

This consolidated version of the regulations is produced by ORR as a guide to assist users. It is not an official version of the regulations and you should refer to the original versions of The Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended) and the relevant amending legislation on [legislation.gov.uk](http://legislation.gov.uk) for the official text of the legislation.

This is the second consolidated version produced by ORR and shows the most recent EU exit amendments in different colours. Previous amendments are shown in square bracketed text.

The Railways (Interoperability) (Amendment) (EU Exit) Regulations 2019

The Rail Safety (Amendment etc.) (EU Exit) Regulations 2019

The Railways (Safety, Access, Management and Interoperability) (Miscellaneous Amendments and Transitional Provision) (EU Exit) Regulations 2019.

The Railways (Interoperability) (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2020

The Railways (Miscellaneous Amendments, Revocations and Transitional Provisions) (EU Exit) Regulations 2020

2006 No 599

## HEALTH AND SAFETY

# Railways and Other Guided Transport Systems (Safety) Regulations 2006

Made 9th March 2006

Laid before Parliament 17th March 2006

Coming into force except for regulations 19, 23 to 26, 29 and 34 10th April 2006 regulations 19, 23 to 26, 29, and 34 1st October 2006

The Secretary of State, in exercise of the powers conferred upon him by sections 15(1), (2), (3)(a) and (c), (4), (5), (6), 18(2), 43(2) to (6), 47(2), 80, 82(3)(a) of, and paragraphs 1(1)(a) and (c), 1(2), 4(1), 6, 7, 8(1), 9, 14, 15(1), 16, 18(a) and 20 of Schedule 3 to, the Health and Safety at Work etc Act 1974 ("the 1974 Act")--

(a) for the purpose of giving effect without modifications to proposals submitted to him by the Health and Safety Commission under section 11(2)(d) of the 1974 Act after the carrying out by the said Commission of consultations in accordance with section 50(3) of that Act; and

(b) it appearing to him that the modifications in paragraph 4 of Schedule 6 are expedient and it also appearing to him not to be appropriate to consult bodies in respect of such modifications in accordance with section 80(4) of the 1974 Act,

hereby makes the following Regulations:

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## Part 1

### Introduction

#### 1 Citation and commencement

These Regulations may be cited as the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and shall come into force--

- (a) as respects all regulations except for regulations 19, 23 to 26, 29, and 34 on 10th April 2006; and
- (b) as respects regulations 19, 23 to 26, 29 and 34 on 1st October 2006.

#### 2 Interpretation and application

(1) In these Regulations--

“2011 EU ECM Regulation” means Commission Regulation (EU) No 445/2011<sup>(1)</sup> on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) No 653/2007 as it had effect or as it has effect in EU law, as the context dictates;

“2019 EU ECM Regulation”, save in the expression “retained EU ECM Regulation”, means Commission Implementing Regulation (EU) 2019/779<sup>(2)</sup> laying down detailed provisions on a system of certification of entities in charge of maintenance of vehicles pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulation (EU) No 445/2011 as it had effect or as it has effect in EU law, as the context dictates;

“accident” means an unwanted or unintended sudden event or a specific chain of such events which have harmful consequences; accidents are divided into the following categories: collisions, derailments, level-crossing accidents, accidents to persons caused by rolling stock in motion, fires and others;

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(1) O.J. No. L 122, 11.5.2011, p. 22.

(2) O.J. No. L 1391, 27.5.2019, p. 360.

"building operation" means the--

- (a) construction, structural alteration, repair or maintenance of a building and "maintenance" shall include repointing, redecoration and external cleaning of the structure;
- (b) demolition of a building; or
- (c) preparation for and laying the foundation of an intended building,

but does not include any operation which is a work of engineering construction;

"bus" means a motor vehicle which is designed or adapted to travel along roads and to carry more than eight passengers but which is not a tramcar;

"cableway installation" means an installation made up of several components that--

- (a) is used or intended to be used for the purpose of providing an operational system for carrying persons in vehicles, on chairs or by towing devices;
- (b) uses cables positioned along the line of travel to provide suspension or traction or both; and
- (c) is one of the following--
  - (i) cable car (including a gondola and chair lift) where the cabins or chairs are lifted or displaced by one or more carrier cables;
  - (ii) drag lift, where users with appropriate equipment are dragged by means of a cable; or
  - (iii) funicular railway or other installation with vehicles mounted on wheels or on other suspension devices where traction is provided by one or more cables;

but does not include cable operated tramways, rack railways or lifts;

"carriageway" has the same meaning as in the Highways Act 1980, or in Scotland the Roads (Scotland) Act 1984;

["certification body" ~~has the same meaning as in the ECM Regulation~~ means a body responsible for the certification of entities in charge of maintenance, on the basis of the criteria in Annex II to Schedule 10;:]

~~"common safety methods" ("CSMs") means the methods, developed pursuant to article 6 of the Directive, to describe how--~~

- ~~(a) safety levels;~~
- ~~(b) achievement of safety targets; and~~
- ~~(c) compliance with other safety requirements,~~

~~are assessed, as revised and reissued from time to time;~~

~~"common safety methods" ("CSMs") means—~~

- ~~(a) Commission Regulation (EU) No 1158/2010 on a common safety method for assessing conformity with the requirements for obtaining railway safety certificates;~~
- ~~(b) Commission Decision (EU) No 1169/2010 on a common safety method for assessing conformity with the requirements for obtaining a railway safety authorisation;~~
- ~~(c) Commission Delegated Regulation (EU) 2018/761 establishing common safety methods for supervision by national safety authorities after the issue of a single safety certificate or a safety authorisation;~~
- ~~— Commission Delegated Regulation (EU) 2018/761 of 16 February 2018 establishing common safety methods for supervision by national safety authorities after the issue of a single safety~~

~~certificate or a safety authorisation pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulation (EU) No 1077/2012~~

- (d) Commission Regulation (EU) 1078/2012 on a common safety method for monitoring to be applied by railway undertakings, infrastructure managers after receiving a safety certificate or safety authorisation and by entities in charge of maintenance; and
  - (e) Commission Implementing Regulation (EU) No 402/2012 on a common safety method for risk evaluation and assessment;
- as they have effect in Great Britain;

"common safety targets" ("CSTs") means the minimum safety levels that must be met by the mainline railway system, or parts of the mainline railway system, expressed in risk categories as defined in paragraph 2 of Schedule 11;

~~means the safety levels, developed pursuant to article 7 of the Directive, that must be reached by--~~

- ~~(a) — different parts of the mainline railway system; and~~
- ~~(b) — that system as a whole;~~

~~expressed in risk acceptance criteria, as revised and reissued from time to time;~~

"competent person" means, except for the purposes of Part 4, a person who--

- (a) has sufficient skills, knowledge, experience and resources to undertake the safety verification in relation to which he is appointed;
- (b) has not borne such responsibility in relation to any of the matters he has to consider in undertaking that safety verification that might compromise his objectivity; and
- (c) is sufficiently independent of a management system, or a part thereof, which has borne responsibility for any of the matters he has to consider in undertaking the safety verification, to ensure that he will be objective in carrying out the safety verification for which he is appointed;

~~"conventional Directive" means Council Directive 2001/16 of the European Parliament and of the Council on the interoperability of the conventional rail system;~~

...

...

"cross-border service" means a service for the carriage of passengers or goods by way of the tunnel system;

"cross-border UK ECM certificate" means a certificate issued in the United Kingdom to an entity in charge of maintenance by an accredited or recognised body or by a safety authority in accordance with the retained 2019 EU ECM Regulation;

["the Directive" means Directive 2004/49/EC of the European Parliament and of the Council 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 as amended by--

- (a) the Interoperability Directive;
- (b) Directive 2008/110/EC of the European Parliament and of the Council amending Directive 2004/49/EC on safety on the Community's railways;

(c) Commission Directive 2009/149/EC amending Directive 2004/49/EC of the European Parliament and of the Council as regards Common Safety Indicators and common methods to calculate accident costs; and

(d) Commission Directive 2014/88/EU amending Directive 2004/49/EC of the European Parliament and of the Council as regards common safety indicators and common methods of calculating accident costs;]

~~["ECM Regulation" means Commission Regulation (EU) No 445/2011 on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) No 653/2007;]~~

"engineering possession" means a section of track which is closed to normal traffic and where the closure is for the purpose of carrying out maintenance which shall include any repair alteration, reconditioning, examination or testing of infrastructure;

["entity in charge of maintenance" means an entity in charge of maintenance of a vehicle, and includes a transport undertaking, an infrastructure manager or a keeper;]

~~["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 or a certificate or self declaration recognised as being equivalent for those purposes in accordance with Article 12(3) to (7) of the ECM Regulation;]~~

"EU ECM certificate" means a certificate issued to an entity in charge of maintenance in accordance with the ~~EU ECM Regulation~~ 2011 EU ECM Regulation or the 2019 EU ECM Regulation as may be applicable;

~~"EU ECM Regulation" means Commission Regulation (EU) No 445/2011 on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) No 653/2007 and amending Regulation (EC) No 653/2007 as it has effect in EU law or had effect in EU law, as the context dictates;~~

~~"European Railway Agency" means the Community agency for railway safety and interoperability established by Regulation (EC) No 881/2004 of the European Parliament and of the Council establishing a European Railway Agency;~~

"European Union Agency for Railways" means the Agency established by Regulation (EU) 2016/796 of the European Parliament and of the Council on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004;

"factory" means a factory within the meaning of section 175 of the Factories Act 1961 and premises to which section 123(1) or (2) or 125(1) of that Act applies;

["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;]

"guided bus system" means a system of transport, used wholly or mainly for the carriage of passengers, that employs buses which for some or all of the time when they are in operation--

- (a) travel along roads; and
- (b) are guided (whether while on the road or at other times) by means of--
  - (i) apparatus, a structure or other device which is fixed and not part of the bus; or
  - (ii) a guidance system which is automatic;

"guided transport" means a system of transport, used wholly or mainly for the carriage of passengers, employing vehicles which for some or all of the time when they are in operation are guided by means of--

- (a) rails, beams, slots, guides or other apparatus, structures or devices which are fixed and not part of the vehicle; or
- (b) a guidance system which is automatic;

["harbour" area has the same meaning as in the Dangerous Goods in Harbour Areas Regulations 2016;]

. . .

~~"high speed Directive" means Council Directive 96/48/EC on the interoperability of the trans-European high speed rail system;~~

"infrastructure" means fixed assets used for the operation of a transport system which shall include, without prejudice to the generality of the foregoing--

- (a) its permanent way or other means of guiding or supporting vehicles;
- (b) any station; and
- (c) plant used for signalling or exclusively for supplying electricity for operational purposes to the transport system;

"infrastructure manager" means the person who--

- (a) in relation to infrastructure other than a station, is responsible for developing and maintaining that infrastructure or, in relation to a station, the person who is responsible for managing and operating that station, except that it shall not include any person solely on the basis that he carries out the construction of that infrastructure or station or its maintenance, repair or alteration; and
- (b) manages and uses that infrastructure or station, or permits it to be used, for the operation of a vehicle;

["Interoperability Directive" means Directive 2008/57/EC of the European Parliament and of the Council of 17th June 2008 on the interoperability of the rail system within the Community (Recast);]

"Interoperability Regulations" means the Railways (Interoperability) Regulations [2011];

["keeper" means the person who, 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 being the keeper in the National Vehicle Register;]

"mainline application" means an application for--

- (a) a safety certificate or an amended safety certificate; or
- (b) a safety authorisation or an amended safety authorisation,

made in relation to an operation on the mainline railway;

["mainline railway" means any railway except for any railway or part of a railway--

- (a) that [the Office of Rail and Road] determines in accordance with regulation 2A (determination of exclusion from the 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;]

"mainline railway system" means the mainline railway and the management and operation of the mainline railway as a whole;



["maintenance file" means the written file that contains all the technical and management information that is necessary to carry out the maintenance of a vehicle;

"maintenance rules" means any rules, applicable [in] Great Britain, which set out requirements relating to the maintenance of vehicles;]

"material" includes plant;

"military establishment" means an establishment intended for use for naval, military or air force purposes or for the purposes of the Department of the Secretary of State responsible for defence;

"mine" has the meaning assigned to it by section 180 of the Mines and Quarries Act 1954;

"national safety rules" means any legislation and other requirements--

(a) applicable [in] Great Britain; and

[(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,]

except that where the requirements in sub-paragraph (b) consist of common operating rules of the mainline railway it shall not include such rules which regulate matters which are covered by a ~~TSI~~ NTSN;

"NTSN" means a National Technical Specification Notice published by the Secretary of State pursuant to regulation 3B of the Interoperability Regulations;

["National Vehicle Register" means the register of vehicles authorised in Great Britain, required by regulation [36] of the Interoperability Regulations;]

"new" in relation to regulations 5 and 6 means new to the transport system in question;

"non-mainline application" means an application for--

(a) a safety certificate or an amended safety certificate; or

(b) a safety authorisation or an amended safety authorisation,

made in relation to an operation on a transport system other than the mainline railway;

"operator of last resort" means a transport operator appointed by the Secretary of State to provide transport services in accordance with section 30 of the Railways Act 1993;

["owner", in relation to a vehicle, means any person who has an estate or interest in, or a right over, that vehicle, and whose permission is needed before another may use it;]

"Part A of a safety certificate" means that part of a safety certificate certifying the matters set out in regulation 7(4)(b)(i) and related expressions shall be construed accordingly;

"Part B of a safety certificate" means that part of a safety certificate certifying the matters set out in regulation 7(4)(b)(ii) and related expressions shall be construed accordingly;

["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;]

"quarry" has the meaning assigned to it by regulation 3 of the Quarries Regulations 1999;

"railway" means a system of transport employing parallel rails which--

(a) provide support and guidance for vehicles carried on flanged wheels; and

(b) form a track which either is of a gauge of at least 350 millimetres or crosses a carriageway (whether or not on the same level),

but does not include a tramway;

"Recast Safety Directive" means Directive (EU) 2016/798 of the European Parliament and the Council on railway safety (recast);

"relevant infrastructure manager" means the infrastructure manager for any infrastructure used in relation to the operation in question;

"relevant infrastructure or vehicle" means any new or altered--

- (a) infrastructure; or
- (b) vehicle,

falling within regulation 5(4) or 6(4) and related expressions shall be construed accordingly;

"responsible person" means in relation to any relevant infrastructure or vehicle, any person who--

- (a) has contracted with another person for the manufacture or construction by that other person of that infrastructure or vehicle; or
- (b) manufactures or constructs that infrastructure or vehicle for his own use, or for sale to, or use by, another person but not where he is contracted to do so by a person falling under sub-paragraph (a),

and includes an authorised representative established in Great Britain of such a person.

