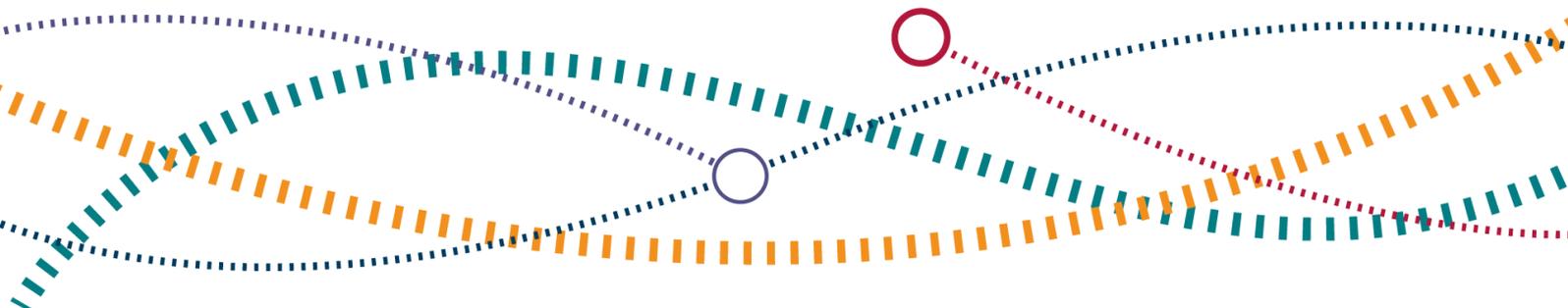




Guidance on Entities in Charge of Maintenance from 1 January 2021

01 December 2020



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Foreword

This guidance outlines the requirements relating to entities in charge of maintenance that apply in Great Britain (GB) after the transition period ends on 31 December 2020, as provided for by the European Union (Withdrawal Agreement) Act 2020. These requirements differ depending on the type of vehicle and whether it is being used in international or domestic traffic.

This guidance will be of particular interest to entities in charge of maintenance, certification bodies, wagon keepers and railway undertakings responsible for the maintenance or operation of vehicles involved in international traffic.

This guidance has been jointly prepared by the Department for Transport and ORR.

Introduction

Who are entities in charge of maintenance?

1. People or organisations who are responsible for the maintenance of vehicles used on the mainline railway are known as entities in charge of maintenance (ECMs). All vehicles that run on the mainline railway are required to have an ECM assigned to them in the National Vehicle Register (NVR) and, depending on the type of vehicle and where it is used, the ECM may also be required to obtain an ECM certificate from a certification body.

Brexit

2. On 16 June 2020, the new ECM Regulation 2019/779¹ took effect in the UK and repealed Regulation (EU) 445/2011.²
3. At the end of the transition period, the UK is no longer bound by EU law³. The Railways (Miscellaneous Amendments, Revocations and Transitional Provisions) (EU Exit) Regulations 2020⁴ revokes ECM Regulation 2019/779 at the end of the transition period, save for cross-border services via the Channel Tunnel, which will be retained for the UK half of the Channel Tunnel. The Rail Safety (Amendment etc.) (EU Exit) Regulations 2019⁵ substantially reproduces Regulation (EU) 445/2011⁶ by inserting new Schedules 9 and 10 in the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended) (“ROGS”)⁷. Whether it is necessary to comply with the requirements of Schedules 9 and 10 of ROGS, or ECM Regulation 2019/779, depends on whether the vehicle is used only for domestic services or is used for cross-border services via the Channel Tunnel.

¹ Commission Implementing Regulation (EU) 2019/779: https://eur-lex.europa.eu/eli/reg_impl/2019/779/oj

² Commission Regulation (EU) No 445/2011: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011R0445>

³ <https://www.legislation.gov.uk/ukpga/2020/1/contents/enacted>

⁴ <https://www.legislation.gov.uk/uksi/2020/786/made>

⁵ <https://www.legislation.gov.uk/uksi/2019/837/contents/made>

⁶ Commission Regulation (EU) No 445/2011: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011R0445>

⁷ <https://www.legislation.gov.uk/uksi/2006/599/contents/made>

4. If a vehicle is used only for domestic services in GB, then the ECM assigned to that vehicle in the NVR will need to comply with regulation 18A (except for paragraph 1A) and Schedules 9 and 10 of ROGS. (see paragraphs 7 -16).
5. If a vehicle is used for cross-border services via the Channel Tunnel, then the ECM assigned to that vehicle in the NVR will need to comply with regulation 18A (except for paragraphs 1 and 4) of ROGS and the ECM Regulation 2019/779, see paragraphs 17-39.

