ECM Regulation enables an ECM for freight wagons to apply for a certificate from 31 May 2012. All ECMs for freight wagons must obtain an ECM certificate by 31 May 2013. An ECM can choose which certification body it wants to apply to.

## ECM Accreditation Scheme

3.3 The European Railway Agency (“ERA”) has worked with sector organisations and national safety authorities to develop an ECM Accreditation Scheme (“ECMAS”) that complies with EU Regulation 765/2008 on accreditation and market surveillance (“RAMS”). The purpose of the ECMAS is to provide national accreditation bodies with the necessary common rules to accredit certification bodies that will carry out ECM certification in accordance with the ECM Regulation.

3.4 Article 5(2) of RAMS gives Member States the flexibility to choose between accreditation and recognition. Recognition is an alternative way of verifying the competence of conformity assessment bodies. ECM certification bodies are conformity assessment bodies. A Member State can recognise a certification body through a specific process of verifying competence by a national public authority if there is no National Accreditation Body (“NAB”). However, as there is an established NAB in the UK (the United Kingdom Accreditation Service or ‘UKAS’), the types of certification bodies in the UK will be either the national safety authority or an accredited body (see Box 1).

### Box 1

#### European Regulation 765/2008

European Regulation 765/2008 is the Regulation on accreditation and market surveillance (“RAMS”). According to RAMS each Member State has to appoint a national accreditation body (“NAB”). But a Member State can decide not to have a NAB if it is not economically viable or sustainable to have one. However, the Department for Business, Innovation and Skills appoints on behalf of Government as a whole an NAB for the UK. By means of The Accreditation Regulations 2009 (S.I. 2009/3155), the United Kingdom Accreditation Service (“UKAS”) is appointed as the NAB for the UK.

3.5 The European Co-operation for Accreditation (“EA”) is an association of NABs across the EU that are signatories of the EA multi-lateral agreement to recognise the equivalence, reliability and therefore

acceptance of accredited certifications, inspections, calibration certificates and test reports across the EU. The ECMAS will be validated by EA.

3.6 The ECMAS comprises:

- an accreditation scheme, which addresses the competence criteria for certification bodies seeking accreditation; and
- an ECM certification scheme, which details the process for the assessment of applications.

## Certification body

3.7 The Secretary of State for Transport has notified the European Commission that the certification bodies in the UK will be the national safety authority (ORR) and any bodies accredited by UKAS under the ECMAS.

3.8 ORR will act as a certification body for ECMs for an initial period of two years to ensure that the requirements in the revised Railway Safety Directive and the ECM Regulation are met. We will review our role as certification body in 2013/14 when the position on accredited certification bodies in the UK will be clearer. ORR's decision to become a certification body does not preclude any other organisation putting itself forward to the Department for Transport to become an accredited certification body.

3.9 There are two types of certification that a certification body can choose to carry out:

- certification of the ECM; and
- certification of the separate maintenance functions

## Certification of the ECM

3.10 Certification of the ECM will be against all the four functions of the maintenance system listed in paragraph 1 of Article 4 of the ECM Regulation. These four functions are:

- (a) **the management function**, which supervises and coordinates the maintenance functions referred to in (b), (c), and (d) below and ensures that the freight wagon is safe to operate;
- (b) **the maintenance development function**, which is responsible for the management of the maintenance documentation, including the configuration management, based on design and operational data, performance and a return on experience;
- (c) **the fleet maintenance management functions**, which manages the freight wagon's removal for maintenance and its return to operation after maintenance; and
- (d) **the maintenance delivery function**, which delivers the required technical maintenance of a freight wagon or parts of it, including the release-to-service documentation.

3.11 An ECM can sub-contract or outsource the maintenance development function, the fleet maintenance management function, and the maintenance delivery function. It cannot sub-contract or outsource the management function.

## Certification of the separate maintenance functions

3.12 A certificate can be issued to an organisation that takes on one or more of the outsourced maintenance functions. Certification of organisations or workshops that take on the maintenance delivery function **only** is also known as certification of maintenance workshops.

## ORR as a certification body

3.13 ORR will only certify the ECM function as a whole because to do so meets the mandatory requirements of the ECM Regulation and gives us a wide view of the ECM's activities. ORR will not certify separate maintenance functions or maintenance workshops as this is voluntary and we believe that industry players should be encouraged to take the certification body role for these functions if there proves to be a market. Therefore the ECM needs to show ORR how it satisfies the requirements for all four functions in Annex III of the ECM Regulation. If the ECM has outsourced all or any of the separate maintenance functions, then any certificates that the outsourced organisation obtains from another certification body would be deemed to meet the requirements of the respective function in Annex III of the ECM Regulation.

## Assessment of applications for ECM certificates

### ECM certification scheme

3.14 The ECM certification scheme is part of the ECMAS and is a set of common rules for accredited or recognised certification bodies to award ECM certificates in accordance with the ECM Regulation. It addresses the main concerns about risks from interested parties, particularly railway undertakings. These risks are related to the:

- management system of the ECM;
- competencies; and
- establishment and updates of maintenance files based on operational issues.

3.15 The scheme is intended to give railway undertakings and other interested parties confidence that an ECM certificate will demonstrate adequate control of these risks.

3.16 The CSM for conformity assessment (European Regulation 1158/2010) provides criteria for the assessment of applications from railway undertakings for safety certificates. The ECM certification scheme is more prescriptive than the certification scheme developed in the CSM for conformity assessment. However guidance from ERA says that national safety authorities, when acting as an ECM certification body that has not been accredited, have the flexibility to use the ECM certification scheme as a guide and bring its ECM certification process in line with existing processes for safety certification (including the CSM for conformity assessment). But the national safety authority still has to cover the activities described in Annex III of the ECM Regulation, taking into account its knowledge of the applicant and those risks stated in paragraph 3.14 above.

3.17 Using this flexible approach, ORR has developed and published criteria for assessing an application for a certificate, which are published on our website (<http://www.rail-reg.gov.uk/server/show/nav.2628>).

**Question 1:** Do you have any comments on ORR's role as certification body? If so, please state.

# 4. Proposals for Regulations giving effect to the ECM Regulation

## Introduction

4.1 This chapter describes the requirements of each regulation being proposed in the draft Miscellaneous Amendments Regulations (Annex B). It also sets out the background to each proposal.

## Citation, commencement and interpretation

### **Regulation 1**

4.2 The Regulations are expected to come into force in winter 2012.

## Amendments to the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006

### Background

4.3 EARR were made under the Health and Safety at Work etc. Act 1974. They provide the enforcement demarcation between the Health and Safety Executive (“HSE”) and ORR for railway safety purposes. Under EARR, ORR is the enforcing authority for activities associated with the operation of a railway.

4.4 The current demarcation means that in certain premises, such as factories, mines, quarries, etc., ORR inspectors can enter to undertake railway related inspections of freight rolling stock only by invitation from the occupier or by authorisation from HSE to accompany one of their inspectors. This potentially limits the effectiveness of ORR as a safety regulator as some ECMs will have maintenance facilities in premises where ORR currently has no enforcement responsibility, e.g. railway heavy maintenance workshops. ORR, as a safety regulator, could therefore have difficulty monitoring the ECM's maintenance systems.

4.5 ORR therefore proposes to amend EARR as follows.

### **Regulation 2(1)**

4.6 This regulation inserts new definitions into regulation 2 of EARR. These are “entity in charge of maintenance” and “mainline railway”, which have the same meaning as in regulation 2(1) of ROGS.

### **Regulation 2(2)**

4.7 This inserts new regulation 4(4A) into EARR, which would allow ORR inspectors to enter and have enforcement powers in those premises that they are currently not able to enter without HSE authorisation. This is solely for the purposes of monitoring compliance by ECMs with the requirements in regulations 18A and new regulation 18B of ROGS. These premises are:

- (a) a harbour within premises referred to in any of sub-paragraphs (c) to (h);

- (b) any other harbours subject to certain exceptions;
- (c) an establishment to which the Control of Major Accident Hazards Regulations 1999 (S.I. 1999/743, as amended by S.I. 2005/1088) applies;
- (d) a factory;
- (e) a mine;
- (f) a nuclear licensed site;
- (g) a quarry; or
- (h) warehouse premises.

**Question 2:** Do you have any comments on the proposed new regulation 4(4A) of EARR? If so, please state.

### ***Regulation 2(3)***

4.8 This inserts new regulation 8 into EARR, which requires the Secretary of State to review EARR and publish a report within five years. See paragraph 4.76 for more details.

## **Amendments to the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (“ROGS”)**

### ***Regulation 3(2)***

4.9 This inserts new or amended definitions into regulation 2(1) of ROGS and deletes some existing ones as set out below.

### **Certification body**

4.10 A new definition of “certification body” which has the same meaning as in the ECM Regulation.

### **Deemed safety authorisation and deemed safety certificate**

4.11 The definitions of “deemed safety authorisation” and “deemed safety certificate” are deleted as they relate to transitional provisions for safety certificates and safety authorisations between 2006 and 2008, which are contained in Schedule of 5 of ROGS. As these dates have passed, the transitional provisions are no longer necessary and Schedule 5 is being deleted.

### **ECM certificate**

4.12 A new definition of “ECM certificate” refers to the ECM Regulation.

### **ECM Regulation**

4.13 A new definition referring to the ECM Regulation 445/2011.

### **Freight wagon**

4.14 A new definition which replicates the definition in the ECM Regulation.

### **Heritage railway**

4.15 The definition of “heritage railway” is deleted as the revised definition of “mainline railway” leaves discretion to ORR to determine which parts of the railway are heritage railway and so are excluded from the mainline railway.

## Mainline railway

4.16 A revised definition of “mainline railway” is proposed in regulation 2(1) of ROGS.

4.17 The proposed definition excludes any railway or part of a railway:

- (a) that ORR determines in accordance with new regulation 2A of ROGS (see regulation 3(3) below); or
- (b) which is privately owned infrastructure that exists solely for use by the infrastructure owner for its own freight operations.

4.18 The Railway Safety Directive applies to mainline operators; i.e. those that operate on the mainline railway and those that manage the mainline infrastructure. In order to clarify that those operators that may be excluded from the Railway Safety Directive requirements are properly excluded from the mainline railway in Great Britain, ORR therefore proposes to amend the definition of “mainline railway” in regulation 2(1) of ROGS.

4.19 The approach to exclusions from the scope of the Railway Safety Directive will mirror the approach to exclusions from the scope of the recast Interoperability Directive (2008/57/EC). The Railways (Interoperability) Regulations 2011 (“RIR11”) (S.I. 2011/3066), which transpose the Interoperability Directive in the UK, provide for a list of excluded railway systems to be approved by the Secretary of State and published on DfT’s website.

4.20 ORR proposes to adopt this approach in relation to the exclusions from the Railway Safety Directive. This ensures consistency of approach across regulatory boundaries. A list of exclusions (“the Approved List”) proposed by ORR is at Annex E. This list has the same exclusions as the list published by DfT under RIR11; although, it is structured differently to reflect the requirements of the Railway Safety Directive. It includes details of railway networks and systems that meet the description of being a:

- metro system;
- light rail system;
- heritage, museum or tourist railway; or
- functionally separate dedicated local urban or suburban passenger railway.

4.21 ORR therefore proposes that such systems should automatically be excluded from the scope of the mainline railway requirements in ROGS. Although tramways are already excluded from ROGS because they are not “railways”, they have been included in the Approved List for clarity and consistency.

4.22 Vehicles that are principally used on such systems are excluded as it is the rail system that they are normally used on that determines their status.

**Question 3:** Do you agree with the proposed approach for carving out specific railway systems from the mainline railway requirements in ROGS through the use of an Approved List? Please explain your answer.

**Question 4:** Are there any systems that should not be on the Approved List? Please identify them if so and explain why they should not be exempted.

**Question 5:** Are there any systems that are not on the Approved List that should be? Please identify them if so and explain why they should be included.

4.23 ORR will keep the Approved List up to date and publish it on its website. Systems can be added following consultation with stakeholders where appropriate. Annex E describes how systems can be added. A draft exclusion application form is at Annex F.

4.24 A consequence of the proposal to amend the definition of “mainline railway” in ROGS is that drivers of trains for operators such as a heritage railway or metro systems would be excluded from the requirement to have a train driving licence and certificate even if the trains belonging to these operators run on part of the mainline infrastructure.

### **Safety certificates**

4.25 Under ROGS, transport operators on both mainline and non-mainline railways are required to obtain a safety certificate. Those ‘lower-risk’ operators that run trains at speeds below 40 km/h do not require a safety certificate but are required to have a safety management system (“SMS”).

4.26 We have reviewed ORR’s policy in relation to safety certificates for

- non-mainline operators whose vehicles operate on part of the mainline infrastructure; and
- mainline operators whose vehicles operate on part of non-mainline infrastructure.

4.27 We have also reviewed, in conjunction with the Department for Transport (“DfT”), how this policy impacts on the requirement for licensing and certification of drivers of trains for a railway undertaking required to have a mainline safety certificate

4.28 It is not the intention of the Railway Safety Directive that a non-mainline operator, such as a heritage railway or a metro system, whose vehicles operate on part of the mainline infrastructure, should be required to have a mainline safety certificate. This is because the Directive contains specific provisions allowing such non-mainline systems to be excluded.

4.29 ORR believes that a non-mainline safety certificate should cover all that operator’s activities even if its trains operate on part of the mainline infrastructure. Its SMS should show that its systems are adequate for those aspects of mainline operation undertaken by it. For example, a heritage railway whose trains operate on part of the mainline railway should be able to demonstrate in its SMS that it complies with relevant regulations and national safety rules.

4.30 ORR also believes that a mainline operator that operates vehicles on part of non-mainline infrastructure should not be required to have a non-mainline safety certificate. As long as the operator has stated the extent of its operations on its application for a mainline safety certificate and taken those operations into account, then its SMS should cover the whole of its operations.

4.31 In future ORR proposes to issue only one certificate to an operator: a mainline certificate to those operators caught by the requirements of the Railway Safety Directive; and a non-mainline certificate to those excluded from these requirements (see below). ORR will, of course, expect the SMS to cover the risks of all types of infrastructure that the operation runs on.

**Question 6:** Do you agree with the proposal to issue one safety certificate instead of two? If not, please explain why.

## **National safety rules**

4.32 ROGS uses the term ‘transport undertaking’ rather than ‘railway undertaking’, which is in the Railway Safety Directive. ‘Transport undertaking’ includes operators not on the mainline railway.

4.33 The definition of ‘national safety rules’ was copied from the Directive and is therefore out of line with implementation in Great Britain as it includes the term ‘railway undertaking’. ORR therefore proposes to change the definition of ‘national safety rules’ so that it refers to ‘transport undertaking’ rather than ‘railway undertaking’.

4.34 Regulation 3(2) substitutes the old definition of “national safety rules” in regulation 2(1) of ROGS for a proposed new one.

## **Placed in service**

4.35 Regulation 3(2) substitutes the old definition of “placed in service” for a proposed new one so that infrastructure is included as well as vehicles.

## **Regulation 3(3)**

### **Determination of mainline railway**

4.36 Regulation 3(3) inserts new regulation 2A into ROGS. This sets out how a railway or part of a railway is determined to be a mainline railway. It gives ORR discretion to determine if a railway, or part of a railway is not mainline railway if it falls within one or more of these categories:

- (a) metros and other light rail systems;
- (b) networks that are functionally separate from the rest of the mainline railway and intended only for the operation of local, urban or suburban passenger services, as well as transport undertakings operating solely on these networks; and
- (c) heritage, museum or tourist railways that operate on their own networks.

4.37 Regulation 2A also give ORR discretion to determine that a heritage vehicle which operates on the mainline railway and complies with national safety rules is deemed not to operate on the mainline railway.

4.38 ORR will maintain and publish an Approved List of those systems that we determine are not mainline railways (see paragraphs 4.16 to 4.24 above).

## **Regulations 3(4) and 3(5)**

4.39 These regulations removes any reference to safety verification on the mainline railway. This is because retaining requirements for safety verification in Great Britain in relation to the mainline railway when the Common Safety Method (“CSM”) for risk evaluation and assessment (Commission Regulation 352/2009) is in force potentially means that additional burdens are being placed on mainline operators if they have a legal duty to carry out both. Regulation 5(1)(b) of ROGS requires that a duty holder’s SMS applies the relevant parts of CSMs. ORR therefore proposes that it should no longer be a requirement under ROGS for mainline operators to carry out safety verification, although the requirement for non-mainline operators to carry out safety verification will be retained.

4.40 To achieve this, the Miscellaneous Amendment Regulations include amendments removing regulations 5(1)(d)(iii), 5(4), 5(5), 5(6) and 5(7)(a) of ROGS and deleting the words “...save that any reference to new or altered vehicles in those paragraphs shall be replaced with a reference to new or altered infrastructure” from regulation 5(7).

## Background to Safety verification

4.41 Currently, whenever there is a significant change that impacts on safety, duty holders have to decide if safety verification is needed by applying a two-stage test:

- **Difference Test:** the risk arising from the design is new, or novel to the transport system; and
- **Risk Test:** there will be a new significant safety risk or a significant increase in risk.

4.42 If a new or altered vehicle has been authorised under RIR11 for placing in service on the mainline railway, that authorisation shall be treated as satisfying the requirements for safety verification (except for an authorisation deemed to be given under regulation 44 of RIR11).

## Background to the CSM for risk evaluation and assessment

4.43 Commission Regulation 352/2009 setting out a common safety method (“CSM”) for risk evaluation and assessment on the mainline railway has been in force since 19 July 2010 and has applied to:

- significant technical changes to rolling stock; and
- significant changes to other structural subsystems (infrastructure, command control and signalling, and energy) where an authorisation to place in service is required, or where required by a Technical Specification for Interoperability (“TSI”).

4.44 From 1 July 2012 the CSM will apply in full to all other significant technical changes and to significant operational and organisational changes.

4.45 The CSM has direct effect in all Member States. When a proposed change has an impact on safety on the mainline railway, the CSM places a duty on a proposer of change to decide, by expert judgement, the significance of a change based on six criteria:

- failure consequences;
- novelty;
- complexity;
- the inability to monitor the change;
- reversibility; and
- additionality.

4.46 If a change is regarded as significant, the risk management process described in the CSM should be followed.

**Figure 1: Comparing safety verification and the CSM on risk evaluation and assessment**

		Safety verification	CSM on risk evaluation and assessment
1	Who does it apply to?	Mainline and non-mainline duty holders	Mainline duty holders and other proposers of a change
2	What does it apply to?	New or altered vehicles New or altered infrastructure	Rolling stock and infrastructure Other structural subsystems requiring authorisation for placing in service
3	When does it apply?	(a) when the design, construction or testing of the structural subsystems listed in (2) above incorporates significant changes when they are placed in service compared to those already in use on the transport system, <b>and</b> (b) when such action is capable of significantly increasing an existing risk or creating a significant new safety risk	(a) from 19 July 2010 for significant technical changes to rolling stock and structural subsystems which require an authorisation for placing in service, or where required by a TSI; <b>and</b>  (b) from 1 July 2012 for all other significant technical changes and significant operational and organisational changes
4	What are the criteria for deciding if SV or CSM is needed?	Both parts of a two-stage test must be met:  <b>Deference Test:</b> the risk arising from the design is new, or novel, to the transport system,  <b>and</b>  <b>Risk Test:</b> there will be a new significant safety risk or a significant increase in risk	Six criteria determine whether or not a change is significant:  <b>Novelty used in implementing the change:</b> this concerns both what is innovative in the railway sector, and what is new just for the organisation implementing the change  <b>Failure consequences:</b> credible worst-case scenario in the event of failure of the system under assessment, taking into account the existence of safety barriers outside the system  <b>Complexity of the change</b>  <b>Monitoring:</b> the inability to monitor the implemented change throughout the system life-cycle and take appropriate interventions  <b>Reversibility:</b> the inability to revert to the system before the change  <b>Additionality:</b> assessment of the significant of the change taking into account all the recent safety-related modifications to the system under assessment and which were not judged as significant
5	How is it assessed?	An <b>independent competent person</b> carries out independent assessment that a project has gone through all the steps needed to reduce risks.	An <b>assessment body</b> carries out independent assessment of how the risk management process is applied and of the results.

### Comparing safety verification with the CSM

4.47 When fully in force in July 2012, the CSM will cover the same requirements as safety verification (and more). *Figure 1* shows how safety verification compares with the CSM. Both the CSM and safety verification apply only in relation to significant change but the safety verification criteria are a sub-set of the CSM, with the CSM having a wider test of significance. The two-stage test for safety verification appears

to equate to two of the criteria for the CSM. These are 'novelty' and 'failure consequence'. In practice, the two tests for significance are very similar.

4.48 Both the CSM and safety verification require independent assessment. However, the CSM is more comprehensive than safety verification. It includes the need to demonstrate that the risk assessment principles have been applied correctly and that the system complies with all specified safety requirements. ORR has produced guidance on the CSM ([http://www.rail-reg.gov.uk/upload/pdf/common\\_safety\\_method\\_guidance.pdf](http://www.rail-reg.gov.uk/upload/pdf/common_safety_method_guidance.pdf)). The main phases of the CSM are illustrated in Annex II of the guidance.

**Question 7:** Do you agree with the proposal to remove from ROGS the requirement for mainline operators to carry out safety verification? Please explain your answer.

### **Regulation 3(6)**

#### **Deemed safety certification and deemed safety authorisation**

4.49 Regulation 3(5) removes any references to 'deemed safety authorisation' or 'deemed safety certificate' in regulation 17 and schedule 5 of ROGS. This is because they relate to transitional provisions for safety certificates and safety authorisations between 2006 and 2008, which are contained in Schedule of 5 of ROGS. As these dates have passed and the certificates and authorisations to which they relate have expired, the transitional provisions are no longer necessary and Schedule 5 is being deleted.

#### **Consultation with affected parties**

4.50 Currently, regulation 17(7) of ROGS requires that the four month period that ORR has to make its decision on an application for a safety certificate, safety authorisation, amended safety certificate or amended safety authorisation will not begin to run until the 28-day "affected party" consultation period has elapsed. We have reviewed this requirement and found that in many cases, it did not take as long as four months for ORR to process applications. Taking the four-month period as 122 days, adding 28 days gives 150 days. In a sample size of 64 safety certificate applications, the average time taken to process an application is 99 days. In a sample size of 29 safety authorisation applications, the average duration is 110 days. These are within four months, which means that in these cases applicants will have to wait up to an additional 28 days to receive their certificate or authorisation.

4.51 In the interest of better regulation, we therefore propose that ROGS is amended so that the 28-day consultation with an 'affected party' runs concurrently with the four-month application assessment period. This will in some cases shorten the time taken for an applicant to receive a decision from ORR.

4.52 Regulation 17 of ROGS requires that whenever:

- an application is made for a safety certificate, safety authorisation, amended safety certificate or amended safety authorisation; or
- ORR issues a notice that it is considering revoking a safety certificate or safety authorisation,

the applicant and ORR must consult an 'affected party' on the application or notice of revocation, or on any further information requested by ORR. The 'affected party' has 28 days from the date of issue of the application or notice of revocation to make representations to ORR and includes:

- for all applications, any recognised trades unions in the applicant's organisation;
- for all applications, the appropriate rail user groups;

- for a safety certificate application, transport operators who manage the infrastructure of the transport system the applicant runs;
- for a safety authorisation application, transport operators who run on the applicant's infrastructure or who manage infrastructure that 'interfaces' with the applicant's system.

**Question 8:** Do you agree with the proposal to make the 28-day consultation period run concurrently with ORR's four month processing time? Please explain your answer.

### **Regulation 3(7)**

#### **Maintenance of freight wagons on the mainline railway**

4.53 Regulation 3(7) amends regulation 18A(1) of ROGS by substituting the old one for a proposed new one, which says:

No person may place in service or use a vehicle on the mainline railway unless that vehicle has an entity in charge of maintenance assigned to it, and that entity in charge of maintenance:

- (a) is registered in relation to that vehicle in the NVR; and
- (b) holds an ECM certificate if the vehicle is a freight wagon.

4.54 This brings the requirement to obtain an ECM certificate within the scope of ROGS.

### **Regulation 3(8)**

#### **Annual safety reports**

4.55 Regulation 3(8) removes the requirement for non-mainline operators to send to ORR an annual safety report.

4.56 Regulation 20 of ROGS currently requires that a transport undertaking sends an annual safety report to ORR if it requires a mainline or non-mainline safety certificate or safety authorisation.

4.57 We have reviewed the requirement for non-mainline operators and have concluded that this requirement is not necessary, as the information from these operators is available in other ways. This applies to the following five systems:

- Docklands Light Railway;
- London Underground;
- Nexus, Tyne and Wear Metro;
- North Yorkshire Moors Railway; and
- SPT (Glasgow) Subway

4.58 The requirement for operators on the mainline railway to submit annual safety reports will remain, as this is mandated by the Railway Safety Directive. We therefore propose that the requirement for non-mainline operators to send an annual safety reports to ORR is removed from ROGS.

**Question 9:** Do you agree with the proposal to remove the requirement for non-mainline operators to submit annual safety reports to ORR? Please explain your answer.

### **Regulation 3(9)**

4.59 Regulation 3(8) removes from regulation 21 of ROGS references to 'deemed safety authorisation' and 'deemed safety certificate'. See regulation 3(5) above.

### **Regulation 3(10)**

#### **Monitoring arrangements for controllers of 'safety-critical work'**

4.60 Regulation 3(10) inserts into regulation 24(1)(d) of ROGS the words "suitable and sufficient" between 'place' and 'arrangement'.

4.61 Regulation 24(1)(d) of ROGS requires that every controller of 'safety-critical work', so far as is reasonably practicable, ensure that anyone under his management, supervision or control only carries out 'safety-critical work' where there are arrangements in place for monitoring the competence and fitness of that person.

4.62 Operational experience suggests that the provisions of regulation 24(1)(d) are not clear to duty holders. It is also difficult for ORR to enforce against these arrangements if they are considered by the inspector to be unsuitable and insufficient. However, if regulation 24(1)(d) required that there were in place **suitable and sufficient** arrangements for monitoring, this would help to improve safety by clarifying the requirement for controllers of 'safety-critical work'. The inspector would then be able to require improvements if monitoring arrangements were considered to be unsuitable and insufficient.

4.63 We therefore propose to amend regulation 24(1)(d) of ROGS to clarify that the monitoring arrangements of the controller of 'safety-critical work' have to be suitable and sufficient.

**Question 10:** Do you agree with the proposal to clarify that the monitoring arrangements of the controller of 'safety-critical work' have to be suitable and sufficient? Please explain your answer.

### **Regulation 3(11)**

#### **Appeals in relation to an application for an ECM certificate**

4.64 Regulation 3(11) adds to the existing appeals mechanism in regulation 27 of ROGS, appeals arising from decisions made by a certification body in relation to on an application for an ECM certificate. The certification body can either be ORR or a body accredited by UKAS (see paragraphs 3.3 to 3.6).

4.65 Article 7(7) of the ECM Regulation states that "in the event of continuous non-compliance with the certification requirements or any improvement plan, the certification body shall limit the scope of or revoke the ECM certificate, giving reasons for its decision, together with an indication of the process and time limit for appeal and the contact details of the appeal body".

4.66 Regulation 27 of ROGS is therefore being amended to propose the Secretary of State as the appeal body. This is consistent with the procedure for appealing other decisions in ROGS.

### **Regulation 3(12)**

4.67 Regulation 3(12) deletes paragraph 7 of regulation 29, which relates to 'deemed safety authorisation' and 'deemed safety certificate'. See regulation 3(6) above.

### **Regulation 3(13)**

4.68 Regulation 3(13) deletes the words "other than a deemed safety certificate" from schedule 2 of ROGS. See regulation 3(6) above.

### **Regulation 3(14)**

4.69 Regulation 3(14) deletes the reference to regulation 5(4) of ROGS in Schedule 4, which relates to safety verification on the mainline railway. See regulation 3(4) above.

### **Regulation 3(15)**

4.70 Regulation 3(15) deletes Schedule 5 of ROGS (see paragraph 4.49 above).

## **Amendments to the Train Driving Licences and Certificates Regulations 2010**

### **Regulation 4(2)**

4.71 Regulation 4(2) inserts a definition of “in code form” into regulation 2 of TDLCR.

4.72 Schedule 2 of TDLCR refers to a model train driving licence and harmonised complementary train driving certificate across the EU. It sets out a model of what information licences and certificates must contain, how it must look and what restrictions there are.

4.73 In order to clarify the meaning of “in code form” in paragraph 2(g) of Schedule 2 of TDLCR, a definition is being inserted into TDLCR and the final paragraph of paragraph 2(g) is being deleted. This makes it clear that “in code form” implements future obligations in relation to additional information or medical restrictions that may be required by amendments to European Regulation 36/2010.

### **Regulation 4(3)**

4.74 Regulation 4(3) inserts a proposed new regulation 1A into TDLCR. This excludes from TDLCR heritage vehicles that ORR determines do not operate on the mainline railway, as provided by regulation 2A(2) of ROGS.

### **Regulation 4(4)**

4.75 Regulation 4(4) inserts new regulation 40 into TDLCR, which requires the Secretary of State to review TDLCR and publish a report within five years. See below for more details.

## **Statutory review of EARR and TDLCR**

4.76 It is the UK Government’s policy that for Regulations implementing EU obligations, a statutory obligation on the Secretary of State to review them every five years will apply. The ROGS (Amendment) Regulations 2011 have already inserted regulation 34A into ROGS which requires that within a maximum of five years of those Regulations coming into force, the Secretary of State must review the whole of ROGS and publish the review’s conclusions. Since this clause has already been added to ROGS, the Miscellaneous Amendments Regulations (which are expected to be in force in late 2012 and will therefore automatically be included in the review) do not insert an additional review clause. TDLCR and EARR implement EU obligations so a statutory obligation on the Secretary of State to review them applies. The Miscellaneous Amendments Regulations accordingly insert new regulation 8 into EARR and new regulation 40 into TDLCR.

# 5. Impact assessment

5.1 The Impact Assessment can be found in Annex G. When responding to the consultation, please comment on the analysis of costs and benefits, giving supporting evidence wherever possible.

5.2 Please also suggest any alternative methods for reaching the objective and highlight any possible unintended consequences of the policy, and practical enforcement or implementation issues.

**Question 11:** Do you have any other comments in relation to the issues raised in this consultation document (and annexes)?