"retained 2019 EU ECM Regulation" means Commission Implementing Regulation (EU) 2019/779 laying down detailed provisions on a system of certification of entities in charge of maintenance of vehicles pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulation (EU) No 445/2011, as it has effect in the UK after IP completion day;

"risk" means in Parts 1 and 2 a risk to the safety of a person;

"road" means in the definition of "guided bus system" and "tramway"-

- (a) in England and Wales, any length of highway or of any other road to which the public has access, and includes bridges over which a road passes; and
- (b) in Scotland, has the same meaning as in the Roads (Scotland) Act 1984;

"rolling stock" has the meaning in section 83(1) of the Railways Act 1993;

"ROTS" means the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994;

"safety authorisation" means a safety authorisation issued by [the Office of Rail and Road] in accordance with regulation 10 or 12;

~~"safety authority" means—~~

- ~~(a) as regards a member State other than the United Kingdom, the authority established in that State in accordance with article 16.1 of the Directive;~~
- ~~(b) as regards Great Britain, [the Office of Rail and Road]; or~~

~~(c) as regards Northern Ireland, the Department for Regional Development established by article 3(1) of the Departments (Northern Ireland) Order 1999;~~

“safety authority”, save for in the expression “safety authority for the tunnel system”, means—

(a) as regards Great Britain, the Office of Rail and Road; or

(b) as regards Northern Ireland, the Department for Infrastructure established by article 3(1) of the Departments (Northern Ireland) Order 1999 and renamed by section 1(6) of the Departments Act (Northern Ireland) 2016;

“safety authority for the tunnel system” means the Intergovernmental Commission as defined in section 49(1) of the Channel Tunnel Act 1987;

“safety certificate” means a safety certificate issued by [the Office of Rail and Road] in accordance with regulation 7 or 9;

“safety management system” means the organisation and arrangements established by a transport operator to ensure the safe management of its operation;

“significant safety risk” means, in relation to new or altered infrastructure or a new or altered vehicle the design or construction of which incorporates significant changes compared to any infrastructure or vehicle already in use on the transport system, the capability of significantly increasing an existing safety risk or creating a significant safety risk to--

(a) passengers on the transport system in question; or

(b) members of the public on roads and any other location where the transport system in question operates and to which the public have access (including a place to which the public has access only on making a payment), except a location which is a crossing subject to an Order made under section 1 of the Level Crossings Act 1983;

“station” means a passenger stop, station or terminal on a transport system but does not include any permanent way or other means of guiding or supporting vehicles or plant used for signalling or exclusively for supplying electricity for operational purposes to a transport system;

[“subsystem” has the same meaning as in the Interoperability ~~Directive~~ Regulations;

~~“technical specifications for interoperability” (“TSIs”) means technical specifications for interoperability which are published in the Official Journal of the [European Union] pursuant to--~~

~~(a) Article 6.1 of the high-speed Directive; . . .~~

~~(b) Article 6.1 of the conventional Directive; or~~

~~(c) Article 6.1 of the Interoperability Directive];~~

and in force;

“train” includes any rolling stock;

“tramway” means a system of transport used wholly or mainly for the carriage of passengers--

(a) which employs parallel rails which--

(i) provide support and guidance for vehicles carried on flanged wheels;

(ii) are laid wholly or partly along a road or in any other place to which the public has access (including a place to which the public has access only on making a payment); and

(b) on any part of which the permitted maximum speed is such as to enable the driver to stop a vehicle in the distance he can see to be clear ahead;

"transport operator" means any transport undertaking or infrastructure manager;

"transport system" means a railway, a tramway, or any other system using guided transport where that other system is used wholly or mainly for the carriage of passengers but a transport system does not include--

- (a) a guided bus system;
- (b) a trolley vehicle system;
- (c) any part of a transport system--
  - (i) within a . . . harbour area or which is part of a factory, mine or quarry;
  - (ii) used solely for the purpose of carrying out a building, operation or work of engineering construction;
  - (iii) within a maintenance or goods depot;
  - (iv) within a siding except where Part 4 applies; or
  - (v) which is within a military establishment;
- (d) any fairground equipment;
- (e) any cableway installation; or
- (f) any transport system where the track forms a gauge of less than 350mm except where such a track crosses a carriageway (whether or not on the same level),

except where the transport system in question forms part of the mainline railway;

"transport undertaking" means any person who operates a vehicle in relation to any infrastructure but shall not include a person who operates a vehicle solely within an engineering possession;

"trolley vehicle system" means a system of transport by vehicles constructed or adapted for use on roads without rails under electric power transmitted to them by overhead wires (whether or not there is in addition a source of power on board the vehicles);

"tunnel system" has the same meaning as in section 1(7) of the Channel Tunnel Act 1987;

"UK-issued ECM certificate", save in the expression "cross border UK-issued ECM certificate", means a certificate issued in the United Kingdom to an entity in charge of maintenance by an accredited or recognised body or by a safety authority in accordance with Schedule 10;

["vehicle"--

- (a) includes a mobile traction unit; and
- (b) in respect of the mainline railway, means a vehicle that runs on its own wheels on railway lines of a gauge of at least 350 millimetres, with or without traction, and is composed of one or more structural and functional subsystems or parts of such subsystems;]

"work of engineering construction" means the--

- (a) construction of any line or siding otherwise than on an existing transport system; and
- (b) construction, structural alteration, repair (including repointing and repainting) or demolition of any tunnel, bridge or viaduct except where carried on upon a transport system; and

"writing" apart from its usual meaning includes any text transmitted using electronic communications that is received, or accessible by the person to whom it is sent, in legible form.

(2) Any reference in these Regulations to a person who operates a train or a vehicle is a reference to the person operating the train or vehicle for the time being in the course of a business or other undertaking carried on by him, whether for profit or not, but it does not include a self-employed person by reason only that he drives or otherwise controls the movement of a train or vehicle.

(3) Parts 2 and 3 of these Regulations shall not apply to or in relation to the operation of a train or the management or use of infrastructure in the tunnel system, save for--

- (a) regulation 18(1A) for vehicles used to operate a cross border service;
- (b) regulation 18B in the tunnel system.

~~(3) Parts 2 and 3 of these Regulations shall not apply to or in relation to the operation of a train or the management or use of infrastructure in the tunnel system within the meaning of section 1(7) of the Channel Tunnel Act 1987, save for regulations 18A(1A) regulations 18A(1) and (4), and 18B.~~

## **[2A Determination of exclusion from the mainline railway]**

[(1) A railway or part of a railway does not form part of the mainline railway if [the Office of Rail and Road] 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 and Road] 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.

(3) [The Office of Rail and Road] may revoke or vary a determination under paragraph (1) or (2).

(4) A person may make an application to [the Office of Rail and Road] for a determination under paragraph (1) or (2) or for such a determination to be revoked or varied under paragraph (3) and [the Office of Rail and Road] shall consider any such application.

(5) [The Office of Rail and Road] shall maintain and publish a list of--

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

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

## **Part 2**

### **Safety Management, Certification and Authorisation**

### **3 Use of infrastructure on the mainline railway**

(1) After 30th September 2006 no person shall operate a train in relation to any infrastructure on the mainline railway unless--

- (a) he has established and is maintaining a safety management system which meets the requirements set out in regulation [5(1) to (3)]; and
- (b) he holds a current safety certificate in relation to the operation in question,

except to the extent that he is doing so within an engineering possession.

(2) After 30th September 2006 no person who is responsible for developing and maintaining infrastructure other than a station or who is responsible for managing and operating a station on the mainline railway shall manage and use it, or permit it to be used, for the operation of trains unless--

- (a) he has established and is maintaining a safety management system which meets the requirements referred to in regulation 5(7);
- (b) he holds a current safety authorisation in relation to the infrastructure in question; and
- (c) where he is using it or permitting such use, the person who is to use the infrastructure has complied with paragraph (1)(b).

### **4 Use of infrastructure on other transport systems**

(1) After 30th September 2006 no person shall operate a vehicle in relation to any infrastructure on a transport system other than the mainline railway unless--

- (a) he has established and is maintaining a safety management system which meets the requirements set out in regulation 6; and
- (b) subject to paragraph (3), he holds a current safety certificate in relation to the operation in question,

except to the extent that he is doing so within an engineering possession.

(2) After 30th September 2006 no person who is responsible for developing and maintaining infrastructure, other than a station, or who is responsible for managing and operating a station on a transport system other than the mainline railway shall manage and use it, or permit it to be used, for the operation of a vehicle unless--

- (a) he has established and is maintaining a safety management system which meets the requirements set out in regulation 6; and
- (b) subject to paragraph (3)--
  - (i) he holds a current safety authorisation in relation to the infrastructure in question; and
  - (ii) where he is using it or permitting such use, the person who is to use the infrastructure has complied with paragraph (1)(b).

(3) Paragraphs (1)(b) and (2)(b) shall not apply to the extent that the operation in question is only carried out--

- (a) on a tramway; or

(b) on a transport system on no part of which there is a permitted maximum speed exceeding 40 kilometres per hour.

(4) Where the operation in question falls within paragraph (3)(a) or (b), the requirement in paragraphs (1)(a) and (2)(a) shall be read as if the date was, in each case, after 31st March 2007.

## 5 Safety management system for the mainline railway

(1) The requirements for a safety management system referred to in regulation 3(1)(a) are that--

(a) subject to paragraph (2), it is established to ensure that the mainline railway system--

(i) can achieve the CSTs; and

(ii) is in conformity with relevant national safety rules and relevant safety requirements laid down in ~~TSIs~~ NTSNs;

(b) it applies the relevant parts of CSMs;

(c) it meets the requirements and contains the elements set out in Schedule 1, adapted to the character, extent and other characteristics of the operation in question;

(d) subject to paragraph (2), it ensures the control of all categories of risk including new or existing risks associated with the operation in question which, without prejudice to the generality of the foregoing, shall include such risks relating to the--

(i) supply of maintenance and material; [and]

(ii) use of contractors; . . .

(iii) . . .

(e) it takes into account, where appropriate and reasonable, the risks arising as a result of activities carried on by other persons; and

(f) all parts of it are documented.

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

(3) In paragraph (2), "relevant transport operator" means another transport operator whose operation is capable of materially affecting the safety of the operation carried on by the first operator.

(4) . . .

(5) . . .

(6) . . .

(7) The requirements for a safety management system referred to in regulation 3(2)(a) are the requirements in paragraphs [(1) to (3)] . . . and that--

(a) . . .

(b) it takes into account the effects of operations of transport undertakings; and

(c) it contains provisions to ensure that the way in which the infrastructure manager carries out his operation makes it possible for any transport undertaking to operate in accordance with--

- (i) relevant ~~TSIs~~ NTSNs and national safety rules; and
  - (ii) the means adopted by the transport undertaking to meet the requirements referred to in regulation 7(4), of which [the Office of Rail and Road] accepted that there was sufficient evidence upon issue or amendment of its safety certificate pursuant to these Regulations; and
- (d) it aims to co-ordinate the emergency procedures of the infrastructure manager or of the applicant for a safety authorisation with those of transport undertakings,

and in each case the requirements in [sub-paragraphs (b) to (d)] shall only apply in relation to transport undertakings that operate or will operate a train in relation to the infrastructure of the infrastructure manager or of the applicant for a safety authorisation in question.

## **6 Safety management system for other transport systems**

(1) The requirements for a safety management system referred to in regulation 4(1)(a) and 4(2)(a) are that--

- (a) it is adequate to ensure that the relevant statutory provisions which make provision in relation to safety will be complied with in relation to the operation in question;
- (b) subject to paragraph (7), it meets the requirements and contains the elements set out in Schedule 1, adapted to the character, extent and other characteristics of the operation in question;
- (c) subject to paragraph (2), it ensures the control of all categories of risk associated with the operation in question which, without prejudice to the generality of the foregoing, shall include such risks relating to the--
  - (i) supply of maintenance and material;
  - (ii) use of contractors; and
  - (iii) placing in service of new or altered vehicles or infrastructure the design or construction of which incorporates significant changes compared to any vehicles or infrastructure already in use on the transport system and which changes would be capable of significantly increasing an existing risk or creating a significant safety risk;
- (d) it takes into account, where appropriate and reasonable, the risks arising as a result of activities carried on by other persons; and
- (e) all parts of it are documented.

(2) The requirement in paragraph (1)(c) shall be met where the safety management system of a transport operator or an applicant for a safety certificate or a safety authorisation ("the first operator") taken with that of any relevant transport operator is capable of meeting the requirements of the paragraph in question.

(3) In paragraph (2), "relevant transport operator" means another transport operator whose operation is capable of materially affecting the safety of the operation carried on by the first operator.

(4) In paragraph (1)(c)(iii) where such new or altered vehicles or infrastructure are intended to be placed in service, then before that placing in service the transport operator shall ensure that he--

- (a) has an established written safety verification scheme which meets the requirements and contains the elements set out in Schedule 4; and



(b) has appointed a competent person to undertake that safety verification and the competent person has undertaken that safety verification in relation to the new or altered vehicle or infrastructure.

(5) . . .

(6) In this regulation the requirements of paragraph (4) shall apply in the absence of a transport operator to a responsible person as they would apply to a transport operator.

(7) Paragraph 2(c) of Schedule 1 shall apply in relation to transport systems other than the mainline railway as if it read as follows--

"(c) procedures--

- (i) to meet relevant technical specifications; and
- (ii) relating to operations or maintenance,

insofar as they relate to the safety of persons, and procedures for ensuring that the procedures in subparagraphs (i) and (ii) are followed throughout the life-cycle of any relevant equipment or operation;".

## 7 Safety certificate

(1) An application for a first safety certificate in respect of an operation shall--

- (a) be made to [the Office of Rail and Road];
- (b) subject to regulation 17(1) and (2), include the information set out in--
  - (i) Part 1 of Schedule 2 in respect of a mainline application; and
  - (ii) Part 2 of Schedule 2 in respect of a non-mainline application; and
- (c) if it is a mainline application, clearly indicate in respect of which part of the safety certificate any information is provided.

(2) **Subject to paragraph (2A),** where--

- (a) an applicant sends to [the Office of Rail and Road] in relation to a mainline application the matters specified in paragraphs 1(a) and 1(b)(i) of Schedule 2; and
- (b) [the Office of Rail and Road] is satisfied that the certificate in question is for an equivalent operation to that in respect of which the application is made,

then that certificate shall be deemed to be Part A of the safety certificate for the operation in respect of which the application is made.

**(2A) Where in accordance with paragraphs (1) and (2) of this regulation, the applicant has at any time before, on or after exit day submitted a copy of the certificate referred to in paragraph 1(b)(i)(bb) of Schedule 2, that certificate shall cease to be deemed to be Part A of the safety certificate after the second anniversary of exit day and no such certificate submitted after that anniversary shall be deemed to be Part A of the safety certificate.**

(3) Subject to regulation 17(7), within four months of the date of receipt of the application, [the Office of Rail and Road] shall--

- (a) issue a safety certificate for the operation in question; or

- (b) notify the applicant that it has refused the application,

and in either case shall give reasons for its decision.

- (4) A safety certificate shall--

- (a) specify the type and extent of the operation in respect of which it is issued; and
- (b) certify acceptance by [the Office of Rail and Road] that the applicant has provided sufficient evidence--
  - (i) subject to paragraph (2), to demonstrate that the safety management system of the applicant meets the requirements set out in regulations 5(1) to (4) in respect of a mainline application or regulation 6 in respect of a non-mainline application; and
  - (ii) of the provisions adopted by the applicant to meet the requirements that are necessary to ensure safe operation on the transport system in question,

and reference the information on which such acceptance is based.