General Requirements

6. Some of the ECM requirements relate to ECM certification. However, others are more general requirements that apply to all ECMs. There are some requirements that apply to other bodies who are not ECMs, including certification bodies, railway undertakings, infrastructure managers, manufacturers and keepers. The table below sets out the legislation to be complied with for each category of vehicle from 1 January 2021.

Type of vehicle	Legislation to be complied with from 1 January 2021
Domestic only (GB)	
Freight wagons	Regulation 18A(1), 18A(2), 18A(3) and 18A(4) and Schedules 9 and 10 of ROGS
Other vehicles	Regulation 18A(1), 18A(2) and 18A(3) of ROGS
International (Channel Tunnel)	
Freight wagons	Regulation 18A(1A), 18A(2) and 18A(3) of ROGS and ECM Regulation 2019/779 ⁸
Other vehicles	

⁸ Operators and ECMs assigned to other vehicles have until 16 June 2022 to comply with ECM Regulation 2019/779.

ECM requirements for domestic only services under ROGS from 1 January 2021

What are the requirements from 1 January 2021?

7. From 1 January 2021, regulation 18A of ROGS will require that no person places in service or uses a vehicle on the mainline railway unless that vehicle has an ECM assigned to it, and that entity in charge of maintenance is registered as such in the National Vehicle Register (NVR). For example, a Train Operating Company leasing passenger trains must make sure that there is an ECM registered against the vehicles in the NVR before it begins to haul them.
8. Each ECM must ensure that, through a system of maintenance, a vehicle for which it is responsible is safe to run on the mainline railway. The system of maintenance is the maintenance of a vehicle in accordance with:
 - the maintenance file for that vehicle;
 - applicable maintenance rules; and
 - applicable National Technical Specification Notices (NTSNs)
9. ECMs may also wish to apply the four management functions, as described in the 2019 ECM Regulation, although this is not a legal requirement for ECMs assigned to domestic only vehicles.
10. All ECMs must comply with the CSM for monitoring⁹ and the CSM for risk evaluation and assessment evaluation¹⁰. These will be amended on 1 January 2021 by the Rail Safety (Amendment etc.) (EU Exit) Regulations 2019 to address any deficiencies.

⁹ Commission Regulation 1078/2012: <https://www.legislation.gov.uk/eur/2012/1078/contents>

¹⁰ Commission Implementing Regulation (EU) 402/2013:
<https://www.legislation.gov.uk/eur/2013/402/contents>

What vehicles do these requirements apply to?

11. These requirements apply to all passenger rolling stock, locomotives, freight wagons and all other vehicles placed in service or used on the GB mainline railway for domestic only services (for cross-border services see paragraphs 17 - 39). If the vehicle is a freight wagon, the ECM must have an ECM certificate.

Do I need an ECM certificate?

12. If the ECM has responsibility for freight wagons, it must hold one of the following:
 - an ECM certificate issued in accordance with Regulation (EU) 2011/445 that is valid on the terms of its original issue;
 - a UK-issued ECM certificate to use freight wagons on the mainline railway in accordance with Schedules 9 and 10 of ROGS; or
 - An ECM certificate issued in the EU in accordance with Commission Implementing Regulation (EU) 2019/779.
13. Schedules 9 and 10 of ROGS substantially reproduce Regulation (EU) 445/2011 from 1 January 2021.
14. **If you are an ECM for vehicles other than freight wagons**, you do not need an ECM certificate to operate vehicles on the GB mainline railway. However, you may obtain voluntary certification under Schedules 9 and 10 of ROGS or ECM Regulation 2019/779, should you wish to do so

How do I apply for a UK-issued ECM certificate?

15. An ECM may apply to a certification body accredited by the United Kingdom Accreditation Service (UKAS) for a UK-issued ECM certificate. The Department for Transport will maintain a list of accredited certification bodies after the end of the transition period. Further information about recognition of EU ECM certification was published by the Department for Transport in its latest Technical Notice available here: <https://www.gov.uk/guidance/rail-transport-from-1-january-2021>.
16. If you are an ECM responsible for vehicles other than freight wagons used to operate cross-border services, Section 3 explains how to apply for a cross-border UK-issued ECM certificate.

ECM Regulation 2019/779 for cross-border services from 1 January 2021

Who do these requirements apply to?