## 6. Summary of questions

**Question 1:** Do you have any comments on ORR's role as certification body? If so, please state.

**Question 2:** Do you have any comments on the proposed new regulation 4(4A) of EARR? If so, please state.

**Question 3:** Do you agree with the proposed approach for carving out specific railway systems from the mainline railway requirements in ROGS through the use of an Approved List? Please explain your answer.

**Question 4:** Are there any systems that should not be on the Approved List? Please identify them if so and explain why they should not be exempted.

**Question 5:** Are there any systems that are not on the Approved List that should be? Please identify them if so and explain why they should be included.

**Question 6:** Do you agree with the proposal to issue one safety certificate instead of two? If not, please explain why.

**Question 7:** Do you agree with the proposal to remove from ROGS the requirement for mainline operators to carry out safety verification? Please explain your answer.

**Question 8:** Do you agree with the proposal to make the 28-day consultation period run concurrently with ORR's four month processing time? Please explain your answer.

**Question 9:** Do you agree with the proposal to remove the requirement for non-mainline operators to submit annual safety reports to ORR? Please explain your answer.

**Question 10:** Do you agree with the proposal to clarify that the monitoring arrangements of the controller of 'safety-critical work' have to be suitable and sufficient? Please explain your answer.

**Question 11:** Do you have any other comments in relation to the issues raised in this consultation document (and annexes)?

# 7. How to respond

## The consultation

7.1 We are consulting on these proposals from 30 July 2012 to 23 October 2012. Please ensure that your response reaches us by 23 October 2012.

## Responses

7.2 We welcome comments on any aspect of this document and the specific questions listed in Chapter 6.

7.3 Responses to this consultation should be sent as soon as possible, but no later than 23 October 2012, by post or email to:

Stefano Valentino  
Senior Executive  
Safety Policy Team  
Railway Safety Directorate  
Office of Rail Regulation  
One Kemble Street  
London WC2A 4AN

Email: [rogsguidance@orr.gsi.gov.uk](mailto:rogsguidance@orr.gsi.gov.uk)

7.4 All responses will be published on our website and may be quoted from by ORR. If you wish all or part of your response to remain confidential you should set out clearly why this is the case. Where a response is made in confidence, it should be accompanied by a statement summarising the submission, but excluding the confidential information, which can then be used as above. We will publish the names of respondents in future documents or on our website, unless you indicate that you wish your name to be withheld.

7.5 Copies of this consultation document are available from our website ([www.rail-reg.gov.uk/server/show/nav.1089](http://www.rail-reg.gov.uk/server/show/nav.1089)).

7.6 This consultation has been produced in accordance with the Government's *Code of Practice on Consultations*. A copy of the Code of Practice is included at Annex H. If you consider that this consultation does not comply with the criteria or have comments about the consultation process, please contact Ken Young, ORR's director of external affairs on 020 7282 3732 or [ken.young@orr.gsi.gov.uk](mailto:ken.young@orr.gsi.gov.uk).

## Next steps

7.7 After the close of this consultation, ORR will consider all responses received and decide whether there should be any change to the draft Miscellaneous Amendments Regulations.

## 8. List of those consulted

A V Dawson

Administrative Justice & Tribunals Service

Advanced Transport Systems

AEA Technology Plc

Aggregate Industries

Alcan Primary Metal Europe

Alcan Smelting & Power UK

Alstom Transport Ltd

Amey Plc

Angel Trains Plc

Arriva plc

Arriva Trains Wales

ASLEF

Association of British Chamber of Commerce

Association of Chief Police Officers in Scotland

Association of Community Rail Partnerships

Association of London Government

Association of Railway Industry Occupational Physicians (ARIOPS)

Association of Train Operating Companies (ATOC)

Association of Transport Coordinating Officers (ATCO)

Atkins Rail

Avon Valley Railway

Axiom Rail

BAA Rail

Babcock Rail

Bala Lake Railway

Balfour Beatty plc

Bluebell Railway Plc

Bombardier Transportation

Bombardier Transportation Prorail Ltd

BP Oil UK Ltd

Brett Aggregates Ltd

British Gypsum

British International Freight Association

British Nuclear Fuels Ltd

British Ports Association

British Transport Police

BUPA

Buxton Lime Industries Ltd

C2c Rail Ltd

Cabinet Office

Campaign for Better Transport

Carillion Rail

Cawoods of Northern Ireland

Cemex UK Cement Ltd

Centro (***West Midlands Passenger Transport Executive***)

Channel Tunnel Safety Authority

Chartered Institute of Logistics & Transport

Chiltern Railways Co Ltd

City of Edinburgh Council

Civil Aviation Authority

Colas Rail Ltd

Commission for Integrated Transport

Confederation of British industry (CBI)

Confederation of Passenger Transport UK (CPT)

Consumer Focus

Convention of Scottish Local Authorities

Correl Rail Ltd

Corus Construction & Industrial

Corus Plc

CrossCountry

D B Schenker (formerly EWS)

Dartmoor Railway Ltd

Defence Rail & Container Services

DeltaRail

Department for Business Innovation and Skills

Department for Children, Schools and Families

Department for Regional Development Northern Ireland

Department for Transport

Department for Work and Pensions

Department of Health

Department of the Environment, Food & Rural Affairs

Derby City Council

Direct Rail Services Ltd

Disabled Persons Transport Advisory Committee (DPTAC)

E G Steele & Co Ltd

East Lancashire Railway

East Midlands Trains Ltd

Esso Petroleum Company Ltd

Eurotunnel Plc

Fastline

Federation of Small Businesses

First Capital Connect Ltd

First Engineering Ltd

First GB Railfreight

First Great Western Co Ltd

First Group plc

First ScotRail Ltd

First Transpennine Express

Freight Transport Association

Freightliner Ltd

G E Capital Rail Services

Gatwick Express Ltd

GE Transportation Systems Ltd

Go-Ahead Group

Grand Central Railway Co Ltd

Greater Manchester PTE

Greater Manchester Waste Ltd

Halcrow Group Limited

Harsco

Health and Safety Executive

Health and Safety Executive, Northern Ireland

Health and Safety Inspectorate, Guernsey

Heathrow Express Ltd

Heritage Railway Association

High Speed 1

Hitachi Europe Ltd

HM Treasury

Home Office

HSBC Rail (UK) Ltd

Hull Trains

Hunslett-Barclay

ICENI Enterprises Ltd

Inclusive Mobility and Transport Advisory Committee

Institution of Engineering and Technology

Institution of Mechanical Engineers

Institution of Occupational Safety & Health

Interfleet Certification Ltd

Intergovernmental Commission for the Channel Tunnel

International Railway Journal

IRSE

JacksonEve Infrastructure Services

Jafco Tools

Jarvis Rail

Keolis UK Ltd

Lafarge Cement

Lafarge Redlands Aggregates Ltd

Light Rail Transit Association

Light Rapid Transit Forum

Lloyd's Register MHA Ltd

Lloyd's Register Rail Ltd

Local Government Association

London & South Eastern Railway (trading as Southeastern)

London and Continental Railways Ltd

London Development Agency

London Midland Trains

London Overground Rail Operations Ltd

London Travel Watch

London Underground Ltd (LUL)

Marcroft Engineering Ltd

Marsh UK Ltd

Mendip Rail Ltd

Mersey Rail

Merseytravel

Metro (West Yorkshire Integrated Transport Authority and West Yorkshire Passenger Transport Executive)

Middleton Railway Trust Ltd

Ministry of Defence

Ministry of Justice

Modern Railway Magazine

Mott MacDonald Railway Approvals

Mowlem Plc

N. Green

NACCO (UK) Ltd

National Assembly for Wales

National Express East Anglia

National Express East Coast

National Specialist Contractors Council

National Union of Rail, Maritime and Transport Workers (RMT)

Network Rail Infrastructure Ltd

Nexus

North Yorkshire Moors Railway

Northern Ireland Railways

Northern Rail Ltd

Parliamentary Advisory Council for Transport Safety (PACTS)

Passenger Focus

Passenger Transport Executive Group (PTEG)

Peter Wainwright (Esso consultant)

Plasmor Ltd

Porterbrook Leasing Company Ltd

Praxis HIS Ltd

Pre Metro Operations Ltd

Private Wagon Federation

Quintec Assoc Ltd

Rail Accident Investigation Branch

Rail Charter Services Ltd

Rail Freight Group

Rail Safety and Standards Board (RSSB)

Railfuture

Railway Approvals Ltd

Railway Forum

Railway Gazette International

Railway Industry Advisory Committee Freight Group (Chair)

Railway Industry Association

Railway Magazine

Rheilfford Ffestiniog Railway

Riviera Trains Ltd

RoSPA

Safety Cases Ltd

Scientifics Ltd

ScotRail Railways Ltd

Scottish Consumer Council

Scottish Executive

Scottish Trade Union Congress (STUC)

Serco Docklands Ltd

Serco Integrated Transport

Serco Rail Group

Siemens Transportation Systems Ltd

Signalling Solutions Ltd

South Tynedale Railway Preservation Society

South Yorkshire PTE

Southern Railway

Stagecoach South Western Trains Ltd

Stagecoach Supertram

Strathclyde Partnership for Transport

STVA UK Ltd

Trade Union Congress (TUC)

Transport for London (TfL, London Rail)

Transport Research Laboratory

Transport Salaried Staffs' Association (TSSA)

Transport Scotland

Tubelines

UK Major Ports Group Ltd

UK Tram Ltd

Union Railways (North)

Unite the Union

United Kingdom Accreditation Service (UKAS)

University College London

Venice Simplon Orient Express Ltd

Virgin Trains

Volker Rail Group

VTG Rail UK Ltd

W & M Thompson (Quarries) Ltd

W H Davis Ltd

Wabtec Rail Ltd

WBB Minerals

Welsh Assembly Government

West Coast Railway Co Ltd

Westinghouse Rail Systems Ltd

Wrexham and Shropshire Railway Co Ltd



## 9. Glossary of terms

CSM	Common Safety Method
CSM for Conformity Assessment	European Regulation 1158/2010
CSM for Risk Assessment	European Regulation 352/2009
DfT	Department for Transport
EA	European Co-operation for Accreditation
EARR	Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (S.I. 2006/557 as amended by S.I. 2008/2323)
ECM	Entity in Charge of Maintenance
ECMAS	ECM Accreditation Scheme
ERA	European Railway Agency
EU	European Union
Miscellaneous Amendments Regulations	Draft Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations
NAB	National Accreditation Body
NVR	National Vehicle Register

ORR	Office of Rail Regulation
RAMS	European Regulation 765/2008 on accreditation and market surveillance
Railway Safety Directive	European Directive 2004/49/EC
Regulation 445/2011	Certification system for freight wagon ECMs
Revised Railway Safety Directive	European Directive 2004/49/EC as amended by European Directive 2008/110/EC
RIR11	Railways (Interoperability) Regulations 2012
ROGS	Railways and Other Guided Transport Systems (Safety) Regulations 2006 (S.I. 2006/599)
ROGS (Amendment) Regulations 2011	Railways and Other Guided Transport Systems (Safety) (Amendment) Regulation 2011 (S.I. 2011/1860)
SMS	Safety Management System
TDLCR	Train Driving Licences and Certificates Regulations 2010 (S.I. 2010/724)
Train Driver Licensing Directive	European Directive 2007/57/EC
TSI	Technical Specification for Interoperability
UKAS	United Kingdom Accreditation Service

# Annex A: ECM Regulation 445/2011

See next page.

**COMMISSION REGULATION (EU) No 445/2011****of 10 May 2011****on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) No 653/2007****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification <sup>(1)</sup>, and in particular Article 14a thereof,

Having regard to the Recommendation of the European Railway Agency of 8 July 2010 on a System of Certification for Entities in Charge of Maintenance,

Whereas:

- (1) Directive 2004/49/EC aims to improve access to the market for rail transport services by defining common principles for the management, regulation and supervision of railway safety. Directive 2004/49/EC also provides for a framework to be put in place to ensure equal conditions for all entities in charge of maintenance for freight wagons through application of the same certification requirements across the Union.
- (2) The purpose of the certification system is to provide a framework for the harmonisation of requirements and methods to assess the ability of entities in charge of maintenance across the Union.
- (3) Without prejudice to the responsibility of railway undertakings and infrastructure managers for the safe operation of trains, the entity in charge of maintenance should ensure that the freight wagons for which it is in charge of maintenance are in a safe state of running by means of a system of maintenance. Taking into account the wide variety of design and maintenance methods, this system of maintenance should be a process-oriented system.
- (4) Infrastructure managers need to use freight wagons to transport materials for construction or for infrastructure

maintenance activities. When they operate freight wagons for this purpose, infrastructure managers do so in the capacity of a railway undertaking. The assessment of the infrastructure manager's capacity to operate freight wagons for this purpose should be part of its assessment for a safety authorisation under Article 11 of Directive 2004/49/EC.

- (5) Inspections and monitoring undertaken before the departure of a train or en route are generally performed by operational staff of the railway undertakings or infrastructure managers, following the process described in their safety management system in accordance with Article 4(3) of Directive 2004/49/EC.
- (6) The railway undertakings or the infrastructure managers should ensure, through their safety management system, the control of all risks related to their activity, including the use of contractors. To this end, a railway undertaking should rely on contractual arrangements involving entities in charge of maintenance for all wagons it operates. This could be a contract between the railway undertaking and the entity in charge of maintenance or a chain of contracts involving other parties, such as the keeper. These contracts should be consistent with the procedures outlined by a railway undertaking or an infrastructure manager in its safety management system, including for the exchange of information.
- (7) In accordance with Directive 2004/49/EC, a certificate for an entity in charge of maintenance (ECM certificate) is valid throughout the Union. Certificates issued by bodies in third countries appointed under equivalent criteria and meeting equivalent requirements to those contained in this Regulation should normally be accepted as being equivalent to the ECM certificates issued in the Union.
- (8) The assessment by a certification body of an application for an ECM certificate is an assessment of the applicant's ability to manage maintenance activities and to deliver the operational functions of maintenance either by itself or through contracts with other bodies, such as maintenance workshops, charged with delivering these functions or parts of these functions.
- (9) A system of accreditation should provide a tool for managing risks by assuring that accredited bodies are competent to carry out the work they undertake. Furthermore, accreditation is regarded as a means to secure national and international recognition of ECM certificates issued by accredited bodies.

<sup>(1)</sup> OJ L 164, 30.4.2004, p. 44.

- (10) In order to have a system allowing certification bodies to perform checks on certified entities in charge of maintenance across the Union, it is important that all bodies able to award certificates to any entity in charge of maintenance (the 'certification bodies') should cooperate with each other in order to harmonise approaches to certification. Specific requirements for accreditation should be developed and approved in line with the provisions of Regulation (EC) No 765/2008 of the European Parliament and of the Council <sup>(1)</sup>.
- (11) To evaluate the certification process set out in this Regulation, it is important that the European Railway Agency (the Agency) oversees the development of the system of certification. To be able to perform this function, the Agency needs to collect information on the nature of the certification bodies active in this field and the number of certificates issued to entities in charge of maintenance. It is also important for the Agency to facilitate coordination of the certification bodies.
- (12) Commission Regulation (EC) No 653/2007 of 13 June 2007 on the use of a common European format for safety certificates and application documents in accordance with Article 10 of Directive 2004/49/EC of the European Parliament and of the Council and on the validity of safety certificates delivered under Directive 2001/14/EC <sup>(2)</sup> provides the standard format for safety certificates. This format must be updated to include further information on entities in charge of maintenance. Regulation (EC) No 653/2007 should therefore be amended accordingly.
- (13) Pending the full application of the certification system of the entity in charge of maintenance provided for in this Regulation, the validity of existing practices to certify entities in charge of maintenance and maintenance workshops should be recognised during a period of transition in order to ensure the uninterrupted provision of rail freight services, in particular at international level. During this period the national safety authorities should pay particular attention to the equivalence and the consistency of the different certification practices.
- (14) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 27 of Directive 2004/49/EC,

HAS ADOPTED THIS REGULATION:

#### Article 1

##### Purpose

1. This Regulation establishes a system of certification of entities in charge of maintenance for freight wagons as referred to in Article 14a of Directive 2004/49/EC.

<sup>(1)</sup> OJ L 218, 13.8.2008, p. 30.

<sup>(2)</sup> OJ L 153, 14.6.2007, p. 9.

2. The purpose of the system of certification is to provide evidence that an entity in charge of maintenance has established its maintenance system and can meet requirements laid down in this Regulation to ensure the safe state of running of any freight wagon for which it is in charge of maintenance.

#### Article 2

##### Scope

1. The system of certification shall apply to any entity in charge of maintenance for freight wagons to be used on the railway network within the Union.

2. Maintenance workshops or any organisation taking on a subset of the functions specified in Article 4 may apply the system of certification on a voluntary basis, based on the principles specified in Article 8 and Annex I.

3. References to an infrastructure manager in Articles 5, 7 and 12 shall be understood as relating to its operations with freight wagons for transporting materials for construction or for infrastructure maintenance activities. When it operates freight wagons for this purpose, an infrastructure manager shall be deemed to do so in the capacity of a railway undertaking.

#### Article 3

##### Definitions

1. For the purposes of this Regulation, the definitions laid down in Article 3 of Directive 2004/49/EC apply.

2. In addition, the following definitions apply:

(a) 'accreditation' means accreditation as defined in Article 2(10) of Regulation (EC) No 765/2008;

(b) 'ECM certificate' means a certificate issued to an entity in charge of maintenance for the purposes of Article 14a(4) of Directive 2004/49/EC;

(c) 'certification body' means a body, designated in accordance with Article 10, responsible for the certification of entities in charge of maintenance, on the basis of the criteria in Annex II;

(d) 'freight wagon' means a non-self-propelled vehicle designed for the purpose of transporting freight or other materials to be used for activities such as construction or infrastructure maintenance;

(e) 'maintenance workshop' means a mobile or fixed entity composed of staff, including those with management responsibility, tools and facilities organised to deliver maintenance of vehicles, parts, components or sub-assemblies of vehicles;

- (f) 'release to service' means the assurance given to the fleet maintenance manager by the entity delivering the maintenance that maintenance has been delivered according to the maintenance orders;
- (g) 'return to operation' means the assurance, based on a release to service, given to the user, such as a railway undertaking or a keeper, by the entity in charge of maintenance that all appropriate maintenance works have been completed and the wagon, previously removed from operation, is in a condition to be used safely, possibly subject to temporary restrictions of use.

#### Article 4

##### Maintenance system

1. The maintenance system shall be composed of the following functions:
  - (a) the management function, which supervises and coordinates the maintenance functions referred to in points (b) to (d) and ensures the safe state of the freight wagon in the railway system;
  - (b) the maintenance development function, which is responsible for the management of the maintenance documentation, including the configuration management, based on design and operational data as well as on performance and return on experience;
  - (c) the fleet maintenance management function, which manages the freight wagon's removal for maintenance and its return to operation after maintenance; and
  - (d) the maintenance delivery function, which delivers the required technical maintenance of a freight wagon or parts of it, including the release to service documentation.
2. The entity in charge of maintenance shall ensure that the functions referred to in paragraph 1 comply with the requirements and assessment criteria set out in Annex III.
3. The entity in charge of maintenance shall carry out the management function itself, but may outsource the maintenance functions referred to in points (b) to (d) of paragraph 1, or parts of them, to other contracting parties subject to the provisions of Article 8. Where it resorts to outsourcing, the entity in charge of maintenance shall ensure that the principles set out in Annex I are applied.
4. Regardless of the outsourcing arrangements in place, the entity in charge of maintenance shall be responsible for the outcome of the maintenance activities it manages and shall establish a system to monitor performance of those activities.

#### Article 5

##### Relationships between parties involved in the maintenance process

1. Each railway undertaking or infrastructure manager shall ensure that the freight wagons it operates, before their departure, have a certified entity in charge of maintenance and that the use of the wagon corresponds to the scope of the certificate.
2. All parties involved in the maintenance process shall exchange relevant information about maintenance in accordance with the criteria listed in sections I.7 and I.8 of Annex III.
3. Following contractual arrangements, a railway undertaking may request information for operational purposes on the maintenance of a freight wagon. The entity in charge of the maintenance of the freight wagon shall respond to such requests either directly or through other contracting parties.
4. Following contractual arrangements, an entity in charge of maintenance may request information on the operation of a freight wagon. The railway undertaking or the infrastructure manager shall respond to such requests either directly or through other contracting parties.
5. All contracting parties shall exchange information on safety-related malfunctions, accidents, incidents, near-misses and other dangerous occurrences as well as on any possible restriction on the use of freight wagons.
6. The certificates of entities in charge of maintenance shall be accepted as proof of the ability of a railway undertaking or infrastructure manager to meet the requirements governing maintenance and the control of contractors and suppliers specified in Annex II, points B.1, B.2, B.3 and C.1, to Commission Regulation (EU) No 1158/2010 of 9 December 2010 on a common safety method for assessing conformity with the requirements for obtaining railways safety certificates<sup>(1)</sup> and Commission Regulation (EU) No 1169/2010 of 10 December 2010 on a common safety method for assessing conformity with the requirements for obtaining a railways safety authorisation<sup>(2)</sup>, unless the national safety authority can demonstrate the existence of a substantial safety risk.
7. If a contracting party, in particular a railway undertaking, has a justified reason to believe that a particular entity in charge of maintenance does not comply with the requirements of Article 14a(3) of Directive 2004/49/EC or with the certification requirements of this Regulation, it shall promptly inform the certification body thereof. The certification body shall take appropriate action to check if the claim of non-compliance is justified and shall inform the parties involved (including the competent national safety authority if relevant) of the results of its investigation.

<sup>(1)</sup> OJ L 326, 10.12.2010, p. 11.

<sup>(2)</sup> OJ L 327, 11.12.2010, p. 13.

8. When there is a change of entity in charge of maintenance, the registration holder as indicated in Article 33(3) of Directive 2008/57/EC of the European Parliament and of the Council<sup>(1)</sup>, shall inform in due time the registration entity, as defined in Article 4(1) of Commission Decision 2007/756/EC<sup>(2)</sup>, so that the latter may update the national vehicle register.

The former entity in charge of maintenance shall deliver the maintenance documentation to either the registration holder or the new entity in charge of maintenance.

The former entity in charge of maintenance is relieved of its responsibilities when it is removed from the national vehicle register. If on the date of de-registration of the former entity in charge of maintenance any new entity has not acknowledged its acceptance of entity in charge of maintenance status, the registration of the vehicle is suspended.

#### Article 6

##### Certification bodies

1. ECM certificates shall be awarded by any competent certification body, chosen by the applicant entity in charge of maintenance.

2. Member States shall ensure that the certification bodies comply with the general criteria and principles set out in Annex II and with any subsequent sectoral accreditation schemes.

3. Member States shall take the measures necessary to ensure that decisions taken by the certification bodies are subject to judicial review.

4. In order to harmonise approaches to the assessment of applications, the certification bodies shall cooperate with each other both within the Member States and across the Union.

5. The Agency shall organise and facilitate cooperation between the certification bodies.

#### Article 7

##### System of certification for entities in charge of maintenance

1. Certification shall be based on an assessment of the ability of the entity in charge of maintenance to meet the relevant requirements in Annex III and to apply them consistently. It shall include a system of surveillance to ensure continuing compliance with the applicable requirements after award of the ECM certificate.

2. The entities in charge of maintenance shall apply for certification using the relevant form in Annex IV and providing documentary evidence of the procedures specified in Annex III. They shall promptly submit all supplementary information requested by the certification body. In assessing applications, certification bodies shall apply the requirements and assessment criteria set out in Annex III.

3. The certification body shall take a decision no later than 4 months after all the information required and any supplementary information requested has been submitted to it by the entity in charge of maintenance applying for the certificate. The certification body shall undertake the necessary assessment at the site or sites of the entity in charge of maintenance prior to the award of the certificate. The decision on the award of the certificate shall be communicated to the entity in charge of maintenance using the relevant form in Annex V.

4. An ECM certificate shall be valid for a period up to 5 years. The holder of the certificate shall without delay inform the certification body of all significant changes in the circumstances applying at the time the original certificate was awarded to allow the certification body to decide whether to amend, renew or revoke it.

5. The certification body shall set out in detail the reasons on which each of its decisions is based. The certification body shall notify its decision and the reasons to the entity in charge of maintenance, together with an indication of the process, time limit for appeal and the contact details of the appeal body.

6. The certification body shall conduct surveillance at least once a year at selected sites, geographically and functionally representative of all the activities of those entities in charge of maintenance it has certified, to verify that the entities still satisfy the criteria set out in Annex III.

7. If the certification body finds that an entity in charge of maintenance no longer satisfies the requirements on the basis of which it issued the ECM certificate, it shall agree an improvement plan with the entity in charge of maintenance, or limit the scope of application of the certificate, or suspend the certificate, depending on the degree of non-compliance.

In the event of continuous non-compliance with the certification requirements or any improvement plan, the certification body shall limit the scope of or revoke the ECM certificate, giving reasons for its decision, together with an indication of the process and time limit for appeal and the contact details of the appeal body.

8. When a railway undertaking or an infrastructure manager applies for a safety certificate or safety authorisation, the following shall apply concerning the freight wagons it uses:

(a) where the freight wagons are maintained by the applicant, either the applicant shall include as part of its application a valid ECM certificate, if available, or its capacity as entity in charge of maintenance shall be assessed as part of its application for a safety certificate or safety authorisation;

(b) where the freight wagons are maintained by parties other than the applicant, the applicant shall ensure, through its safety management system, the control of all risks related to its activity, including the use of such wagons, whereby, in particular, the provisions of Article 5 of this Regulation shall apply.

<sup>(1)</sup> OJ L 191, 18.7.2008, p. 1.

<sup>(2)</sup> OJ L 305, 23.11.2007, p. 30.

Certification bodies and national safety authorities shall conduct an active exchange of views in all circumstances in order to avoid any duplication of assessment.

#### Article 8

##### **System of certification for outsourced maintenance functions**

1. Where the entity in charge of maintenance decides to outsource one or more of the functions referred to in Article 4(1)(b), (c) and (d), or parts of them, voluntary certification of the contractor under the certification system of this Regulation shall create a presumption of conformity of the entity in charge of maintenance with the relevant requirements set out in Annex III, as far as these requirements are covered by the voluntary certification of the contractor. In the absence of such certification, the entity in charge of maintenance shall demonstrate to the certification body how it complies with all the requirements set out in Annex III with regard to the functions it decides to outsource.

2. Certification in respect of outsourced maintenance functions, or parts of them, shall be issued by the certification bodies, following the same procedures in Articles 6, 7, and 10(3), adapted to the specific case of the applicant. They shall be valid throughout the Union.

In assessing applications for certificates in respect of outsourced maintenance functions, or parts of them, certification bodies shall follow the principles set out in Annex I.

#### Article 9

##### **Role of the supervision regime**

If a national safety authority has a justified reason to believe that a particular entity in charge of maintenance does not comply with the requirements of Article 14a(3) of Directive 2004/49/EC or with the certification requirements of this Regulation, it shall immediately take the necessary decision and inform the Commission, the Agency, other competent authorities, the certification body and other interested parties of its decision.

#### Article 10

##### **Provision of information to the Commission and the Agency**

1. By no later than 30 November 2011, Member States shall inform the Commission whether the certification bodies are accredited bodies, recognised bodies or national safety authorities. They shall also notify any change in this situation to the Commission within 1 month of the change.

2. By no later than 31 May 2012, Member States shall notify the Agency of the certification bodies recognised. The accreditation bodies as defined in Regulation (EC) No 765/2008 shall

inform the Agency of the certification bodies accredited. Any change shall also be notified to the Agency within 1 month of the change.

3. Certification bodies shall notify the Agency of all issued, amended, renewed or revoked ECM certificates or certificates for specific functions according to Article 4(1), within 1 week from its decision, using the forms in Annex V.

4. The Agency shall keep a record of all information notified under paragraphs 2 and 3 and shall make it publicly available.

#### Article 11

##### **Amendment to Regulation (EC) No 653/2007**

Annex I to Regulation (EC) No 653/2007 is replaced by the text set out in Annex VI to this Regulation.

#### Article 12

##### **Transitional provisions**

1. The following transitional provisions shall apply without prejudice to Article 9.

2. Starting from 31 May 2012, any ECM certificate shall be issued in accordance with this Regulation to entities in charge of maintenance for freight wagons, without prejudice to Article 14a(8) of Directive 2004/49/EC.

3. Certificates issued by a certification body by no later than 31 May 2012 on the basis of principles and criteria equivalent to those of the Memorandum of Understanding establishing the basic principles of a common system of certification of entities in charge of maintenance for freight wagons, signed by Member States on 14 May 2009, shall be recognised as being equivalent to ECM certificates issued under this Regulation for their original validity period until at the latest 31 May 2015.

4. Certificates issued by a certification body to entities in charge of maintenance by no later than 31 May 2012 on the basis of national laws existing before the entry into force of this Regulation and equivalent to this Regulation, in particular Articles 6 and 7 and Annexes I and III, shall be recognised as being equivalent to ECM certificates issued under this Regulation for their original period of validity until at the latest 31 May 2015.

5. Certificates issued to maintenance workshops by no later than 31 May 2014 on the basis of national laws existing before the entry into force of this Regulation and equivalent to this Regulation shall be recognised as being equivalent to certificates

for maintenance workshops taking on the maintenance delivery function issued under this Regulation for their original period of validity until at the latest 31 May 2017.

6. Without prejudice to paragraphs 3 to 5, entities in charge of maintenance for freight wagons registered in the national vehicle register by no later than 31 May 2012 shall be certified in accordance with this Regulation by no later than 31 May 2013. During this period, self declarations of conformity of entities in charge of maintenance to the relevant requirements of the present Regulation or of the Memorandum of Understanding establishing the basic principles of a common system of certification of entities in charge of maintenance for freight wagons, signed by Member States on

14 May 2009 shall be recognised as being equivalent to ECM certificates issued under this Regulation.

7. Railway undertakings and infrastructure managers which are already certified in accordance with Articles 10 and 11 of Directive 2004/49/EC by no later than 31 May 2012 need not apply for an ECM certificate for the original period of validity of their certificates for maintaining the wagons they are responsible for as entity in charge of maintenance.

#### *Article 13*

#### **Entry into force**

This Regulation shall enter into force on the 20th day following the date of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 10 May 2011.