; and

- (c) be valid for no longer than five years from the date of issue and the period of validity shall be indicated in the safety certificate and where Part A of the certificate is deemed to be such a Part A in accordance with regulation 7(2) that period shall expire on or before the date of expiry of the certificate which is deemed to be the Part A.

- (5) In paragraph (4)(b)(ii) "requirements" means in relation to--

- (a) a mainline application, the ~~TSIs~~ NTSNs, national safety rules and other safety requirements referred to in paragraph 2(a) of Schedule 2; and
- (b) a non-mainline application, the relevant statutory provisions, technical specifications and procedures referred to in paragraph 5 of Schedule 2.

## **8 Amended safety certificate**

(1) Where it is proposed that the type or extent of an operation in respect of which a safety certificate has been issued is to be substantially changed then the holder of the safety certificate shall apply to [the Office of Rail and Road] for the safety certificate to be amended accordingly and the substantial change shall not be made until the safety certificate is so amended.

- (2) An application for an amended safety certificate under this regulation shall--

- (a) provide details of the change proposed;
- (b) provide details of any consequential changes to any information sent to [the Office of Rail and Road] in respect of the operation in question which remains relevant to that operation; and
- (c) if it is a mainline application, clearly indicate in respect of which part of the safety certificate any information is provided.

(3) Where Part A of a safety certificate in respect of which an application is made is deemed to be such a Part A in accordance with regulation 7(2) then [the Office of Rail and Road] shall--

- (a) consider whether the Part A in question would still be for an equivalent operation if the change were made; and

(b) if it considers that it would not be equivalent, notify the applicant in accordance with paragraph (4) that it has refused the application and that he should apply for a new safety certificate under regulation 7 if he wants to make the proposed change,

except that, in relation to Part B of the safety certificate, he only need provide the details set out in paragraph (2) above.

(4) Subject to regulation 17(7), within four months of the date of receipt of the application [the Office of Rail and Road] shall--

(a) issue a notice making any necessary amendments to the matters set out in the safety certificate; or

(b) notify the applicant that it has refused the application,

and in either case shall give reasons for its decision.

## **9 Further safety certificate**

(1) Before the expiry of a safety certificate the holder of that safety certificate may apply to [the Office of Rail and Road] for a further safety certificate to be issued for the operation in question.

(2) An application for a further safety certificate shall set out particulars of any changes to any information sent to [the Office of Rail and Road] in respect of the operation in question which remains relevant to that operation.

(3) Regulations 7(1)(c) and 7(2) to (4) shall apply to an application for and the issuing of a further safety certificate as they apply to an application for and the issuing of a first safety certificate under regulation 7.

### **9A Format of safety certificates and applications**

Schedule 8 has effect.

## **10 Safety authorisation**

(1) An application for a first safety authorisation in respect of infrastructure shall--

(a) be made to [the Office of Rail and Road];

(b) subject to regulation 17(1) and (2), set out particulars of--

(i) the infrastructure in question;

(ii) how the safety management system of the applicant meets the requirements in regulation 5(7) in relation to a mainline application or in regulation 6 in relation to a non-mainline application; and

(iii) how the provisions adopted by the applicant meet any requirements which are necessary for the safe design, maintenance and operation of the infrastructure in question.

(2) Subject to regulation 17(7), within four months of the date of receipt of the application [the Office of Rail and Road] shall--

(a) issue a safety authorisation in relation to the infrastructure in question; or

- (b) notify the applicant that it has refused the application; and
  - (c) in either case shall give reasons for its decision.
- (3) A safety authorisation shall--
- (a) specify the infrastructure in respect of which the authorisation is issued;
  - (b) accept that the applicant has provided sufficient evidence to demonstrate that the safety management system of the applicant meets the requirements--
    - (i) referred to in regulation 5(7) in relation to a mainline application; or
    - (ii) in regulation 6 in relation to a non-mainline application;
  - (c) accept that the applicant has provided sufficient evidence of the provisions adopted by the applicant to meet any requirements that are necessary for the safe design, maintenance and operation of the infrastructure in question;
  - (d) reference the information on which the acceptance referred to in sub-paragraphs (b) and (c) is based; and
  - (e) be valid for no longer than five years from the date of issue and the period of validity shall be indicated in the safety authorisation.

## **11 Amended safety authorisation**

- (1) Where it is proposed that a substantial change is to be made to--
- (a) the infrastructure in respect of which a safety authorisation has been issued;
  - (b) any energy supply, not falling within sub-paragraph (a), which is used in connection with the infrastructure in question; or
  - (c) the principles of operation and maintenance of such infrastructure or energy supply,

then the holder of the safety authorisation shall apply to [the Office of Rail and Road] for the safety authorisation to be amended accordingly and the substantial change shall not be made until the safety authorisation is so amended.

- (2) An application for an amended safety authorisation under this regulation shall provide details of--
- (a) the substantial changes proposed; and
  - (b) any consequential changes to any information sent to [the Office of Rail and Road] in respect of the operation in question which remains relevant to that operation.

- (3) Subject to regulation 17(7), within four months of the date of receipt of the application [the Office of Rail and Road] shall--
- (a) issue a notice making any necessary (a) amendments to the matters set out in the safety authorisation; or
  - (b) notify the applicant that it has refused the application,

and in either case shall give reasons for its decision.

## 12 Further safety authorisation

- (1) Before the expiry of a safety authorisation the holder of that safety authorisation may apply to [the Office of Rail and Road] for a further safety authorisation to be issued for the infrastructure in question.
- (2) An application for a further safety authorisation shall set out particulars of any changes to any information sent to [the Office of Rail and Road] in respect of the operation in question which remains relevant to that operation.
- (3) Regulations 10(2) and 10(3) shall apply to an application for and the issuing of a further safety authorisation as they apply to an application for and the issuing of a first safety authorisation under regulation 10.

## 13 Notice of changes by holder of a safety certificate or a safety authorisation

The holder of a safety certificate or a safety authorisation shall, without delay, notify [the Office of Rail and Road]--

- (a) of any major changes--
  - (i) to the means by which he meets the requirements relating to the safety management system as set out in--
    - (aa) regulation 5(1) to (4) in relation to an operation of a transport undertaking on the mainline railway;
    - (bb) regulation 5(7) in relation to an operation of an infrastructure manager on the mainline railway; or
    - (cc) regulation 6 in relation to an operation which is not carried out on the mainline railway;
  - (ii) in the case of a transport undertaking, to the provisions adopted by him to meet any requirements necessary to ensure safe operation on the transport system in relation to the operation in question; or
  - (iii) in the case of an infrastructure manager, to the provisions adopted by him to meet any requirements that are necessary for the safe design, maintenance and operation of the infrastructure in question;
- (b) when persons first commence work directly relating to the operation which is of a type which has not previously been carried out in relation to that operation; or
- (c) when types of vehicle which are new to the operation in question are first introduced.

## 14 Direction to apply for an amended safety certificate or safety authorisation

- (1) Where there is a substantial change to any of the relevant statutory provisions which make provision in relation to the safety of the transport system in question, then [the Office of Rail and Road] may direct the holder of a safety certificate or a safety authorisation to apply to [the Office of Rail and Road] for an amendment to its safety certificate or safety authorisation.
- (2) A direction issued under paragraph (1) shall--
  - (a) state the reasons why [the Office of Rail and Road] considers that it is necessary for the transport operator to apply for an amended safety certificate or safety authorisation;

- (b) identify the information--
  - (i) on the basis of which [the Office of Rail and Road's] acceptance referred to in regulation 7(4) or 10(3) was made upon issue or amendment of the safety certificate or safety authorisation; or
  - (ii) notified to [the Office of Rail and Road] under regulation 13,

which it considers will have to be changed; and

- (c) specify the period, being not less than 28 days from the date of issue of the direction, within which the application shall be sent to [the Office of Rail and Road].

(3) An application for an amended safety certificate or safety authorisation pursuant to this regulation shall provide details of any changes to any information--

- (a) sent to [the Office of Rail and Road] in respect of the operation in question which remains relevant to that operation; and
- (b) which is consequential upon the relevant change to the relevant statutory provisions.

(4) Regulations 8(2)(c) and 8(4) shall apply to an application for and the issuing of a notice of amendment to a safety certificate under this regulation as they apply to an application for and issuing of an amendment to a safety certificate under regulation 8.

(5) Regulation 11(3) shall apply to an application for and the issuing of a notice of amendment to a safety authorisation under this regulation as it applies to an application for and issuing of an amendment to a safety authorisation under regulation 11.

## **15 Revocation of safety certificate**

(1) [The Office of Rail and Road] shall revoke--

- (a) either Part A or Part B of a safety certificate if it is satisfied that the holder is no longer satisfying the conditions of that part of the safety certificate and that there is a significant risk arising as a result;
- (b) a safety certificate if it is satisfied that the holder--
  - (i) is no longer satisfying the conditions of that safety certificate and that there is a significant risk arising as a result; or
  - (ii) is not operating a vehicle in relation to any infrastructure on a transport system as intended pursuant to that safety certificate and has not done so throughout the period of one year commencing with the date of issue of the safety certificate by [the Office of Rail and Road],

except that this paragraph shall not apply in relation to Part A of a safety certificate where it is deemed to be such a Part A in accordance with regulation 7(2).

(2) In this regulation, "conditions" means in relation to--

- (a) Part A of a safety certificate, any part of the requirements relating to the safety management system set out in--
  - (i) regulation 5(1) to (4) in relation to an operation carried out on the mainline railway; or
  - (ii) regulation 6 in relation to an operation carried out on a transport system other than the mainline railway;

- (b) Part B of a safety certificate, that the provisions adopted by the applicant are sufficient to meet any requirements that are necessary to ensure safe operation on the transport system in question in relation to the operation in question; or
  - (c) a safety certificate, the matters referred to in sub-paragraphs (a) and (b).
- (3) Before revoking any safety certificate or Part A or B of it, [the Office of Rail and Road] shall--
- (a) notify the holder that--
    - (i) it is considering revoking that safety certificate or Part A or B of it and the reasons why;
    - (ii) within a period specified in the notice, which shall be not less than 28 days, the holder may make representations in writing to [the Office of Rail and Road] or, if the holder so requests, may make oral representations to [the Office of Rail and Road]; and
  - (b) consider any representations which are duly made and not withdrawn.
- (4) Where [the Office of Rail and Road] revokes a safety certificate or Part A or B of it, it shall send to the holder with the notice of revocation a statement of the reasons why.
- (5) Where--
- (a) [the Office of Rail and Road] revokes Part B of a safety certificate; and
  - (b) Part A of that safety certificate is deemed to be Part A of a safety certificate pursuant to regulation 7(2) and was issued by the safety authority ~~in another member State or~~ in Northern Ireland;

then [the Office of Rail and Road] shall notify that safety authority as soon as reasonably possible of that revocation.

(6) Where--

- (a) the Office of Rail and Road revokes Part B of a safety certificate; and
- (b) Part A of that safety certificate is deemed to be Part A of a safety certificate pursuant to regulation 7(2) and was issued by the authority carrying out safety functions in a member State or the European Union Agency for Railways;

then the Office of Rail and Road shall notify that authority or the ~~European Railway Agency~~ European Union Agency for Railways.

(7) For the purposes of subparagraph (6), "authority carrying out railway safety functions" means an authority established in a member State in accordance with Article 16.1 of the Directive or Article 16.1 of the Recast Safety Directive."

## 16 Revocation of safety authorisation

- (1) [The Office of Rail and Road] shall revoke a safety authorisation if it is satisfied that the holder is no longer satisfying the conditions of that safety authorisation and there is a significant risk arising as a result.
- (2) In this regulation, "conditions" means--
- (a) any part of the requirements relating to the safety management system--
    - (i) referred to in regulation 5(7) in relation to an operation carried out on the mainline railway; or

- (ii) in regulation 6 in relation to an operation carried out on a transport system other than the mainline railway; or
  - (b) that the provisions adopted by the applicant are sufficient to meet any requirements that are necessary for the safe design, maintenance and operation of the infrastructure in question.
- (3) Before revoking any safety authorisation, [the Office of Rail and Road] shall--
- (a) notify the holder that--
    - (i) it is considering revoking that safety authorisation and the reasons why;
    - (ii) within a period specified in the notice, which shall be not less than 28 days, the holder may make representations in writing to [the Office of Rail and Road] or, if the holder so requests, may make oral representations to [the Office of Rail and Road]; and
  - (b) consider any representations which are duly made and not withdrawn.
- (4) Where [the Office of Rail and Road] revokes a safety authorisation, it shall send to the holder with the notice of revocation a statement of the reasons why.

## **17 General provisions relating to safety certificates and safety authorisations**

- (1) Where an application is made under these Regulations for a safety certificate or safety authorisation or for an amended safety certificate or safety authorisation which relates to an operation on the mainline railway and on a transport system other than the mainline railway then--
- (a) one application may be made for that operation but it shall be split into separate parts for the mainline railway and the other transport system; and
  - (b) these Regulations shall apply to those parts as if they were a mainline application and a non-mainline application,

except that where the same information is required it need not be stated twice.

- (2) A transport operator may make one application for an operation in relation to which he requires both a safety certificate and a safety authorisation or an amended safety certificate and an amended safety authorisation but--
- (a) such application shall be split into separate parts relating to the safety authorisation and the safety certificate; and
  - (b) these Regulations shall apply to those parts as if they were an application for a safety authorisation and a safety certificate or an amended safety authorisation and an amended safety certificate,

except that where the same information is required it need not be stated twice.

- (3) Where--
- (a) an applicant sends--
    - (i) an application for a safety certificate or safety authorisation, an amended safety certificate or safety authorisation; or
    - (ii) further information to [the Office of Rail and Road] pursuant to paragraph (5); or



(b) the holder of a safety certificate or a safety authorisation sends a notice pursuant to regulation 13 . . . ,

then he shall at the same time either copy it to any affected party or notify any affected party without delay that the application or further information has been sent and of the address of the website where those documents may be accessed and how they may be accessed and, in either case, shall notify such a party, where the document in question is an application, of the time for making representations to [the Office of Rail and Road] pursuant to paragraph (6).

- (4) Where [the Office of Rail and Road] issues a--
- (a) safety certificate or safety authorisation, other than to an operator of last resort;
  - (b) notice amending a safety certificate or safety authorisation;
  - (c) notice refusing an application for a safety certificate or a safety authorisation or an amended safety certificate or safety authorisation;
  - (d) direction to apply for an amended safety certificate or safety authorisation;
  - (e) notice that it is considering revoking a safety certificate or a safety authorisation; or
  - (f) notice revoking a safety certificate or a safety authorisation,

then [the Office of Rail and Road] shall at the same time either copy it and the reasons given for [the Office of Rail and Road's] decision to any affected party or notify any affected party that the relevant document has been issued and of the address of the website where those documents and the reasons given for the decision may be accessed and how they may be accessed and, in either case, shall notify such a party, where the document in question is a notice that it is considering revocation as mentioned in subparagraph (e), of the time for making representations to [the Office of Rail and Road] pursuant to paragraph (6).