17. ECMs, certification bodies, manufacturers, railway undertakings and infrastructure managers that are involved in cross-border services via the Channel Tunnel all have responsibilities under ECM Regulation (EU) 2019/779.
18. Why do the requirements only apply to cross-border services via the Channel Tunnel?
19. The Government has decided to retain the new ECM requirements of ECM Regulation (EU) 2019/779 for cross-border services via the Channel Tunnel to ensure the continued smooth operation of services. The Convention concerning International Carriage by Rail (COTIF), which the UK will remain a signatory of, is in the process of aligning Annex A of Appendix G, the COTIF equivalent to Commission Regulation (EU) 445/2011¹¹, with the requirements of ECM Regulation (EU) 2019/779. This means that, once adopted under COTIF, these requirements will apply to international traffic between the UK and all other COTIF contracting states.

What happens to Regulation (EU) 2019/779 at the end of the transition period?

20. At the end of the transition period, the Railways (Miscellaneous Amendments, Revocations and Transitional Provisions) (EU Exit) Regulations 2020 will revoke ECM Regulation (EU) 2019/779 for Great Britain, except for cross-border services where it will apply. This will be an uncorrected text of the EU Regulation and will, therefore, contain deficiencies.

¹¹ Annex A of Appendix G to COTIF 1999 concerning Certification and Auditing of Entities in Charge of Maintenance (ECM) under the Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic (ATMF).

How do I interpret the requirements of the retained and uncorrected version of ECM Regulation (EU) 2019/779 between 1 January 2021 and the Regulation being corrected?

21. Stakeholders should read this uncorrected ECM Regulation (EU) 2019/779 in the context of the UK no longer being an EU Member State. Therefore, references to EU law, institutions and Member States should be disregarded and instead read in the context of UK law and institutions. As such, obligations relating to notifying EU institutions should also be disregarded. See Annex A for a non-exhaustive list of common deficiencies for illustrative purposes.
22. The Government is developing legislation to amend ECM Regulation (EU) 2019/779 in order to correct these deficiencies that arise as a result of the UK no longer being an EU Member State. In the meantime, please contact Interoperability@dft.gov.uk if you have any questions about this guidance.

What are the ECM requirements that apply to cross-border services?

23. The new ECM Regulation 2019/779 widens the scope of the ECM certification scheme to include all vehicles in use on the mainline railway and introduces a new system for the management of components deemed to be safety critical.
24. Further guidance published by the ORR on ECM Regulation 2019/779 is available at: https://orr.gov.uk/data/assets/pdf_file/0016/42019/entities-in-charge-of-maintenance-ecm-guidance-on-introduction-of-eu-regulation-2019-779.pdf

What are the criteria for exemption to mandatory ECM certification?

25. An exception is made for ECMs that are also railway undertakings (RU) or infrastructure managers (IM) responsible for the maintenance of vehicles other than freight wagons exclusively for their own operations. These ECMs will still need to demonstrate that they comply with the requirements of ECM Regulation 2019/779, in particular Annex II, but they have the option of doing this as part of safety certification/safety authorisation instead of separately obtaining an ECM certificate. If this option is chosen, the RU/IM will need to be able to demonstrate that it is managing compliance with Annex II through its safety management system (SMS). ECMs that share a name or parent company with the RU/IM but are functionally

separate and not covered by the RU/IMs SMS will need to obtain an ECM certificate from a certification body.

How do I apply for a cross-border UK-issued ECM certificate?

26. ECMs that are responsible for the maintenance of vehicles used for cross-border services and require a certificate can apply to a certification body accredited by the United Kingdom Accreditation Service (UKAS) and in accordance with accreditation requirements of ECM Regulation 2019/779. The UK will recognise ECM certificates issued in EU Member States after the end of the transition period.
27. The ORR will maintain a list of accredited UK certification bodies, indicating which Regulations they are accredited to certify against.

Will UK-issued ECM certificates be recognised in the EU in accordance with COTIF?

28. If you wish to operate in the EU, you should refer to the EU Commission's notice to stakeholders concerning the withdrawal of the United Kingdom and EU rules in the field of rail transport. This can be found here:
https://ec.europa.eu/info/publications/rail-transport-0_en.
29. Under COTIF, ECM certificates issued in accordance with the legal framework of COTIF should be recognised for the purposes of international traffic between Contracting States. The UK and all EU Member States with railways are signatories to COTIF.
30. COTIF's current ECM Regulation (Annex A to Appendix G) is considered equivalent to the 2011 ECM Regulation. OTIF are in the process of updating their ECM Regulation to align with the 2019 ECM Regulation, and it is due to come into force in April 2021. Certificates issued in the UK under the retained version of the 2019 ECM Regulation should, therefore, be valid for the purposes of international traffic between the UK and the EU from April 2021.