*For the Commission*

*The President*

José Manuel BARROSO

---

## ANNEX I

**Principles to be used for organisations applying for a certificate in respect of maintenance functions outsourced by an entity in charge of maintenance**

1. For certification of an entity or organisation taking on one or more maintenance functions of an entity in charge of maintenance (maintenance development, fleet maintenance management, maintenance delivery) or parts of them, the following requirements and assessment criteria contained in Annex III apply:
    - (a) requirements and assessment criteria set out in section I of Annex III, adapted to the organisation's type and extent of service;
    - (b) requirements and assessment criteria describing the specific maintenance function or functions.
  2. For certification of a maintenance workshop taking on the maintenance delivery function, the following requirements and assessment criteria contained in Annex III apply:
    - (a) the requirements and assessment criteria set out in section I of Annex III, which must be adapted to the specific activity of a maintenance workshop providing the maintenance delivery function;
    - (b) the processes describing the maintenance delivery function.
-

## ANNEX II

**Criteria for accreditation or recognition of certification bodies involved in the assessment and award of ECM certificates**

## 1. ORGANISATION

The certification body must document its organisational structure, showing the duties, responsibilities and authorities of management and other certification staff and any committees. Where the certification body is a defined part of a legal entity, the structure must include the line of authority and the relationship to other parts within the same legal entity.

## 2. INDEPENDENCE

The certification body must be organisationally and functionally independent in its decision-making from railway undertakings, infrastructure managers, keepers, manufacturers and entities in charge of maintenance and shall not provide similar services.

The independence of the staff responsible for the certification checks must be guaranteed. No official must be remunerated on the basis of either the number of checks performed or the results of those checks.

## 3. COMPETENCE

The certification body and the staff deployed must have the required professional competence, in particular regarding the organisation of the maintenance of freight wagons and the appropriate maintenance system.

The certification body must demonstrate:

- (a) sound experience in assessing management systems;
- (b) knowledge of the applicable requirements of the legislation.

The team established for surveillance of the entities in charge of maintenance must be experienced in the relevant fields, and in particular must demonstrate:

- (a) appropriate knowledge and understanding of the applicable European legislation;
- (b) relevant technical competence;
- (c) a minimum of 3 years of relevant experience in maintenance in general;
- (d) sufficient experience in freight wagon maintenance or at least in maintenance in equivalent industrial sectors.

## 4. IMPARTIALITY

The certification body's decisions must be based on objective evidence of conformity or non-conformity obtained by the certification body, and must not be influenced by other interests or by other parties.

## 5. RESPONSIBILITY

The certification body is not responsible for ensuring ongoing conformity with the requirements for certification.

The certification body has the responsibility to assess sufficient objective evidence upon which to base a certification decision.

## 6. OPENNESS

A certification body needs to provide public access to, or disclosure of, appropriate and timely information about its audit process and certification process. It also needs to provide information about the certification status (including the granting, extension, maintenance, renewal, suspension, reduction in scope, or withdrawal of certification) of any organisation, in order to develop confidence in the integrity and credibility of certification. Openness is a principle of access to, or disclosure of, appropriate information.

## 7. CONFIDENTIALITY

To gain the privileged access to information needed to assess conformity with the requirements for certification adequately, a certification body must keep confidential any commercial information about a client.

#### 8. RESPONSIVENESS TO COMPLAINTS

The certification body must establish a procedure to handle complaints about decisions and other certification-related activities.

#### 9. LIABILITY AND FINANCING

The certification body must be able to demonstrate that it has evaluated the risks arising from its certification activities and that it has adequate arrangements (including insurance or reserves) to cover liabilities arising from its operations in each field of its activities and the geographic areas in which it operates.

---

## ANNEX III

**Requirements and assessment criteria for organisations applying for an ECM certificate or for a certificate in respect of maintenance functions outsourced by an entity in charge of maintenance****I. Management function requirements and assessment criteria**

1. Leadership — *commitment to the development and implementation of the maintenance system of the organisation and to the continuous improvement of its effectiveness*

The organisation must have procedures for:

- (a) establishing a maintenance policy appropriate to the organisation's type and extent of service and approved by the organisation's chief executive or his or her representative;
- (b) ensuring that safety targets are established, in line with the legal framework and consistent with an organisation's type, extent and relevant risks;
- (c) assessing its overall safety performance in relation to its corporate safety targets;
- (d) developing plans and procedures for reaching its safety targets;
- (e) ensuring the availability of the resources needed to perform all processes to comply with the requirements of this Annex;
- (f) identifying and managing the impact of other management activities on the maintenance system;
- (g) ensuring that senior management is aware of the results of performance monitoring and audits and takes overall responsibility for the implementation of changes to the maintenance system;
- (h) ensuring that staff and staff representatives are adequately represented and consulted in defining, developing, monitoring and reviewing the safety aspects of all related processes that may involve staff.

2. Risk assessment — *a structured approach to assess risks associated with the maintenance of freight wagons, including those directly arising from operational processes and the activities of other organisations or persons, and to identify the appropriate risk control measures*

2.1. The organisation must have procedures for:

- (a) analysing risks relevant to the extent of operations carried out by the organisation, including the risks arising from defects and construction non-conformities or malfunctions throughout the lifecycle;
- (b) evaluating the risks referred to in point (a);
- (c) developing and putting in place risk control measures.

2.2. The organisation must have procedures and arrangements in place to recognise the need and commitment to collaborate with keepers, railway undertakings, infrastructure managers, or other interested parties.

2.3. The organisation must have risk assessment procedures to manage changes in equipment, procedures, organisation, staffing or interfaces, and to apply Commission Regulation (EC) No 352/2009 <sup>(1)</sup>.

2.4. When assessing risk, an organisation must have procedures to take into account the need to determine, provide and sustain an appropriate working environment which conforms to Union and national legislation, in particular Council Directive 89/391/EEC <sup>(2)</sup>.

3. Monitoring — *a structured approach to ensure that risk control measures are in place, working correctly and achieving the organisation's objectives*

3.1. The organisation must have a procedure to regularly collect, monitor and analyse relevant safety data, including:

- (a) the performance of relevant processes;
- (b) the results of processes (including all contracted services and products);

<sup>(1)</sup> OJ L 108, 29.4.2009, p. 4.

<sup>(2)</sup> OJ L 183, 29.6.1989, p. 1.

- (c) the effectiveness of risk control arrangements;
  - (d) information on experience, malfunctions, defects and repairs arising from day-to-day operation and maintenance.
- 3.2. The organisation must have procedures to ensure that accidents, incidents, near-misses and other dangerous occurrences are reported, logged, investigated and analysed.
- 3.3. For a periodic review of all processes, the organisation must have an internal auditing system which is independent, impartial and acts in a transparent way. This system must have procedures in place to:
- (a) develop an internal audit plan, which can be revised depending on the results of previous audits and monitoring of performance;
  - (b) analyse and evaluate the results of the audits;
  - (c) propose and implement specific corrective measures/actions;
  - (d) verify the effectiveness of previous measures/actions.
4. Continuous improvement — *a structured approach to analyse the information gathered through regular monitoring, auditing, or other relevant sources and to use the results to learn and to adopt preventive or corrective measures in order to maintain or improve the level of safety*

The organisation must have procedures to ensure that:

- (a) identified shortcomings are rectified;
  - (b) new safety developments are implemented;
  - (c) internal audit findings are used to bring about improvement in the system;
  - (d) preventive or corrective actions are implemented, when needed, to ensure compliance of the railway system with standards and other requirements throughout the lifecycle of equipment and operations;
  - (e) relevant information relating to the investigation and causes of accidents, incidents, near-misses and other dangerous occurrences is used to learn and, where necessary, to adopt measures in order to improve the level of safety;
  - (f) relevant recommendations from the national safety authority, from the national investigation body and from industry or internal investigations are evaluated and implemented if appropriate;
  - (g) relevant reports/information from railway undertakings/infrastructure managers and keepers or other relevant sources are considered and taken into account.
5. Structure and responsibility — *a structured approach to define the responsibilities of individuals and teams for secure delivery of the organisation's safety objectives*
- 5.1. The organisation must have procedures to allocate responsibilities for all relevant processes throughout the organisation.
- 5.2. The organisation must have procedures to clearly define safety-related areas of responsibility and the distribution of responsibilities to specific functions associated with them as well as their interfaces. These include the procedures indicated above between the organisation and the keepers and, where appropriate, railway undertakings and infrastructure managers.
- 5.3. The organisation must have procedures to ensure that staff with delegated responsibilities within the organisation have the authority, competence and appropriate resources to perform their functions. Responsibility and competence should be coherent and compatible with the given role, and delegation must be in writing.
- 5.4. The organisation must have procedures to ensure the coordination of activities related to relevant processes across the organisation.
- 5.5. The organisation must have procedures to hold those with a role in the management of safety accountable for their performance.
6. Competence management — *a structured approach to ensure that employees have the competences required in order to achieve the organisation's objectives safely, effectively and efficiently in all circumstances*
- 6.1. The organisation must set up a competence management system providing for:
- (a) the identification of posts with responsibility for performing within the system all the processes necessary for compliance with the requirements of this Annex;
  - (b) the identification of posts involving safety tasks;

- (c) the allocation of staff with the appropriate competence to relevant tasks.
- 6.2. Within the organisation's competence management system, there must be procedures to manage the competence of staff, including at least:
- (a) identification of the knowledge, skills and experience required for safety-related tasks as appropriate for the responsibilities;
  - (b) selection principles, including basic educational level, mental aptitude and physical fitness;
  - (c) initial training and qualification or certification of acquired competence and skills;
  - (d) assurance that all staff are aware of the relevance and importance of their activities and how they contribute to the achievement of safety objectives;
  - (e) ongoing training and periodical updating of existing knowledge and skills;
  - (f) periodic checks of competence, mental aptitude and physical fitness where appropriate;
  - (g) special measures in the case of accidents/incidents or long absences from work, as required.
7. Information — *a structured approach to ensure that important information is available to those making judgments and decisions at all levels of the organisation*
- 7.1. The organisation must have procedures to define reporting channels to ensure that, within the entity itself and in its dealings with other actors, including infrastructure managers, railways undertakings and keepers, information on all relevant processes is duly exchanged and submitted to the person having the right role both within its own organisation and in other organisations, in a prompt and clear way.
- 7.2. To ensure an adequate exchange of information, the organisation must have procedures:
- (a) for the receipt and processing of specific information;
  - (b) for the identification, generation and dissemination of specific information;
  - (c) for making available reliable and up-to-date information.
- 7.3. The organisation must have procedures to ensure that key operational information is:
- (a) relevant and valid;
  - (b) accurate;
  - (c) complete;
  - (d) appropriately updated;
  - (e) controlled;
  - (f) consistent and easy to understand (including the language used);
  - (g) made known to staff before it is applied;
  - (h) easily accessible to staff, with copies provided to them where required.
- 7.4. The requirements set out in points 7.1, 7.2 and 7.3 apply in particular to the following operational information:
- (a) checks of the accuracy and completeness of national vehicle registers regarding the identification (including means) and registration of the freight wagons maintained by the organisation;
  - (b) maintenance documentation;
  - (c) information on support provided to keepers and, where appropriate, to other parties, including railway undertakings/infrastructure managers;
  - (d) information on the qualification of staff and subsequent supervision during maintenance development;
  - (e) information on operations (including mileage, type and extent of activities, incidents/accidents) and requests of railway undertakings, keepers and infrastructure managers;
  - (f) records of maintenance performed, including information on deficiencies detected during inspections and corrective actions taken by railway undertakings or by infrastructure managers such as inspections and monitoring undertaken before the departure of the train or en route;
  - (g) release to service and return to operation;
  - (h) maintenance orders;

- (i) technical information to be provided to railway undertakings/infrastructure managers and keepers for maintenance instructions;
  - (j) emergency information concerning situations where the safe state of running is impaired, which may consist of:
    - (i) the imposition of restrictions of use or specific operating conditions for the freight wagons maintained by the organisation or other vehicles of the same series even if maintained by other entities in charge of maintenance, whereby this information should also be shared with all involved parties;
    - (ii) urgent information on safety-related issues identified during maintenance, such as deficiencies detected in a component common to several types or series of vehicles;
  - (k) all relevant information/data needed to submit the annual maintenance report to the certification body and to the relevant customers (including keepers), whereby this report must also be made available upon request to national safety authorities.
8. Documentation — *a structured approach to ensure the traceability of all relevant information*
- 8.1. The organisation must have adequate procedures in place to ensure that all relevant processes are duly documented.
- 8.2. The organisation must have adequate procedures in place to:
- (a) regularly monitor and update all relevant documentation;
  - (b) format, generate, distribute and control changes to all relevant documentation;
  - (c) receive, collect and archive all relevant documentation.
9. Contracting activities — *a structured approach to ensure that subcontracted activities are managed appropriately in order for the organisation's objectives to be achieved*
- 9.1. The organisation must have procedures in place to ensure that safety related products and services are identified.
- 9.2. When making use of contractors and/or suppliers for safety related products and services, the organisation must have procedures in place to verify at the time of selection that:
- (a) contractors, subcontractors and suppliers are competent;
  - (b) contractors, subcontractors and suppliers have a maintenance and management system that is adequate and documented.
- 9.3. The organisation must have a procedure to define the requirements that such contractors and suppliers have to meet.
- 9.4. The organisation must have procedures to monitor the awareness of suppliers and/or contractors of risks they entail to the organisation's operations.
- 9.5. When the maintenance/management system of a contractor or supplier is certified, the monitoring process described in point 3 may be limited to the results of the contracted operational processes referred to in point 3.1(b).
- 9.6. At least the basic principles for the following processes must be clearly defined, known and allocated in the contract between the contracting parties:
- (a) responsibilities and tasks relating to railway safety issues;
  - (b) obligations relating to the transfer of relevant information between both parties;
  - (c) the traceability of safety-related documents.
- II. Requirements and assessment criteria for the maintenance development function**
1. The organisation must have a procedure to identify and manage all maintenance activities affecting safety and safety-critical components.
2. The organisation must have procedures to guarantee conformity with the essential requirements for interoperability, including updates throughout the lifecycle, by:
- (a) ensuring compliance with the specifications related to the basic parameters for interoperability as set out in the relevant technical specifications for interoperability (TSIs);
  - (b) verifying in all circumstances the consistency of the maintenance file with the authorisation of placing-in-service (including any national safety authority requirements), the declarations of conformity to TSIs, the declarations of verification, and the technical file;

- (c) managing any substitution in the course of maintenance in compliance with the requirements of the Directive 2008/57/EC and the relevant TSIs;
  - (d) identifying the need for risk assessment regarding the potential impact of the substitution in question on the safety of the railway system;
  - (e) managing the configuration of all technical changes affecting the system integrity of the vehicle.
3. The organisation must have a procedure to design and to support the implementation of maintenance facilities, equipment and tools specifically developed and required for maintenance delivery. The organisation must have a procedure to check that these facilities, equipment and tools are used, stored and maintained according to their maintenance schedule and in conformity with their maintenance requirements.
4. When freight wagons start operations, the organisation must have procedures to:
- (a) obtain the initial documentation and to collect sufficient information on planned operations;
  - (b) analyse the initial documentation and to provide the first maintenance file, also taking into account the obligations contained in any associated guarantees;
  - (c) ensure that the implementation of the first maintenance file is done correctly.
5. To keep the maintenance file updated throughout the lifecycle of a freight wagon, the organisation must have procedures to:
- (a) collect at least the relevant information in relation to:
    - (i) the type and extent of operations effectively performed, including, but not limited to, operational incidents with a potential to affect the safety integrity of the freight wagon;
    - (ii) the type and extent of operations planned;
    - (iii) the maintenance effectively performed;
  - (b) define the need for updates, taking into account the limit values for interoperability;
  - (c) make proposals for and approve changes and their implementation, with a view to a decision based on clear criteria, taking into account the findings from risk assessment;
  - (d) ensure that the implementation of changes is done correctly.
6. When the competence management process is applied to the maintenance development function, at least the following activities affecting safety must be taken into account:
- (a) assessment of the significance of changes for the maintenance file and proposed substitutions in the course of maintenance;
  - (b) engineering disciplines required for managing the establishment and the changes of maintenance file and the development, assessment, validation and approval of substitutions in the course of maintenance;
  - (c) joining techniques (including welding and bonding), brake systems, wheel sets and draw gear, non-destructive testing techniques and maintenance activities on specific components of freight wagons for the transport of dangerous goods such as tanks and valves.
7. When the documentation process is applied to the maintenance development function, the traceability of at least the following elements needs to be guaranteed:
- (a) the documentation relating to the development, assessment, validation and approval of a substitution in the course of maintenance;
  - (b) the configuration of vehicles, including, but not limited to, components related to safety;
  - (c) records of the maintenance performed;
  - (d) results of studies concerning return on experience;
  - (e) all the successive versions of the maintenance file, including risk assessment;
  - (f) reports on the competence and supervision of maintenance delivery and fleet maintenance management;
  - (g) technical information to be provided to support keepers, railway undertakings and infrastructure managers.

**III. Requirements and assessment criteria for the fleet maintenance management function**

1. The organisation must have a procedure to check the competence, availability and capability of the entity responsible for maintenance delivery before placing maintenance orders. This requires that the maintenance workshops are duly qualified to decide upon the requirements for technical competences in the maintenance delivery function.
2. The organisation must have a procedure for the composition of the work package and for the issue and release of the maintenance order.
3. The organisation must have a procedure to send freight wagons for maintenance in due time.
4. The organisation must have a procedure to manage the removal of freight wagons from operation for maintenance or when defects have been identified.
5. The organisation must have a procedure to define the necessary control measures applied to the maintenance delivered and the release to service of the freight wagons.
6. The organisation must have a procedure to issue a notice to return to operation, taking into account the release to service documentation.
7. When the competence management (CM) process is applied to the fleet maintenance management function, at least the return to operation must be taken into account.
8. When the information process is applied to the fleet maintenance management function, at least the following elements need to be provided to the maintenance delivery function:
  - (a) applicable rules and technical specifications;
  - (b) the maintenance plan for each freight wagon;
  - (c) a list of spare parts, including a sufficiently detailed technical description of each part to allow like-for-like replacement with the same guarantees;
  - (d) a list of materials, including a sufficiently detailed description of their use and the necessary health and safety information;
  - (e) a dossier that defines the specifications for activities affecting safety and contains intervention and in-use restrictions for components;
  - (f) a list of components or systems subject to legal requirements and a list of these requirements (including brake reservoirs and tanks for the transport of dangerous goods);
  - (g) all additional relevant information related to safety according to the risk assessment performed by the organisation.
9. When the information process is applied to the fleet maintenance management function, at least the return to operation, including restrictions on use relevant to users (railway undertakings and infrastructure managers), needs to be communicated to interested parties.
10. When the documentation process is applied to the fleet maintenance management function, at least the following elements need to be recorded:
  - (a) maintenance orders;
  - (b) return to operation, including restrictions on use relevant to railway undertakings and infrastructure managers.

**IV. Requirements and assessment criteria for the maintenance delivery function**

1. The organisation must have procedures to:
  - (a) check the completeness and appropriateness of the information delivered by the fleet maintenance management function in relation to the activities ordered;
  - (b) control the use of the required, relevant maintenance documents and other standards applicable to the delivery of maintenance services in accordance with maintenance orders;
  - (c) ensure that all relevant maintenance specifications in the maintenance orders are available to all involved staff (e.g. they are contained in internal working instructions);
  - (d) ensure that all relevant maintenance specifications, as defined in applicable regulations and specified standards contained in the maintenance orders, are available to all involved staff (e.g. they are contained in internal working instructions).
2. The organisation must have procedures to ensure that:
  - (a) components (including spare parts) and materials are used as specified in the maintenance orders and supplier documentation;

- (b) components and materials are stored, handled and transported in a manner that prevents wear and damage and as specified in the maintenance orders and supplier documentation;
  - (c) all components and materials, including those provided by the customer, comply with relevant national and international rules as well as with the requirements of relevant maintenance orders.
3. The organisation must have procedures to determine, identify, provide, record and keep available suitable and adequate facilities, equipment and tools to enable it to deliver the maintenance services in accordance with maintenance orders and other applicable specifications, ensuring:
  - (a) the safe delivery of maintenance, including the health and safety of maintenance staff;
  - (b) ergonomics and health protection, also including the interfaces between users and information technology systems or diagnostic equipment.
4. Where necessary to ensure valid results, the organisation must have procedures to ensure that its measuring equipment is:
  - (a) calibrated or verified at specified intervals, or prior to use, against international, national or industrial measurement standards — where no such standards exist, the basis used for calibration or verification must be recorded;
  - (b) adjusted or re-adjusted as necessary;
  - (c) identified to enable the calibration status to be determined;
  - (d) safeguarded from adjustments that would invalidate the measurement result;
  - (e) protected from damage and deterioration during handling, maintenance and storage.
5. The organisation must have procedures to ensure that all facilities, equipment and tools are correctly used, calibrated, preserved and maintained in accordance with documented procedures.
6. The organisation must have procedures to check that the performed maintenance tasks are in accordance with the maintenance orders and to issue the notice to release to service that includes eventual restrictions of use.
7. When the risk assessment process (in particular point 2.4 of section I) is applied to the maintenance delivery function, the working environment includes not only the workshops where maintenance is done but also the tracks outside the workshop buildings and all places where maintenance activities are performed.
8. When the competence management process is applied to the maintenance delivery function, at least the following activities affecting safety must be taken into account:
  - (a) joining techniques (including welding and bonding);
  - (b) non-destructive testing;
  - (c) final vehicle testing and release to service;
  - (d) maintenance activities on brake systems, wheel sets and draw gear and maintenance activities on specific components of freight wagons for the transport of dangerous goods, such as tanks, valves, etc.;
  - (e) other identified specialist areas affecting safety.
9. When the information process is applied to the maintenance delivery function, at least the following elements must be provided to the fleet maintenance management and maintenance development functions:
  - (a) works performed in accordance with the maintenance orders;
  - (b) any possible fault or defect regarding safety which is identified by the organisation;
  - (c) the release to service.
10. When the documentation process is applied to the maintenance delivery function, at least the following elements must be recorded:
  - (a) clear identification of all facilities, equipments and tools related to activities affecting safety;
  - (b) all maintenance works performed, including personnel, tools, equipment, spare parts and materials used and taking into account:

- (i) relevant national rules where the organisation is established;
  - (ii) requirements laid down in the maintenance orders, including requirements regarding records;
  - (iii) final testing and decision regarding release to service;
  - (c) the control measures required by maintenance orders and the release to service;
  - (d) the results of calibration and verification, whereby, for computer software used in the monitoring and measurement of specified requirements, the ability of the software to perform the desired task must be confirmed prior to initial use and reconfirmed as necessary;
  - (e) the validity of the previous measuring results when a measuring instrument is found not to conform to requirements.
-

## ANNEX IV


**APPLICATION FOR AN ENTITY IN CHARGE OF MAINTENANCE  
CERTIFICATE**

Application for a certificate confirming acceptance of the maintenance system of an entity in charge of maintenance (ECM)  
in conformity with Directive 2004/49/EC and Regulation (EU) No 445/2011

**Certification body contact information**

- 1.1 Organisation addressed for the application \_\_\_\_\_
- 1.2 Certification body reference number \_\_\_\_\_
- 1.3 Complete postal address (street, postal code,  
city, country) \_\_\_\_\_  
\_\_\_\_\_

**Applicant information**

- 2.1 Legal title \_\_\_\_\_
- 2.2 Complete postal address (street, postal code,  
city, country) \_\_\_\_\_  
\_\_\_\_\_
- 2.3 Phone number \_\_\_\_\_ 2.4 Fax number \_\_\_\_\_
- 2.5 E-mail address \_\_\_\_\_ 2.6 Website \_\_\_\_\_
- 2.7 Registration business number \_\_\_\_\_ 2.8 VAT No \_\_\_\_\_
- 2.9 Other information \_\_\_\_\_

**Contact person information**

- 3.1 Family name and first name \_\_\_\_\_
- 3.2 Complete postal address (street, postal code,  
city, country) \_\_\_\_\_  
\_\_\_\_\_
- 3.3 Phone number \_\_\_\_\_ 3.4 Fax number \_\_\_\_\_
- 3.5 E-mail address \_\_\_\_\_

**Application details**

- 4.1 Application reference (given by the applicant)

**This application is for a**

- 4.1.1 new certificate  4.1.2 updated/amended certificate
- 4.1.3 renewed certificate

**Operational details**

- Type of company 5.1 RU/IM  5.2 Keeper
- 5.3 others  specify: \_\_\_\_\_

Scope of ECM activities

- 5.4 Covers tank wagons for dangerous goods: YES/NO  
Covers other wagons specialised in transport of dangerous goods: YES/NO

ECM operational functions

	own	partially	fully
5.5 Maintenance development	5.4.1 <input type="checkbox"/>	5.4.2 <input type="checkbox"/>	5.4.3 <input type="checkbox"/>
5.6 Fleet maintenance management	5.5.1 <input type="checkbox"/>	5.5.2 <input type="checkbox"/>	5.5.3 <input type="checkbox"/>
5.7 Maintenance delivery	5.6.1 <input type="checkbox"/>	5.6.2 <input type="checkbox"/>	5.6.3 <input type="checkbox"/>

**Submitted documents**

- 6.1 Maintenance system documentation
- 6.2 Other  specify: \_\_\_\_\_

**Signatures**

**Applicant** \_\_\_\_\_  
 (first name, family name)

Date \_\_\_\_\_ Signature \_\_\_\_\_

**Certification body** \_\_\_\_\_

Internal reference number \_\_\_\_\_ Date application received \_\_\_\_\_

Date \_\_\_\_\_ Signature \_\_\_\_\_

*SPACE RESERVED FOR THE ADDRESSED OFFICE/AUTHORITY*



### APPLICATION FOR A MAINTENANCE FUNCTIONS CERTIFICATE

Application for a certificate confirming acceptance of the maintenance system within the European Union in conformity with Directive 2004/49/EC and Regulation (EU) No 445/2011

#### Certification body contact information

- 1.1 Organisation addressed for the application \_\_\_\_\_
- 1.2 Certification body reference number \_\_\_\_\_
- 1.3 Complete postal address (street, postal code, city, country) \_\_\_\_\_  
\_\_\_\_\_

#### Applicant information

- 2.1 Legal title \_\_\_\_\_
- 2.2 Complete postal address (street, postal code, city, country) \_\_\_\_\_  
\_\_\_\_\_
- 2.3 Phone number \_\_\_\_\_ 2.4 Fax number \_\_\_\_\_
- 2.5 E-mail address \_\_\_\_\_ 2.6 Website \_\_\_\_\_
- 2.7 Registration business number \_\_\_\_\_ 2.8 VAT No \_\_\_\_\_
- 2.9 Other information \_\_\_\_\_

#### Contact person information

- 3.1 Family name and first name \_\_\_\_\_
- 3.2 Complete postal address (street, postal code, city, country) \_\_\_\_\_  
\_\_\_\_\_
- 3.3 Phone number \_\_\_\_\_ 3.4 Fax number \_\_\_\_\_
- 3.5 E-mail address \_\_\_\_\_

#### Application details

- 4.1 Application reference (given by the applicant)

#### This application is for a

- 4.1.1 new certificate  4.1.2 updated/amended certificate
- 4.1.3 renewed certificate

#### Operational details

- Type of company 5.1 RU/IM  5.2 Keeper
- 5.3 others  specify: \_\_\_\_\_
- Scope of activities
- 5.4 Covers tank wagons for dangerous goods: YES/NO  
Covers other wagons specialised in transport of dangerous goods: YES/NO
- Maintenance functions

- 5.5 Maintenance development YES  NO  Partial
- 5.6 Fleet maintenance management YES  NO  Partial
- 5.7 Maintenance delivery YES  NO  Partial

For partial maintenance functions, the sub-functions for which this application is submitted (cf. list in Annex III to Regulation (EU) No 445/2011):

---



---



---

**Submitted documents**

- 6.1 Maintenance system documentation
- 6.2 Other  specify: \_\_\_\_\_

**Signatures**

**Applicant** \_\_\_\_\_

(first name, family name)

Date \_\_\_\_\_ Signature \_\_\_\_\_

**Certification body** \_\_\_\_\_

Internal reference number \_\_\_\_\_  
Date application received \_\_\_\_\_

Date \_\_\_\_\_ Signature \_\_\_\_\_

*SPACE RESERVED FOR THE ADDRESSED OFFICE/AUTHORITY*

\_\_\_\_\_

## ANNEX V

**ENTITY IN CHARGE OF MAINTENANCE CERTIFICATE**

confirming acceptance of the maintenance system of an entity in charge of maintenance (ECM) within the European Union in conformity with Directive 2004/49/EC and Regulation (EU) No 445/2011

**1. CERTIFIED ENTITY IN CHARGE OF MAINTENANCE**

Legal title:	
Commercial designation or acronym (voluntary)	
Complete postal address (street, postal code, city, country)	
Registration business number:	VAT No:

**2. CERTIFICATION BODY**

Legal title:
Complete postal address (street, postal code, city, country)
Certification body reference number:

**3. CERTIFICATE INFORMATION**

This is a <ul style="list-style-type: none"> <li>— new certificate <input type="checkbox"/></li> <li>— renewed certificate <input type="checkbox"/></li> <li>— updated/amended certificate <input type="checkbox"/></li> </ul>	ECM Identification Number of the previous certificate:
Validity from:	to:
Type of company: (railway undertaking, keeper, maintenance supplier, etc.)	

**4. SCOPE OF ECM ACTIVITIES**

Covers tank wagons for dangerous goods	YES/NO
Covers other wagons specialised in transport of dangerous goods	YES/NO

**5. ADDITIONAL INFORMATION**

--

Date issued and validity

--

Signature

--

Internal reference number

--

Certification body's stamp

--



### MAINTENANCE FUNCTIONS CERTIFICATE

confirming acceptance of the maintenance system within the European Union in conformity with Directive 2004/49/EC and Regulation (EU) No 445/2011

#### 1. CERTIFIED ORGANISATION

Legal title:	
Commercial designation or acronym (voluntary)	
Complete postal address (street, postal code, city, country)	
Registration business number:	VAT No:

#### 2. CERTIFICATION BODY

Legal title:
Complete postal address (street, postal code, city, country)
Certification body reference number:

#### 3. CERTIFICATE INFORMATION

This is a      — new certificate <input type="checkbox"/> — renewed certificate <input type="checkbox"/> — updated/amended certificate <input type="checkbox"/>	ECM Identification Number of the previous certificate:
Validity from:	to:
Type of company: (railway undertaking, keeper, maintenance supplier, etc.)	