- (5) [The Office of Rail and Road] may upon receipt of--
- (a) an application for a safety certificate or safety authorisation;
  - (b) an application for an amended safety certificate or safety authorisation;
  - (c) any further information requested under this paragraph,

request as soon as reasonably possible such further information as it may reasonably require and the applicant shall provide such information as soon as reasonably possible . . .

- (6) Where an affected party receives a copy of an application or a notice relating to revocation pursuant to paragraph (3)(a) or (4)(e) then--
- (a) he may make any representations in writing to [the Office of Rail and Road], which are relevant to the application or notice, within 28 days of the date of issue of the application or notice in question; and
  - (b) [the Office of Rail and Road] shall consider any such representations in making its decision.

[(7) If a request for information is made under paragraph (5), the period of 4 months for [the Office of Rail and Road] 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.]

(8) . . .

(9) An employer who makes an application for a safety certificate or safety authorisation, an amended safety certificate or safety authorisation or sends a notice to [the Office of Rail and Road] under regulation 13 . . . shall, in relation to its preparation, consult--

- (a) safety representatives within the meaning of regulation 2(1) of the Safety Representatives and Safety Committees Regulations 1977; and
  - (b) such other employees as he is required to consult by virtue of regulation 3 of the Health and Safety (Consultation with Employees) Regulations 1996.
- (10) In this regulation, "affected party" means for a document sent or issued in relation to--
- (a) a safety certificate or an application for a safety certificate--
    - (i) any relevant infrastructure manager;
    - (ii) a trade union which is a recognised trade union within the meaning of regulation 2(1) of the Safety Representatives and Safety Committees Regulations 1977 in relation to employees of the operator or applicant employed in relation to the operation in question; and
    - (iii) the [Passengers' Council] and the London Transport Users' Committee where, in each case, it represents passengers' interests in relation to the operation in question; and
  - (b) a safety authorisation or an application for a safety authorisation--
    - (i) any transport undertaking who is or will be operating on the infrastructure of the applicant or infrastructure manager in question;
    - (ii) any infrastructure manager who manages infrastructure which interfaces or will interface with the infrastructure of the infrastructure manager in question; and
    - (iii) any person falling within paragraph (10)(a)(ii) or (iii).

**~~18—Notification to the European Railway Agency regarding safety certificates and safety authorisations relating to the mainline railway~~**

~~(1) [The Office of Rail and Road] shall notify the European Railway Agency of the issuing, amendment or revocation of--~~

- ~~(a) Part A of a safety certificate; or~~
- ~~(b) a safety authorisation;~~

~~pursuant to these Regulations in relation to an operation on the mainline railway within one month of such issue, amendment or revocation.~~

~~(2) A notice under paragraph (1) shall include the following information in relation to the safety certificate or safety authorisation--~~

- ~~(a) the name and address of the holder;~~
- ~~(b) its date of issue and period of validity;~~
- ~~(c) the operation or infrastructure in relation to which it was issued; and~~
- ~~(d) where it relates to a revocation, the reasons for that decision.~~

**[18A Maintenance of vehicles on the mainline railway]**

(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) where the vehicle is a freight wagon, holds either an EU ECM certificate valid on the terms of its original issue or a UK-issued ECM certificate. ~~holds an ECM certificate if the vehicle is a freight wagon.]~~

(1A) No person may use a vehicle to operate a cross-border service 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 either an EU ECM certificate valid on the terms of its original issue or a cross-border UK ECM certificate, where it is required to do so in accordance with the retained 2019 EU ECM Regulation.

(2) Each entity in charge of maintenance must ensure, by means of a system of maintenance, that a vehicle for which it is in charge of maintenance is in a safe state of running.

(3) The requirement for a system of maintenance referred to in paragraph (2) is that a vehicle must be maintained in accordance with--

- (a) the maintenance file for the vehicle;
- (b) applicable maintenance rules; and
- (c) applicable NTSNs ~~TSIs~~ .]

(4) Schedules 9 (applications for UK-issued ECM certificates by entities in charge of maintenance) and Schedule 10 (system of certification of entities in charge of maintenance in respect of Great Britain) have effect.

### **18B Common Safety Targets**

The Office of Rail and Road shall assess the achievement of common safety targets in accordance with Schedule 11 (common safety targets), which has effect.

## **Part 3**

### **General Duties**

#### **19 Risk assessment**

(1) A transport operator shall--

- (a) make a suitable and sufficient assessment of the risks to the safety of any persons for the purpose of identifying the measures he needs to take to ensure safe operation of the transport system in question insofar as this is affected by his operation; and
- (b) implement the measures referred to in sub-paragraph (a).

(2) When carrying out an assessment or a review under paragraph (1) or (3), a transport operator shall apply the CSMs to the extent that the operation is carried out on the mainline railway.

(3) Any assessment under paragraph (1) shall be reviewed by the transport operator who made it if--

- (a) there is a reason to suspect that it is no longer valid; or

(b) there has been a significant change in the matters to which it relates and where as a result of any such review changes to an assessment are required,

the transport operator concerned shall make them, and implement any changes to the measures identified pursuant to paragraph (1) as a result of the review.

- (4) The transport operator shall record in relation to any assessment or review under this regulation--
- (a) the assessment process undertaken, the methods of any calculation used and any assumptions made; and
  - (b) the significant findings of the risk assessment including the measures in place and any further measures the transport operator intends to take to ensure safe operation of the transport system in relation to his operation.

(5) Every transport operator shall make and give effect to such arrangements as are appropriate, having regard to the nature of his activities and the extent of the undertaking, for the effective planning, organisation, control, monitoring and review of the measures identified pursuant to paragraph (1) or (3) and shall record such arrangements.

## 20 Annual safety reports

[(1) Subject to paragraph (2), any transport operator who carries out operations on the mainline railway shall send to [the Office of Rail and Road] an annual safety report in respect of its operations on the mainline railway relating to the previous calendar year, which shall contain--

- (a) information on how the transport operator's safety targets, referred to in paragraph 2(b) of Schedule 1, are met;
- (b) the results achieved through putting the transport operator's safety plans, referred to in paragraph 2(b) of Schedule 1, into effect;
- (c) statistics for the common safety indicators ~~listed in Annex I (common safety indicators) of the Directive~~, insofar as they are relevant to the operations in question;
- (d) the findings of safety auditing carried out pursuant to the procedures referred to in paragraph 2(k) of Schedule 1; and
- (e) comments on any deficiencies or malfunctions relating to the running of vehicles or the management of infrastructure relating to the operation in question that may be relevant to the safety of that transport system,

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.]

(2) The first annual report required under paragraph (1) shall be sent by 30th June 2007 and subsequent reports by 30th June in each subsequent calendar year.

~~(3) Subject to paragraph (4), [the Office of Rail and Road] shall publish and send to the European Railway Agency an annual report relating to the previous calendar year which shall contain information on the following in relation to the mainline railway--~~

- ~~(a) the development of railway safety including an aggregation of all the statistics reported to [the Office of Rail and Road] for the relevant calendar year pursuant to paragraph (1)(c) which relate to an operation or part of an operation which is carried out on the mainline railway;~~

- ~~(b) any important changes in relation to the regulation of railway safety;~~
- ~~(c) the development of the system for safety certification and authorisation; and~~
- ~~(d) the results of and experience relating to the supervision of transport operators,~~

~~in Great Britain.~~

~~(4) The first annual report required under paragraph (3) shall be sent to the European Railway Agency by 30th September 2007 and subsequent reports by 30th September in each subsequent calendar year.~~

~~(5) Where [the Office of Rail and Road] discovers, after sending an annual report, that there were errors or omissions in it then it shall send a corrected report for that year to the European Railway Agency at the first convenient opportunity and in any event by no later than the time the next annual report is due to be sent.~~

6) For the purposes of paragraph (1)(c), the common safety indicators are those laid down in paragraphs 1.1 to 6.2 of, and the Appendix to, Annex I to the Directive, save that the Appendix is to be read with the following modifications—

- (a) in paragraph 1.2, for “EUR 150 000” substitute “£170,000”;
- (b) in paragraph 5.1, for “Member State” substitute “United Kingdom”; and
- (c) in paragraphs 7.3 and 7.4, for “railway network in Member States, whose scope is set out in Article 2” substitute “mainline railway as defined in the Railways and Other Guided Transport Systems (Safety) Regulations 2006”.]

## **21 Sending, issuing, and keeping of documents and making them available for public inspection**

(1) Any application, notice, report or any other information sent to [the Office of Rail and Road] or records made pursuant to these Regulations shall be in writing and in English.

(2) Any certificate, authorisation, notice, direction, request for information, statement or report issued by [the Office of Rail and Road] pursuant to these Regulations shall be in writing and in English.

(3) An applicant who makes an application in respect of a safety certificate or a safety authorisation pursuant to regulations 7, 9, 10 or 12 shall when sending the application, notify [the Office of Rail and Road] of an address ~~in Great Britain~~ for the purposes of this regulation ("notified address").

(4) Subject to paragraphs (5) and (6), a transport operator shall keep at the notified address in relation to the operation in question--

- (a) the safety certificate or safety authorisation issued in response to his application for such certificate or authorisation and the documentation referenced in that safety certificate or safety authorisation;
- (b) any notice of amendment issued pursuant to Part 2 of these Regulations . . . in relation to his safety certificate or safety authorisation;
- (c) any records he is required to make pursuant to regulation 19(4) and (5);
- (d) any annual safety report sent to [the Office of Rail and Road] under regulation 20(1);
- (e) any notification of changes or of a revision notified to [the Office of Rail and Road] under regulation 13 . . .; and
- (f) a record of any findings of internal safety auditing carried out pursuant to the procedures referred to in paragraph 2(k) of Schedule 1 and of any action taken in consequence of such auditing,

or a hard or electronic copy of such documents.

- (5) The documents referred to in paragraph (4) shall be kept as long as they--
- (a) are or are a copy of the current safety certificate or safety authorisation or a notice of amendment thereof;
  - (b) are or are a copy of a notification of a major change or a revision which is relevant to the current operation of the transport undertaking;
  - (c) relate to the information on the basis of which [the Office of Rail and Road's] acceptance referred to in regulation 7(4) or 10(3), as the case may be, was made in relation to a current safety certificate or safety authorisation; or
  - (d) relate to a risk assessment, as reviewed from time to time, carried out pursuant to regulation 19.
- (6) The documents kept pursuant to paragraph (4)(d) or (4)(f) shall be kept for 5 years and the documents kept pursuant to sub-paragraphs (a), (b), (d) and (e) of paragraph (4) shall, subject to paragraph (7), be made available for public inspection at the notified address at reasonable times and on reasonable notice.
- (7) Nothing in paragraph (6) shall require the disclosure of any information--
- (a) relating to a named individual;
  - (b) which is commercially confidential; or
  - (c) which is detrimental to national security or to the security of the transport system in question.
- (8) A person who has a notified address may subsequently notify [the Office of Rail and Road] of a different address ~~in Great Britain~~ and in this case references in this regulation to the notified address shall be construed as a reference to the last address notified under this paragraph.

## **22 Co-operation**

- (1) Every person to whom this paragraph applies shall co-operate as far as is necessary with a transport operator to enable him to comply with the provisions of these Regulations.
- (2) Paragraph (1) applies to--
- (a) any transport operator whose operations may affect or may be affected by operations carried out by the duty holder; and
  - (b) an employer of persons or a self-employed person carrying out work on or in relation to premises or plant owned or controlled by the duty holder.
- (3) Every transport operator shall co-operate, insofar as is reasonable, with any other transport operator who operates on the same transport system where that other transport operator is taking action to achieve the safe operation of that transport system.
- (4) In paragraph (2) "duty holder" means a transport operator referred to in paragraph (1).

## **Part 4**

### **Safety Critical Work**

## **23 Interpretation and application of Part 4**

- (1) In this Part--

"assessor" means any person who is competent to make an impartial and objective assessment of another person's competence or fitness to carry out safety critical work, and related expressions shall be construed accordingly;

"controller of safety critical work" means 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;

"fitness" means physical and mental fitness, and related expressions shall be construed accordingly;

"installation" includes the installation, examination or testing of components;

"maintenance" includes repair work, reconditioning, examination, testing or alteration;

"operator" means any person carrying on an undertaking which includes a transport system or any part of it or the provision of transport services on such a system;

"safety critical task" means--

(a) in relation to a vehicle used on a transport system--

(i) driving, dispatching or any other activity which is capable of controlling or affecting the movement of that vehicle;

(ii) signalling, and signalling operations, the operation of level crossing equipment, receiving and relaying of communications or any other activity which is capable of controlling or affecting the movement of that vehicle;

(iii) coupling or uncoupling;

(iv) installation of components, other than where the installation of those components is subject to supervision and checking by a safety critical worker or a controller of safety critical work;

(v) maintenance, other than where the carrying out of that maintenance is subject to supervision and checking by a safety critical worker or a controller of safety critical work; or

(vi) checking that that vehicle is working properly and, where carrying goods, is correctly loaded before being used;

(b) in relation to a transport system--

(i) installation or maintenance of any part of it or of the telecommunications system relating to it or used in connection with it, or of the means of supplying electricity directly to that transport system or to any vehicles using it or to the telecommunications system other than where the carrying out of that task is subject to supervision and checking by a safety critical worker or a controller of safety critical work;

(ii) controlling the supply of electricity directly to it or to any vehicles used on it;

(iii) receiving and relaying of communications; or

(iv) any person ensuring the safety of any persons working on or near to the track, whether or not the persons working on or near to the track are carrying out safety critical work;

(c) in relation to training, any practical training or the supervision of any such training in any of the tasks set out in sub-paragraphs (a) to (b),

which could significantly affect the health or safety of persons on a transport system;

"safety critical work" means any safety critical task carried out by any person in the course of their work . . . on or in relation to a transport system and related expressions shall be construed accordingly; . . .

"telecommunications system" means any telecommunications system provided by a transport operator or its associated equipment, which is capable of controlling or affecting the movement of a vehicle, or

which is provided by a transport operator for purposes which include calling the emergency services[; and

"work" includes voluntary work].

(2) Any reference in this Part to a safety critical worker or a controller of safety critical work supervising and checking the work of another person is to a safety critical worker or a controller of safety critical work who has been assessed as competent in the tasks to which that supervision and checking relates.

(3) Any reference in this Part to a person controlling the carrying out of safety critical work is a reference to a person managing, supervising or controlling that work in connection with the carrying on by him of a trade, business or other undertaking (whether or not for profit).

(4) This Part shall not apply to or in relation to--

(a) the police, ambulance or fire service when they are carrying out their emergency functions on or in relation to a transport system; and

(b) any voluntary worker for a period of twelve months from the date of the coming into force of this Part.

## **24 Competence and fitness**

(1) Every controller of safety critical work shall, so far as is reasonably practicable, ensure that a person under his management, supervision or control, with the exception of where that person is receiving practical training in a safety critical task, only carries out safety critical work where--

(a) that person has been assessed as being competent and fit to carry out that work following an assessment by an assessor;

(b) there is an accurate and up to date record in writing of that person's competence and fitness which references any criteria for determining competence and fitness against which that assessment of competence was made;

(c) the record, or an accurate summary of the record referred to in sub-paragraph (b) is available for inspection, on reasonable request, by any other controller of safety critical work or any operator who may be affected by any safety critical work carried out or to be carried out by that person, for the purposes of establishing that person's competence and fitness to carry out safety critical work; and

(d) there are in place [suitable and sufficient] arrangements for monitoring the competence and fitness of that person.