Do I need to apply for separate ECM certificates for domestic only and cross-border services?

31. ECMs responsible for the maintenance of vehicles used for cross-border services will need to obtain a cross-border UK-issued ECM certificate issued in accordance with ECM Regulation 2019/779 for their cross-border operations.

32. ECMs responsible for the maintenance of freight wagons will also need to hold a UK-issued ECM certificate issued in accordance with Regulation 18A and Schedules 9 and 10 of ROGS for their domestic operations.
33. Alternatively, ECM certificates issued in the EU under Regulation (EU) 2019/779 will be recognised for the purposes of domestic only and cross-border services in the UK.

When do the requirements need to be complied with?

34. Although ECM Regulation 2019/779 came into force on 16 June 2020, it has been amended by the European Commission to provide industry with more time to comply with the new requirements in response to the difficulties caused by the COVID-19 pandemic. As such, Commission Implementing Regulation (EU) 2020/780 amended ECM Regulation 2019/779 to:
 - Defer the coming into force of the requirement to comply with Article 4 concerning safety critical components by 12 months to 16 June 2021;
 - Provide a six-month extension to the validity of ECM certificates and certificates issued in respect of outsourced maintenance functions which are due to expire between 1 March 2020 and 31 August 2020; and
 - Provide that all vehicles, other than freight wagons and those listed in Article 15(1) of Directive (EU) 2016/798, have until 16 June 2022 to comply with the new requirements. This transitional provision was previously limited to vehicles which met the criteria for exemption from mandatory ECM certification in Article 3(2)(b) of ECM Regulation (EU) 2019/779. The extension of the time period beyond 1 January 2021 means that in practice the new requirements will not apply to UK domestic non-freight operators.

Are ECM certificates issued under ECM Regulation 445/2011 still valid from 1 January 2021?

35. For the duration of the transition period and beyond, ECM certificates already issued in the UK or EU under ECM Regulation (EU) 445/2011 are unaffected and will continue to be recognised during their original period and scope of validity. ECM certificates that were due to expire between 1 March 2020 and 31 August 2020 have also been extended for a period of six months from the original expiry date.

What are the requirements relating to the management of safety critical components?

36. ECM Regulation 2019/779 introduces obligations on the ECM and the manufacturer to identify, manage and record information on safety critical components. These are defined as components for which a single failure has a credible potential to lead directly to a serious accident.
37. The specific vehicle and its use must be taken into account when assessing components. Designers/manufacturers have initial responsibility for identifying safety critical components. ECMs have the ongoing responsibility for managing safety critical components and identifying new safety critical components once the vehicle is in service.
38. When unexpected or exceptional maintenance findings are discovered and/or new safety critical components are identified, the ECM and manufacturer must notify those parties involved in the maintenance of the vehicle and the relevant wider industry.
39. The requirements concerning safety critical components do not apply to cross-border services via the Channel Tunnel until 16 June 2021.

Annex A – Common deficiencies in Commission Implementing Regulation (EU) 2019/779

Deficiencies	How the provision could be read for application in the UK
References to ‘certification body’.	ECMs may consult the list of certification bodies on the Office of Rail and Road’s website.
References to provisions contained in other retained EU law	Stakeholders may wish to consider if other retained EU law referred to in the Regulation has been corrected by UK domestic regulations e.g. Regulation (EC) 765/2008 ¹² was corrected by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 ¹³ .
References to Technical Specifications for Interoperability (TSIs)	Stakeholders should read these as National Technical Specification Notices (NTSNs) as the equivalent versions of TSIs as provided for under

¹² Regulation (EC) No 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008R0765>

¹³ <https://www.legislation.gov.uk/ukxi/2019/696/contents/made>

	The Railways (Interoperability) (Amendment) (EU Exit) Regulations 2019 ¹⁴ .
References to Member State	Stakeholders should read this as the UK where applicable.
References and obligations to the European Union Agency for Railways (the Agency)	Not relevant – stakeholders will not be required to comply with requirements relating to the European Agency for Railways save where they hold ECM certificates issued in the EU.
Application Forms	Stakeholders should reproduce the substantive parts of the form.
Certification Forms	Stakeholders should reproduce the substantive parts of the form.

¹⁴ <https://www.legislation.gov.uk/uksi/2019/345/made>



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