#### 4. SCOPE OF MAINTENANCE ACTIVITIES

Covers tank wagons for dangerous goods	YES/NO
Covers other wagons specialised in transport of dangerous goods	YES/NO

#### 5. MAINTENANCE FUNCTIONS

<b>Maintenance development</b>	YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
<b>Fleet maintenance management</b>	YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
<b>Maintenance delivery</b>	YES	<input type="checkbox"/>	NO	<input type="checkbox"/>

For partial maintenance functions, the sub-functions for which this certificate is valid (cf. list in Annex III to Regulation (EU) No 445/2011):

---



---



---



---

**6. ADDITIONAL INFORMATION**

Date issued and validity

Signature

Internal reference number

Certification body's stamp

\_\_\_\_\_

## ANNEX VI

## ANNEX I

**SAFETY CERTIFICATE — PART A**

Safety Certificate confirming acceptance of the Safety Management System within the European Union in conformity with Directive 2004/49/EC and applicable national legislation

EU IDENTIFICATION NUMBER:

**1. CERTIFIED RAILWAY UNDERTAKING**

Legal title:	
Railway undertaking name:	Acronym:
National registration number:	VAT No:

**2. ORGANISATION ISSUING CERTIFICATE**

Organisation:
Country:

**3. CERTIFICATE INFORMATION**

This is a — new certificate <input type="checkbox"/> — renewed certificate <input type="checkbox"/> — updated/amended certificate <input type="checkbox"/>	ECM (entity in charge of maintenance) certificate Yes/No
	ECM certificate number:
	EU Identification Number of the previous Part A certificate
Validity from:	to:
Type(s) of service(s):	
Transportation volume:	
Railway undertaking size:	
Scope of ECM activities:	
Covers tank wagons for dangerous goods: YES/NO	
Covers other wagons specialised in transport of dangerous goods: YES/NO	

**4. APPLICABLE NATIONAL LEGISLATION**

**5. ADDITIONAL INFORMATION**


Date issued

Signature \_\_\_\_\_

Internal reference number

Authority's stamp

\_\_\_\_\_

# Annex B: Draft Regulations

See next page.

**2012 No.**

**HEALTH AND SAFETY**

**The Railways and Other Guided Transport Systems  
(Miscellaneous Amendments) Regulations 2012[X]**

*Made* - - - - \*\*\*  
*Laid before Parliament* \*\*\*  
*Coming into force* - - \*\*\*

The Secretary of State makes the following Regulations in exercise of the powers conferred by—

- (a) section 2(2) of, as read with paragraph 1A of Schedule 2 to, the European Communities Act 1972(a); and
- (b) sections 15(1), (2), (4), (5), 47(2), and 82(3)(a) of, and paragraphs 1(1)(a) and (c), 1(2) and 6(2) of Schedule 3 to, the Health and Safety at Work etc. Act 1974(b).

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to railways and railway transport(c). These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State expedient for the references to Commission Regulation (EU) No 36/2010(d) to be construed as a reference to that Regulation as amended from time to time.

These Regulations are made for the purpose of giving effect without modifications to proposals submitted to the Secretary of State by the Office of Rail Regulation under paragraph 2(5) of Schedule 3 to the Railways Act 2005(e), in respect of which the Office of Rail Regulation has carried out consultations in accordance with paragraph 2 of Schedule 3 of the Railways Act 2005.

**Citation and commencement**

**1.** These Regulations may be cited as the Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2012 and come into force on [XXXXX].

---

(a) 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a). The enabling powers of section 2(2) were extended by virtue of the amendment of section 1(2) of the 1972 Act by section 1 of the European Economic Area Act 1993 (c.51). Paragraph 1A of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006 (c.51), section 28.

(b) 1974 c.37; section 15 was amended by the Employment Protection Act 1975 (c.71), section 116 and Schedule 15, paragraph 6; the general purposes of Part I referred to in section 15(1) were extended by section 117 of the Railways Act 1993 (c.43); section 15(1) was amended by S.I. 2002/794, article 5(2) and Schedule 2; there are other amendments but none is relevant to these Regulations.

(c) S.I. 1996/266, to which there are amendments not relevant to these Regulations.

(d) O.J. No. L13, 19.01.2010, p1.

(e) 2005 c.14, to which there are amendments not relevant to these Regulations.

## **Amendments to the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006**

2.—(1) In regulation 2 of the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006(a)—

(a) after the definition of “Enforcing Authority Regulations”, insert—

““entity in charge of maintenance” has the same meaning as in regulation 2(1) of the Railways and Other Guided Transport Systems (Safety) Regulations 2006(b);”;

(b) after the definition of “light maintenance services”, insert—

““mainline railway” has the same meaning as in regulation 2(1) of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;”.

(2) After regulation 4(4), insert—

“(4A) Notwithstanding paragraph (3), where an entity in charge of maintenance performs maintenance on a vehicle that is to be placed in service or is used on the mainline railway, the operation of a railway specified in regulation 3(2)(a) shall include such maintenance performed on a vehicle within any premises referred to in paragraph (3).”.

(3) After regulation 7 (transitional provisions), insert—

### **“Review**

8.—(1) Before the end of each review period, the Secretary of State must—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) “Review period” means—

- (a) the period of five years beginning with the day on which the Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 201[X] come into force; and
- (b) subject to paragraph (4), each successive period of five years.

(4) If a report under this regulation is published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.”.

## **Amendments to the Railways and Other Guided Transport Systems (Safety) Regulations 2006**

3.—(1) The Railways and Other Guided Transport Systems (Safety) Regulations 2006(c) are amended as follows.

(2) In regulation 2(1) (Interpretation and application)—

- 
- (a) S.I. 2006/557, as amended by S.I. 2008/2323, to which there are amendments not relevant to these Regulations.
  - (b) S.I. 2006/599, as amended by S.I. 2007/3531 and S.I. 2011/1860 and to which there are amendments not relevant to these Regulations.
  - (c) S.I. 2006/599, as amended by S.I. 2007/3531 and S.I. 2011/1860 and to which there are amendments not relevant to these Regulations.

- (a) after the definition of “carriageway” insert—
- ““certification body” has the same meaning as in the ECM Regulation;”;
- (b) the definitions of “deemed safety authorisation” and “deemed safety certificate” are omitted;
- (c) after the definition of “the Directive” insert—
- ““ECM certificate” means a certificate issued in accordance with the ECM Regulation to an entity in charge of maintenance for the purposes of Article 14a(4) of the Directive;
- “ECM Regulation” means Commission Regulation (EU) No 445/2011 on a system of certification of entities in charge of maintenance for freight wagons(a);”;
- (d) after the definition of “factory” insert—
- ““freight wagon” means a vehicle that is not self-propelled and which is designed for transporting freight or other materials to be used for activities such as construction or infrastructure maintenance;”;
- (e) omit the definition of “heritage railway”;
- (f) for the definition of “mainline railway” substitute—
- ““mainline railway” means any railway except for any railway or part of a railway—
- (a) that the Office of Rail Regulation determines in accordance with regulation 2A (determination of mainline railway) falls within one of the categories listed in paragraph (1) of that regulation; or
- (b) which is privately owned infrastructure that exists solely for use by the infrastructure owner for its own freight operations;”;
- (g) in the definition of “national safety rules”, for paragraph (b) substitute—
- “(b) which contain requirements (including common operating rules) relating to railway safety which are imposed on more than one transport undertaking operating on the mainline railway;”;
- (h) for the definition of “placed in service”, substitute—
- ““placed in service” means when a vehicle or infrastructure, having been constructed, upgraded or renewed, is first operated in the provision of a transport service, and in ascertaining when this takes place no regard shall be had to any trials or testing that take place to the vehicle or infrastructure, and cognate expressions shall be construed accordingly;”.
- (3) After regulation 2 (interpretation and application) insert—

**“Determination of mainline railway**

**2A.—**(1) A railway or part of a railway is not mainline railway if the Office of Rail Regulation determines that it falls within one or more of these categories—

- (a) metros and other light rail systems;
- (b) networks that are functionally separate from the rest of the mainline railway and intended only for the operation of local, urban or suburban passenger services, as well as transport undertakings operating solely on these networks;
- (c) heritage, museum or tourist railways that operate on their own networks;

(2) The Office of Rail Regulation may determine that a heritage vehicle which operates on the mainline railway and complies with national safety rules is deemed not to operate on the mainline railway for the purposes of these Regulations.

---

(a) O.J. No. L122, 11.05.2011, p22.

(3) A person may make an application to the Office of Rail Regulation for a determination under paragraph (1) or (2) and the Office of Rail Regulation must consider any such application.

(4) The Office of Rail Regulation must maintain and publish a list of—

- (a) railways or parts of railways that are not mainline railway; and
- (b) vehicles which operate on both mainline railway and heritage railway and are deemed not to operate on mainline railway,

by virtue of determinations made under paragraph (1) or (2).”

(4) In regulation 3 (use of infrastructure on the mainline railway)—

- (a) in paragraph (1)(a) for “5(1) to (4)” insert “5(1) to (3)”;
- (b) in paragraph (2)(a) for “5(7)” insert “5(4)”;

(5) In regulation 5 (safety management system for the mainline railway)—

- (a) at the end of sub-paragraph (d)(i) insert “and”;
- (b) at the end of sub-paragraph (d)(ii) omit “and”
- (c) omit sub-paragraph (d)(iii) and paragraphs (4) and (5);
- (d) in paragraph (7)—
  - (i) for “(1) to (6)” insert “(1) to (3)”;
  - (ii) omit “save that any reference to new or altered vehicles in those paragraphs shall be replaced with a reference to new or altered infrastructure”;
  - (iii) omit sub-paragraph (a);
  - (iv) for “(a) to (d)” insert “(b) to (d)”.

(6) In regulation 17 (general provisions relating to safety certificates and safety authorisations)—

- (a) in paragraph (3)(b) omit “or paragraph 9 of Schedule 5”;
- (b) in paragraph (5) omit the wording from “except”;
- (c) for paragraph (7) substitute—

“(7) If a request for information is made under paragraph (5), the period of 4 months for the Office of Rail Regulation to make a decision referred to in regulations 7(3), 8(4), 10(2) and 11(3) shall not start to run until the date of receipt of the last information requested.”;

- (d) omit paragraph (8);
- (e) in paragraph (9) omit the words, “or paragraph 9 of Schedule 5”.

(7) In regulation 18A (maintenance of vehicles on the mainline railway)—

- (a) for paragraph (1) substitute—

“(1) No person may place in service or use a vehicle on the mainline railway unless that vehicle has an entity in charge of maintenance assigned to it, and that entity in charge of maintenance—

- (a) is registered in relation to that vehicle in the National Vehicle Register; and
- (b) holds an ECM certificate if the vehicle is a freight wagon.”;

(8) In regulation 20 (annual safety reports)—

- (a) for paragraph (1) substitute—

“(1) Subject to paragraph (2), any transport operator who carries out operations on the mainline railway shall send to the Office of Rail Regulation an annual safety report in respect of its operations on the mainline railway relating to the previous calendar year, which shall contain—”;

- (b) for paragraph 1(c) substitute—

“(c) statistics for the common safety indicators listed in Schedule 3 insofar as they are relevant to the operations in question;”;

(c) for the end of paragraph (1) substitute—

“and where an operation is carried out in part on the mainline railway and in part on another transport system the report shall include only information in respect of the part carried out on the mainline railway.”.

(9) In regulation 21 (sending, issuing, and keeping of documents and making them available for public inspection)—

(a) in paragraph (4)(b) omit the words, “or any revision made pursuant to paragraph 8 of Schedule 5”;

(b) in paragraph (4)(e) omit the words, “or paragraph 9 of Schedule 5”.

(10) In regulation 24 (competence and fitness), in paragraph (1)(d) between “place” and “arrangement” insert “suitable and sufficient”.

(11) In regulation 27 (appeals)—

(a) for paragraph (1)(a)(i), substitute—

“(i) a safety certificate, a safety authorisation or an ECM certificate;”;

(b) at the end of paragraph (1)(b), omit “or”;

(c) after paragraph (1)(c), insert—

“; or

(d) decision of the Office of Rail Regulation taken pursuant to Articles 7(3), (4) or (7) of the ECM Regulation concerning his ECM certificate,”.

(d) after paragraph (1), insert—

“(1A) A person who is aggrieved by a decision of a certification body accredited or recognised in Great Britain for the purposes of the ECM Regulation either to refuse an application for an ECM certificate or taken by that body pursuant to Articles 7(3), (4) or (7) of the ECM Regulation, may—

(a) appeal to the Secretary of State; and

(b) for the purposes of such appeal, references to the Office of Rail Regulation in this regulation shall be construed as references to that certification body, except for paragraph (7) which does not apply to such appeal.”;

(e) in paragraph (2), for “paragraph (1)”, substitute “paragraphs (1) and (1A)”.

(12) In regulation 29 (transitional provisions and savings) omit paragraph (7).

(13) In Schedule 2 (application for a safety certificate) in paragraph 1(b)(i) omit “, other than a deemed safety certificate,”.

(14) In the heading to Schedule 4 (written safety verification scheme requirements) omit “5(4)(a) and”.

(15) Omit Schedule 5.

#### **Amendments to the Train Driving Licences and Certificates Regulations 2010**

**4.—(1)** The Train Driving Licences and Certificates Regulations 2010(a) are amended as follows.

(2) In regulation 2, after the definition of “employed”, insert—

---

(a) S.I. 2010/724

““in code form” is a reference to a code representing additional information or a medical restriction, as provided for in Commission Regulation (EU) No 2010/36 on Community models for train driving licences, complementary certificates, certified copies of complementary certificates and application forms for train driving licences, under Directive 2007/59/EC of the European Parliament and Council(a), as that Regulation is amended from time to time;”;

(3) In regulation 3, after paragraph (1), insert—

“(1A) These Regulations do not apply in relation to the driving of trains which the Office of Rail Regulation has determined under regulation 2A(2) of ROGS are deemed not to operate on the mainline railway.”

(4) After part 14 (transitional provisions), insert—

## “PART 15

### Review

#### **Review**

**40.**—(1) Before the end of each review period, the Secretary of State must—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) “Review period” means—

- (a) the period of five years beginning with the day on which the Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 201[X] come into force; and
- (b) subject to paragraph (5), each successive period of five years.

(5) If a report under this regulation is published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.”.

(5) In Schedule 2 (community model train driving licence and harmonised complementary train driving certificate), omit the sentence at the end of paragraph 2.

Signed by authority of the Secretary of State for Transport

---

(a) O.J. No. L13, 19.01.2010, p1.

Date

Department for Transport

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations impose prohibitions and requirements in relation to safety on the railways and other guided transport systems.

[XXXXXXXXXX]

A copy of the impact assessment and the transposition note for the Revised Safety Directive prepared in respect of these Regulations can be obtained from the Office of Rail Regulation, One Kemble Street, London WC2B 4AN. A copy of each has been placed in the library of each House of Parliament.

# Annex C: ROGS consolidated with proposed amendments

Available at: <http://www.rail-reg.gov.uk/upload/pdf/rogs-annexc-with-amendments.pdf>

# Annex D: European Directive 2008/110/EC

See next page.

## DIRECTIVES

**DIRECTIVE 2008/110/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 16 December 2008****amending Directive 2004/49/EC on safety on the Community's railways (Railway Safety Directive)****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(2)</sup>,

Whereas:

- (1) With a view to pursuing the efforts to create a single market in rail transport services, the European Parliament and the Council have adopted Directive 2004/49/EC <sup>(3)</sup> establishing a common regulatory framework for railway safety.
- (2) Originally, authorisation procedures for placing in service railway vehicles were dealt with by Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system <sup>(4)</sup> and Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the conventional rail system <sup>(5)</sup> for new or upgraded parts of the Community rail system, and Directive

2004/49/EC for vehicles already in use. In accordance with better regulation, and with a view to simplifying and modernising Community legislation, all provisions regarding authorisations for placing railway vehicles in service should be incorporated in a single legal text. Therefore, the current Article 14 of Directive 2004/49/EC should be deleted and a new provision regarding authorisation of placing in service vehicles already in use should be included in Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (recast) <sup>(6)</sup>, (hereinafter referred to as the 'Railway Interoperability Directive'), that has replaced Directives 96/48/EC and 2001/16/EC.

- (3) The entry into force of the 1999 Convention concerning International Carriage by Rail (COTIF) on 1 July 2006 brought in new rules governing contracts for the use of vehicles. According to the CUV (Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic) appended thereto, wagon keepers are no longer obliged to register their wagons with a railway undertaking. The former 'Regolamento Internazionale Veicoli' (RIV) Agreement between railway undertakings has ceased to apply and was partially replaced by a new private and voluntary agreement (General Contract of Use for Wagons, GCU) between railway undertakings and wagon keepers whereby the latter are in charge of the maintenance of their wagons. In order to reflect these changes and to facilitate the implementation of Directive 2004/49/EC as far as safety certification of railway undertakings is concerned, the concept of the 'keeper' and the concept of 'entity in charge of maintenance' should be defined, as well as the specification of the relationship between these entities and railway undertakings.
- (4) The definition of the keeper should be as close as possible to the definition used in the 1999 COTIF Convention. Many entities can be identified as a keeper of a vehicle, for example, the owner, a company making business out of a fleet of wagons, a company leasing vehicles to a railway undertaking, a railway undertaking or an infrastructure manager using vehicles for maintaining its infrastructure. These entities have the control over the vehicle with a view to its use as a means of transport by the railway undertakings and the infrastructure managers. In order to avoid any doubt, the keeper should be clearly identified in the National Vehicle Register (NVR) provided for in Article 33 of the Railway Interoperability Directive.

<sup>(1)</sup> OJ C 256, 27.10.2007, p. 39.

<sup>(2)</sup> Opinion of the European Parliament of 29 November 2007 (OJ C 297 E, 20.11.2008, p. 133), Council Common Position of 3 March 2008 (OJ C 122 E, 20.5.2008, p. 10) and Position of the European Parliament of 9 July 2008 (not yet published in the Official Journal). Council Decision of 1 December 2008.

<sup>(3)</sup> Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive) (OJ L 164, 30.4.2004, p. 44). Corrected by OJ L 220, 21.6.2004, p. 16.

<sup>(4)</sup> OJ L 235, 17.9.1996, p. 6.

<sup>(5)</sup> OJ L 110, 20.4.2001, p. 1.

<sup>(6)</sup> OJ L 191, 18.7.2008, p. 1.

- (5) In order to ensure consistency with existing railway legislation and avoid undue burden, Member States should be allowed to exclude heritage, museum and tourist railways from the scope of this Directive.
- (6) Before a vehicle is placed in service or used on the network, an entity in charge of its maintenance should be identified in the NVR. A railway undertaking, an infrastructure manager or a keeper could be an entity in charge of maintenance.
- (7) Member States should be allowed to fulfil the obligations to identify the entity in charge of maintenance and to certify it through alternative measures in the case of vehicles registered in a third country and maintained according to the law of that country, vehicles which are used on networks or lines the track gauge of which is different from that of the main rail network within the Community and for which the requirement to identify an entity in charge of maintenance is ensured alternatively by international agreements with third countries and vehicles used by heritage, museum and tourist railways or military equipment and special transport requiring an ad hoc national safety authority permit to be delivered prior to the service. In these situations the relevant Member State should be allowed to accept vehicles on the network for which it is competent without an entity in charge of maintenance being assigned to these vehicles or without such an entity being certified. However, such derogations should be subject to formal decisions of the relevant Member State and be analysed by the European Railway Agency (hereinafter referred to as the 'Agency') in the context of its report on safety performance.
- (8) When a railway undertaking or infrastructure manager uses a vehicle for which no entity in charge of maintenance is registered or for which the entity in charge of maintenance is not certified, it should control all risks associated with the use of such a vehicle. The capacity to control such risks should be demonstrated by the railway undertaking or the infrastructure manager through the certification of their safety management system and, where applicable, through their safety certification or authorisation.
- (9) For freight wagons, the entity in charge of maintenance should be certified according to a system to be developed by the Agency and to be adopted by the Commission. Where the entity in charge of maintenance is a railway undertaking or an infrastructure manager, this certification should be included in the procedure for safety certification or authorisation. The certificate delivered to such an entity would guarantee that the maintenance requirements of this Directive are met for any freight wagon of which it is in charge. This certificate should be valid in the whole Community and should be delivered by a body able to audit the maintenance system set up by such entities. As freight wagons are frequently used in international traffic and as an entity in charge of maintenance may want to use workshops established in more than one Member State, the certification body should be able to perform its controls in the whole Community.
- (10) Maintenance requirements are being developed in the context of the Railway Interoperability Directive, in particular as part of the 'rolling stock' technical specifications for interoperability (TSIs). As a result of the entry into force of this Directive there is a need to ensure coherence between these TSIs and the certification requirements for the entity in charge of maintenance to be adopted by the Commission. The Commission will achieve this by modifying, where appropriate, the relevant TSIs using the procedure envisaged by the Railway Interoperability Directive.
- (11) Since the objective of this Directive, namely further developing and improving safety on the Community's railways, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (12) The measures necessary for the implementation of Directive 2004/49/EC should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(1)</sup>.
- (13) In particular, the Commission should be empowered to revise and adapt the Annexes to Directive 2004/49/EC, to adopt and revise common safety methods and common safety targets, and also to establish a maintenance certification system. Since those measures are of general scope and are designed to amend non-essential elements of Directive 2004/49/EC, inter alia, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (14) A Member State which has no railway system and which does not envisage having one in the near future, would be under a disproportionate and pointless obligation if it had to transpose and implement this Directive. Therefore, such a Member State should be exempted, for as long as it has no railway system, from the obligation to transpose and implement this Directive.

<sup>(1)</sup> OJ L 184, 17.7.1999, p. 23.

- (15) In accordance with point 34 of the Interinstitutional Agreement on better law-making <sup>(1)</sup>, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and make them public.
- (16) Directive 2004/49/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

#### Article 1

#### Amendments

Directive 2004/49/EC is hereby amended as follows:

1. the following points shall be added to Article 2(2):

- (d) heritage vehicles that run on national networks provided that they comply with national safety rules and regulations with a view to ensuring safe circulation of such vehicles;
- (e) heritage, museum and tourist railways that operate on their own network, including workshops, vehicles and staff.;

2. the following points shall be added to Article 3:

- (s) “keeper” means the person or entity that, being the owner of a vehicle or having the right to use it, exploits the vehicle as a means of transport and is registered as such in the National Vehicle Register (NVR) provided for in Article 33 of Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (recast) (\*), (hereinafter referred to as the “Railway Interoperability Directive”);
- (t) “entity in charge of maintenance” means an entity in charge of maintenance of a vehicle, and registered as such in the NVR;
- (u) “vehicle” means a railway vehicle suitable for circulation on its own wheels on railway lines, with or without traction. A vehicle is composed of one or more structural and functional subsystems or parts of such subsystems.

(\*) OJ L 191, 18.7.2008, p. 1.;

3. in Article 4(4) the term ‘wagon keeper’ shall be replaced by ‘keeper’;

4. Article 5(2) shall be replaced by the following:

‘2. Before 30 April 2009 Annex I shall be revised, in particular to incorporate therein the common definitions of the CSIs and the common methods for calculating accident costs. This measure, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).’;

5. Article 6 shall be amended as follows:

- (a) paragraph 1 shall be replaced by the following:

‘1. An initial series of CSMs covering, as a minimum, the methods described in paragraph 3(a) shall be adopted by the Commission before 30 April 2008. They shall be published in the *Official Journal of the European Union*.

A second series of CSMs covering the remaining methods described in paragraph 3 shall be adopted by the Commission before 30 April 2010. They shall be published in the *Official Journal of the European Union*.

These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).’;

- (b) point (c) of paragraph 3 shall be replaced by the following:

‘(c) as far as they are not yet covered by TSIs, methods to check that the structural subsystems of the railway system are operated and maintained in accordance with the relevant essential requirements.’;

- (c) paragraph 4 shall be replaced by the following:

‘4. The CSMs shall be revised at regular intervals, taking into account the experience gained from their application and the global development of railway safety and the obligations on Member States as laid down in Article 4(1). This measure, designed to amend non-essential elements of this Directive, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).’;

<sup>(1)</sup> OJ C 321, 31.12.2003, p. 1.

6. Article 7 shall be amended as follows:

- (a) the first and second subparagraphs of paragraph 3 shall be replaced by the following:

'3. The first set of draft CSTs shall be based on an examination of existing targets and safety performance in the Member States and shall ensure that the current safety performance of the rail system is not reduced in any Member State. It shall be adopted by the Commission before 30 April 2009 and shall be published in the *Official Journal of the European Union*. This measure, designed to amend non-essential elements of this Directive, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).

The second set of draft CSTs shall be based on the experience gained from the first set of CSTs and their implementation. It shall reflect any priority areas where safety needs to be further improved. It shall be adopted by the Commission before 30 April 2011 and shall be published in the *Official Journal of the European Union*. This measure, designed to amend non-essential elements of this Directive, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).;

- (b) paragraph 5 shall be replaced by the following:

'5. The CSTs shall be revised at regular intervals, taking into account the global development of railway safety. This measure, designed to amend non-essential elements of this Directive, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).;

7. Article 10 shall be amended as follows:

- (a) the second subparagraph of paragraph 1 shall be replaced by the following:

'The purpose of the safety certificate is to provide evidence that the railway undertaking has established its safety management system and can meet requirements laid down in TSIs and other relevant Community legislation and in national safety rules in order to control risks and provide transport services safely on the network.';

- (b) point (b) of paragraph 2 shall be replaced by the following:

'(b) certification confirming acceptance of the provisions adopted by the railway undertaking to meet specific requirements necessary for the safe supply of its services on the relevant network. These requirements may concern the application of the TSIs and national safety rules, including the network operating rules, acceptance of staff certificates and authorisation to operate vehicles used by railway undertakings. The certification shall be based on documentation submitted by the railway undertaking as described in Annex IV.';

8. the following Article shall be inserted:

'Article 14a

#### **Maintenance of vehicles**

1. Each vehicle, before it is placed in service or used on the network, shall have an entity in charge of maintenance assigned to it and this entity shall be registered in the NVR in accordance with Article 33 of the Railway Interoperability Directive.

2. A railway undertaking, an infrastructure manager or a keeper may be an entity in charge of maintenance.

3. Without prejudice to the responsibility of the railway undertakings and infrastructure managers for the safe operation of a train as provided for in Article 4, the entity shall ensure that the vehicles for which it is in charge of maintenance are in a safe state of running by means of a system of maintenance. To this end, the entity in charge of maintenance shall ensure that vehicles are maintained in accordance with:

(a) the maintenance file of each vehicle;

(b) the requirements in force including maintenance rules and TSI provisions.

The entity in charge of maintenance shall carry out the maintenance itself or make use of contracted maintenance workshops.

4. In the case of freight wagons, each entity in charge of maintenance shall be certified by a body accredited or recognised in accordance with paragraph 5, or by a national safety authority. The accreditation process shall be based on criteria of independence, competence and impartiality, such as the relevant EN 45 000 series European standards. The recognition process shall also be based on criteria of independence, competence and impartiality.

Where the entity in charge of maintenance is a railway undertaking or an infrastructure manager, compliance with the requirements to be adopted under paragraph 5 shall be checked by the relevant national safety authority pursuant to the procedures referred to in Articles 10 or 11 and shall be confirmed on the certificates specified in those procedures.

5. Based on a recommendation by the Agency, the Commission shall, by 24 December 2010, adopt a measure establishing a system of certification of the entity in charge of maintenance for freight wagons. Certificates granted in accordance with this system shall confirm compliance with the requirements referred to in paragraph 3.

The measure shall include the requirements concerning:

- (a) the maintenance system established by the entity;
- (b) the format and validity of the certificate granted to the entity;
- (c) the criteria for accreditation or recognition of body or bodies responsible for issuing certificates and ensuring controls necessary for the functioning of the certification system;
- (d) the date of application of the certification system, including a transition period of one year for existing entities in charge of maintenance.

This measure, designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).

Based on a recommendation by the Agency, the Commission shall, by 24 December 2018 review this measure in order to include all vehicles and to update, if necessary, the certification system applicable to freight wagons.

6. The certificates granted in accordance with paragraph 5 shall be valid throughout the Community.

7. The Agency shall evaluate the certification process implemented in accordance with paragraph 5 by submitting a report to the Commission, no later than three years after the entry into force of the relevant measure.

8. Member States may decide to fulfil the obligations to identify the entity in charge of maintenance and to certify it through alternative measures, in the following cases:

- (a) vehicles registered in a third country and maintained according to the law of that country;
- (b) vehicles which are used on networks or lines the track gauge of which is different from that of the main rail network within the Community and for which fulfilment of the requirements referred to in paragraph 3 are ensured by international agreements with third countries;
- (c) vehicles identified in Article 2(2), and military equipment and special transport requiring an ad hoc national safety authority permit to be delivered prior to the service. In this case derogations shall be granted for periods not longer than five years.

Such alternative measures shall be implemented through derogations to be granted by the relevant national safety authority:

- (a) when registering vehicles pursuant to Article 33 of the Railway Interoperability Directive, as far as the identification of the entity in charge of maintenance is concerned;
- (b) when delivering safety certificates and authorisations to railway undertakings and infrastructure managers pursuant to Articles 10 and 11 of this Directive, as far as the identification or certification of the entity in charge of maintenance is concerned.

Such derogations shall be identified and justified in the annual safety report referred to in Article 18 of this Directive. Where it appears that undue safety risks are being taken on the Community rail system, the Agency shall immediately inform the Commission thereof. The Commission shall make contact with the parties involved and, where appropriate, request the Member State to withdraw its derogation decision.;

9. Article 16(2) shall be amended as follows:

(a) point (a) shall be replaced by the following:

- ‘(a) authorising the placing in service of the structural subsystems constituting the rail system in accordance with Article 15 of the Railway Interoperability Directive and checking that they are operated and maintained in accordance with the relevant essential requirements;’;

(b) point (b) shall be deleted;

(c) point (g) shall be replaced by the following:

'(g) supervising that vehicles are duly registered in the NVR and that safety related information contained therein, is accurate and kept up to date;'

10. the following point shall be added to Article 18:

'(e) the derogations that have been decided in accordance with Article 14a(8).';

11. Article 26 shall be replaced by the following:

'Article 26

#### **Adaptation of the Annexes**

The Annexes shall be adapted to scientific and technical progress. This measure, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).';

12. Article 27 shall be amended as follows:

(a) the following paragraph shall be inserted:

'2a. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.';

(b) paragraph 4 shall be deleted;

13. point 3 of Annex II shall be deleted.