(2) Every controller of safety critical work shall without unreasonable delay review any person's competence or fitness assessment where--

(a) they have reason to doubt the competence or fitness of a person to carry out that safety critical work; or

(b) there has been a significant change in the matters to which the assessment relates,

and where, as a result of any such review a reassessment of competence or fitness is required, that reassessment of competence or fitness shall be carried out to ensure that the requirements of paragraph (1) are met.

(3) Where a reassessment of competence or fitness under paragraph (2) is required, the controller of safety critical work shall, so far as is reasonably practicable ensure that, as a result, the health and safety of persons on a transport system is not prejudiced.



## 25 Fatigue

(1) Every controller of safety critical work shall have in place arrangements to ensure, so far as is reasonably practicable, that a safety critical worker under his management, supervision or control does not carry out safety critical work in circumstances where he is so fatigued or where he would be liable to become so fatigued that his health or safety or the health or safety of other persons on a transport system could be significantly affected.

(2) The arrangements in paragraph (1) shall be reviewed by the controller of safety critical work where he has reason to doubt the effectiveness of those arrangements.

## 26 Co-operation requirements for safety critical work

(1) Every controller of safety critical work to whom this Part applies shall co-operate as far as is necessary with any other controller of safety critical work or any operator to enable that other controller of safety critical work to comply with the provisions of this Part.

(2) Every person carrying out safety critical work shall, as regards any requirement imposed on any controller of safety critical work under this Part, co-operate with that controller of safety critical work so far as is necessary to enable that requirement to be performed or complied with.

## Part 5

### Miscellaneous

## 27 Appeals

(1) A person who is aggrieved by a--

(a) decision of [the Office of Rail and Road] to refuse his application for--

[(i) a safety certificate, a safety authorisation or ~~an ECM certificate~~ an EU ECM certificate, a cross-border UK ECM certificate or a UK-issued ECM certificate;

(ii) an amended safety certificate or safety authorisation;

(b) direction of [the Office of Rail and Road] to make an application to amend his safety certificate or safety authorisation; . . .

(c) decision of [the Office of Rail and Road] to revoke his--

(i) safety certificate or part of it; or

(ii) safety authorisation,

[(d) decision of the Office of Rail and Road, concerning his EU ECM Certificate taken pursuant to either—

(i) Article 7(3), (4) or (7) of the 2011 EU ECM Regulation; or

(ii) Article 7(5), (8) or 8(2) of the 2019 EU ECM Regulation;

~~decision of [the Office of Rail and Road] taken pursuant to Articles 7(3), (4) or (7) of the EU ECM Regulation ~~ECM Regulation~~ concerning his EU ECM certificate; ~~ECM certificate; or~~~~

~~(dd) decision of the Office of Rail and Road taken pursuant to paragraphs 7(3), (4), or (7) of Schedule 10 concerning his UK-issued ECM certificate; or~~"

~~(de) decision of the Office of Rail and Road, concerning his cross-border UK ECM certificate, taken pursuant to Article 7(5) or (8) or 8(2) of the retained 2019 EU ECM Regulation; or~~

~~(e) determination of [the Office of Rail and Road] under regulation 2A or a decision of the Office of Rail Regulation under that regulation to revoke or vary such a determination,]~~

may appeal to the Secretary of State.

~~(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 and Road] in this regulation shall be construed as references to that certification body, except for paragraph (7) which does not apply to such appeal.~~

(1A) A person who is aggrieved by—

(a) a decision taken either—

(i) to refuse an application for an EU ECM certificate or taken pursuant to Article 7(4) or (7) of the 2011 ECM Regulation by a certification body accredited or recognised in Great Britain for the purposes of the 2011 EU ECM Regulation; or

(ii) to refuse an application for an EU ECM certificate or taken pursuant to Article 7(8) or 8(2) of the 2019 EU ECM Regulation by a certification body accredited or recognised in Great Britain for the purposes of the 2019 EU ECM Regulation;

(b) a decision of a certification body accredited or recognised for the purposes of Schedule 10 either to refuse an application for a UK-issued ECM certificate or taken by that body pursuant to paragraph 7(3), (4) or (7) of Schedule 10; or

(c) a decision of a certification body accredited or recognised for the retained 2019 EU ECM Regulation, either to refuse an application for a cross-border UK ECM certificate or taken by that body pursuant to paragraph 7(3), (4) or (7) of the retained 2019 EU ECM Regulation.

may appeal to the Secretary of State.

~~(1B) For the purposes of an appeal under paragraph 1(A), references to the Office of Rail and Road in this regulation shall be construed as references to that certification body (except for paragraph (7) which does not apply to such appeal).~~

(2) For the purposes of [paragraphs (1) and (1A)] the Secretary of State may, in such cases as he considers it appropriate to do so, having regard to the nature of the questions which appear to him to arise, direct that an appeal under that paragraph shall be determined on his behalf by a person appointed by him for that purpose.

(3) Before the determination of an appeal the Secretary of State shall ask the appellant and [the Office of Rail and Road] whether they wish to appear and be heard on the appeal and--

(a) The appeal may be determined without a hearing of the parties if both of them express a wish not to appear and be heard as aforesaid;

(b) The Secretary of State shall, if either of the parties expresses a wish to appear and be heard, afford to both of them an opportunity of doing so.

(4) The Tribunals and Inquiries Act 1992 shall apply to a hearing held by a person appointed in pursuance of paragraph (2) to determine an appeal as it applies to a statutory inquiry held by the Secretary of State, but as if in section 10(1) of that Act (statement of reasons for decisions) the reference to any decision taken by the Secretary of State included a reference to a decision taken on his behalf by that person.

[(4A) . . .]

(5) A person who determines an appeal under this regulation on behalf of the Secretary of State and the Secretary of State, if he determines such an appeal, may give such directions as he considers appropriate to give effect to his determination.

(6) The Secretary of State may pay to any person appointed to hear or determine an appeal under paragraph (2) on his behalf such remuneration and allowances as the Secretary of State may with the approval of the [Treasury] determine.

(7) For the purposes of paragraph (1)(a), a failure by [the Office of Rail and Road] to make a decision on whether or not to issue or amend a safety certificate or safety authorisation within the four month period for making a decision calculated in accordance with regulation 17(7) shall be treated as a refusal of the application.

(8) The Health and Safety Licensing Appeals (Hearing Procedure) Rules 1974, as respects England and Wales, and the Health and Safety Licensing Appeals (Hearing Procedure)(Scotland) Rules 1974, as respects Scotland, shall apply to an appeal under paragraph (1) as they apply to an appeal under [section 44(1) of the Health and Safety at Work etc Act 1974], but with the modification that references to a licensing authority are to be read as references to [the Office of Rail and Road].

(9) Where an appeal is made under paragraphs (1)(a) or (1)(c), the decision in question shall be suspended pending the final determination of the appeal.

## **28 Offences**

A failure to discharge a duty placed on [the Office of Rail and Road] by these Regulations shall not be an offence under section 33(1)(c) of the Health and Safety at Work etc Act 1974.

## **29 Transitional provisions and savings**

(1) Any competence and fitness assessments made pursuant to regulation 3 of the Railways (Safety Critical Work) Regulations 1994 shall have effect as if they were made under Part 4, provided that the assessment would, at the time it was made, have met the requirements for impartiality and objectivity in that Part.

(2) Notwithstanding the revocation of ROTS pursuant to regulation 34, and subject to paragraph (6) ROTS shall, up to and including 1st October 2008, continue in force as they had effect on 30th September 2006 for the purposes of--

(a) determining applications for approval made;

(b) issuing a written consent for the purposes set out in regulation 4(4)(b) of ROTS in relation to new or altered works, plant or equipment for which an application for approval has been made;

(c) making notices dispensing with or requiring compliance with certain provisions of ROTS under regulation 10(1)(a) or 11(1)(a) of ROTS in relation to new or altered works, plant or equipment, for which an application for approval has been made,

to [the Office of Rail and Road] in relation to a relevant transport system before 1st October 2006.

(3) Where an approval is issued by [the Office of Rail and Road] in response to an application for approval made in relation to a transport system--

- (a) before 1st October 2006 but where the new or altered works, plant or equipment are placed in service within the meaning of regulation 5(6) and 6(5) on or after that date; or
- (b) on or before 1st October 2008 pursuant to paragraph (2),

in relation to new or altered works, plant or equipment that is relevant infrastructure or a vehicle then such works, plant or equipment shall be deemed to satisfy the requirements of regulations 5(4) and 6(4).

(4) Where a written consent is issued by [the Office of Rail and Road] in relation to new or altered works, plant or equipment which is relevant infrastructure or a vehicle in relation to a transport system--

- (a) under regulation 4(4)(b)(i) of ROTS on or before 1st October 2008 pursuant to paragraph (2) then such relevant infrastructure or vehicle shall be deemed to satisfy the requirements of regulations 5(4) and 6(4); or
- (b) under regulation 4(4)(b)(ii) of ROTS on or before 1st October 2008 pursuant to paragraph (2) then no regard shall be taken of the use of such relevant infrastructure or vehicle for the purposes for which the written consent relates when determining whether the relevant infrastructure or vehicle has been placed in service in accordance with regulations 5(6) and 6(5).

(5) In this regulation--

- (a) "application for approval" means an application for approval made under regulation 5, 6 or 7 of ROTS;
- (b) "altered works, plant or equipment" shall have the meaning in regulation 2(a) of ROTS; and
- (c) "relevant transport system" shall have the meaning in regulation 2(a) of ROTS.

(6) For the purposes of heritage railways and tramways, all references in this regulation to 1st October 2006 shall be read as if those references were in each case to 1st October 2008, and all references to 1st October 2008 shall be read as if those references were in each case to 1st October 2010.

(7) . . .

### **30 Exemptions**

(1) Subject to paragraphs (2) and (3), [the Office of Rail and Road] may, by certificate in writing, exempt any person or class of persons or any transport system or part of a transport system from any requirement or prohibition imposed by these Regulations.

(2) [The Office of Rail and Road] shall not grant any such exemption in relation to any requirement or prohibition imposed by Part 2 or 3 in relation to an operation carried out on the mainline railway other than an exemption to an operator of last resort from the requirement to copy the documents referred to in regulation 17(3)(a)(i) and (ii) to an affected party or to notify an affected party as the case may be.

(3) [The Office of Rail and Road] shall not grant any such exemption unless, having regard to the circumstances of the case, and in particular to--

- (a) the conditions, if any, which it proposes to attach to the exemption; and
- (b) any other requirements imposed by or under any enactment which applies to the case,

it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it.

(4) The Secretary of State for Defence may, in the interests of national security, by a certificate in writing exempt any person or class of persons from any requirement or prohibition imposed by these Regulations.

(5) An exemption granted pursuant to paragraph (1), (2) or (4) may be granted subject to conditions and to a limit of time.

(6) An exemption granted pursuant to--

- (a) paragraph (1) or (2) may be revoked by [the Office of Rail and Road]; and
- (b) paragraph (4) may be revoked by the Secretary of State for Defence,

at any time by a further certificate in writing.

### **31 Defence of due diligence**

(1) Subject to the following provisions of this regulation, in any proceedings against any person for an offence under [regulation 5(4), 6(4) or 18A(2)] it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against any person for such an offence the defence provided in paragraph (1) involves an allegation that the commission of the offence was due to--

- (a) the act or default of another; or
- (b) reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless, within a period ending seven clear days before the hearing of the proceedings (or in Scotland, the trial diet), he has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying, or assisting in the identification of, the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) A person shall not be entitled to rely on the defence provided by paragraph (1) by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied upon the information, having regard in particular--

- (a) to the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether he had any reason to disbelieve the information.

### **32 Amendment of ROTS**

In regulation 4 of ROTS--

- (a) for paragraph (2A) substitute--

"(2A) Approval shall not be required in relation to any interoperability constituent or any subsystem to the extent that the interoperability constituent or subsystem, as the case may be, has been authorised before 2nd April 2006 under regulation 14 of the Railways (Interoperability) (High-Speed) Regulations 2002

or is subject to the requirement for authorisation under regulation 4(1)(a) of the Railways Interoperability Regulations 2006."

(b) for paragraph (5) substitute--

"(5) In this regulation, "interoperability constituent" and "subsystem" have the same meaning as in the Railways (Interoperability) Regulations 2006."

### **33 Consequential amendments**

The Regulations referred to in Schedule 6 shall be amended as set out in that Schedule.

### **34 Revocation**

The Regulations referred to in column (1) of Schedule 7 are revoked to the extent specified in column (3) of that Schedule.

#### **[34A Review]**

[(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 (Safety) (Amendment) Regulations 2011 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.]

Signed by authority of the Secretary of State for Transport

Derek Twigg

Parliamentary Under Secretary of State,

Department for Transport

9th March 2006

## SCHEDULE 1

### SAFETY MANAGEMENT SYSTEM

Regulations 5(1)(c), and 6(1)(b)

*(This Schedule substantially reproduces the provisions of Annex III to the Directive)*

#### Requirements on the safety management system

1

The safety management system shall--

- (a) describe the distribution of responsibilities, within the operation, for the safety management system;
- (b) show how control of the safety management system by the management on different levels is secured;
- (c) show how persons carrying out work or voluntary work directly in relation to the operation and their representatives on all levels are involved with the safety management system; and
- (d) show how continuous improvement of the safety management system is ensured.

#### Basic elements of the safety management system

2

The basic elements of a safety management system are--

- (a) a statement of the safety policy which has been approved by the chief executive and communicated to all persons carrying out work or voluntary work directly in relation to the operation;
- (b) qualitative and quantitative targets for the maintenance and enhancement of safety and plans and procedures for reaching those targets;
- (c) procedures to meet relevant technical and operational standards or other requirements as set out in--
  - (i) ~~TSSs~~-NTSNs;
  - (ii) national safety rules;
  - (iii) other relevant safety requirements; and
  - (iv) decisions of [the Office of Rail and Road] addressed to the transport operator in question,

and procedures to ensure compliance with the requirements listed in this paragraph throughout the life-cycle of any relevant equipment or operation which is subject to the requirement in question.

(d) procedures and methods for carrying out risk evaluation and implementing risk control measures when--

- (i) there is a change in the way in which the operation in question is carried out; or
- (ii) new material is used in the operation in question,

which gives rise to new risks in relation to any infrastructure or the operation being carried out;

(e) provision of programmes for training of persons carrying out work or voluntary work directly in relation to the operation and systems to ensure that the competence of such persons is maintained and that they carry out tasks accordingly;

(f) arrangements for the provision of sufficient information relevant to safety--

- (i) within the operation in question; and
- (ii) between the operator in question and any other transport operator or an applicant for a safety certificate or a safety authorisation who carries out or who intends to carry out operations on the same infrastructure;

(g) procedures and formats for the documentation of safety information;

(h) procedures to control the lay out of, and changes to, vital safety information;

(i) procedures to ensure that accidents, incidents, near misses and other dangerous occurrences are reported, investigated and analysed and that necessary preventative measures are taken;

(j) provision of plans for action, alerts and information in the case of an emergency which are to be agreed with any public body, including the emergency services, that may be involved in such an emergency; and

(k) provisions for recurrent internal auditing of the safety management system.

## SCHEDULE 2

### APPLICATION FOR A SAFETY CERTIFICATE

Regulation 7(1)(b)

#### Part 1

#### Information to be Included for a Mainline Application

1

The following information shall be included in relation to Part A of a safety certificate--

(a) particulars of the type and extent of the operation in respect of which the application is made; and

(b) either--

~~[(i) a copy of a current certificate issued to the applicant by--~~

~~(aa) [the Office of Rail and Road]. . .;~~

~~(bb) a safety authority in another member State;~~

~~(cc) a safety authority in Northern Ireland; or~~



~~(dd) — the safety authority for the tunnel system within the meaning of section 1(7) of the Channel Tunnel Act 1987,~~

~~under provisions giving effect to article 10(2)(a) of the Directive which relates to an equivalent railway operation; or]~~

(i) a copy of a current certificate issued to the applicant by—

(aa) the Office of Rail and Road;

~~(bb) a safety authority in a member State before exit day under provisions giving effect to Article 10(2)(a) of the Directive;~~

(bb) the European Union Agency for Railways or a safety authority in a member State before the end of the second anniversary of exit day, under provisions giving effect to Article 10(2)(a) of the Directive or Article 10 of the Recast Safety Directive;

(cc) the safety authority in Northern Ireland; or

(dd) the safety authority for the tunnel system,

which relates to an equivalent railway operation; or

(ii) particulars of how the safety management system of the applicant meets the requirements set out in regulation 5(1) to (4).

## 2

The following information shall be included in relation to Part B of a safety certificate--

(a) information on the ~~TSIs~~ NTSNs, national safety rules and other safety requirements relevant to the applicant's operation including those relevant to persons carrying out work in relation to the operation and the applicant's vehicles and an explanation of how compliance with these requirements is ensured by the safety management system;

(b) information on the different types of work being carried out by persons directly in relation to the operation including evidence of how the applicant ensures that when such persons are carrying out such work that they are doing so in accordance with the requirements of any relevant ~~TSIs~~ NTSNs and national safety rules; and

(c) information on the different types of rolling stock used for the operation in question including evidence that they meet any relevant ~~TSIs~~ NTSNs and national safety rules,

and where information is submitted concerning an interoperability constituent or a subsystem which is subject to and complies with the requirements of the [Interoperability Regulations] then only brief details need be supplied concerning compliance of such constituents or subsystems with relevant ~~TSIs~~ NTSNs and other requirements of those Regulations and in this paragraph "interoperability constituent" and "subsystem" shall have the same meaning as in the [Interoperability Regulations].

## Part 2

### Information to be Included for a Non-mainline Application

## 3

Particulars of the type and extent of the operation in respect of which the application is made.

## 4

Particulars of how the safety management system of the applicant meets the requirements set out in regulation 6.

**5**

Information on the--

- (a) relevant statutory provisions which make provision in relation to safety which are applicable to the operation; and
- (b) technical specifications and procedures relating to operations and maintenance that are relevant to the safety of the transport system which the applicant proposes to follow,

and an explanation of how compliance with these requirements is ensured by the safety management system.

**6**

Information on the different types of work or voluntary work being carried out by persons directly in relation to the operation including evidence of how the applicant ensures that when such persons are carrying out work or voluntary work in relation to the operation that they are doing so in accordance with relevant requirements of the relevant statutory provisions referred to in paragraph 5(a).

**7**

Information on the different types of rolling stock used for the operation including evidence that they meet relevant requirements of the relevant statutory provisions referred to in paragraph 5(a).

### **SCHEDULE 3**

...

#### **Part 1**

...

#### **[Part 2**

...]

### **SCHEDULE 4**

#### **WRITTEN SAFETY VERIFICATION SCHEME REQUIREMENTS**

**Regulation . . . 6(4)(a)**

#### **Information to be Included in a Safety Verification Scheme**

**1**

- (1) The arrangements for the selection, appointment and retention of the competent person, which arrangements should at least provide for:
  - (a) the appointment of the competent person at an early stage in the design selection process;
  - (b) the involvement of the competent person in the establishing of the criteria to be applied in the verification process and the design selection process; and
  - (c) the communication to the competent person of information necessary for the proper implementation, or revision, of the verification scheme and which information is necessary in order for the competent person to undertake the verification.
  
- (2) The arrangements for the examination and testing of new or altered vehicles or infrastructure, which arrangements should at least provide for:
  - (a) the means of controlling risks that arise during the carrying out of any testing or trials prior to placing in service; and
  - (b) the standards and criteria to be applied in the verification process.
  
- (3) The arrangements for the review and revision of the verification scheme.
- (4) The arrangements for the making and preservation of records showing--
  - (a) the examination and testing carried out to the new or altered vehicles or infrastructure prior to its being placed in service;
  - (b) the findings of that examination and testing;
  - (c) any remedial action recommended as a result of that examination and testing; and
  - (d) any remedial action performed.
  
- (5) The arrangements for communicating the matters contained in sub-paragraphs (1) to (4) of this Schedule to an appropriate level in the management system of the transport operator or responsible person as the case may be.

**SCHEDULE 5**

...

**SCHEDULE 6**

**CONSEQUENTIAL AMENDMENTS**

**Regulation 33**

...

**1**

...

**Amendment to the Railway Safety (Miscellaneous Provisions) Regulations 1997**

**2**

(1) The Railway Safety (Miscellaneous Provisions) Regulations 1997 shall be amended as follows.

(2) In regulation 2(1) (interpretation)--

(a) after the definition of "factory" insert--

""guided bus system" and "guided transport" have the meanings assigned to them by regulation 2(1) of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;"

(b) omit the definition of "prescribed system of guided transport";

(c) for the definition of "tramway" substitute--

""tramway" has the meaning assigned to it by regulation 2(1) of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;" and

(d) in the definition of "transport system" for the words before sub-paragraph (a) substitute--

""transport system" means a railway, a tramway, a trolley vehicle system or any other system using guided transport except that it does not include a guided bus system or any part of any of those systems which--;" and

(e) after the definition of "transport system" insert--

""trolley vehicle system" has the meaning assigned to it by regulation 2(1) of Railways and Other Guided Transport Systems (Safety) Regulations 2006;"

### **Amendment to the Railway Safety Regulations 1999**

#### **3**

(1) The Railway Safety Regulations 1999 shall be amended as follows.

(2) In regulation 2 (interpretation)--

(a) in paragraph (1)--

(i) for the definition of "infrastructure controller" substitute--

""infrastructure controller" means a person who controls railway infrastructure;"

(ii) after the definition of "railway" insert--

""railway infrastructure" means fixed assets used for the operation of a railway including its permanent way and plant used for signalling or exclusively for supplying electricity for operational purposes to the railway, but it does not include a station;"

(iii) after the definition of "speed restriction" insert--

""station" means a railway passenger station or terminal, but does not include any permanent way or plant used for signalling or exclusively for supplying electricity for operational purposes to the railway;" and

(b) after paragraph (4) add--

"(4A) Any reference in these Regulations to a person who controls railway infrastructure is a reference to a person who--

- (a) in the course of a business or other undertaking carried on by him (whether for profit or not);
- (b) is in operational control of that infrastructure,

except that where such control is for the time being exercised by a person undertaking maintenance, repair or alteration work on the infrastructure, it is a reference to a person who would be in operational control of the infrastructure if such work were not being undertaken."

(3) In paragraph 2 to the Schedule (meaning of railway), for the definition of "tramway" substitute--

""tramway" means a system of transport used wholly or mainly for the carriage of passengers--

(a) which employs parallel rails which--

- (i) provide support and guidance for vehicles carried on flanged wheels; and
- (ii) are laid wholly or partly along a road or in any other place to which the public has access (including a place to which the public only has access on making payment); and

(b) on any part of which the permitted speed is such as to enable the driver to stop a vehicle in the distance he can see to be clear ahead;"

#### **Amendment to the Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003**

#### **4**

(1) The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003 shall be amended as follows.

(2) In Schedule 4 (subordinate legislation specified for the purposes of section 241(3) (statutory functions) of the Enterprise Act 2002)--

[(a) at the end, add "Parts 2 and 3 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006";]

[(b) omit "Railways (Safety Case) Regulations 2000".]

#### **SCHEDULE 7**

#### **REVOCATION**

<i>(1)</i> <i>Regulations revoked</i>	<i>(2)</i> <i>References</i>	<i>(3)</i> <i>Extent of revocation</i>
ROTS	SI 1994/157	The whole Regulations
The Railways (Safety Critical Work) Regulations 1994	SI 1994/299	The whole Regulations
The Railways (Safety Case) Regulations 2000	SI 2000/2688	The whole Regulations
The Railway Safety (Miscellaneous Amendments) Regulations 2001	SI 2001/3291	Regulations 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16
The Railways (Safety case) (Amendment) Regulations 2003	SI 2003/579	The whole Regulations
The Cableway Installations Regulations 2004	SI 2004/129	Regulation 31

[NB Keeling Schedule incomplete – new Schedules 8-11 have been inserted by way of the Schedule to the Rail (Safety) (Amendments etc) (EU Exit) Regulations 2019 and the forms are not available below.]

**[SCHEDULE 8  
FORMAT FOR SAFETY CERTIFICATES AND APPLICATIONS]**

**[Regulation 9A]**

**[Part 1]**

[(This Schedule substantially reproduces the provisions of Commission Regulation (EC) No 653/2007 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, with amendments for the purpose of addressing deficiencies arising out of the UK's withdrawal from the EU.)

**1**

Where Part A of a safety certificate is to be issued, renewed, updated, amended or revoked by the Office of Rail and Road, it must be in the form provided in Part 2.

**2**

Where Part B of a safety certificate is to be issued, renewed, updated, amended or revoked by the Office of Rail and Road, it must be in the form provided in Part 3

**3**

An application for a new, updated, amended or renewed—

- (a) Part A of a safety certificate;
- (b) Part B of a safety certificate; or

(c) Part A of a safety certificate and Part B of a safety certificate where a combined application is made,

must be made in the form provided in Part 4.]

**[Part 2 Part a of a Safety Certificate]**

**[4**

The form referred to in paragraph 1 follows.

**Safety Certificate – Part A**

Safety certificate confirming acceptance of the safety management system under the Railways and Other Guided Transport Systems (Safety) Regulations 2006(a)

Identification number

**1. Certified railway undertaking**

Legal denomination:	
Railway undertaking name:	Acronym:
Company registration number (if applicable) :	VAT No:

**2. Organisation issuing certificate**

Organisation: Office of Rail and Road
---------------------------------------

**3. Certificate information**

This is a	- first/new certificate	<input type="checkbox"/>	Identification number of the previous certificate:
	- further/renewed certificate	<input type="checkbox"/>	
	- updated/amended certificate	<input type="checkbox"/>	
Validity from:		to:	
Type(s) of service(s):			
Transportation volume:			
Railway undertaking size:			

**4. Applicable legislation**

The Railways and Other Guided Transport Systems (Safety) Regulations 2006

**5. Additional information**

[Empty box for additional information]

Date issued	Signature
[Empty box]	[Empty line]
Internal reference number	Authority's stamp
[Empty box]	[Empty box]

**[Part 3 Part B of a Safety Certificate]**

**[5**

The form referred to in paragraph 2 follows.

**Safety Certificate – Part B**

Safety certificate confirming acceptance of the provisions adopted by the railway undertaking to meet specific requirements necessary for the safe operation on the UK network under the Railways and Other Guided Transport Systems (Safety) Regulations 2006(a)

Identification number [Empty box]

**1. Certified railway undertaking**

Legal denomination:	
Railway undertaking name:	Acronym:
Company registration number (if applicable):	VAT No:

**2. Certificate issuing organisation**

Organisation: Office of Rail and Road

**3. Certificate information**

[Empty line]



This is a	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>	- first/new certificate  - further/renewed certificate  - updated/amended certificate  Identification number of the previous certificate:
Validity from:		to:
Type(s) of service(s):		

**4. Safety certificate - Part A (acceptance of the safety management system)**

Identification number:
------------------------

**5. Lines operated**

--

**6. Specific conditions and obligations**

--

**7. Applicable legislation**

The Railways and Other Guided Transport Systems (Safety) Regulations 2006
---

Date issued	Signature
<input type="text"/>	<input type="text"/>
Internal reference number	ORR stamp
<input type="text"/>	<input type="text"/>

**[Part 4 Application Form for a Safety Certificate]**

**[6**

The form referred to in paragraph 3 follows.

## SAFETY CERTIFICATE APPLICATION

Application for a safety certificate confirming acceptance of a railway undertaking's safety management system (Part A safety certificate) and/or confirming acceptance of provisions adopted by the railway undertaking to meet specific requirements necessary for safe operation on the UK network (Part B safety certificate)

Safety authority reference number

### SAFETY ORGANISATION/AUTHORITY CONTACT INFORMATION

1.1 Safety organisation/authority addressed for the request \_\_\_\_\_

1.2 Complete postal address (street, postal code, city, country) \_\_\_\_\_

2.1 **This application is for a PART A SAFETY CERTIFICATE**

2.2 First/New certificate

2.4 Updated/amended certificate

2.3 Further/Renewed certificate

2.5 Identification number of the previous Part A safety certificate \_\_\_\_\_

Type(s) of service(s) requested (select one or more) and estimated total volume of goods/passengers

Passenger transport	2.6	including high-speed services <input style="width: 20px; height: 20px;" type="checkbox"/>	2.8	Less than 200 million passenger-km per year <input style="width: 20px; height: 20px;" type="checkbox"/>
	2.7	excluding high-speed services <input style="width: 20px; height: 20px;" type="checkbox"/>	2.9	200 million or more passenger-km per year <input style="width: 20px; height: 20px;" type="checkbox"/>

Freight transport	2.10	including dangerous goods services <input style="width: 20px; height: 20px;" type="checkbox"/>	2.12	Less than 500 million tonne-km per year <input style="width: 20px; height: 20px;" type="checkbox"/>
	2.11	excluding dangerous goods services <input style="width: 20px; height: 20px;" type="checkbox"/>	2.13	500 million or more tonne-km per year <input style="width: 20px; height: 20px;" type="checkbox"/>

2.14 Shunting only

2.15 Service to begin in \_\_\_\_\_

The applying railway undertaking belongs to the following categories for estimated number of employees

2.16 Micro enterprise       2.18 Medium sized enterprise

2.17 Small enterprise       2.19 Large enterprise

—

- 3.1 This application is for a PART B SAFETY CERTIFICATE
- 3.2 First/New certificate  3.4 Updated/amended certificate
- 3.3 Further/Renewed certificate  3.5 Identification number of the previous Part B safety certificate \_\_\_\_\_

Type(s) of service(s) requested and estimated volume of goods/passengers on the network where Part B will apply (one or more to be selected)