#### *Article 2*

#### **Implementation and transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 24 December 2010. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

The obligations for transposition and implementation of this Directive shall not apply to the Republic of Cyprus and the Republic of Malta for as long as no railway system is established within their respective territories.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 3*

#### **Entry into force**

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

#### *Article 4*

#### **Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 16 December 2008.

*For the European Parliament*

*The President*

H.-G. PÖTTERING

*For the Council*

*The President*

B. LE MAIRE

# Annex E: List of exclusions from the mainline railway

See next page.

**Draft (GB) Approved List of Exclusions from the scope of application of European Directive 2004/49/EC, pursuant to Article 2(2) of the Directive**

This list was last updated: **February 2010**

**Article 2(2)(a): metro (metropolitan railways and their vehicles)**

Glasgow Underground (Subway)

London Underground (including infrastructure, vehicles running over Network Rail infrastructure and heritage vehicles)

Tyne & Wear Metro (including vehicles running over Network Rail infrastructure)

**Article 2(2)(a): tram (trams and tramways)**

Blackpool and Fleetwood Tramway

Greater Manchester Metrolink

London Tramlink (formerly Croydon Tramlink)

Midland Metro

Nottingham Express Transit

Southport Pier Tramway

South Yorkshire (Sheffield) Supertram

-----  
Cross River Tram (London) (*proposed*)

Edinburgh Tram (*under construction*)

Greater Manchester Metrolink: (*proposed extensions to Oldham/Rochdale; Droylsden; St. Werburgh's Road Chorlton; MediaCity; Ashton-under-Lyne; East Didsbury; and, Manchester Airport*)

Midland Metro: (*proposed extensions to Birmingham New Street Station and Wolverhampton City Centre*)

Nottingham Express Transit: (*proposed extensions to Chilwell (via QMC) and Beeston and Clifton (via Wilford)*)

Tram-Train (vehicles only, including vehicles running over Network Rail infrastructure) (*proposed*)

**Article 2(2)(a): (other) light rail system**

Docklands Light Railway

**Article 2(2)(b): networks that are functionally separate from the rest of the railway system and intended only for the operation of local, urban or suburban passenger services as well as railway undertakings operating solely on these networks**

Island Line: Isle of Wight (Ryde to Shanklin)

***Vehicles only***

Parry People Mover (vehicles only)

Class 08 (0-6-0) shunters (built by BR)

Class 09 (0-6-0) shunters (built by BR)

***Infrastructure only***

St Ives – St Erth

Looe Valley: Liskeard - Looe

Tamar Valley: St Budeaux - Gunnislake

St Albans Abbey: Watford Junction – St Albans Abbey

Penistone – Barnsley - Huddersfield

Esk Valley: Middlesbrough - Whitby

Tarka Line: Barnstaple to Cowley Bridge Jnc

Maritime Line: Falmouth to Truro September

Derwent Valley: Whatstandwell - Matlock

East Lancashire Line: Colne to Gannow Jnc Burnley

Gainsborough Line: Marks Tey to Sudbury November

Barton Line: Barton-on-Humber to Ulceby N. Junction

Bittern Line: North Walsham to Sheringham

Lakes Line: Oxenholme - Windermere

South Fylde Line: Blackpool South – Kirkham and Wesham

Lymington Line: Brockenhurst - Lymington

**Article 2(2)(d): heritage vehicles that run on national networks provided that they comply with national safety rules and regulations with a view to encouraging safe circulation of such vehicles**

**Article 2(2)(e): heritage, museum and tourist railways that operate on their own network, including workshops, vehicles and staff**

**Note 1:** Reference to rail systems in this category includes vehicles that are used (mainly) on any of the listed infrastructure - if such vehicles under this category are occasionally used for operation on the mainline railway (for example, a steam tour), then they continue to be excluded from scope, with respect to that operation.

**Note 2:** All infrastructure and vehicles with a track gauge of less than 350mm are considered as automatically excluded from scope through blanket exemption from the meaning of “railway” and “vehicle” in the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended by S.I. 2011/1860) (they are considered to be either historical or touristic rail systems), even though some such rail systems might be included in the list below.

Abbey Light Railway

Abbey Pumping Station Museum (i.e. rail vehicle tracks within its grounds)

Aberystwyth Electric Cliff Railway

Alford Valley Railway

Almond Valley Railway

Aln Valley Railway

Amberley Working Museum (i.e. rail vehicle tracks within its grounds)

American Adventure Theme Park (i.e. rail vehicle tracks within its grounds)

Amerton Railway

Angelsey Central Railway

Apedale Valley Light Railway

Appleby Frodingham Railway

(Astley Green Colliery Museum Railway)

Avon Valley Railway

Babbacombe Cliff Railway

Bala Lake Railway

Barrow Hill Roundhouse Railway Centre (i.e. rail vehicle tracks within its grounds)

Battlefield Line Railway

Beamish North of England Open Air Museum (i.e. rail vehicle tracks within its grounds)

Bicton Woodland Railway

Bideford Railway Museum (i.e. rail vehicle tracks within its grounds)

Billing Miniature Railway

Blackpool Zoo Miniature Railway

Blenheim Park Railway

Black Country Living Museum (i.e. rail vehicle tracks within its grounds)

Bluebell Railway

Bodmin and Wenford Railway

Bo'ness and Kinneil Railway

Bournemouth Fishermans Walk Cliff Railway

Bowes Railway

Bradford Industrial Museum (i.e. rail vehicle tracks within its grounds)

Brecon Mountain Railway

Bredgar and Wormshill Light Railway

Bressingham Steam Museum (i.e. rail vehicle tracks within its grounds)

Bridgend Valleys Railway

Bridgnorth Castle Hill Railway

Bristol Harbour Railway

Buckinghamshire Railway Centre (i.e. rail vehicle tracks within its grounds)

Bure Valley Railway

Burseldon Brickworks (i.e. rail vehicle tracks within its grounds)

Burry Port and Gwendraeth Valley Railway

Cairngorm Mountain Railway

Caledonian Railway

Cambrian Heritage Railway

Central Tramway Scarborough

Centre for Alternative Technology (i.e. rail vehicle tracks within its grounds)

Chasewater Railway

Chinnor and Princes Risborough Railway

Cholsey and Wallingford Railway

Churnet Valley Railway  
Cleethorpes Coast Light Railway  
Colne Valley Railway  
Combe Martin Wildlife and Dinosaur Park (i.e. rail vehicle tracks within its grounds)  
Conkers Express  
Conwy Valley Railway Museum (i.e. rail vehicle tracks within its grounds)  
Corris Railway  
Cotswold Wildlife Park (i.e. rail vehicle tracks within its grounds)  
Coventry Railway Centre (i.e. rail vehicle tracks within its grounds)  
Craigtoun Miniature Railway  
Crich Tramway Museum  
Cricket St Thomas Wildlife Park (i.e. rail vehicle tracks within its grounds)  
Darlington Railway Centre and Museum (i.e. rail vehicle tracks within its grounds)  
Dartmoor Railway  
Dart Valley Railway  
Dean Forest Railway  
Derbyshire Dales Narrow Gauge Railway  
Derwent Valley Light Railway  
Devon Railway Centre (i.e. rail vehicle tracks within its grounds)  
Didcot Railway Centre (i.e. rail vehicle tracks within its grounds)  
Dolgarrog Railway  
Drayton Manor Park (i.e. rail vehicle tracks within its grounds)  
Drusillas Zoo Park (i.e. rail vehicle tracks within its grounds)  
Dunaskin Heritage Centre (i.e. rail vehicle tracks within its grounds)  
East Anglia Transport Museum (i.e. rail vehicle tracks within its grounds)  
East Anglian Railway Museum (i.e. rail vehicle tracks within its grounds)  
East Cliff Railway (Bournemouth)  
East Hayling Light Railway  
East Hill Cliff Railway (Hastings)  
East Kent Railway  
East Lancashire Railway  
East Links Family Park (i.e. rail vehicle tracks within its grounds)

East Somerset Railway  
East Suffolk Light Railway  
Eaton Hall (i.e. rail vehicle tracks within its grounds)  
Ecclesborne Valley Railway  
Eden Valley Railway  
Elsecar Steam Railway  
Embsay and Bolton Abbey Steam Railway  
Epping Ongar Railway  
Evesham Vale Light Railway  
Ffestiniog & Welsh Highland Railways  
Flamingo Land Theme Park and Zoo (i.e. rail vehicle tracks within its grounds)  
Foxfield Light Railway  
Gartell Light Railway  
Gloucestershire Warwickshire Railway  
Golden Valley Light Railway  
Great Bush Railway  
Great Central Railway (Loughborough)  
Great Central Railway (Nottingham)  
Great Orme Tramway  
Guillivers Theme Park, Warrington (i.e. rail vehicle tracks within its grounds)  
Guillivers World, Milton Keynes (i.e. rail vehicle tracks within its grounds)  
Gwili Steam Railway  
Haigh Country Park (i.e. rail vehicle tracks within its grounds)  
Heatherslaw Light Railway  
Heaton Park Tramway  
Hollycombe Steam Collection (i.e. rail vehicle tracks within its grounds)  
Hopewell Colliery Museum (i.e. rail vehicle tracks within its grounds)  
Hythe Pier Railway  
Imperial War Museum (i.e. rail vehicle tracks within its grounds)  
Irchester Country Park (i.e. rail vehicle tracks within its grounds)  
Isle of Wight Steam Railway  
Keighley and Worth Valley Railway

Keith and Dufftown Railway  
Kent and East Sussex Railway  
Kew Bridge Steam Museum (i.e. rail vehicle tracks within its grounds)  
Kirkland Sidings Heritage Centre (i.e. rail vehicle tracks within its grounds)  
Kirklees Light Railway  
Knowsley Safari Park (i.e. rail vehicle tracks within its grounds)  
Lakeside and Haverthwaite Railway  
Lakeside Miniature Railway  
Lappa Valley Steam Railway  
Launceston Steam Railway  
Lavender Line  
Leadhills and Wanlockhead Railway  
Leas Cliff Railway (Folkestone)  
Leeds Industrial Museum, Armley Mills (i.e. rail vehicle tracks within its grounds)  
Legoland, Windsor (i.e. rail vehicle tracks within its grounds)  
Leighton Buzzard Railway  
Lightwater Valley theme park (i.e. rail vehicle tracks within its grounds)  
Lincolnshire Coast Light Railway  
Lincolnshire Wolds Railway  
Llanberis Lake Railway  
Llangollen Railway  
Llechwedd Slate Caverns (i.e. rail vehicle tracks within its grounds)  
Locomotion, the National Railway Museum at Shildon (i.e. rail vehicle tracks within its grounds)  
Longleat (i.e. rail vehicle tracks within its grounds)  
Lynton and Barnstaple Railway  
Lynton and Lynmouth Cliff Railway  
Mangapps Farm Railway Museum (i.e. rail vehicle tracks within its grounds)  
Margam Country Park (i.e. rail vehicle tracks within its grounds)  
Markeaton Park (i.e. rail vehicle tracks within its grounds)  
Marwells Zoological Park (i.e. rail vehicle tracks within its grounds)  
Mid-Hants Watercress Railway

Mid-Norfolk Railway

Mid-Suffolk Light Railway Museum (i.e. rail vehicle tracks within its grounds)

Middleton Railway

Midland Railway, Butterley

Milkyway Adventure Park (i.e. rail vehicle tracks within its grounds)

Morwellham Quay Historic Port and Copper Mine (i.e. rail vehicle tracks within its grounds)

Museum of Science and Industry, Manchester (i.e. rail vehicle tracks within its grounds)

National Coal Mining Museum for England (i.e. rail vehicle tracks within its grounds)

National Railway Museum, York (i.e. rail vehicle tracks within its grounds)

National Slate Museum, Llanberis (i.e. rail vehicle tracks within its grounds)

National Tramway Museum (i.e. rail vehicle tracks within its grounds)

Nene Valley Railway

North Bay Railway

North Gloucestershire Railway

North Ings Farm Museum (i.e. rail vehicle tracks within its grounds)

North Norfolk Railway

North Tyneside Steam Railway

North Yorkshire Moors Railway

Northampton and Lamport Steam Railway

Oakwood Theme Park (i.e. rail vehicle tracks within its grounds)

Old Kiln Light Railway

Oswestry Railway Museum (i.e. rail vehicle tracks within its grounds)

Queen Elizabeth II Country Park (i.e. rail vehicle tracks within its grounds)

Paignton and Dartmouth Railway

Paignton Zoo Environmental Park (i.e. rail vehicle tracks within its grounds)

Paradise Park (i.e. rail vehicle tracks within its grounds)

Paultons Park (i.e. rail vehicle tracks within its grounds)

Peak Rail

Pembrey County Park (i.e. rail vehicle tracks within its grounds)

Perrygrove Railway  
Pleasure Beach Express  
Pleasure Island Family Theme Park (i.e. rail vehicle tracks within its grounds)  
Pleasurewood Hills Leisure Park (i.e. rail vehicle tracks within its grounds)  
Plym Valley Railway  
Pontypool and Blaenavon Railway  
Prestongrange Industrial Heritage Museum (i.e. rail vehicle tracks within its grounds)  
Ravenglass and Eskdale Railway  
Rhyl Miniature Railway  
Ribble Steam Railway  
Ripon and District Light Railway  
Romney, Hythe and Dymchurch Railway  
Rother Valley Railway  
Royal Deeside Railway  
Royal Gunpowder Mills (i.e. rail vehicle tracks within its grounds)  
Rushden, Higham and Wellingborough Railway  
Rutland Railway Museum to Ashwell Station (i.e. rail vehicle tracks within its grounds)  
Saltburn Cliff Lift  
Saltburn Miniature Railway  
Scottish Industrial Railway Centre (i.e. rail vehicle tracks within its grounds)  
Seaton and District Electric Tramway  
Severn Valley Railway  
Sherwood Forest Theme Park (i.e. rail vehicle tracks within its grounds)  
Shipleigh Glen Tramway  
Sittingbourne and Kemsley Light Railway  
Snibston Colliery Railway  
Snowdon Mountain Railway  
Somerset and Dorset Railway (Midsomer Norton)  
South Cliff Railway (Scarborough)  
South Devon Railway  
South Tynedale Railway

Southend Cliff Railway  
Southend Pier Railway  
Spa Cliff Lift  
Spa Valley Railway  
St Nicholas Cliff Lift  
Stainmore Railway  
Steam, the Museum of the Great Western Railway (i.e. rail vehicle tracks within its grounds)  
Steeple Grange Light Railway  
Strathspey Railway  
Stephenson Railway Museum (i.e. rail vehicle tracks within its grounds)  
Stevington and Turvey Light Railway  
Strumpshaw Steam Railway Museum (i.e. rail vehicle tracks within its grounds)  
the Stone Line  
Summerlee Heritage Park (i.e. rail vehicle tracks within its grounds)  
Swanage Railway (Purbeck Line)  
Swansea Vale Railway  
Swindon and Cricklade Railway  
Talyllyn Railway Co  
Tanfield Railway  
Teifi Valley Railway  
Telford Steam Railway  
Thorpe Park (i.e. rail vehicle tracks within its grounds)  
Threlkeld Quarry Railway  
Tyseley Locomotive Works (i.e. rail vehicle tracks within its grounds)  
Vale of Glamorgan Railway  
Vale of Rheidol Railway  
Valley International Park (i.e. rail vehicle tracks within its grounds)  
Volks Electric Railway  
Weardale Railway  
Welsh Highland Heritage Railway  
Welshpool and Llanfair Light Railway  
Wensleydale Railway

West Cliff Railway (Bournemouth)

West Hill Cliff Railway (Hastings)

West Lancashire Light Railway

West Midlands Safari Leisure Park (i.e. rail vehicle tracks within its grounds)

West Somerset Railway

Whipsnade Wild Animal Park (i.e. rail vehicle tracks within its grounds)

Wicksteed Park (i.e. rail vehicle tracks within its grounds)

Windmill Animal Farm Railway (i.e. rail vehicle tracks within its grounds)

Wirral Tramway / Birkenhead Heritage Tramway

Woburn Safari Park (i.e. rail vehicle tracks within its grounds)

Yaxham Light Railway

Yeovil Railway Centre (i.e. rail vehicle tracks)

## **Guidance on ORR's Approved List of Exclusions from the scope of application of European Directive 2004/49/EC, pursuant to Article 2(2) of the Directive**

The Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2012 provide a mechanism giving the Secretary of State discretion to exclude from the mainline railway requirements in ROGS certain rail systems or vehicles if they fall within one or more of the following categories:

- a) Metros, trams and other light rail systems;
- b) Networks that are functionally separate from the rest of the railway system and intended only for the operation of local, urban or suburban passenger services, as well as railway undertakings operating solely on these networks;
- c) Privately owned railway infrastructure that exists solely for use by the infrastructure owner for its own freight operations;
- d) Heritage vehicles that run on national networks provided that they comply with national safety rules and regulations with a view to encouraging safe circulation of such vehicles;
- e) Heritage, museum and tourist railways that operate on their own network, including workshops, vehicles and staff.

An Approved List of exclusions is published on the ORR's website [insert link]. This lists the rail systems that are excluded from the requirements of the Railway Safety Directive, i.e. excluded from the mainline railway. Systems can be added, or removed, from the list as necessary following consultation with stakeholders where appropriate

An initial exclusion list was developed by the Department for Transport with stakeholders (and was subject to public consultation) for the purpose of transposing the Interoperability Directive (2008/57/EC). ORR's list was developed from this, and is subject to continuous review to ensure it remains current. Any future versions of it will take into account the list developed by DfT, following consultations with stakeholders where appropriate. New systems can be added, or existing systems removed. The process for making amendments is explained below.

## **Additions to the list**

Suggestions for additions must be covered by one of the exclusion categories listed above and must be made on the form on ORR's website: [insert link]. This is designed to give ORR information to aid the decision-making process. Further information may be required depending on the scope of the application. If an addition is agreed, a new version of the list will be published on ORR's website.

## **Removing an exclusion from the list**

If the Secretary of State decides, or representations are made, to remove an exclusion, the following process will usually be followed:

- ORR will publish on its website a statement of intention to revoke an exemption indicating the reason.
- A 12-week consultation period will follow to allow representations from stakeholders to be made.
- If the decision to remove is upheld following consultation, ORR must remove the system from the list immediately.

# Annex F: Application for removal from scope

See next page.

## Application for removal from scope of the “mainline railway” requirements in ROGS

This pro forma is designed to assist ORR in deciding whether or not to provide an exclusion from the definition of “mainline railway” in the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (“ROGS”).

**Please note:** Applicants should first consider whether the system, infrastructure or vehicles are already exempt through ROGS, which include automatic exemption for:

- privately owned exclusively operated freight infrastructure and vehicles;
- and railway and vehicles that have a track gauge of less than 350mm.

Applicants should also consider the published list [insert link] to ensure that they are not already covered by an existing exclusion.

### 1. Applicant’s details

<b>Name:</b>	
<b>Address:</b>	
<b>Postcode:</b>	
<b>Telephone:</b>	
<b>Email:</b>	
<b>Name of organisation:</b>	
<b>Please describe your interest in railway system, vehicle or infrastructure</b>	

## 2. System details

### Exemption category

Please choose a category from the list below.	
<input type="checkbox"/>	Metros, trams and other light rail systems
<input type="checkbox"/>	Networks that are functionally separate from the rest of the railway system and intended only for the operation of local, urban or suburban passenger services, as well as railway undertakings operating solely on these networks
<input type="checkbox"/>	Heritage vehicles that run on national networks provided that they comply with national safety rules and regulations with a view to encouraging safe circulation of such vehicles
<input type="checkbox"/>	Heritage, museum and tourist railways that operate on their own network, including workshops, vehicles and staff

## 3. Technical details and mechanisms

Please provide as much technical information as possible about the system or service for which you are applying for an exemption. Please also include arrangements for managing safety in the event of an exemption being granted.
<p>(For example:            What is the system?            What is its extent?            When was, or is, the intended placing into service date?            What services will be/will be operated?            What is the build amount?            Is the system likely to be used in international traffic?            How will the system be managed under safety verification?            What domestic standards will be applied?)</p>

#### 4. Consultation

**Please provide information about any consultation that may have taken place with stakeholders to inform your application.**

[For example, consultation could be with the infrastructure manager, owner, service operator, passenger representatives and local interest groups].

#### 5. Next steps

Please email your completed application form to [rogsguidance@orr.gsi.gov.uk](mailto:rogsguidance@orr.gsi.gov.uk). Your application will be dealt with by the Railway Safety Policy Team and the Deputy Director of Railway Safety will make a decision on its merits. You will be notified of the outcome of this process in due course and, if agreed, an exclusion will be granted through an addition to the published list.

# Annex G: Impact assessment

See next page.

<b>Title:</b> Implementing the certification requirements of the European Directive on the maintenance of railway vehicles ("Miscellaneous Amendments Regulations") <b>IA No:</b> ORR1201 <b>Lead department or agency:</b> Office of Rail Regulation <b>Other departments or agencies:</b> Department for Transport	<h2 style="margin: 0;">Impact Assessment (IA)</h2>
	<b>Date:</b> 03/02/2012
	<b>Stage:</b> Consultation
	<b>Source of intervention:</b> EU
	<b>Type of measure:</b> Secondary legislation
	<b>Contact for enquiries:</b> Stefano Valentino, 020 7282 2003 stefano.valentino@orr.gsi.gov.uk
<b>Summary: Intervention and Options</b>	<b>RPC:</b> GREEN

Cost of Preferred (or more likely) Option (Option 3)			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£14.865m	£0.892m	£-0.104m	Yes, partially   OUT

**What is the problem under consideration? Why is government intervention necessary?**

Different national procedures in the EU for the approval of freight wagons hinder the free movement of trains and impose costs on businesses. Railway undertakings assert that these procedures are bureaucratic and expensive when freight wagons are placed in service. "Keepers" of freight wagons have identified that meeting multiple maintenance regimes of different railway undertakings is onerous and expensive. EU-wide action is needed to address this, as no Member State can unilaterally determine that the operating authorisation it has issued will be valid elsewhere.

**What are the policy objectives and the intended effects?**

The European Commission's objective is to harmonise railway vehicle maintenance regimes across the EU and establish a certification scheme for entities in charge of maintenance ("ECMs") to ensure that freight wagons are maintained in a safe manner. The UK objectives are to: (a) establish a maintenance regime applicable to the UK, which complies with the Directive and is consistent with the Railways and Other Guided Transport Systems (Safety) Regulations 2006 ("ROGS"); and (b) additionally make some clarifications in ROGS and two other existing Regulations all in the interests of better regulation. The intended effects are to: (a) provide assurance that the ECM of a freight wagon is able to safely maintain it; (b) reduce the administrative burden on some operators; and (c) provide ORR with jurisdiction to supervise ECMs' compliance with health and safety legislation in certain premises.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 1: Do nothing - Existing regime stays in place  
Option 2: Implement the Directive's requirement for an ECM for freight wagons to obtain an ECM certificate from a certification body.  
Option 3: As Option 2, but in addition make changes to ROGS, EARR and TDLCR in the interest of better regulation. **Option 3 is preferred** because it meets EU requirements and benefits businesses by improving clarity and reducing administrative burdens on some duty holders.

**Will the policy be reviewed? It will be reviewed. If applicable, set review date:** 06/2017

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>		<b>Non-traded:</b>

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister: \_\_\_\_\_ Date: \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Implement the Directive on vehicle maintenance to require an ECM for freight wagons to obtain an ECM certificate from a certification body. This is a minimal or 'copy out approach'.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 3.672	High: 24.381	Best Estimate: 14.027

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.802	0.449	4.536
High	1.450	0.495	5.567
Best Estimate	1.126	0.472	5.051

### Description and scale of key monetised costs by 'main affected groups' (Constant prices)

The costs for this option arise only from the certification of ECMs as summarised in **Table 8** in **Section 5** below. Total transition and annual costs are summarised in **Table 1** in **Section 4**. For the 26 existing freight wagon ECMs in Great Britain these are estimated to be £0.966m for familiarisation with the ECM certification requirements and preparing for certification. Total transition cost for ORR is estimated to be £0.161m for policy development and its role as an ECM certification body. Total annual cost for the 26 existing freight wagon ECMs is estimated to be between £0.398m and £0.444m for 'Professional Head' engineering services and annual surveillance checks. Total annual cost for ORR is estimated to be £0.051m for conducting annual surveillance checks.

### Other key non-monetised costs by 'main affected groups'

None.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0.987	8.208
High	0	3.601	29.948
Best Estimate	0	2.294	19.078

### Description and scale of key monetised benefits by 'main affected groups' (Constant prices)

Total benefits (in present value terms) for Option 2 are summarised in **Table 8** in **Section 5** below. Details of transition and annual benefits (in constant price terms) are shown in **Table 2** in **Section 4** below. Total annual benefit for 8 railway undertakings is between £0.074m and £0.317m. Total annual benefit for 26 ECMs not having to undergo multiple checks from different railway undertakings is between £0.714m and £3.085m. Total annual benefit for Network Rail PWRA team is £0.1990m. The low-high range of the total present value of benefits is wide because a fitness-to-run examination could take between 10 and 50 person-days depending on the level of intervention.

### Other key non-monetised benefits by 'main affected groups'

The benefits of the Regulations are that (a) they will help to achieve consistency of approach to rail vehicle maintenance across the EU; and (b) they help to reduce the burden on railway undertakings in terms of time and cost involved in ensuring that freight wagons have been properly and safely maintained.

### Key assumptions/sensitivities/risks

Discount rate (%)

3.5

This IA assumes that the certification body is ORR and that all 26 ECMs apply to ORR for an ECM certificate. An ECM can choose to apply to any certification body in the European Union, (whether accredited, recognised or a national safety authority such as ORR), but at present it is unlikely that a UK based ECM will apply outside the UK. As ORR's assessment of applications will involve high-level scrutiny of the ECM's maintenance processes, costs are likely to increase for an ECM if it chooses to apply for a more thorough assessment from an accredited or recognised body.

## BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	No	NA

## Summary: Analysis & Evidence

## Policy Option 3 (Preferred Option)

**Description:** As Option 2, but in addition, make changes to ROGS; the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 ("EARR"); and the Train Driving Licences and Certificates Regulations 2010 ("TDLCR").

### FULL ECONOMIC ASSESSMENT

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 4.510	High: 25.219	Best Estimate: 14.865

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.840	0.459	4.654
High	1.488	0.505	5.685
Best Estimate	1.164	0.482	5.169

#### Description and scale of key monetised costs by 'main affected groups'

The costs of Option 3 are shown in **Table 8** in **Section 5** below, which identifies the main elements under this Option, and compares them with Option 2. (Further details of transition and annual costs are set out in **Table 6** in **Section 5**). The costs of Option 3 are the same as those summarised in Option 2 above, but in addition to these costs, Option 3 involves some minor one-off familiarisation costs in relation to the changes made to ROGS, EARR and TDLCR. These are estimated to be £0.038m on the assumptions set out in **Section 4** below (paragraph 4.54). There will also be additional annual average costs of £0.010m for statutory reviews of EARR and TDLCR.

#### Other key non-monetised costs by 'main affected groups'

None.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		1.097	9.164
High	10	3.711	30.904
Best Estimate	0.040	2.404	20.034

#### Description and scale of key monetised benefits by 'main affected groups' (Constant prices)

Option 3 offers annual benefits of about £2.404m per year (average in 2010 prices), with the largest items being savings to industry from the ECM not having multiple audits (£1.900m per year) and the checks by the railway undertaking being reduced (£0.196m per year). The low-high range of the total present value of benefits is wide because a fitness-to-run examination could take between 10 and 50 person-days depending on the level of intervention. There are also small transitional benefits of £0.040m in relation to train drivers for non-mainline operators.

#### Other key non-monetised benefits by 'main affected groups'

The benefits are (a) greater consistency of approach to rail vehicle maintenance across the EU; (b) smaller burden on railway undertakings in terms of time and cost in ensuring that freight wagons have been properly and safety maintained; (c) Forty one safety certificate and safety authorisation applicants could benefit from shorter processing times of their applications; and (d) savings to some operators from not having one safety certificate instead of two.

#### Key assumptions/sensitivities/risks

This IA assumes that the certification body is ORR and that all 26 ECMs apply to ORR for an ECM certificate. An ECM can choose to apply to any certification body in the European Union, (whether accredited, recognised or a national safety authority such as ORR), but at present it is unlikely that a UK based ECM will apply outside the UK. As ORR's assessment of applications will involve high-level scrutiny of the ECM's maintenance processes, costs are likely to increase for an ECM if it chooses to apply for a more thorough assessment from an accredited or recognised body.

Discount rate (%)

3.5

### BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0.0	Benefits: 0.0	Net: 0.1	Yes, partially	OUT

# CONTENTS OF EVIDENCE BASE

Evidence Base (for summary sheets) .....	5
<b>1. Issue</b> .....	5
Problem .....	5
<b>2. Purpose and intended effect</b> .....	5
<b>3. Background</b> .....	6
<b>4. Options</b> .....	8
Option 1: Do nothing.....	8
Option 2: Implement the Directive on vehicle maintenance in relation to the requirement for an ECM for freight wagons to obtain an ECM certificate from a certification body.....	8
Proposal 1: Certification of ECMs for freight wagons .....	8
Option 3: In addition to the proposal in Option 2 (Implement the Directive on vehicle maintenance) include amendments to ROGS, EARR and TDLCR. ....	10
<i>Proposal 1: Certification of ECMs for freight wagons</i> .....	11
<i>Proposal 2: Enforcement of ECMs</i> .....	11
<i>Proposal 3: Safety verification</i> .....	11
<i>Proposal 4: Definition of ‘mainline railway’</i> .....	12
<i>Proposal 5: Train Driving Licences and Certificates Regulations 2010</i> .....	14
<i>Proposal 6: Annual safety reports for non-mainline operators</i> .....	14
<i>Proposal 7: Competency and fitness for safety critical work</i> .....	15
<i>Proposal 8: Consulting an ‘affected party’</i> .....	15
<i>Proposal 9: Definition of national safety rules</i> .....	16
<i>Familiarisation costs in relation to proposals 2 to 9</i> .....	16
<i>One-in, one-out business assessment</i> .....	17
<b>5. Summary of preferred option (Option 3)</b> .....	18
<b>6. Statutory review of ROGS, TDLCR and EARR</b> .....	20
<b>7. Specific impact tests</b> .....	21
Annex 1: Cost and benefit calculations for Proposal 1 (which occurs in both Options 2 and 3). ..	24
Annex 2: Costs and benefits spreadsheet.....	26
Annex 3: Justice Impact Test .....	26
Annex 4: Post Implementation Review (PIR) Plan for ROGS .....	27
Annex 5: Post Implementation Review (PIR) Plan for TDLCR .....	29
Annex 6: Post Implementation Review (PIR) Plan for EARR .....	31
Annex 7: Glossary of Terms.....	33
Annex 8: References .....	36

# Evidence Base (for summary sheets)

## 1. Issue

- 1.1 Implementing the certification requirements of the European Directive on the maintenance of railway vehicles ("Miscellaneous Amendments Regulations").