- |                     |   |                          |   |                          |
|---------------------|---|--------------------------|---|--------------------------|
| Passenger transport | 3.6 including high-speed services       | <input type="checkbox"/> | 3.8 Less than 200 million passenger-km per year | <input type="checkbox"/> |
|                     | 3.7 excluding high-speed services       | <input type="checkbox"/> | 3.9 200 million or more passenger-km per year   | <input type="checkbox"/> |
| Freight transport   | 3.10 including dangerous goods services | <input type="checkbox"/> | 3.12 Less than 500 million tonne-km per year    | <input type="checkbox"/> |
|                     | 3.11 excluding dangerous goods services | <input type="checkbox"/> | 3.13 500 million or more tonne-km per year      | <input type="checkbox"/> |
- 3.14 Shunting only
- 3.15 Service to begin in \_\_\_\_\_
- 3.16 Lines intended to be operated

If the applicant already holds a valid Part A safety certificate (acceptance of the safety management system) it should provide the following information

- 3.17 Identification number of Part A safety certificate \_\_\_\_\_
- 3.18 Organisation that has issued Part A safety certificate \_\_\_\_\_

**IF THE APPLICANT ALREADY HOLDS ONE (OR MORE) VALID PART B CERTIFICATE(S) IT SHOULD PROVIDE THE FOLLOWING INFORMATION**

- 4.1 Identification number(s) of issued Part B safety certificate(s) \_\_\_\_\_

**IF THE APPLICANT HAS AN OPERATOR LICENCE AND IS APPLYING FOR PART A AND/OR PART B CERTIFICATE(S) IT SHOULD PROVIDE THE FOLLOWING INFORMATION**

- 4.2 Notification number of the licence \_\_\_\_\_
- 4.3 Organisation that has issued the licence \_\_\_\_\_

**APPLICANT'S INFORMATION**

- 5.1 Legal denomination \_\_\_\_\_

5.2 Railway undertaking name \_\_\_\_\_ 5.3 Acronym \_\_\_\_\_  
5.4 Complete postal address (street, postal code, city, country) \_\_\_\_\_  
5.5 Phone number \_\_\_\_\_ 5.6 Fax number \_\_\_\_\_  
5.7 Email address \_\_\_\_\_ 5.8 Website \_\_\_\_\_  
5.9 Company registration number \_\_\_\_\_ 5.10 VAT No \_\_\_\_\_  
5.11 Other information \_\_\_\_\_

**Contact person information**

6.1 Family name and first name \_\_\_\_\_  
6.2 Complete postal address (street, postal code, city, country) \_\_\_\_\_  
6.3 Phone number \_\_\_\_\_ 6.4 Fax number \_\_\_\_\_  
6.5 Email address \_\_\_\_\_

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

Internal reference number \_\_\_\_\_

Date application received \_\_\_\_\_

SPACE RESERVED FOR THE AD-  
DRESSED OFFICE/AUTHORITY

**FRONT PAGE FOR ANNEXES  
TO THE APPLICATION FORM**

**DOCUMENTS SUBMITTED FOR**

**PART A**

7.1  Summary of the manual of the safety management system

7.2  Copy of the operator licence (if applicable)

7.3  Not applicable

**PART B**

8.1  Copy of the Part A safety certificate

8.2  Copy of the operator licence (if applicable)

8.3  Not applicable

8.4  Copy of insurance or financial cover for liability, annexed to the operator licence

8.5  List of necessary rules and TSIs with reference to the processes in the safety management system and documents and how they are implemented

8.6  List of different categories of staff, either employed or contracted

8.7  Description of staff related processes of the safety management system required by national rules or TSIs and reference to the national relevant certificates where necessary

8.8  List of different types of rolling stock

8.9  Description of rolling stock related processes in the safety management system required by national rules or TSIs and reference to the national relevant certificates where necessary

8.10  Other (specify)

---

Internal reference number

---

Date application received

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**[SCHEDULE 9  
APPLICATIONS FOR UK-ISSUED ECM CERTIFICATES BY ENTITIES IN CHARGE OF MAINTENANCE]**

**[Regulation 18A(4)]**

**[Part 1]**

[(This Schedule substantially reproduces Annexes IV and V of Commission Regulation (EU) No 445/2011 on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) No 653/2007, with amendments for the purpose of addressing deficiencies arising out of the UK's withdrawal from the EU.)]

**1**

Applications to certification bodies must be made—

- (a) where the applicant is an entity in charge of maintenance for freight wagons applying for a UK-issued ECM certificate, in the form provided in Part 2;
- (b) where the applicant is a contractor applying for a maintenance functions certificate, in the form provided in Part 3.

**2**

- (1) A UK-issued ECM certificate must be issued in the form provided in Part 4.
- (2) A maintenance functions certificate must be issued in the form provided in Part 5.

**3**

For the purposes of this Schedule, a “maintenance functions certificate” is a certificate issued pursuant to paragraph 8 of Schedule 10.]

**[Part 2 Application for a UK-Issued ECM Certificate]**

**[4**

The application form referred to in paragraph 1(a) follows.



## Application for a UK-issued ECM Certificate

Application for a certification confirming acceptance of the maintenance system of an entity in charge of maintenance (ECM) in conformity with the Railways and Other Guided Transport Systems (Safety) Regulations 2006

### 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 Email address \_\_\_\_\_ 2.6 Website \_\_\_\_\_
- 2.7 Registration business No. \_\_\_\_\_ 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 Email address \_\_\_\_\_

### Application details

- 4.1 Application reference (given by the applicant)  
*This application is for a*

- 4.2 New certificate  4.3 Updated/amended certificate   
 4.4 Renewal 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
- |                                  |                                |                                |                                |
|----------------------------------|--------------------------------|--------------------------------|--------------------------------|
| 5.5 Maintenance development      | 5.5.1 <input type="checkbox"/> | 5.5.2 <input type="checkbox"/> | 5.5.3 <input type="checkbox"/> |
| 5.6 Fleet maintenance management | 5.6.1 <input type="checkbox"/> | 5.6.2 <input type="checkbox"/> | 5.6.3 <input type="checkbox"/> |
| 5.7 Maintenance delivery         | 5.7.1 <input type="checkbox"/> | 5.7.2 <input type="checkbox"/> | 5.7.4 <input type="checkbox"/> |

**Submitted documents**

- 6.1 Maintenance system documentation   
 6.2 Others  Specify: \_\_\_\_\_

**Signatures**

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

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

**Certification Body**

\_\_\_\_\_

Internal reference Number \_\_\_\_\_

Date application received \_\_\_\_\_

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

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**[Part 3 Application for a Maintenance Functions Certificate]**

**[5**

The form referred to in paragraph 1(b) follows.

**Application for a Maintenance Functions Certificate**

Application for a certification confirming acceptance of the maintenance system in conformity with the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

**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 Email address \_\_\_\_\_
- 2.6 Website \_\_\_\_\_
- 2.7 Registration business No. \_\_\_\_\_
- 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 Email 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 Renewal 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  
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 the application is submitted

---

---

**Submitted documents**

- 6.1 Maintenance system documentation   
6.2 Others  Specify: \_\_\_\_\_

**Signatures**

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

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

**Certification Body**

---

Internal reference number

---

Date application received

\_\_\_\_\_

6.2 Others

Specify:

\_\_\_\_\_

Date

\_\_\_\_\_

Signature:

\_\_\_\_\_

SPACE RESERVED FOR THE ADDRESSED OFFICE /AUTHORITY

**[Part 4 UK-Issued ECM Certificate]**

**[6**

The form referred to in paragraph 2(1) follows.

### UK-issued ECM certificate

Confirming acceptance of the maintenance system of an entity in charge of maintenance (ECM) in conformity with the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

#### 1. Certified entity in charge of maintenance

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

#### 2. Certification body

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

#### 3. Certification information

This is a	- new certificate	<input type="checkbox"/>	EU ECM or UK-issued ECM identification number of the previous certificate:
	- renewed certificate	<input type="checkbox"/>	
	- updated/amended certificate	<input type="checkbox"/>	
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	

**[Part 5 Maintenance Functions Certificate]**

**[7**

The form referred to in paragraph 2(2) follows.

**Maintenance Functions Certificate**

Confirming acceptance of the maintenance system in conformity with the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

**1. Certified organisation**

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

**2. Certification body**

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

**3. Certification information**

This is a	- new certificate	<input type="checkbox"/>	EU ECM or UK-issued ECM Identification Number of the previous certificate:
	- renewed certificate	<input type="checkbox"/>	
	- updated/amended certificate	<input type="checkbox"/>	
Validity from:		to:	
Type of company: Railway Undertaking (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**

Maintenance development	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Fleet maintenance management	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Maintenance delivery	Yes <input type="checkbox"/>	No <input type="checkbox"/>

For partial maintenance functions, the sub-functions for which this certificate is valid

---

---

---

---

**6. Additional information**

Date issued and validity	
Signature	
Internal reference number	
Certification body's stamp	



**[SCHEDULE 10  
SYSTEM OF CERTIFICATION OF ENTITIES IN CHARGE OF MAINTENANCE IN RESPECT OF GREAT BRITAIN]**

**[Regulation 18A(4)]**

**[Part 1  
Principles]**

[(This Schedule substantially reproduces the provisions of Commission Regulation (EU) No 445/2011 on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) No 653/2007 other than Annexes IV and V, with amendments for the purpose of addressing deficiencies arising out of the UK's withdrawal from the EU.)

**Purpose**

**1**

This Schedule sets out a system of certification of entities in charge of maintenance for freight wagons for the purpose of providing evidence that such an entity has established its maintenance system and can meet the requirements for ensuring the safe state of running of any freight wagon for which it is in charge of maintenance.

**Scope**

**2**

- (1) The system of certification applies to any entity in charge of maintenance for freight wagons to be used on the railway network within Great Britain.
- (2) Maintenance workshops or any organisation taking on a subset of the functions specified in paragraph 4 may apply the system of certification on a voluntary basis, based on the principles specified in paragraph 8 and Part 2.
- (3) References to an infrastructure manager in paragraphs 5 and 7 are to 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 is to be deemed to do so in the capacity of a railway undertaking.

**Interpretation**

**3**

In this Schedule—

“accreditation” has the meaning in Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9th July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93;

“causes” means actions, omissions, events or conditions, or a combination thereof, which led to the accident or incident;

“common safety methods” (“CSMs”) means the methods developed to describe how safety levels and achievement of safety targets and compliance with other safety requirements are assessed;

“designated standard” has the meaning provided in Article 3A of Commission Implementing Regulation (EU) No 402/2013 on the common safety method for risk evaluation and assessment and repealing Regulation (EC) No 352/2009, as it has effect in Great Britain;

“incident” means any occurrence, other than an accident, associated with the operation of trains and affecting the safety of operation;

“infrastructure manager” means any body or undertaking that is responsible in particular for establishing and maintaining railway infrastructure, or a part thereof, as defined in Article 3 of Directive 91/440/EEC, which may also include the management of infrastructure control and safety systems. The functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings;

“investigation” means a process conducted for the purpose of accident and incident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of causes and, when appropriate, the making of safety recommendations;

“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;

“national safety authority” means one or both of the safety authority in Great Britain and the safety authority for the tunnel system;

“railway system” means the totality of the subsystems in Great Britain for structural and operational areas, as defined in paragraph 2(1) to 2(7) of Annex II to Directive 2008/57/EC, as well as the management and operation of the system as a whole;

“railway undertaking” means a public or private undertaking, licensed according to applicable legislation, the activity of which is to provide transport of goods and/or passengers by rail on the basis that the undertaking must ensure traction; this also includes undertakings which provide traction only;

“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;

“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.

## **Maintenance system**

### **4**

(1) The maintenance system is to be composed of the following functions—

(a) the management function, which supervises and coordinates the maintenance functions referred to in paragraphs (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;

(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 must ensure that the functions referred to in sub paragraph (1) comply with the requirements and assessment criteria set out in Part 4.

(3) The entity in charge of maintenance must carry out the management function itself, but may out-source the maintenance functions referred to in paragraphs (b) to (d) of sub paragraph (1), or parts of them, to other contracting parties subject to the provisions of paragraph 8. Where it resorts to outsourcing, the entity in charge of maintenance must ensure that the principles set out in Part 2 are applied.

(4) Regardless of the outsourcing arrangements in place, the entity in charge of maintenance is responsible for the outcome of the maintenance activities it manages and must establish a system to monitor performance of those activities.

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

## **5**

(1) Each railway undertaking or infrastructure manager must 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 must exchange relevant information about maintenance in accordance with the criteria listed in paragraphs 27 and 28.

(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 must 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 must respond to such requests either directly or through other contracting parties.

(5) All contracting parties must 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 are to 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 Part 3, points in B.1, B.2, B.3 and C 1 of Commission Regulation (EU) No 1158/2010 of 9th December 2010 on a common safety method for assessing conformity with the requirements for obtaining railway safety certificates as it has effect in Great Britain, and in Commission Regulation (EU) No 1169/2010 of 10th December 2010 on a common safety method for assessing conformity with the requirements for obtaining a railway safety authorisation as it has effect in Great Britain, 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 justifiable reason to believe that a particular entity in charge of maintenance does not comply with the requirements of regulation 18A, or with paragraph 55B of the Schedule to the Channel Tunnel (Safety) (Amendment) Order 2013, or with the certification requirements of this Schedule, it must promptly inform the certification body thereof. The certification body must take appropriate action to check if the claim of non-compliance is justified and must inform the parties involved, including the competent national safety authority if relevant, of the results of its investigation.

(8) When there is a change of entity in charge of maintenance, the registration holder must inform in due time the registration entity, as defined in the Interoperability Regulations, so that the latter may update the National Vehicle Register.

(9) The former entity in charge of maintenance must deliver the maintenance documentation to either the registration holder or the new entity in charge of maintenance.

(10) 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.

## **Certification bodies**

### **6**

(1) UK-issued ECM certificates may be awarded by any competent certification body, chosen by the applicant entity in charge of maintenance.

(2) Certification bodies must comply with the general criteria and principles set out in Part 3 and with any subsequent sectoral accreditation schemes.

(3) Decisions taken by the certification bodies are subject to judicial review.

(4) In order to harmonise approaches to the assessment of applications, certification bodies within the United Kingdom must cooperate with each other.

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

### **7**

(1) Certification must be based on an assessment of the ability of the entity in charge of maintenance to meet the relevant requirements in Part 4 and to apply them consistently. It must include a system of surveillance to ensure continuing compliance with the applicable requirements after award of the UK-issued ECM certificate.

(2) The entities in charge of maintenance must apply for certification using the form in Part 2 of Schedule 9 and providing documentary evidence of the procedures specified in Part 4. They must promptly submit all supplementary information requested by the certification body. In assessing applications, certification bodies must apply the requirements and assessment criteria set out in Part 4.

(3) The certification body must 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 must 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 must be communicated to the entity in charge of maintenance using the relevant form in Part 4 of Schedule 9.

(4) A UK-issued ECM certificate is valid for a period up to 5 years. The holder of the certificate must 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 must set out in detail the reasons on which each of its decisions is based. The certification body must 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 must 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 Part 4.