### Problem

- 1.2 There are different national procedures in the EU for the approval of freight wagons, which hinder the free movement of trains. Railway undertakings assert that these procedures are bureaucratic and expensive when freight wagons are placed in service. "Keepers" of freight wagons have identified that meeting multiple maintenance regimes of different railway undertakings is onerous and expensive. This is a barrier to the creation of new railway undertakings in the freight sector and a stumbling block affecting the interoperability of the European rail system. As no Member State has the power to determine unilaterally that the operating authorisation it has issued will be valid in another Member State, an EU-wide initiative is being taken to harmonise and simplify the existing national procedures. The proposed Miscellaneous Amendments Regulations implement European provisions that are part of the solution to this problem.

## 2. Purpose and intended effect

- 2.1 It is hoped that the effect of the introduction of ECM certification regime for freight wagons will improve the competitiveness of the freight sector in the UK and across the EU by reducing the administrative costs associated with establishing freight wagon safety. (See **paragraphs 3.5 to 3.7**). The impact of a consistent approach to establishing vehicle maintenance standards and safety will particularly benefit international traffic, although it is envisaged that substantial benefits will also be realised at a UK level. (See **paragraph 4.7**). (**Note:** A full glossary of acronyms and technical terms is at **Annex 7**).
- 2.2 The Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2012 ("the Miscellaneous Amendments Regulations") are being proposed to make miscellaneous amendments to three statutory instruments:
  - The Railways and Other Guided Transport Systems (Safety) Regulations 2006 ("ROGS");
  - The Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 ("EARR"); and
  - The Train Driving Licences and Certificates Regulations 2010 ("TDLCR").
- 2.3 The Miscellaneous Amendments Regulations propose to implement the outstanding elements of Directive 2008/110/EC ("the Directive on vehicle maintenance) which requires an entity in charge of maintenance ("ECM") of freight wagons to obtain an ECM certificate from a certification body. European Commission Regulation 445/2011 ("the ECM Regulation") was adopted on 10 May 2011 and sets out the system of certification of ECMs for freight wagon, which must be followed in all Member States.
- 2.4 The intended effect of an ECM certificate is to provide assurance to the railway undertaking and the national safety authority<sup>1</sup> that an ECM is able to safely maintain the freight wagon for which it has responsibility. The ECM certificate is intended to reduce the burden on railway undertakings in terms of time and cost involved in ensuring that freight wagons have been properly and safely maintained. By having an ECM certificate the need for further checks and audits of freight wagons by the railway undertaking will be reduced.

---

<sup>1</sup> For Great Britain, the national safety authority is the Office of Rail Regulation ("ORR"). "Safety authority" is defined in the Railway Safety Directive as meaning the national body entrusted with the tasks regarding railway safety in accordance with that Directive or any bi-national body entrusted by Member States with these tasks to ensure a unified safety regime for specialised cross-border infrastructures.

- 2.5 As well as implementing the above mentioned elements of the Directive on vehicle maintenance, ORR wishes to include some additional amendments to ROGS, EARR and TDLCR. Whilst the additional amendments to increase the transparency are not part of the European transposition process they have been included in light of experience of operating under the current regime and are designed with better regulation principles in mind to ensure regulatory clarity and give businesses the benefits of reduced administrative burdens. More information about these measures can be found in **Section 4**.
- 2.6 The amendments proposed do not expand or gold plate any of the Directives' requirements. As they represent a purely domestic change, these amendments are within scope of "One In, One Out", but they do not create any "Ins". The draft Regulations propose some domestic "Outs" by removing the requirement for non-mainline<sup>2</sup> operators to submit annual safety reports to ORR and by clarifying that non-mainline operators are excluded from the requirements of the TDLCR. The introduction of these measures is estimated to save businesses around £110,000 per year on the current arrangements.

### 3. Background

#### The position in the United Kingdom

- 3.1 In the UK, the Private Wagon Registration Agreement ("PWRA") was created after railway privatisation. It places responsibility for safety assurance of private wagons running on the infrastructure with the infrastructure manager. Currently this is Network Rail Infrastructure Ltd.
- 3.2 PWRA members are rail freight industry members of the Private Wagon Federation ("PWF") and other private wagon owners. The PWF is a trade association comprising members with interests in freight wagons.
- 3.3 The UK rail freight sector, mainly through the PWF, has expressed a desire to move away from the current regime. In particular, they have requested the establishment of a scheme that recognises them (private wagon owners) as a player under the Railway Safety Directive and allows them the choice of breaking away from the PWRA. The ECM certification scheme will allow them to have this choice by enabling them to appoint any certificated ECM from across the EU.
- 3.4 In the UK, there are<sup>3</sup>:
- 19,319 UK-registered domestic freight wagons (i.e. registered in the UK for travel in the UK), of which 5,130 are privately owned;
  - 1,732 UK-registered international freight wagons (i.e. registered in the UK to travel through the Channel Tunnel); and
  - 6,477 foreign registered international freight wagons (i.e. registered outside the UK for travel through the Channel Tunnel).

According to figures from the National Rail Trends<sup>4</sup>, 19.23 billion net tonne kilometres of freight was carried by rail in Great Britain in 2010-11. This is a 0.9 per cent increase from 2009-10.

- 3.5 There are 26 private wagon owners (of which 17 are part of the PWRA) and eight railway undertakings. Using Direct Rail Services ("DRS"), a typical railway undertaking, as an example<sup>5</sup>, for their long-term hire freight wagons not registered in the PWRA, currently it has to carry out four types of checks on wagons including:
- supplier assurance (in accordance with Railway Group Standard GT/RT2450);

<sup>2</sup> Non-mainline means those operators and systems that are not part of the mainline railway.

<sup>3</sup> Source: Rolling Stock Library.

<sup>4</sup> National Rail Trends Yearbook 2010-11, p. 67 (See **Annex 8** for link).

<sup>5</sup> Based on privately-owned/maintained coaching stock, as the privately-owned freight wagons operated by DRS are PWRA registered.

- documentation review of certification and a detailed examination of the maintenance records/arrangements;
  - fitness-to-run examination, which is a detailed examination of the freight wagon; and
  - Level 1 traffic examination, which involves a visual check of the freight wagon to ensure that it is safe to operate.
- 3.6 A supplier assurance audit could take two person-days to conduct; a documentation review could take between half to two person-days; a fitness-to-run examination could take between 10 and 50 person-days depending on the level of intervention, which would be determined by the supplier assurance and documentation reviews. The introduction of an ECM certification regime would mean that DRS could benefit by not having to conduct the supplier assurance audit, documentation review or the fitness-to-run examination. If the keeper leasing or hiring out a non-PWRA wagon to DRS presented them with an ECM Certificate, DRS would only need to carry out a Level 1 traffic examination prior to operating the freight wagon. This could mean significant cost savings for DRS (DRS would only consider it necessary to carry out a Level 1 traffic examination on a PWRA freight wagon because of the assurance carried out by Network Rail under the agreement). (*Source: Direct Rail Services*)
- 3.7 For a private wagon owner, which is non-PWRA, it would benefit if all railway undertakings only carry out a Level 1 traffic examination for all of the wagons it owns.

### **The position in Europe**

- 3.8 COTIF stated in 2006 that keepers of freight wagons were no longer obliged to register them with a railway undertaking. This led to representatives of the freight wagon community lobbying the EU institutions to amend the Railway Safety Directive. They wanted a system that would help provide assurance of the safety of freight wagons across EU Member States. In October 2006 a working group<sup>6</sup> was set up by the European Commission (“the Commission”) to look at ways to clarify the role of the keeper of wagons and the maintenance of wagons. It consisted of representatives from the freight community, national safety authorities, Member States and the European Railway Agency (“ERA”)<sup>7</sup>.
- 3.9 Across the EU, there are<sup>8</sup>:
- a. a total of 536 contracting parties, which include 83 railway undertakings, 354 private wagon keepers and 99 railway undertakings who are also wagon keepers; and
  - b. a total of 705,168 declared wagons of which 201,698 are owned by private wagon keepers.

### **Directive on vehicle maintenance (2008/110/EC)**

- 3.10 The nature of the problem identified above, and the objectives set suggested that an EU-wide approach was more appropriate.
- 3.11 The outcome of the lobbying mentioned earlier was a consultation by the Commission in early 2006. Responses to the consultation favoured a Commission initiative. Non-legislative options considered included:
- close monitoring of the use of the mutual recognition principle and, where appropriate, launch of infringement procedures; and
  - assigning ERA the role of coordinating parallel acceptance procedures.
- 3.12 In December 2006, the Commission<sup>9</sup> tabled a package of revisions to the Common Transport Policy. The driving force behind these revisions was to improve cross-acceptance for freight wagons. This is to allow free movement of rail services in an integrated common railway area. The legislative package included amendments to the Railway Safety Directive, in the form of the Directive on vehicle maintenance.

<sup>6</sup> Working Group Final Report – See ‘References’ section in **Annex 8** for web link.

<sup>7</sup> ERA has been established to provide EU Member States and the Commission with technical assistance in the fields of railway safety and interoperability.

<sup>8</sup> 2007 figures from Working Group Final Report – See ‘References’ section in **Annex 8** for web link.

<sup>9</sup> European Commission explanatory memorandum and impact assessment – See ‘References’ section in **Annex 8** for web link

- 3.13 The Directive on vehicle maintenance establishes a common system for maintenance arrangements across EU Member States. Under its requirements, all vehicles need to be assigned an ECM before they are placed in service or used on the network. The ECM must be registered on the National Vehicle Register<sup>10</sup> of the Member State in which it is first placed in service. The ECM must also establish a system of maintenance, which ensures that the vehicles for which it is responsible are safe to run on the network. These requirements have already been transposed by The Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011(S.I. 2011/1860).
- 3.14 In respect of the maintenance of freight wagons only, the ECM will need to hold an ECM certificate. The ECM certificate will provide assurance that the maintenance requirements of the Directive on vehicle maintenance are being met for any freight wagon for which the ECM has responsibility. The ECM Regulation sets out a system of certification of ECMs for freight wagons.

## 4. Options

### Option 1: Do nothing.

4. 1 A “do nothing” option would leave all regulations unchanged. This would mean we fail to implement the outstanding elements of the Directive and the existing regime stays in place. There would be the risk of infraction fines with this option. It is the baseline for quantifying the costs and benefits of action under the other two Options.

### Option 2: Implement the Directive on vehicle maintenance in relation to the requirement for an ECM for freight wagons to obtain an ECM certificate from a certification body.

4. 2 The Miscellaneous Amendments Regulations are being proposed to introduce to ROGS the requirement for an ECM for freight wagons to obtain an ECM certificate from a certification body as set out in the ECM Regulation. As a result of these new requirements the following impacts are envisaged:

#### Proposal 1: Certification of ECMs for freight wagons

##### Costs

4. 3 Some of the ECM certification requirements for freight wagons are broadly being carried out under the existing arrangements in the Private Wagon Registration Agreement (PWRA). The PWRA is a series of contracts between Network Rail and around 17 Private Wagon Owners (“PWO”), which allows the PWOs’ 3400 freight wagons to be operated on Network Rail-managed infrastructure. The PWRA team at Network Rail reviews the maintenance documentation for the 3400 wagons and registers and undertakes audits of their maintenance locations at no cost to the PWO. The PWRA team issues engineering instructions to the Private Wagon Owners and reviews any modifications that the owners wish to carry out to their wagons. The PWRA team also monitors the safety performance of the wagons and assists with investigations into serious incidents and accidents. Under the existing arrangements, the PWRA team carries out some aspects of the ECM function under the ECM certification regime.
4. 4 The onset of the ECM certification regime for freight wagons means a shift in responsibility for freight wagon maintenance from the PWRA team to the PWO, who in most cases will become the ECM. As a result of this, the PWRA will be replaced by the ECM Service Provision Agreement (ESPA). The ESPA team at Network Rail will provide an engineering support service to the ECM, but the ECM itself will become responsible for managing the maintenance activities relating to any freight wagons for which it is responsible. The new

---

<sup>10</sup> A database of rail vehicles operated in each Member State whose establishment is required under Directive 2008/57/EC

ECM responsibilities mean that extra costs are likely to be incurred in set up, administration, assessment, audit and decision-making.

4. 5 The new regime means that the ECM will be required to:

- familiarise itself with the new requirements;
- prepare and adopt the necessary formalised internal procedures and processes; and
- prepare the application for ECM certification.

4. 6 The costs for the certification of ECMs for freight wagons are summarised in **Table 1**. Over a ten year period, the total present value costs are estimated to be between **£4.536m** and **£5.567m**<sup>11</sup>. The underlying cost calculations can be found in **Annexes 1 and 2**.

**Table 1: Summary of certification costs for freight wagon ECMs (Proposal 1)**

	Transition (or one-off) costs (2010 constant prices) (£)			Annual costs (excluding transition) (2010 constant prices) (£)		
	<i>Low</i>	<i>High</i>	<i>Best estimate</i>	<i>Low</i>	<i>High</i>	<i>Best estimate</i>
Initial familiarisation costs for the ECM	644,000	1,287,000	965,500	N/A	N/A	N/A
'Professional Head' engineering services cost for the ECM	N/A	N/A	N/A	304,000	304,000	304,000
Annual surveillance check costs for the ECM	N/A	N/A	N/A	94,000	140,000	117,000
Policy development costs for ORR	90,000	95,000	92,500	N/A	N/A	N/A
ECM certification costs for ORR	68,000	68,000	68,000	N/A	N/A	N/A
Annual surveillance check costs for ORR	N/A	N/A	N/A	51,000	51,000	51,000
<b>Total costs</b>	<b>802,000</b>	<b>1,450,000</b>	<b>1,126,000</b>	<b>449,000</b>	<b>495,000</b>	<b>472,000</b>
<i>Total in present value terms over 10 years</i>	<i>802,000</i>	<i>1,450,000</i>	<i>1,126,000</i>	<i>3,734,156</i>	<i>4,116,720</i>	<i>3,925,438</i>
<i>Grand total in present value terms over 10 years (including transition costs)</i>				<b>4,536,156</b>	<b>5,566,720</b>	<b>5,051,438</b>

### **Benefits**

4. 7 The total benefits of ECM certification are summarised in **Table 2**. Over a ten year period the total present value of benefits is **£19.078m** on best estimate, with a low-high range estimated to be between **£8.208m** and **£29.948m**. This is a very wide range because a fitness-to-run examination could take between 10 and 50 person-days depending on the level of intervention, which would be determined by the supplier assurance and documentation review. (It is difficult to predict what the finding from these reviews will be). The underlying benefits calculations can be found in **Annexes 1 and 2**.

<sup>11</sup> Cells H4 and H5 of CBA – Option 2 in Annex 2

**Table 2: Summary of benefits of certification of ECMs for freight wagons (Proposal 1)**

	Transition benefits (2010 constant prices) (£)			Annual average (excluding transition) (2010 constant prices) (£)		
	<i>Low</i>	<i>High</i>	<i>Best estimate</i>	<i>Low</i>	<i>High</i>	<i>Best estimate</i>
Benefits of Railway Undertakings	N/A	N/A	N/A	74,000	317,000	195,500
Benefits of the ECM	N/A	N/A	N/A	714,000	3,085,000	1,899,500
Benefits of PWRA/ESPA	N/A	N/A	N/A	199,000	199,000	199,000
<b>Total benefits</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>987,000</b>	<b>3,601,000</b>	<b>2,294,000</b>
<i>Total in present value terms over 10 years</i>				<i>8,208,489</i>	<i>29,948,096</i>	<i>19,078,293</i>

**Option 3: In addition to the proposal in Option 2 (Implement the Directive on vehicle maintenance) include amendments to ROGS, EARR and TDLCR.**

4. 8 In reviewing ROGS to implement the outstanding elements of the Directive on vehicle maintenance, ORR has also taken the opportunity to consider the current railway safety framework in the light of lessons learned from operating under the current regime. The Miscellaneous Amendments Regulations also propose changes to: ROGS; the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (“EARR”); and the Train Driver Licences and Certificates Regulations 2010 (“TDLCR”). The Miscellaneous Amendments Regulations therefore propose to:

- amend ROGS to require an ECM for freight wagons to obtain an ECM certificate from a certification body (**Proposal 1**);
- amend EARR to give ORR inspectors jurisdiction to enter and have enforcement powers in certain premises that have been excluded, thereby allowing ORR inspectors to carry out enforcement in premises where an ECM may have maintenance facilities (**Proposal 2**);
- remove from ROGS the requirement for mainline operators to carry out safety verification in the light of introduction of the common safety method (“CSM”) on risk evaluation and assessment (European Regulation 352/2009). This will reduce the administrative burden of mainline operators who currently have a legal duty to carry out the existing safety verification requirements in ROGS **and** apply the CSM on risk evaluation and assessment (**Proposal 3**);
- amend the definition of ‘mainline railway’ in ROGS to ensure that operators of heritage and light rail systems are excluded from the mainline requirements (**Proposal 4**);
- amend TDLCR to clarify the meaning of “in Code form” in relation to medical restrictions in train driving licences (**Proposal 5**);
- remove the requirement for non-mainline operators to send annual safety reports to ORR, thereby reducing their administrative burden (**Proposal 6**);
- amend ROGS to make it clear controllers of ‘safety critical work’ must have suitable and sufficient monitoring arrangements in place (**Proposal 7**);
- amend ROGS so that the 28 day ‘affected parties’ consultation period runs concurrently with ORR’s four month processing time for applications for safety certificates and authorisations, thereby reducing the time taken for applicants to receive a safety certificate or safety authorisation (**Proposal 8**); and
- amend the definition of ‘national safety rules’ to clarify its meaning (**Proposal 9**).

4. 9 In the interests of better regulation, these changes and the implementation of the Directive on vehicle maintenance are being taken forward in a single instrument, since they all either make

amendments to ROGS or have a direct relationship with ROGS or the Railway Safety Directive.

### ***Proposal 1: Certification of ECMs for freight wagons***

4. 10 The costs and benefits of the certification of ECMs for freight wagons are the same as those set out in Proposal 1 in Option 2 (above).

### ***Proposal 2: Enforcement of ECMs***

4. 11 The Railways Act 2005, which made provision for the transfer of responsibilities for railway safety from the Health & Safety Executive (“HSE”) to ORR, did not include provisions for ORR to mutually agree enforcement demarcation with HSE (as HSE is able to with local authorities, for example).
4. 12 The Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (“EARR”) were made under the Health and Safety at Work etc. Act 1974. They provide the enforcement demarcation between HSE and ORR for railway safety purposes. Under EARR, ORR is the enforcing authority for activities associated with operation of a railway.
4. 13 The current demarcation means that in certain premises such as factories, mines quarries, etc, ORR inspectors can enter to undertake railway related inspections of railway vehicles only by invitation from the occupier or by authorisation from HSE to accompany one of their inspectors. This potentially limits ORR’s effectiveness as safety regulator because some ECMs will have maintenance facilities in premises where ORR has no enforcement responsibility, e.g. railway heavy maintenance workshops. ORR, as a safety authority, could therefore have difficulty monitoring that ECMs’ maintenance systems.
4. 14 ORR proposes to amend EARR to allow ORR inspectors to enter and have enforcement powers in those premises that have been excluded from regulation 4(3) of EARR. This is solely to allow ORR inspectors to monitor compliance by ECMs with the requirements in regulations 18A (and the proposed new regulation 18B) of ROGS. Currently, only HSE inspectors are allowed to carry out enforcement on these premises (e.g. quarries, harbours, factories, warehouse premises).

### ***Costs and benefits***

4. 15 ORR does not envisage that this change will create any additional cost burden to ORR or to businesses. The non-monetised benefit is that ORR will be able to monitor compliance by an ECM certificate holder operating in all premises.

### ***Proposal 3: Safety verification***

4. 16 ROGS requires that whenever there is a significant change that impacts on safety, a duty holder has to decide if safety verification is needed by applying a two stage test:
- **Difference Test:** the risk arising from the design is new, or novel to the transport system; and
  - **Risk Test:** there will be a new significant safety risk or a significant increase in risk
4. 17 The CSM for risk evaluation and assessment on the mainline railway has been in force since 19 July 2010 and applies to:
- significant technical changes to rolling stock; and
  - significant changes to other structural subsystems (infrastructure, command control and signalling, and energy) where an authorisation to place in service is required, or where required by a Technical Specification for Interoperability (“TSI”).

4. 18 From 1 July 2012 the CSM will apply in full to include all other significant technical changes and to significant operational and organisational changes.
4. 19 The CSM has direct effect in the all EU Member States. When a proposed change has an impact on safety on the mainline railway, the CSM places a duty on a proposer of change to decide, by expert judgment, the significance of a change based on six criteria:
- failure consequence;
  - novelty;
  - complexity;
  - The inability to monitor the change;
  - reversibility; and
  - additionality.
4. 20 If a change is regarded as significant, the risk management process described in the CSM should be followed.
4. 21 When fully in force, the CSM will cover the same requirements as safety verification (and more). Both are designed to provide an independent assessment that a project has gone through all the steps needed to reduce risks.
4. 22 Retaining requirements for safety verification in Great Britain in relation to the mainline railway when the CSM is in force potentially means that additional burdens are being placed on mainline operators if they are required to carry out both. ORR therefore proposes that it should no longer be a requirement under ROGS for mainline operators to carry out safety verification. The requirement for non-mainline operators to carry out safety verification will be retained.
4. 23 Guidance on the CSM can be found on ORR's website<sup>12</sup>.

#### *Costs and benefits*

4. 24 A baseline of 'do nothing' in relation to safety verification in ROGS would result in additional cost burdens being placed on the operator. This is because costs will be incurred in carrying out safety verification under ROGS as well as carrying out the CSM. The impact of this proposal is to avoid these costs. Removing the requirement for safety verification has savings for businesses.

#### ***Proposal 4: Definition of 'mainline railway'***

4. 25 ORR has reviewed its policy in relation to safety certificates for:
- non-mainline operators whose vehicles operate on part of the mainline infrastructure; and
  - mainline operators whose trains operate on a part of non-mainline infrastructure.
4. 26 ORR has also reviewed, in conjunction with the Department for Transport, how this policy impacts on the requirement for drivers of trains for a railway undertaking required to have a safety certificate.
4. 27 ORR considers that it is not the policy intention of the Railway Safety Directive that a non-mainline operator, such as a heritage railway or a metro system, whose vehicles operate on part of the mainline railway, should be required to have a mainline safety certificate to operate on that part of the mainline railway. This is because those systems are excluded from the requirements of the Directive. ORR also considers that it is not the policy intention of the Train Driver Licensing Directive (2007/57/EC) that the drivers of trains operated by such operators must have a train driving licence and certificate to do so.

---

<sup>12</sup> Guidance on the CSM for risk evaluation and assessment – See 'References' section in **Annex 8** for web link

4. 28 ORR believes that a non-mainline safety certificate should cover all that operator's activities even if its trains operate on part of the mainline infrastructure. Its SMS should show that its systems are adequate for mainline operation. For example, a heritage railway whose trains operate on part of the mainline railway should be able to demonstrate in its SMS that it complies with relevant regulations and national safety rules.
4. 29 ORR believes that a mainline operator that operates vehicles on part of non-mainline infrastructure should not be required to have a separate non-mainline safety certificate. As long as the operator has stated the extent of its operations on its application for mainline safety certificate, its safety certificate should cover the whole of its operations.
4. 30 The Railway Safety Directive applies to mainline operators; i.e. those that operate on the mainline railway and those that manage the mainline infrastructure. In order to clarify that those operators that may be excluded from the Railway Safety Directive requirements properly excluded from the mainline railway in Great Britain, ORR proposes to amend the definition of "mainline railway" in ROGS.
4. 31 The revised Railway Safety Directive gives an opportunity for Member States to exclude heritage operations that operate on the mainline, provided they comply with national safety rules. ORR therefore propose that a new definition excludes from the mainline railway requirements in ROGS systems such as heritage railways like North Yorkshire Moors Railways, and metro systems such as London Underground and Tyne and Wear Metro, which may operate trains on part of mainline infrastructure. It is not clear from the current definition whether these systems are excluded.
4. 32 The proposed definition is intended to also exclude from the mainline railway requirements in ROGS systems, such as heritage railways and metro systems, which may operate trains on part of the mainline infrastructure.

#### *Cost and benefits*

4. 33 This clarification will eliminate any potential costs that a non-mainline operator would incur in obtaining train driver licences and certificates for its drivers driving on the mainline. By making these changes to the definition of "mainline railway" three non-mainline operators with a total of around 652 drivers would benefit from the changes.
4. 34 TDLCR will come into effect in three phases:
- New cross-border drivers from 29 October 2011;
  - new domestic drivers from 29 October 2013; and
  - existing train drivers from 29 October 2018
4. 35 Using the evidence from RSSB (2009)<sup>13</sup> – scenarios 3 and 4, which applied to 21 train operation companies and figures from the non-mainline operators, the benefit would be as follows (2010 constant prices):
- **Medical assessment testing for new drivers:** Assuming that there are 20 new drivers in 2013 each requiring a medical assessment in line with TDLCR at an additional cost of £300 per driver, the total medical assessment cost saving is estimated to be £6,000 in 2013. There would also be cost savings from a medical assessment every three years.
  - **Psychometric testing for new drivers:** Assuming that there are 20 new drivers in 2013 each requiring a one-off psychometric test in line with TDLCR at an additional cost of £200 per driver, the total psychometric testing cost saving is estimated to be £4,000 in 2013 (2010 constant prices).
  - **Medical assessment for existing drivers 55 and over:** Assuming that there are 209 existing drivers across three non-mainline operators aged 55 and over in 2018, each

<sup>13</sup> MVA Consultancy (March 2009) for RSSB, *Assessment of EU Driver Licensing Directive*, Cost Benefit Analysis, Project no T77 – See 'References' section in **Annex 8** for web link.

requiring an annual medical assessment in line with TDLCR at an additional cost of £300 per driver, the total medical assessment cost saving is estimated to be £62,700 per year from 2018.

- **Medical assessment for existing drivers under 55:** Assuming that there are 443 existing drivers across three non-mainline operators under the age of 55, each requiring a medical assessment in line with TDLCR at an additional cost of £300 per driver, the total medical assessment cost saving is estimated to be £132,900 in 2018 and 2021. There would be cost savings from a medical assessment every three years.
- **Certificate database:** The cost of creating or modifying driver competence databases to comply with the requirements of TDLCR would be a one-off saving, estimated to be £36,000.
- **Certificate database administration:** Starting from 2013, there would be estimated savings of £56,000 per year for the extra cost of administering the driver competence management system.

4. 36 The total benefits from amending the definition of “mainline railway” are summarised in **Table 3**.

**Table 3: Summary of benefits of amending the definition of “mainline railway”**

	One-off benefits (£)	Annual average benefits from 2012 over 10 years (£)
Additional medical assessment for 652 drivers		53,000 <sup>14</sup>
Psychometric testing for 20 drivers	4,000	
Certificate database	36,000	
Certificate database administration		56,000
<b>Total</b>	<b>40,000</b>	<b>109,000</b>
<i>Total in present value terms over 10 years</i>	<i>37,340</i>	<i>906,510</i>

#### **Proposal 5: Train Driving Licences and Certificates Regulations 2010**

4. 37 Schedule 2 of TDLCR refers to a model train driving licence and harmonised complementary train driving certificate across the EU. It sets out a model of what information licences and certificates must contain, how it must look and what restrictions there are.
4. 38 In order to clarify the meaning of “in code form” in paragraph 2(g) of Schedule 2 of TDLCR, a definition is being inserted into TDLCR and the final paragraph of paragraph 2(g) is being deleted. This makes it clear that “in code form” implements future obligations in relation to additional information or medical restrictions that may be required by amendments to Commission Regulation 36/2010.

#### **Cost and benefits**

4. 39 This minor change to TDLCR does not create any impact on businesses.

#### **Proposal 6: Annual safety reports for non-mainline operators**

4. 40 Regulation 20 of ROGS currently requires that a transport operator sends an annual safety report to ORR if it requires a mainline or non-mainline safety certificate or safety authorisation.

<sup>14</sup> Annual average from 2012 over 10 years

4. 41 ORR has reviewed the requirement for non-mainline operators and has concluded that this requirement is not necessary, as information from these operators is available in other ways. ORR therefore proposes that the requirement for non-mainline operators to send annual safety reports to ORR is removed from ROGS.

*Costs and benefits*

4. 42 Removing the requirement for non-mainline operators to submit annual safety reports to ORR will mean a cost saving for these operators. ORR estimates that it takes 12 hours for a report to be written by a middle manager earning £15 per hour<sup>15</sup> (multiplied by 1.58<sup>16</sup> for non-wage labour costs). There are five non-mainline duty holders that submit annual safety reports to ORR. The total benefit to these non-mainline operators is £1,400 per year.

***Proposal 7: Competency and fitness for safety critical work***

4. 43 ROGS regulation 24(1)(d) of ROGS requires that every controller of safety-critical work, so far as is reasonably practicable, ensure that anyone under his management, supervision or control only carries out safety-critical work where there are arrangements in place for monitoring the competence and fitness of that person.
4. 44 Operational experience suggests that the provisions of regulation 24(1)(d) are not clear to duty holders. It is also difficult to enforce against these arrangements if they were considered by the inspector to be unsuitable and insufficient. However, if regulation 24(1)(d) required that there were in place **suitable and sufficient** arrangements for monitoring, this would help to improve safety by clarifying the requirement for controllers of safety-critical work. The inspector would then be able to require improvements if monitoring arrangements were considered to be unsuitable and insufficient.
4. 45 ORR therefore proposes to amend regulation 24(1)(d) of ROGS to clarify that the monitoring arrangements of the controller of safety-critical work have to be suitable and sufficient.

*Costs and benefits*

4. 46 ORR does not envisage that this clarification will create additional cost burdens on businesses. There will be non-monetary benefits in increased transparency of the monitoring arrangements of controllers of safety-critical work.

***Proposal 8: Consulting an 'affected party'***

4. 47 Regulation 17 of ROGS requires that whenever an application is made for a safety certificate or authorisation, the applicant must consult an 'affected party' on its application or any further information requested by ORR. The 'affected party' has 28 days from the date of issue of the application to make representations to ORR. The 'affected party' includes:
- for all applications, any recognised trades unions in the applicant's organisation;
  - for all applications, the appropriate rail user groups;
  - for a safety certificate application, transport operators who manage the infrastructure of the transport system the applicant runs; and
  - for a safety authorisation application, transport operators who run on the applicant's infrastructure or who manage infrastructure that 'interfaces' with the applicant's.
4. 48 ROGS also requires that the four month period that ORR has to make its decision on an application for a safety certificate or authorisation will not begin to run until the 28-day period stated above has elapsed. ORR has reviewed this requirement and found that in many cases, it did not take as long as four months for ORR to process applications. Taking the four-month period as 122 days, adding 28 days gives 150 days. In a sample size of 64 safety certificate applications, the average time taken to process an application is 99 days. In a

---

<sup>15</sup> Annual Survey of Hours and Earnings - Manufacturing

<sup>16</sup> ORR Finance Department

sample size of 29 safety authorisations, the average duration is 110 days. These are within four months, which means that in these cases applicants will have to wait up to an additional 28 days to receive their certificate or authorisation.

4. 49 In the interest better regulation, ORR therefore proposes that ROGS is amended so that the 28-day consultation with an ‘affected party’ runs concurrently with the four-month application assessment period. This will in some cases shorten the time taken for an applicant to receive a decision from ORR.

*Costs and benefits*

4. 50 Amending ROGS to allow the consultation of ‘affected parties’ to run concurrently with ORR’s four-month assessment period could mean that an operator receives its safety certificate or authorisation earlier. For new train operators or infrastructure managers, this could mean that they can begin their operations earlier and benefit from generating revenue earlier. However, this is difficult to quantify because franchises run for several years and it is difficult to predict whether or not existing franchise holders will continue with the same operation. This proposal applies to 41 safety certificate and safety authorisation applicants from October 2012 until 2015 (see **Table 4**) that currently hold certificates or authorisations.

**Table 4: Applications affect by change in ‘affected party’ consultation**

<b>Year</b>	<b>No of safety certificates</b>	<b>No of safety authorisations</b>
2012 (from October)	7	4
2013	14	7
2014	3	3
2015	2	1
<b>Total</b>	<b>26</b>	<b>15</b>

4. 51 Making this change to ROGS does not create any additional cost burden for businesses.

**Proposal 9: Definition of national safety rules**

4. 52 ROGS uses the term ‘transport undertaking’ rather than ‘railway undertaking’, which is in the Railway Safety Directive as ‘transport undertaking’ includes operators not on the mainline. The definition of ‘national safety rules’ was copied from the Railway Safety Directive and is therefore out of line with UK implementation as it includes the term ‘railway undertaking’. ORR therefore proposes to change the definition of ‘national safety rules’ so that it refers to ‘transport undertaking’ rather than ‘railway undertaking’.

*Costs and benefits*

4. 53 The clarification of the definition of ‘national safety rules’ does not create any material impact on costs. It will benefit duty holders as they will be able to better understand what is meant by ‘national safety rules’.

**Familiarisation costs in relation to proposals 2 to 9**

4. 54 A total of 67 duty holders will need to familiarise themselves with the changes being made to ROGS, TDLR and EARR. Assuming that it takes a middle manager earning £15 per hour (multiplied by 1.58<sup>17</sup> for non-wage labour costs) taking three days (24 hours) to familiarise themselves with the legislation, the total familiarisation cost is £38, 000.

<sup>17</sup> ORR Finance Department

## One-in, one-out business assessment

4. 55 As the measures implement European requirements which the UK is obliged to implement as part of its treaty obligations as a Member State of the European Union, the ECM measures included in the Miscellaneous Amendments Regulations do not fall within the scope of the Government's "One In, One Out" ("OIOO") requirement. In relation to those measures that do fall within the scope of OIOO, the "Ins" identified are those relating to the familiarisation costs above, but in 2009 prices (£36,943). These proposals create 'Outs' in relation to:

- **proposal 3:** the removal of safety verification for mainline operators in ROGS;
- **proposal 4:** amending the definition of 'mainline railway' in ROGS;
- **proposal 6:** the removal of the requirement in ROGS for non-mainline operators to send annual safety reports to ORR, and
- **proposal 8:** amending ROGS to allow the 28-day 'affected parties' consultation period to run concurrently with ORR's four-month processing time;

4. 56 The total benefits for the 'Outs' and costs of 'Ins' are set out in **Table 5**.

4. 57 The present value of the net cost to business ("PVNCB") (based on the familiarisation costs set out in **paragraph 4.54** for 69 duty holders) is £-0.892m. Over a 10 year period, using an annuity rate of 8.608, the equivalent annual net cost to business (EANCB) is £-0.104m. Box 1 shows how the EANCB is calculated.

**Table 5: Benefits of 'Outs' and costs of 'Ins'**

Benefits	Transition benefits (2009 constant prices) (£)			Annual average (excluding transition) (2009 constant prices) (£)		
	Low	High	Best estimate	Low	High	Best estimate
Benefits of no annual safety reports ( <b>Proposal 6</b> )	N/A	N/A	N/A	N/A	N/A	1,361
Benefits of non-mainline operator (train driver) ( <b>Proposal 4</b> )	N/A	N/A	38,887	N/A	N/A	105,968
<b>Total benefits</b>	<b>N/A</b>	<b>N/A</b>	<b>38,887</b>	<b>N/A</b>	<b>N/A</b>	<b>110,400</b>
<i>Total in present value terms over 10 years</i>	<i>N/A</i>	<i>N/A</i>	<i>36,302</i>	<i>N/A</i>	<i>N/A</i>	<i>892,610</i>
<i>Grand total in present value terms over 10 years (including transition benefits)</i>						<i>928,912</i>
Costs	Transition costs (2009 constant prices) (£)			Annual average (excluding transition) (2009 constant prices) (£)		
	Low	High	Best estimate	Low	High	Best estimate
Familiarisation costs of 'Outs' involving 67 duty holders	N/A	N/A	36,943	N/A	N/A	N/A
<i>Total in present value terms over 10 years</i>	<i>N/A</i>	<i>N/A</i>	<i>36,943</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>

### Box 1: Calculation of EANCB and EANBB for 'Outs'

EANCB =  $\frac{PVNCB}{a_{t,r}}$  where  $a_{t,r}$  is the annuity rate given by:

$$a_{t,r} = \frac{1+r}{r} \left[ 1 - \frac{1}{(1+r)^t} \right] = \frac{1.035}{0.035} \left[ 1 - \frac{1}{1.411} \right] = 8.608$$

Where:

Present value of net costs to business	= PVNCN
Time period in the calculation of the net present value	= $t$ (10 years)
Discount rate	= $r$ (3.5%)
Equivalent annual net cost to business	= EANCB

$$PVNCB = \text{£ } 36,943 - \text{£ } 928,912 = \text{£ } -891,969\text{m} = \text{£ } -0.892\text{m}$$

$$EANCB = \frac{PVNCB}{a_{t,r}} = \frac{\text{£ } -0.892\text{m}}{8.608} = \text{£ } -0.104\text{m}$$

## 5. Summary of preferred option (Option 3)

- 5.1 The preferred option is Option 3 because it provides an opportunity to make further changes to ROGS, EARR and TDLCR. The total costs of Option 3 are summarised in **Table 6**. In addition there will be the cost of carrying out a statutory review (See **Section 6**). The total benefits of Option 3 are summarised in **Table 7**. **Table 8** sets out a summary of the present value of costs and benefits for both Options 2 and 3.

**Table 6: Summary of costs for Option 3**

	Transition (or one-off) costs (constant prices) (£)			Annual costs (excluding transition) (constant prices) (£)		
	<i>Low</i>	<i>High</i>	<i>Best estimate</i>	<i>Low</i>	<i>High</i>	<i>Best estimate</i>
Initial familiarisation costs for the ECM ( <b>Proposal 1</b> )	644,000	1,287,000	965,500	N/A	N/A	N/A
'Professional Head' services cost for the ECM ( <b>Proposal 1</b> )	N/A	N/A	N/A	304,000	304,000	304,000
Annual surveillance check costs for the ECM ( <b>Proposal 1</b> )	N/A	N/A	N/A	94,000	140,000	117,000
Policy development costs for ORR ( <b>Proposal 1</b> )	90,000	95,000	92,500	N/A	N/A	N/A
ECM certification costs for ORR ( <b>Proposal 1</b> )	68,000	68,000	68,000	N/A	N/A	N/A
Annual surveillance check costs for ORR ( <b>Proposal 1</b> )	N/A	N/A	N/A	51,000	51,000	51,000
Familiarisation cost for changes to ROGS, EARR and TDLCR ( <b>Proposals 2 to 9</b> )	38,000	38,000	38,000	N/A	N/A	N/A
<i>(Cost for statutory review of EARR and TDLCR)</i>	N/A	N/A	N/A	9,600	9,600	9,600
<b>Total costs</b>	<b>840,000</b>	<b>1,488,000</b>	<b>1,164,000</b>	<b>458,600</b>	<b>504,600</b>	<b>481,600</b>
<i>Total in present value terms over 10 years</i>	<i>840,000</i>	<i>1,488,000</i>	<i>1,164,000</i>	<i>3,813,995</i>	<i>4,196,559</i>	<i>4,005,277</i>
<i>Grand total in present value terms (including transition costs)</i>				<b>4,653,995</b>	<b>5,684,559</b>	<b>5,169,277</b>

**Table 7: Total benefits of Option 3**

	Transition benefits (constant prices) (£)			Annual average (excluding transition) (constant prices) (£)		
	<i>Low</i>	<i>High</i>	<i>Best estimate</i>	<i>Low</i>	<i>High</i>	<i>Best estimate</i>
Benefits of railway undertakings ( <b>Proposal 1</b> )	N/A	N/A	N/A	74,000	317,000	195,500
Benefits of the ECM ( <b>Proposal 1</b> )	N/A	N/A	N/A	714,000	3,085,000	1,899,500
Benefits of PWRA ( <b>Proposal 1</b> )	N/A	N/A	N/A	199,000	199,000	199,000
Benefits of no Annual Safety Reports ( <b>Proposal 6</b> )	N/A	N/A	N/A	1,400	1,400	1,400
Benefits of non-mainline operator (train driver) ( <b>Proposal 4</b> )	40,000	40,000	40,000	109,000	109,000	109,000
<b>Total benefits</b>	<b>40,000</b>	<b>40,000</b>	<b>40,000</b>	<b>1,097,400</b>	<b>3,711,400</b>	<b>2,404,400</b>
<i>Total in present value terms over 10 years</i>	<i>37,340</i>	<i>37,340</i>	<i>37,340</i>	<i>9,126,643</i>	<i>30,866,249</i>	<i>19,996,446</i>
<i>Grand total in present value terms over 10 years (including transition costs)</i>				<b>9,163,983</b>	<b>30,903,589</b>	<b>20,033,786</b>

**Table 8: Summary of present value of costs and benefits**  
*(Over 10 years, relative to “do nothing” notional option) (Best estimates in 2010 prices)*

Proposal	Option 2 – copy out the Directive		Option 3 – Copy out the Directive and amend domestic requirements	
	Costs (£)	Benefits (£)	Costs (£)	Benefits (£)
Proposal 1: Certification of ECMs for freight wagons	5,051,438	19,078,293	5,051,438	19,078,293
Proposal 2: Enforcement of ECMs	0	0	4,750	0
Proposal 3: Safety verification	0	0	4,750	0
Proposal 4: Definition of ‘mainline railway’	0	0	4,750	943,850
Proposal 5: TDLCR	0	0	4,750	0
Proposal 6: Annual safety reports for non-mainline operators	0	0	4,750	11,643
Proposal 7: Competency and fitness for safety critical work	0	0	4,750	0
Proposal 8: Consulting an ‘affected party’	0	0	4,750	0
Proposal 9: Definition of national safety rules	0	0	4,750	0
Statutory reviews	0	0	79,839	0
<b>Total in present value terms</b>	<b>5,051,438</b>	<b>19,078,293</b>	<b>5,169,277</b>	<b>20,033,786</b>
<i>Net benefit in present value terms</i>		<i>14,026,855</i>		<i>14,864,509</i>

## 6. Statutory review of ROGS, TDLCR and EARR

- 6.1 It is the UK Government’s policy that for regulations implementing EU obligations, a statutory obligation on the Secretary of State to review them every five years will apply. The Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011 has already inserted regulation 34A into ROGS. This requires that within a maximum of five years of those Regulations coming into force, the Secretary of State must review the whole of ROGS and publish the review’s conclusions. As a result of this, the Miscellaneous Amendments Regulations do not insert a review clause into ROGS. However, a Post Implementation Plan can be found at **Annex 4**.
- 6.2 The Train Driving Licences and Certificates Regulations 2010 (“TDLCR”) and the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (“EARR”) implement EU obligations so a statutory obligation on the Secretary of State to review them applies. The Miscellaneous Amendments Regulations inserts regulation 40 into TDLCR and regulation 8 into EARR. This requires that:
- within 11 years the Secretary of State must review the whole of TDLCR and publish the review’s conclusion; and

- within 5 years the Secretary of State must review the whole of EARR and publish the review's conclusion.

6.3 TDLCR will come into effect in three phases:

- New cross border drivers from 29 October 2011;
- new domestic drivers from 29 October 2013; and
- existing train drivers from 29 October 2018

6.4 The Department for Transport at the end of 11 years (October 2023) will undertake a desktop review of TDLCR to ensure that its policy for application of the Directive is working and not disproportionately affecting industry. It will also review the costs and benefits of implementation of the licensing requirements of the Train Driver Licensing Directive to domestic drivers and decide at that time whether there is sufficient justification and evidence for Great Britain applying for a further derogation for domestic drivers from the requirements of the Directive. The review will involve collating and updating existing evidence (including industry Cost-benefit Analysis reports on the costs associated of implementing the requirements of the Directive) as well as taking evidence from stakeholders via workshops and questionnaires. Stakeholders are all those affected by TDLCR, such as Train and Freight Operating Companies.

6.5 The Post Implementation Review Plan for TDLCR is at **Annex 5** and the Post Implementation Review Plan for EARR is at **Annex 6**.

6.6 ORR expects that it will take 0.33 person-years to carry out each review. The estimated completion cost, including publication as a Command Paper, will be around £48,000<sup>1</sup>. This occurs in year 5 and year 10. So the annual average cost is £9,600 over 10 years (constant prices).

6.7 The benefits of a Ministerial duty to review TDLCR and EARR are that it helps to:

- prevent over-regulation;
- ensure that the Regulations are working as intended; and
- assess whether any burdens on business and others can be reduced.

## 7. Specific impact tests

7.1 ORR has considered the potential impact of this policy on the following areas, in line with relevant guidance. No specific impacts have been identified given the nature of the proposed measure.

### ***Equality***

7.2 The proposals in the Miscellaneous Amendments Regulations are aimed at railway undertaking (mainline train operators), infrastructure managers, ECMs, and non-mainline train operators (e.g. metros and heritage railways) regardless of whether individuals have any of the protected characteristics under the Equality Act 2010. ORR envisages no impact on an individual with any particular protected characteristic because the proposals will have neither a positive or negative impact on these characteristics.

### ***Competition***

7.3 The certification regime for ECMs for freight wagons is likely to have a positive impact on competition in the UK and European rail freight markets. It is likely to reduce barriers to entry

---

<sup>1</sup> This assumes: salary is £42,491; on costs multiplied by 1.58; full time equivalent required is 0.33; an additional £2,000 for publication of the Command Paper for each review.

for firms wishing to operate across national borders by increasing confidence in an ECM's ability to control the process of freight wagon maintenance.

### ***Impact on Small Firms***

- 7.4 The Miscellaneous Amendments Regulations should not adversely impact on small firms. ORR does not believe that regulatory burden will increase for any size of firm. They apply to any size, whether micro or large to ensure protection of the public from risks of danger and injury. However, the clarification of the exclusions from the definition of 'mainline railway' will minimise or the burden on smaller lines (such as those that are functionally separate from the mainline railway and used for local passenger services and heritage or touristic railways).

### ***Greenhouse Gas***

- 7.5 With the exception of the certification of ECMs for freight wagons, the measures being proposed are administrative and are not expected to have a material impact on greenhouse gas emissions. In relation to ECM certification, a consistent approach to rail freight wagon maintenance across Europe should allow for easier cross-border rail traffic, which may encourage the movement of traffic from the roads onto the rail network resulting in environmental benefits from lower carbon emissions.

### ***Wider Environmental Impact***

- 7.6 The Miscellaneous Amendments Regulations do not have a material impact on the wider environment other than what's been stated under 'Greenhouse Gas' above.

### ***Health & Well Being***

- 7.7 Major incidents on the railway and other guided transport systems are rare, but when they occur, they have the potential to cause a large impact on the confidence of users. They can also lead to injuries and fatalities as well as physical disruption of the railway. Indirectly, these incidents can undermine public confidence in the operation of the railways. Implementing the measures in the Miscellaneous Amendments Regulations is likely to provide further assurance that safety risks are being managed appropriately.

### ***Human Rights***

- 7.8 The Miscellaneous Amendments Regulations propose to amend EARR to give ORR inspectors jurisdiction to enter and have enforcement powers in certain premises that have previously been excluded. ORR inspectors would, therefore, be able to carry out enforcement in premises where an ECM may have maintenance facilities.
- 7.9 The powers of inspectors are governed by section 20 of the Health and Safety at Work etc. Act 1974. These powers allow for entry, inspection, analysis and seizure of property. Allowing inspectors to exercise these powers in more areas engages Article 1 of the First Protocol of the European Convention on Human Rights and Fundamental Freedoms. This relates to the entitlement to peaceful enjoyment of possessions. The powers of inspectors restrict that right as they allow interference with property.
- 7.10 However, this is not an absolute right. The Article is qualified by stating that no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by general principles of international law. The basis of the restriction is found in health and safety legislation. Allowing inspectors these powers is legitimate as they ensure that health and safety rules are enforced. Health and safety rules are necessary to ensure protection of the public from risks of danger and injury. The rules in force are proportionate to the purpose to be achieved. The interference is limited and the aim, namely public safety, extremely important.
- 7.11 As a result, it is likely that these proposals will be human rights compliant. In coming to this conclusion, reference has been made to the Ministry of Justice guidance and the [Human Rights Flowchart](#) (Page 50 of the guidance).

### ***Justice Impact***

- 7.12 No new impacts are created on the justice system. Please see Justice Impact Test in **Annex 3**. This has been agreed by the Ministry of Justice.

### ***Rural Proofing***

- 7.13 The railways affect both urban and rural areas and the Miscellaneous Amendments Regulations apply to the whole of Great Britain without being specific to any particular geographic location. ORR therefore considers that the proposals do not disproportionately impact on rural communities, either negatively or positively.

### ***Sustainable Development Impact***

- 7.14 The Miscellaneous Amendments Regulations do not have a material impact on sustainable development. However, the certification regime for ECMs for freight wagons is likely to have a positive impact on competition in the UK and European rail freight markets. A more competitive rail transport sector will also help the EU to fulfil its basic commitments with regard to sustainable development and the struggle against climate change<sup>2</sup>. A consistent approach to rail freight wagon maintenance across Europe should allow for easier cross-border rail traffic, which may encourage the movement of traffic from the roads onto the rail network resulting in environmental benefits from lower carbon emissions. See also 'Competition' above.

---

<sup>2</sup> European Commission explanatory memorandum – see 'References' section in **Annex 8** web link

## Annex 1: Cost and benefit calculations for Proposal 1 (which occurs in both Options 2 and 3)

### Costs of certification of ECMs for freight wagons

#### *Costs for the ECM (source: Private Wagon Federation)*

1. The estimated total initial cost per ECM is between £29,000 and £58,000. A range is expressed because ECMs will be starting from different points. For example, one organisation might have a baseline of a defined management and responsibility structure, formalised document control, internal audit and competence systems. Others may need to start at a baseline where these areas would need to be developed. Similarly, whereas some ECMs are rail specialists with access to in-house professional expertise, others are not and would need to buy-in this expertise to the level likely to be required.
2. The estimated total initial cost per ECM makes the following assumptions:
  - it takes typically at least 0.25 to 0.5 person years of effort for each ECM to familiarise itself with the new requirements and prepare for ECM certification; and
  - the cost for each ECM will be £450 per person day.
3. So, assuming the current position in GB where there are 26 ECMs (PWRA members and non-members) (excluding railway undertakings and infrastructure managers), the estimated total initial cost for all freight wagon ECMs will be between **£644,000** and **£1,287,000**.
4. Each ECM is likely to require additional 'Professional Head' engineering services of at least an estimated half a day a week compared to the baseline of 'no ECM'. At £450 per day, this is an additional cost of £12,000 per ECM per year. So, for all freight wagon ECMs, the total cost for 'Professional Head' engineering services is estimated to be around **£304,000 per year**.
5. Each ECM will also incur on-going additional costs to service annual surveillance checks compared with the 'no ECM' baseline. The total cost per ECM per year is between £4,000 and £5,000. This assumes the following:
  - the surveillance check involves high level scrutiny by the certification body;
  - the surveillance check involves the headquarters site, plus perhaps one workshop site;
  - the cost is £450 per person day; and
  - it takes 4 to 6 days for the ECM to prepare for and undergo surveillance.
6. So, for all freight wagon ECMs, the total surveillance costs will be between **£94,000** and **£140,000 per year**.

#### *Costs for ORR*

7. In its role as a safety regulator ORR will incur costs in developing policy and transposing the Directive on vehicle maintenance.
8. The cost to ORR for policy development is **£90,000** and **£95,000** assuming the following:
  - 70% of a Grade D's time with annual salary of £42,000;
  - 5% of a Grade C's time with annual salary of £55,000;
  - 25% of a Grade B's time with annual salary of £61,000
  - all salaries are multiplied by 1.58 for non-wage costs; and
  - there will be one-off development costs of between £15,000 and £20,000 for the accreditation of certification bodies by the United Kingdom Accreditation Service.

9. As a certification body ORR will also incur costs in processing applications for ECM certificates. The cost for ORR certifying 26 ECMs over 12 months is estimated to be **£68,000**, assuming the following:
- it takes 6.5 hours for a Grade G to process one application;
  - it takes 1 hour for a Grade E to process one application;
  - it takes 47 hours for two Grade Cs to process one application;
  - it takes 2.5 hours for one Grade B to process one application;
  - a Grade G's hourly rate is £12.34;
  - a Grade E's hourly rate is £19.20;
  - a Grade C's hourly rate is £31.28;
  - a Grade B's hourly rate is £34.57; and
  - the hourly rate is multiplied by 1.58 for non-wage costs.
10. The certification body will be required to carry out surveillance activities at least once a year at selected sites, representative of all the activities of those ECMs they have certified. The cost for ORR will be **£51,000 per year** assuming the following:
- the number of sites visited is 52 (two per ECM);
  - each visit takes 20 hours and includes preparation, inspection and report writing; and
  - the total staff cost per hour is £31.28 (multiplied by 1.68 for non-wage costs).

### **Benefits of certification of ECMs for freight wagons**

11. The example from DRS in **Section 3 (3.6)** uses privately owned/maintained coaching stock to demonstrate its assurance process. Assuming that this can be applied to freight wagons and to other railway undertakings, the estimated benefits of an ECM certificate for eight railway undertakings is between **£74,000** and **£317,000 per year**. This depends on the level of findings from fitness-to-run examinations. The following assumptions are made based on the example from DRS in **Section 3**:
- larger railway undertakings will require additional human resource, so three workers, each earning £19.32 per hour (multiplied by 1.68 for non-wage costs) are assumed for the average railway undertaking;
  - each day has 8 hours;
  - the supplier audit takes 48 hours;
  - the document review takes between 12 and 48 hours;
  - the fitness-to-run examination takes between 240 and 1200 hours; and
  - each railway undertaking relies on an ECM certificate and does not carry out the supplier assurance audit, the documentation review and the fitness-to-run examination itself, but carries out a Level 1 traffic examination
12. Assuming that the ECM will currently undergo the supplier assurance audit, the documentation review and the fitness-to-run examination with three different railway undertakings on average, having an ECM certificate will mean that the ECM will just have to undergo these checks once only when it applies for an ECM certificate. Assuming that the costs for the railway undertaking are the same for the ECM, the benefits for 26 ECMs will be between **£714,000** and **£3,085,000 per year**.
13. Assuming that there are benefits for the PWRA Team in not having to carry out the 'Professional Head' engineering role for all ECMs, the total benefit to Network Rail is estimated to be **£199,000 per year**. This is using the figures in **paragraph 4** above, assuming that there are 17 private wagon owners in the PWRA and the future ESPA.

## Annex 2: Costs and benefits spreadsheet



Source data for ROGS OIOO Option 3 - BIS  
Amendmend 2012 im; IA calculator.xls

## Annex 3: Justice Impact Test



ORR-#427062-v1-Ju  
stice\_Impact\_Test\_-

## Annex 4: Post Implementation Review (PIR) Plan for ROGS

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR, please provide reasons below.

**Basis of the review:** [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];

The basis of the review is a statutory review of the whole of ROGS five years from when the ROGS (Amendment) Regulations enter into force. See 'Statutory review of ROGS' in section 6 of the evidence base.

**Review objective:** [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

A proportionate check that ROGS are operating as intended.

**Review approach and rationale:** [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

ROGS came into force on 6 October 2006. A report on the monitoring and evaluation of ROGS was published by GL Nobel Denton in June 2010. In view of the scale of resources involved in carrying out such a review, ORR does not envisage a second review of ROGS on the same scale with a five-year timeframe. The 2010 report concluded that the majority of objectives of ROGS had either been met or were on their way to being met. On that basis, and the fact that the impact of new regulation 18A is likely to be small, ORR feels that a desktop review of ROGS will be appropriate. This will involve collating and updating existing evidence from the 2010 report and seeking new evidence from inspectors and evidence from stakeholders via workshops and questionnaires. Stakeholders are all those affected by ROGS, such as Network Rail, Train Operating Companies, Freight Operating Companies, heritage organisations, metros and tramways.

**Baseline:** [The current (baseline) position against which the change introduced by the legislation can be measured]

The baseline position is:

- (a) replacing (in 2006) a system of 'permissioning' safety cases with system of: minimum requirements for a safety management system, safety certification, safety authorisation, and co-operation to ensure system safety;
- (b) replacing (in 2006 and 2008) a system of formal approval by ORR before new or altered works, plant or equipment are introduced with a system of safety verification from an independent competent person;
- (c) changing (in 2006) the approach of controlling the number of hours for preventing fatigue to one requiring arrangements to be implemented that controls risks such as pattern of working hours and roster design;
- (d) changing (in 2006) the focus on the management of hours of work of safety critical workers to include other factors, rather than just hours of work;
- (e) introducing (in 2006) the requirement for controllers of safety critical workers to ensure that safety critical workers are competent, fit and risks arising from fatigue are adequately managed;
- (f) introducing (in 2011) the requirement to assign an entity in charge of maintenance ("ECM") to a railway vehicle and ensure that the ECM is registered on the National Vehicle Register; and for the ECM to ensure that the rail vehicles for which it is responsible are safely maintained through a system of maintenance; and
- (g) introducing (in 2012) the requirement for an ECM responsible for freight wagons to obtain an ECM certificate from and certification body.

**Success criteria:** [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

- (a) ROGS and any changes made to it have a positive or neutral impact on business
- (b) Standards of safety do not reduce
- (c) The administrative burden of ROGS and changes made to it reduce over time

**Monitoring information arrangements:** [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]

ORR's approach to maintaining health and safety on Britain's railways is to ensure that the industry manages risks satisfactorily, and continuously improves its health and safety performance as far as is reasonably practicable. ORR monitors the safety performance of duty holders and investigates incidents and complaints to find out why failures have occurred and if the law has been broken.

**Reasons for not planning a review:** [If there is no plan to do a PIR please provide reasons here]

## Annex 5: Post Implementation Review (PIR) Plan for TDLCR

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR, please provide reasons below.

**Basis of the review:** [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];

The basis of the review is a statutory review of TDLCR 10 years from the Regulations coming into force for domestic drivers.

**Review objective:** [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

The basis of the review is a statutory review of TDLCR 10 years from the Regulations coming into force for domestic drivers.

**Review approach and rationale:** [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

On 6 April 2010 the EU directive on Train Driver Licensing was transposed for GB. TDLCR will come into effect in three phases:

- New cross border drivers from 29 October 2011;
- new domestic drivers from 29 October 2013; and
- existing train drivers from 29 October 2018

The directive had the aim of creating a standardised licensing system for train drivers across Europe, in order to allow train drivers to move more easily between railway undertakings in different Member States. The directive imposes substantial costs on the rail industry (mainly administering licenses and changes to medical assessment requirements) without providing significant benefits. The UK has applied for a derogation of up to 10 years, which would exempt domestic drivers from the requirements. The ten year review period has been chosen to coincide with the length of the derogation.

The review will comprise a desktop review to ensure that the Regulations are operating as intended and not disproportionately affecting industry. It will also review the costs and benefits of implementation of the licensing requirements of the Directive to domestic drivers and decide whether there is sufficient justification and evidence for GB applying for a further derogation for domestic drivers from the requirements of the Directive. The review will involve collating and updating existing evidence (including research conducted by Rail Standards and Safety Board in 2009) as well as taking evidence from stakeholders via workshops and questionnaires.

**Baseline:** [The current (baseline) position against which the change introduced by the legislation can be measured]

The baseline position is:

Impact Assessment from transposition of Train Driver Licensing Directive:

MVA Consultancy (March 2009) for RSSB, *Assessment of EU Driver Licensing Directive*, Cost Benefit Analysis, Project no T77 (See 'References' section in **Annex 8** for web link).

**Success criteria:** [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

- (a) TDLCR and any changes to it have a positive or neutral impact on stakeholders
- (b) The costs and administrative burden on the rail industry reduce over time

**Monitoring information arrangements:** [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]

ORR is the regulator for the licensing requirements of the Directive. Their approach is to ensure that the industry manages risks, and continually improves its health and safety performance as far as reasonably practicable. ORR monitors the safety performance of duty holders and investigates incidents and complaints to find out why failures have occurred and if the law has been broken. In terms of TDLCR the Department will liaise closely with ORR as to whether there are problems by the industry with compliance with the Regulations. The Regulations will be reviewed and monitored and the Department will make amendments if proved necessary.

**Reasons for not planning a PIR:** [If there is no plan to do a PIR please provide reasons here]

## Annex 6: Post Implementation Review (PIR) Plan for EARR

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR, please provide reasons below.

**Basis of the review:** [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)]

The basis of the review of EARR will be a statutory review looking at the allocation of health and safety enforcement responsibility between HSE and ORR, and any changed needed which have been identified since the last review.

**Review objective:** [is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern; or as a wider exploration of the policy approach taken? or as a link from policy objective to outcome?]

This review will be a proportionate check that EARR are operating as expected and adequately describing the allocation of HSE and ORR's enforcement responsibilities.

**Review approach and rationale:** [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc) and rationale that made choosing such an approach]

EARR came into force in 2006 when responsibility for railways health and safety regulation was transferred from HSE to ORR. This review will establish how well the current arrangements are working and whether further areas of uncertainty for enforcement responsibility have been identified. The approach will involve a combination of policy/legal discussions with HSE and external stakeholder consultation with the industry and other interested parties. We will arrange an open meeting with stakeholders if there are significant issues to discuss. We intend to keep the scale of the review proportionate to the scope of any proposed changes.

A project board will probably not be required to carry out this review.

### Baseline:

The baseline position is:

- a) EARR came into force following the transfer of responsibility for rail safety from HSE to ORR in April 2006.
- b) EARR was amended in 2008 to resolve some ambiguities around enforcement responsibilities between ORR and HSE in relation to demarcation issues, such as in the case of harbours, pier railways, the operation of miniature railways and construction activities relating to both the extension of the railways and construction work at operational premises.
- c) A further minor amendment will be made in 2012 to take account of some new responsibilities for ORR arising out of European regulations.
- d) A review will be required to examine and give clarity to further areas of uncertainty in relation to enforcement responsibility.
- e) Other issues are likely to be identified during the review and consultation.

**Success criteria:** [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objective]

- a) The review will clarify areas of uncertainty and rectify any anomalies regarding the borders of ORR and HSE enforcement responsibilities. This will give clarity to duty holders and facilitate effective and efficient health and safety regulation.

**Monitoring information arrangements:** [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]

ORR and HSE have designated policy staff with “ownership” of EARR. The policy functions monitor the effectiveness of the regulations and meet every 6 months to discuss any issues. Notes are taken of these meetings.

The ORR legal support team gives advice on the interpretation of EARR to inspectors and notes any problematical areas to the policy team.

An issues log has been raised to capture areas of concern and support the next review.

**Reasons for not planning a review:** [If there is no plan to do a PIR please provide reasons here]

N/A

## Annex 7: Glossary of Terms

<b>Accredited certification body</b>	-	A body accredited as defined by Article 2(10) of European Regulation 765/2008 to perform ECM certification in accordance with the ECM Regulation
<b>Certification body</b>	-	A body responsible for the certification of entities in charge of maintenance in accordance with the ECM Regulation
<b>Commission</b>	-	European Commission
<b>Common safety method</b>	-	The method to be developed to decide how safety levels and achievement of safety targets and compliance with other safety requirements are assessed.
<b>Controller of safety-critical work</b>	-	Any person controlling the carrying out of safety-critical work on a transport system or in relation to a vehicle used on a transport system
<b>COTIF</b>	-	Convention on International Carriage by Rail
<b>CSM</b>	-	Common Safety Method for risk evaluation and assessment (European Regulation 359/2009)
<b>Directive on Vehicle Maintenance</b>	-	Directive 2008/110/EC
<b>Documentation review</b>	-	A review of all the documentation associated with the maintenance of a freight wagon
<b>DRS</b>	-	Direct Rail Services
<b>EANCB</b>	-	Equivalent annual net cost to business
<b>EARR</b>	-	Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (S.I. 2006/557 as amended by S.I. 2008/2323)
<b>ECM</b>	-	Entity in Charge of Maintenance
<b>ECM Regulation</b>	-	European Regulation 455/2011 on a system of certification of entities in charge of maintenance
<b>Entity in charge of maintenance</b>	-	Any person or organisation that is responsible for the safe maintenance of a vehicle and is registered as an ECM in the National Vehicle Register. This can include people or organisations such as railway undertakings, infrastructure managers, a keeper or a maintenance organisation
<b>ERA</b>	-	European Railway Agency
<b>ESPA</b>	-	Entities in Charge of Maintenance Service Provision Agreement
<b>EU</b>	-	European Union

<b>HSE</b>	-	Health and Safety Executive
<b>Keeper</b>	-	A person who owns a rail vehicle, or has a right to use it, and operates it as a means of transport
<b>Miscellaneous Amendment Regulations</b>	-	Railways and Other Guided Transport (Miscellaneous Amendments) Regulations 2012 (proposed)
<b>National Vehicle Register</b>	-	A database of rail vehicles operated in each Member State whose establishment is required under Directive 2008/57/EC
<b>ORR</b>	-	Office of Rail Regulation
<b>Professional Head</b>	-	A chartered engineer with at least 10 years experience of the rail industry
<b>PVNBB</b>	-	Present value of net benefits to business
<b>PVNCB</b>	-	Present value of net costs to business
<b>PWF</b>	-	Private Wagon Federation
<b>PWRA</b>	-	Private Wagon Registration Agreement
<b>Railway Group Standards<sup>1</sup></b>	-	(a) technical standards with which railway assets or equipment used on or as part of railway assets by or on behalf of Railway Group members must conform; and (b) operating procedures with which all operators of railway assets must comply; compliance with which will contribute significantly to the safe operation of the rail network and the safe operation and safe interworking of railway assets used or to be used on or in connection with the Rail Network
<b>Railway Safety Directive</b>	-	Directive 2004/49/EC
<b>Railway undertaking</b>	-	A Freight Operating Company
<b>Recognised certification body</b>	-	A body, the competence of which has been assured by the Member State when not applying accreditation as defined by Article 2(10) of European Regulation 765/2008, and performs ECM certification in accordance with the ECM Regulation
<b>Regulation 445/2011</b>	-	Certification system for freight wagon ECMs
<b>ROGS</b>	-	Railways and Other Guided Transport Systems (Safety) Regulations 2006 (S.I. 2006/599)
<b>ROGS (Amendment) Regulations</b>	-	Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations (S.I. 2011/1860)
<b>RSSB</b>	-	Rail Safety and Standards Board

---

<sup>1</sup> From Railway Group Standards Code

<b>Supplier assurance</b>	-	Confidence in a supplier's ability to deliver a good or service that will satisfy the customer's needs
<b>Surveillance activity</b>	-	A surveillance check carried out by a certification body
<b>Surveillance check</b>	-	An audit (but not necessarily full system audit) of representative areas and functions within the scope of the ECM's maintenance arrangements
<b>SMS</b>	-	Safety Management System
<b>TDLCR</b>	-	Train Driving Licences and Certificates Regulations 2010 (S.I. 2010/724)
<b>Train Driver Licensing Directive</b>	-	Directive 2007/57/EC
<b>TSI</b>	-	Technical Specification for Interoperability (A technical standard)

## Annex 8: References

1. **ROGS** (<http://www.legislation.gov.uk/uksi/2006/599/contents/made>)
2. **European Commission explanatory memorandum** ([http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!DocNumber&lg=EN&type\\_doc=COMfinal&an\\_doc=2006&nu\\_doc=0784](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=EN&type_doc=COMfinal&an_doc=2006&nu_doc=0784))
3. **European Commission Impact Assessment**  
([http://www.europarl.europa.eu/registre/docs\\_autres\\_institutions/commission\\_europeenne/sec/2006/1641/COM\\_SEC\(2006\)1641\\_EN.pdf](http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/sec/2006/1641/COM_SEC(2006)1641_EN.pdf))
4. **Working Group Final Report** ([http://www.otif.ch/otif/\\_epdf/dir\\_tech\\_adm\\_2007/2007-10\\_WG\\_Keeper\\_final\\_report.pdf](http://www.otif.ch/otif/_epdf/dir_tech_adm_2007/2007-10_WG_Keeper_final_report.pdf))
5. **European Railway Agency Impact Assessment**



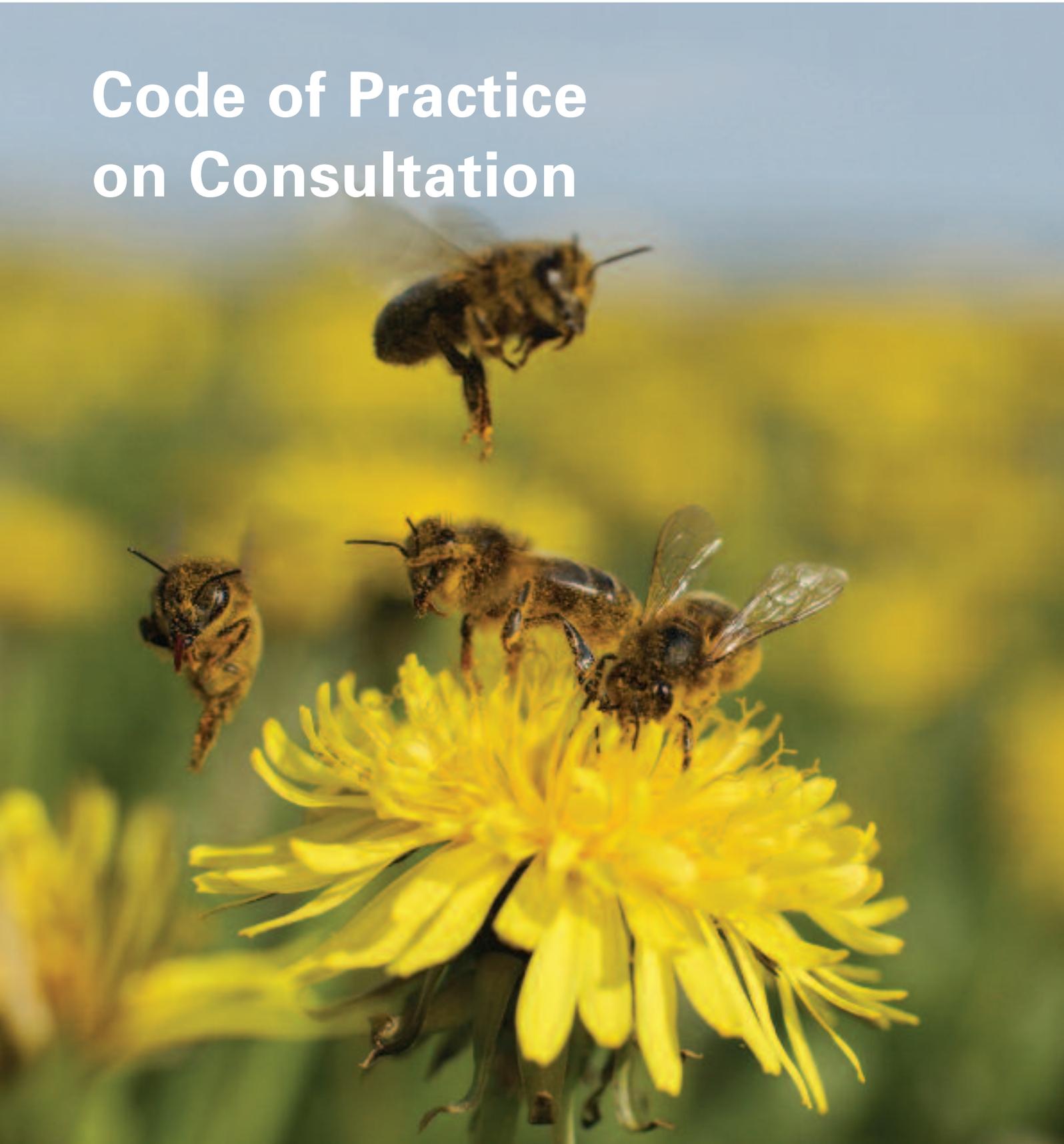
101130 ERA ECM  
Impact Assessment R

6. **European Regulation 445/2011** (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:122:0022:0046:EN:PDF>)
7. **ROGS (Amendment) Regulations** (<http://www.legislation.gov.uk/uksi/2011/1860/made>)
8. **MVA Consultancy (March 2009) for RSSB, Assessment of EU Driver Licensing Directive, Cost Benefit Analysis, Project no T77**  
(<http://www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=b4682ed944d340c89f1286648ff9a6a5>)
9. **Guidance on the CSM on risk evaluation and assessment** (<http://www.rail-reg.gov.uk/server/show/ConWebDoc.8453>)
10. **National Rail Trends Yearbook 2010-11** (<http://www.rail-reg.gov.uk/upload/pdf/nrt-yearbook-2010-11.pdf>)

# Annex H: Government Code of Practice

See next page.

# Code of Practice on Consultation





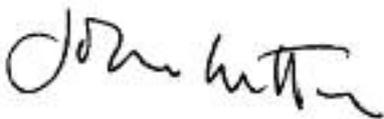
## FOREWORD

This Government is committed to effective consultation; consultation which is targeted at, and easily accessible to, those with a clear interest in the policy in question. Effective consultation brings to light valuable information which the Government can use to design effective solutions. Put simply, effective consultation allows the Government to make informed decisions on matters of policy, to improve the delivery of public services, and to improve the accountability of public bodies.

The Government has had a Code of Practice on Consultation since 2000 setting out how consultation exercises are best run and what people can expect from the Government when it has decided to run a formal consultation exercise.

This third version of the Code is itself the result of listening to those who regularly respond to Government consultations. This Code should help improve the transparency, responsiveness and accessibility of consultations, and help in reducing the burden of engaging in Government policy development.

As part of the Government's commitment to effective consultation, we will continue to monitor how we consult and we appreciate feedback on how we can improve.



**John Hutton**  
*BERR SoS*

July 2008



## THE SEVEN CONSULTATION CRITERIA

### **Criterion 1** When to consult

*Formal consultation should take place at a stage when there is scope to influence the policy outcome.*

### **Criterion 2** Duration of consultation exercises

*Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.*

### **Criterion 3** Clarity of scope and impact

*Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.*

### **Criterion 4** Accessibility of consultation exercises

*Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.*

### **Criterion 5** The burden of consultation

*Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.*

### **Criterion 6** Responsiveness of consultation exercises

*Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.*

### **Criterion 7** Capacity to consult

*Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.*

These criteria should be reproduced in consultation documents.

# INTRODUCTION

**Ongoing dialogue between Government and stakeholders is an important part of policymaking. This dialogue will, at times, need to become more formal and more public. When developing a new policy or considering a change to existing policies, processes or practices, it will often be desirable to carry out a formal, time-bound, public, written consultation exercise. This kind of exercise should be open to anyone to respond but should be designed to seek views from those who would be affected by, or those who have a particular interest in, the new policy or change in policy.<sup>1</sup> Formal consultation exercises can expose to scrutiny the Government’s preliminary policy analysis and the policy or implementation options under consideration.**

## STATUS OF THE CODE

This Code sets out the approach the Government will take when it has decided to run a formal, written, public consultation exercise. It supersedes and replaces previous versions of the Code. The Code does not have legal force and cannot prevail over statutory or mandatory requirements. The Code sets out the Government’s general policy on formal, public, written consultation exercises. A list of the UK departments<sup>2</sup> and agencies adopting the Code is available on the Better Regulation Executive’s website.<sup>3</sup> Other public sector organisations are free to make use of this Code for their consultation purposes, but it does not apply to consultation exercises run by them unless they explicitly adopt it.

Ministers retain their existing discretion not to conduct formal consultation exercises under the terms of the Code. At times, a formal, written, public consultation will not be the most effective or proportionate way of seeking input from interested parties, e.g. when engaging with stakeholders very early in policy development (preceding formal consultation) or when the scope of an exercise is very narrow and the level of interest highly specialised. In such cases an exercise under this Code would not be appropriate. There is, moreover, a variety of other ways available to seek input from interested parties other than formal consultation.<sup>4</sup> Such engagement work is not the subject of this Code. When departments decide only to carry out engagement with interested parties in ways other than formal, written consultation, they are encouraged to be clear about the reasons why the methods being used have been chosen.

<sup>1</sup> In order to reach certain groups this may mean going beyond the traditional, written consultation exercise - see criterion 5

<sup>2</sup> Reference to “department” includes reference to non-Ministerial departments and other organisations that this Code applies to. Reference to a “Minister” includes the senior decision maker(s) in those organisations, e.g. the chief executive or the board responsible for the consultation.

<sup>3</sup> <http://www.berr.gov.uk/bre>

<sup>4</sup> In addition to the guidance supporting this Code, useful information on alternative forms of engagement may be found at [www.peopleandparticipation.net](http://www.peopleandparticipation.net).

This Code is not intended to create a commitment to consult on anything, to give rise to a duty to consult, or to be relied on as creating expectations that the Government will consult in any particular case. The issues on which the Government decides to consult depend on the circumstances in each case.

Moreover, deviation from the Code will, at times, be unavoidable when running a formal, written, public consultation. It is recommended that departments be open about such deviations, stating the reasons for the deviation and what measures will be employed to make the exercise as effective as possible in the circumstances.

Under some laws there are requirements for the Government to consult certain groups on certain issues. This Code is subject to any such legal requirement. Care must also be taken to comply with any other legal requirements which may affect a consultation exercise such as confidentiality issues and equality schemes. More information on such matters can be found in the guidance which accompanies this Code.<sup>5</sup>

This Code should also be used in conjunction with the *Consultation and Policy Appraisal – Compact Code of Good Practice* which supports the Compact on Government's Relations with the Voluntary and Community Sector<sup>6</sup> and with the *Central-Local Government Concordat* which establishes a framework of principles for how central and local government work together to serve the public.<sup>7</sup>

The Better Regulation Executive in the Department for Business, Enterprise and Regulatory Reform welcomes feedback regarding the effectiveness of the Code and the accompanying guidance. If you have any comments, please feel free to contact the Better Regulation Executive at:

Better Regulation Executive  
Department for Business, Enterprise and Regulatory Reform  
1 Victoria Street  
London  
SW1H 0ET

Telephone: 020 7215 0352  
E-mail: [regulation@berr.gsi.gov.uk](mailto:regulation@berr.gsi.gov.uk)

---

<sup>5</sup> See <http://www.berr.gov.uk/bre>

<sup>6</sup> <http://www.thecompact.org.uk/information/100023/publications/>

<sup>7</sup> <http://www.communities.gov.uk/publications/localgovernment/centrallocalconcordat>

**Criterion 1 When to consult**

*Formal consultation should take place at a stage when there is scope to influence the policy outcome.*

- 1.1 Formal, written, public consultation will often be an important stage in the policymaking process. Consultation makes preliminary analysis available for public scrutiny and allows additional evidence to be sought from a range of interested parties so as to inform the development of the policy or its implementation.
- 1.2 It is important that consultation takes place when the Government is ready to put sufficient information into the public domain to enable an effective and informed dialogue on the issues being consulted on. But equally, there is no point in consulting when everything is already settled. The consultation exercise should be scheduled as early as possible in the project plan as these factors allow.
- 1.3 When the Government is making information available to stakeholders rather than seeking views or evidence to influence policy, e.g. communicating a policy decision or clarifying an issue, this should not be labelled as a consultation and is therefore not in the scope of this Code. Moreover, informal consultation of interested parties, outside the scope of this Code, is sometimes an option and there is separate guidance on this.<sup>8</sup>
- 1.4 It will often be necessary to engage in an informal dialogue with stakeholders prior to a formal consultation to obtain initial evidence and to gain an understanding of the issues that will need to be raised in the formal consultation. These informal dialogues are also outside the scope of this code.
- 1.5 Over the course of the development of some policies, the Government may decide that more than one formal consultation exercise is appropriate. When further consultation is a more detailed look at specific elements of the policy, a decision will need to be taken regarding the scale of these additional consultative activities. In deciding how to carry out such re-consultation, the department will need to weigh up the level of interest expressed by consultees in the initial exercise and the burden that running several consultation exercises will place on consultees and any potential delay in implementing the policy. In most cases where additional exercises are appropriate, consultation on a more limited scale will be more appropriate. In these cases this Code need not be observed but may provide useful guidance.
- 1.6 Consultation exercises should not generally be launched during election periods. If there are exceptional circumstances where launching a consultation is considered absolutely essential (for example, for safeguarding public health), departments should seek advice from the Propriety and Ethics team in the Cabinet Office. If a consultation is ongoing at the time an election is called, it should continue. However, departments should avoid taking action during election periods which will compete with candidates for the attention of the public.<sup>9</sup>

<sup>8</sup> See <http://www.berr.gov.uk/bre>

<sup>9</sup> For further guidance see <http://www.berr.gov.uk/bre>

**Criterion 2 Duration of consultation exercises**

*Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.*

- 2.1** Under normal circumstances, consultations should last for a minimum of 12 weeks. This should be factored into project plans for policy development work. Allowing at least 12 weeks will help enhance the quality of the responses. This is because many organisations will want to consult the people they represent or work with before drafting a response to Government and to do so takes time.
- 2.2** If a consultation exercise is to take place over a period when consultees are less able to respond, e.g. over the summer or Christmas break, or if the policy under consideration is particularly complex, consideration should be given to the feasibility of allowing a longer period for the consultation.<sup>10</sup>
- 2.3** When timing is tight, for example when dealing with emergency measures, or international, legally-binding deadlines, or when the consultation needs to fit into fixed timetables such as the Budget cycle, consideration should be given to whether a formal, written, public consultation is the best way of seeking views. Where a formal consultation exercise is considered appropriate and there are good reasons for it to last for a shorter period (e.g. to seek views to inform the UK's negotiating position on EU proposals soon to be discussed in the Council of Ministers), the consultation document should be clear as to the reasons for the shortened consultation period and ministerial clearance (or equivalent, e.g. in non-Ministerial departments) for the shorter timeframe should be sought. In such circumstances it is important to consider the provision of additional means through which people can express their views.
- 2.4** When planning a consultation, it is important to take steps to raise awareness of the exercise among those who are likely to be interested. In particular, departments should consider ways to publicise consultations at the time of, or if possible before, the launch-date so that consultees can take advantage of the full consultation period to prepare considered responses.

---

<sup>10</sup> For more on this, see the accompanying guidance at <http://www.berr.gov.uk/bre>

**Criterion 3 Clarity of scope and impact**

*Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.*

- 3.1 Consultation exercises should be clear about the consultation process, i.e. what has taken place in the development of the policy prior to the consultation exercise, how the consultation exercise will be run and, as far as is possible, what can be expected after the consultation exercise has formally closed.
- 3.2 Consultation exercises should be clear about the scope of the exercise, setting out where there is room to influence policy development and what has already been decided, and so is not in the scope of the consultation.
- 3.3 Estimates of the costs and benefits of the policy options under consideration should normally form an integral part of consultation exercises, setting out the Government's current understanding of these costs and benefits. A "consultation stage Impact Assessment"<sup>11</sup> should normally be published alongside a formal consultation, with questions on its contents included in the body of the consultation exercise. An Impact Assessment should be carried out for most policy decisions and consultation of interested parties on the Impact Assessment and on equality assessments can bring greater transparency to the policymaking process and should lead to departments having more robust evidence on which to base decisions. It is important to read the guidance on specific impact tests, including the race equality impact assessment which is required by statute.<sup>12</sup>
- 3.4 Consideration should also be given to asking questions about which groups or sectors would be affected by the policy in question, and about any groups or sectors (e.g. small businesses or third sector organisations) that may be disproportionately affected by the proposals as presented in the consultation document. Consultation exercises can be used to seek views on the coverage of new policies, ideas of how specific groups or sectors might be exempted from new requirements, or used to seek views on approaches to specific groups or sectors that would ensure proportionate implementation.
- 3.5 The subject matter, any assumptions the Government has made, and the questions in the consultation should all be as clear as possible. A mixture of open and closed questions will often be desirable, and consideration should be given to offering consultees the opportunity to express views on related issues not specifically addressed in the questions.

<sup>11</sup> See guidance on impact assessment at <http://www.berr.gov.uk/bre/policy/scrutinising-new-regulations/page44076.html>

<sup>12</sup> See <http://www.berr.gov.uk/bre/policy/scrutinising-new-regulations/preparing-impact-assessments/toolkit/page44263.html>

**Criterion 4 Accessibility of consultation exercises**

*Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.*

- 4.1** It is essential that interested parties are identified early in the process so that consultation exercises can be designed and targeted accordingly. When consultation exercises need to reach a diverse audience, several approaches may be required. In the consultation document it should be stated what ways are available for people to participate, how exactly to get involved, and why any supplementary channels have been chosen. Over-reliance on standard lists of consultees to disseminate consultation papers can mean that key groups are excluded and others receive consultation documents that are not relevant to them.
- 4.2** As far as is possible, consultation documents should be easy to understand: they should be concise, self-contained and free of jargon. This will also help reduce the burden of consultation. While consultation exercises on technical details may need to seek input from experts, when the views of non-experts are also required, simpler documents should be produced.
- 4.3** It is vital to be proactive in disseminating consultation documents. Careful consideration should be given to how to alert potential consultees to the consultation exercise and how to get views from relevant sectors of the community and the economy. While many interested parties can usually be contacted directly, there will often be other interested parties not known to Government or who can only be reached through intermediary bodies. Working with appropriate trade, community or third sector organisations can help the Government to hear from those who would otherwise go unheard. Using specialist media or events can also help promote consultation exercises among interested groups.
- 4.4** Thought should also be given to alternative versions of consultation documents which could be used to reach a wider audience, e.g. a young person's version, a Braille and audio version, Welsh and other language versions, an "easy-read" version, etc., and to alternative methods of consultation. Guidance on methods to support formal consultation exercises to help reach specific groups and sectors (regional, public meetings, online tools, focus groups, etc.) is available.<sup>13</sup>
- 4.5** It is important that people can decide quickly whether a consultation exercise is relevant to them. For this reason, a standard table of basic information should be used for all consultation exercises produced by any public body. This will mean that all the key information is readily accessible when potential consultees are first presented with a new consultation document and that regular consultees will become familiar with the format.<sup>14</sup>

<sup>13</sup> See <http://www.berr.gov.uk/bre>

<sup>14</sup> For an example template which can be used to provide key information at the beginning of a consultation document, see the guidance available at <http://www.berr.gov.uk/bre>

**Criterion 5 The burden of consultation**

*Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.*

- 5.1 When preparing a consultation exercise it is important to consider carefully how the burden of consultation can be minimised. While interested parties may welcome the opportunity to contribute their views or evidence, they will not welcome being asked the same questions time and time again. If the Government has previously obtained relevant information from the same audience, consideration should be given as to whether this information could be re-used to inform the policymaking process, e.g. is the information still relevant and were all interested groups canvassed? Details of how any such information was gained should be clearly stated so that consultees can comment on the existing information or contribute further to this evidence-base.
- 5.2 If some of the information that the Government is looking for is already in the public domain through market research, surveys, position papers, etc., it should be considered how this can be used to inform the consultation exercise and thereby reduce the burden of consultation.
- 5.3 In the planning phase, policy teams should speak to their Consultation Coordinator and other policy teams with an interest in similar sectors in order to look for opportunities for joining up work so as to minimise the burden of consultations aimed at the same groups.
- 5.4 Consultation exercises that allow consultees to answer questions directly online can help reduce the burden of consultation for those with the technology to participate. However, the bureaucracy involved in registering (e.g. to obtain a username and password) should be kept to a minimum.
- 5.5 Formal consultation should not be entered into lightly. Departmental Consultation Coordinators and, most importantly, potential consultees will often be happy to advise about the need to carry out a formal consultation exercise and acceptable alternatives to a formal exercise.<sup>15</sup>

---

<sup>15</sup> Guidance on alternative means of seeking input are available. See <http://www.berr.gov.uk/bre>

**Criterion 6 Responsiveness of consultation exercises**

*Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.*

- 6.1 All responses (both written responses and those fed in through other channels such as discussion forums and public meetings) should be analysed carefully, using the expertise, experiences and views of respondents to develop a more effective and efficient policy. The focus should be on the evidence given by consultees to back up their arguments. Analysing consultation responses is primarily a qualitative rather than a quantitative exercise.
- 6.2 In order to ensure that responses are analysed correctly, it is important to understand who different bodies represent, and how the response has been pulled together, e.g. whether the views of members of a representative body were sought prior to drafting the response.
- 6.3 Consultation documents should, where possible, give an indication as to the likely timetable for further policy development. Should any significant changes in the timing arise, steps should be taken to communicate these to potential consultees.
- 6.4 Following a consultation exercise, the Government should provide a summary of who responded to the consultation exercise and a summary of the views expressed to each question. A summary of any other significant comments should also be provided. This feedback should normally set out what decisions have been taken in light of what was learnt from the consultation exercise. This information should normally be published before or alongside any further action, e.g. laying legislation before Parliament.<sup>16</sup> Those who have participated in a consultation exercise should normally be alerted to the publication of this information.
- 6.5 Consideration should be given to publishing the individual responses received to consultation exercises.
- 6.6 The criteria of this Code should be reproduced in consultation papers alongside the contact details of the departmental Consultation Coordinator. Consultees should be invited to submit comments to the Consultation Coordinator about the extent to which the criteria have been observed and any ways of improving consultation processes.

---

<sup>16</sup> Where Statutory Instruments are being brought forward it is a requirement to include within the accompanying Explanatory Memorandum a summary of the consultation exercise and its outcome (*Statutory Instrument Practice* paragraph 4.12 refers <http://www.opsi.gov.uk/si/statutory-instrument-practice.htm>)

**Criterion 7 Capacity to consult**

*Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.*

- 7.1** Every organisation to which this Code applies should appoint a Consultation Coordinator. The Consultation Coordinator should be named in consultation documents as the person to contact with any queries or complaints regarding consultation process (the policy lead should be the contact point for queries regarding content).
- 7.2** Policy officials who are to run a consultation exercise should seek advice from their Consultation Coordinator early in the planning stages.
- 7.3** Government departments should monitor the effectiveness of their consultation exercises. Learning from consultation exercises should be shared with the department's Consultation Coordinator who will facilitate the sharing of lessons learned within the department and between departments and agencies.





Better Regulation Executive  
Department for Business, Enterprise  
and Regulatory Reform  
3rd Floor, 1 Victoria Street  
London SW1H 0ET

Publication date: July 2008

URN 08/1097

© Crown copyright 2008

Tel: 020 7215 0352

Website: [www.bre.berr.gov.uk](http://www.bre.berr.gov.uk)

The text in this document may be reproduced free of charge in any format or media without requiring specific permission. This is subject to material not being used in a derogatory manner or in a misleading context. The source of the material must be acknowledged as Crown copyright and the title of the document must be included when being reproduced as part of another publication or service.

© Crown copyright 2012

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit [www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/) or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk)

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.