(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 UK-issued ECM certificate, it must 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 must limit the scope of or revoke the UK-issued 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 provisions apply concerning the freight wagons it uses—

(a) where the freight wagons are maintained by the applicant, either the applicant must include as part of its application a valid UK-issued ECM certificate, if available, or its capacity as entity in charge of maintenance must 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 must 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 paragraph 5 apply.

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

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

#### **8**

(1) Where the entity in charge of maintenance decides to outsource one or more of the functions referred to in paragraph 4(1)(b), (c) and (d), or parts of them, voluntary certification of the contractor under the certification system of this Schedule creates a presumption of conformity of the entity in charge of maintenance with the relevant requirements set out in Part 4, 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 must demonstrate to the certification body how it complies with all the requirements set out in Part 4 with regard to the functions it decides to outsource.

(2) The contractors referred to in sub-paragraph (1) must apply for certification using the relevant form in Part 3 of Schedule 9. Certification in respect of outsourced maintenance functions, or parts of them, must be issued by the certification bodies, following the same procedures in paragraphs 6 and 7, adapted to the specific case of the applicant. In assessing applications for certificates in respect of outsourced maintenance functions, or parts of them, certification bodies must follow the principles set out in Part 2.

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

#### **9**

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 regulation 18A or with paragraph 55B of the Schedule to the Channel Tunnel (Safety) (Amendment) Order 2013 or with the certification requirements of this Schedule, it must immediately take the necessary decision and inform the Secretary of State, the certification body and other interested parties of its decision.]

## **[10**

For certification of an entity or organisation taking on one or more of the functions referred to in paragraph 4(1)(b), (c) and (d), or parts of them, the following requirements and assessment criteria contained in Part 4 apply—

- (a) requirements and assessment criteria set out in section 1 of Part 4, adapted to the organisation's type and extent of service;
- (b) requirements and assessment criteria describing the specific maintenance function or functions.

## **11**

For certification of a maintenance workshop taking on the maintenance delivery function, the following requirements and assessment criteria contained in Part 4 apply—

- (a) the requirements and assessment criteria set out in section 1 of Part 4, 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.]

### **[Part 3 Criteria for Accreditation or Recognition of Certification Bodies Involved in the Assessment and Award of UK-Issued ECM Certificates]**

#### **[Organisation**

## **12**

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.

#### **Independence**

## **13**

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 must 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.

## Competence

### 14

- (1) 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.
- (2) The certification body must demonstrate—
  - (a) sound experience in assessing management systems;
  - (b) knowledge of the applicable requirements of the legislation.
- (3) 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 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.

## Impartiality

### 15

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.

## Responsibility

### 16

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.

## Openness

### 17

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.

## **Confidentiality**

**18**

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.

## **Responsiveness to complaints**

**19**

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

## **Liability and financing**

**20**

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.]

# **[Part 4 Requirements and Assessment Criteria for Organisations Applying for a UK-Issued ECM Certificate or for a Certificate in Respect of Maintenance Functions Outsourced by an Entity in Charge of Maintenance]**

## **[SECTION 1 *Management function requirements and assessment criteria***

### **Leadership: commitment to the development and implementation of the maintenance system of the organisation and to the continuous improvement of its effectiveness**

**21**

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 Part;



- (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.

**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**

**22**

- (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 paragraph (a);
  - (c) developing and putting in place risk control measures.
- (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.
- (3) The organisation must have risk assessment procedures to manage changes in equipment, procedures, organisation, staffing or interfaces, and to apply Commission Implementing Regulation (EU) No 402/2013, as it has effect in Great Britain.
- (4) When assessing risk, an organisation must have procedures to take into account the need to determine, provide and sustain an appropriate working environment.

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

**23**

- (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;
  - (c) the effectiveness of risk control arrangements;
  - (d) information on experience, malfunctions, defects and repairs arising from day-to-day operation and maintenance.
- (2) The organisation must have procedures to ensure that accidents, incidents, near-misses and other dangerous occurrences are reported, logged, investigated and analysed.
- (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.

**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**

**24**

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.

**Structure and responsibility: a structured approach to define the responsibilities of individuals and teams for secure delivery of the organisation's safety objectives**

**25**

- (1) The organisation must have procedures to allocate responsibilities for all relevant processes throughout the organisation.
- (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.
- (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.
- (4) The organisation must have procedures to ensure the coordination of activities related to relevant processes across the organisation.
- (5) The organisation must have procedures to hold those with a role in the management of safety accountable for their performance.

**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 circumstance**

**26**

- (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 Part;
  - (b) the identification of posts involving safety tasks;
  - (c) the allocation of staff with the appropriate competence to relevant tasks.
  
- (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.

**Information: a structured approach to ensure that important information is available to those making judgments and decisions at all levels of the organisation**

**27**

- (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, railway 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.
- (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.
  
- (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.

(4) The requirements set out in paragraph 7(1), (2) and (3) apply in particular to the following operational information—

- (a) checks of the accuracy and completeness of the National Vehicle Register 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 and 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 a safety authority or the safety authority for the tunnel system.

#### **Documentation—a structured approach to ensure the traceability of all relevant information**

28

- (1) The organisation must have adequate procedures in place to ensure that all relevant processes are duly documented.
- (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.

**Contracting activities—a structured approach to ensure that subcontracted activities are managed appropriately in order for the organisation's objectives to be achieved**

**29**

- (1) The organisation must have procedures in place to ensure that safety related products and services are identified.
- (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.
- (3) The organisation must have a procedure to define the requirements that such contractors and suppliers have to meet.
- (4) The organisation must have procedures to monitor the awareness of suppliers and/or contractors of risks they entail to the organisation's operations.
- (5) When the maintenance/management system of a contractor or supplier is certified, the monitoring process described in paragraph 23 may be limited to the results of the contracted operational processes referred to in paragraph 23(1)(b).
- (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.

**SECTION 2**

***Requirements and assessment criteria for the maintenance development function***

**30**

The organisation must have a procedure to identify and manage all maintenance activities affecting safety and safety-critical components.

**31**

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 **NTSNs TSIs**;
- (b) verifying in all circumstances the consistency of the maintenance file with the authorisation of placing-in-service, including the requirements of a safety authority or the safety authority for the tunnel system, the declarations of conformity to **NTSNs 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 relevant NTSNs 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.

### 32

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.

### 33

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.

### 34

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.

### 35

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.

### 36

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.

## SECTION 3

### *Requirements and assessment criteria for the fleet maintenance management function*

### 37

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.

### 38

The organisation must have a procedure for the composition of the work package and for the issue and release of the maintenance order.

### 39

The organisation must have a procedure to send freight wagons for maintenance in due time.

### 40

The organisation must have a procedure to manage the removal of freight wagons from operation for maintenance or when defects have been identified.

### 41

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.

**42**

The organisation must have a procedure to issue a notice to return to operation, taking into account the release to service documentation.

**43**

When the competence management process is applied to the fleet maintenance management function, at least the return to operation must be taken into account.

**44**

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.

**45**

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.

**46**

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.

## **SECTION 4**

### ***Requirements and assessment criteria for the maintenance delivery function***

**47**

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 (eg 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 (eg they are contained in internal working instructions).

#### 48

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.

#### 49

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.

#### 50

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.

#### 51

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.

**52**

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.

**53**

When the risk assessment process, in particular paragraph 22.4, 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.

**54**

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.

**55**

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.

**56**

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, equipment 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.]

## [SCHEDULE 11

### COMMON SAFETY TARGETS]

[Regulation 18B]

#### [Application

1

This Schedule applies to the mainline railway.

#### Interpretation

2

In this Schedule—

“fatalities and weighted serious injuries” (“FWSIs”) means a measurement of the consequences of significant accidents combining fatalities and serious injuries, where 1 serious injury is considered statistically equivalent to 0.1 fatalities;

“level crossing users” means all persons using a level crossing to cross a railway line by any means of transportation or by foot;

“national reference value” (“NRV”) means a reference measure indicating the maximum tolerable level for a railway risk category;

“others” means all persons who are not passengers, staff or employees including the staff of contractors, level crossing users or unauthorised persons on railway premises;

“passenger-km” means the unit of measure representing the transport of one passenger by rail over a distance of one kilometre;

“passenger train-km” means the unit of measure representing the movement of a passenger train over one kilometre;

“risk category” means one of the railway risk categories specified by Article 7(4)(a) and (b) of the Directive;

“risk to society as a whole” means the collective risk to all categories of persons listed in Article 7(4)(a) of the Directive;

“safety enhancement plan” means a plan to implement the organisational structure, responsibilities, procedures, activities, capabilities and resources required to reduce the risk for one or more risk categories;

“staff or employees including the staff of contractors” means any persons whose employment is in connection with a railway and is at work at the moment of the accident; it includes the crew of the train and persons handling rolling stock and infrastructure installations;

“track-km” means the length measured in kilometres of the railway network where each track of a multiple track railway line is to be counted;

“train-km” means the unit of measure representing the movement of a train over one kilometre; the distance used is the distance actually run, if available, otherwise the standard network distance between the origin and destination must be used;

“unauthorised persons on railway premises” means any persons present on railway premises where such presence is forbidden, with the exception of level crossing users;

### **Measurement units for NRVs and CSTs**

#### **3**

The measurement units for NRVs must be expressed in compliance with the mathematical definition of risk. The consequences of accidents which must be considered for each of the risk categories are the FWSIs.

#### **4**

For the purpose of assessment of achievement of the NRVs for the passenger and level crossing user risk categories, compliance with one or both of these NRVs must be considered sufficient.

### **Principles for the assessment of achievement of NRVs and CSTs**

#### **5**

The following principles apply for assessing achievement of NRVs and CSTs—

- (a) for each risk category for which the NRV is equal to or lower than the corresponding CST, the achievement of the NRV also automatically implies the achievement of the CST;
- (b) the assessment of achievement of the NRV must be carried out according to the procedure described in paragraph 8 and the NRV represents the maximum tolerable level of the risk to which it refers, without prejudice to provisions of the range of tolerance laid down in paragraph 10;
- (c) for each risk category for which the NRV is higher than the corresponding CST, the CST represents the maximum tolerable level of the risk to which it refers;
- (d) the assessment of achievement is to be carried out in compliance with the requirements deriving from the impact assessment.

#### **6**

The assessment of achievement of the NRVs and CSTs must be carried out annually by the Office of Rail and Road, taking into consideration the most recent four preceding reporting years, including those years in which the assessment of achievement of the NRVs and CSTs in the United Kingdom was conducted by the European Railway Agency.

## 7

The outcome of the assessment of achievement referred to in paragraph 5 is to be classified as follows—

- (a) acceptable safety performance;
- (b) possible deterioration of safety performance; or
- (c) probable deterioration of safety performance

and published by the Office of Rail and Road.

### **Procedure for assessment of achievement of NRVs and CSTs**

## 8

The procedure for the assessment of achievement of NRVs is composed of four different steps as described in the following paragraphs. The overall decisional flowchart of the procedure is shown in paragraph 15, where positive and negative decisional arrows correspond respectively to a 'passed' and a 'failed' result of the different assessment steps.

## 9

- (1) The first assessment step must verify whether the observed safety performance is complying with the NRV or not.
- (2) The observed safety performance must be measured by using the measurement units listed in paragraph 14 and data gathered by the Office of Rail and Road in respect of railway accidents and related consequences, with time series which must include the most recent years of observations as specified in paragraph 6.
- (3) The observed safety performance must be expressed in terms of—
  - (a) safety performance in the single most recent reported year; and
  - (b) moving weighted average (MWA), as specified in paragraph 13.
- (4) The values returned must then be compared with the NRV, and if one of these values does not exceed the NRV, the safety performance is to be considered acceptable. If this is not the case, the procedure must continue with the second assessment step.

## 10

- (1) The second assessment step must consider the safety performance to be acceptable if the MWA does not exceed the NRV plus a 20% range of tolerance.
- (2) If this condition is not satisfied, the Office of Rail and Road must obtain the specifics of the single highest-consequence accident, in terms of FWSIs, in the most recent years of observation as referred to in paragraph 6, excluding the years used to set the NRV.
- (3) If this single accident is more severe, in terms of consequences, than the most severe single accident included in the data used for setting the NRV, it must be excluded from the statistics.
- (4) The MWA must then be recalculated to check whether it lies within the abovementioned range of tolerance.
- (5) If this is the case, the safety performance must be considered acceptable. If this is not the case, the procedure must continue with the third assessment step.

## 11

The third assessment step must verify whether it is the first time in the last three years that the second assessment step did not return evidence of acceptable safety performance. If this is the case, the outcome of the third assessment step must be classified as 'passed'. The procedure shall continue with the fourth step, whatever the outcome of the third step may be.

## 12

(1) The fourth assessment step must verify whether the number of significant accidents per train-km, with respect to the previous years, remained stable or decreased. The criteria for this appraisal are whether there has been a statistically significant increase in the number of relevant significant accidents per train-km. This must be evaluated by using an upper Poisson tolerance bound which will determine the acceptable variability based on the number of accidents that occurred in the member States of the European Union.

(2) If the number of significant accidents per train-km does not exceed the abovementioned tolerance bound, it is assumed that there has not been a statistically significant increase, and the outcome of this assessment step must be classified as passed.

(3) Depending on the risk category to which the different NRVs under assessment of achievement refer, the significant accidents to be considered for carrying out this assessment step are as follows—

- (a) risks to passengers: all relevant significant accidents;
- (b) risks to staff or employees, including the staff of contractors: all relevant significant accidents;
- (c) risks to level crossing users: all relevant significant accidents included in the risk category of level crossing accidents;
- (d) risks to unauthorised persons on railway premises: all relevant significant accidents included in the risk category of accidents to persons caused by rolling stock in motion;
- (e) risks to others: all relevant significant accidents;
- (f) risk to society as a whole: all significant accidents.

### **Moving weighted averaging process for the annual assessment of achievement of NRVs**

## 13

For each of the risk categories to which the *MWA* is applied for carrying out, in each year *Y* (starting from *Y* = 2010), the assessment steps described in paragraphs 9 to 12, the following phases must be applied for calculating the *MWAY*

- (a) calculation of the annual observations *OBS<sub>i</sub>* returned by the corresponding indicators in paragraph 14 after providing as input the relevant data for the relevant years (the index *i* takes the values as defined in the formula in sub paragraph (e));
- (b) calculation of the 5-year average (*AV*) of annual observation *OBS<sub>i</sub>*;
- (c) calculation of the absolute value of the difference *ABSDIFF<sub>i</sub>* between each annual observation *OBS<sub>i</sub>* and the *AV*. If  $ABSDIFF_i < 0.01 * AV$ , the *ABSDIFF<sub>i</sub>* is attributed a constant value equal to  $0.01 * AV$ ;
- (d) calculation of the weight *W<sub>i</sub>* by taking the inverse of *ABSDIFF<sub>i</sub>*;
- (e) calculation of the *MWAY* as follows—

$$MWA_Y = \frac{\sum_{i=x}^N W_i \times OBS_i}{\sum_{i=x}^N W_i};$$

where  $i$  is a natural number and  $x = Y - 6$ ;  $N = Y - 2$ .

### Measurement units for NRVs and CSTs

14

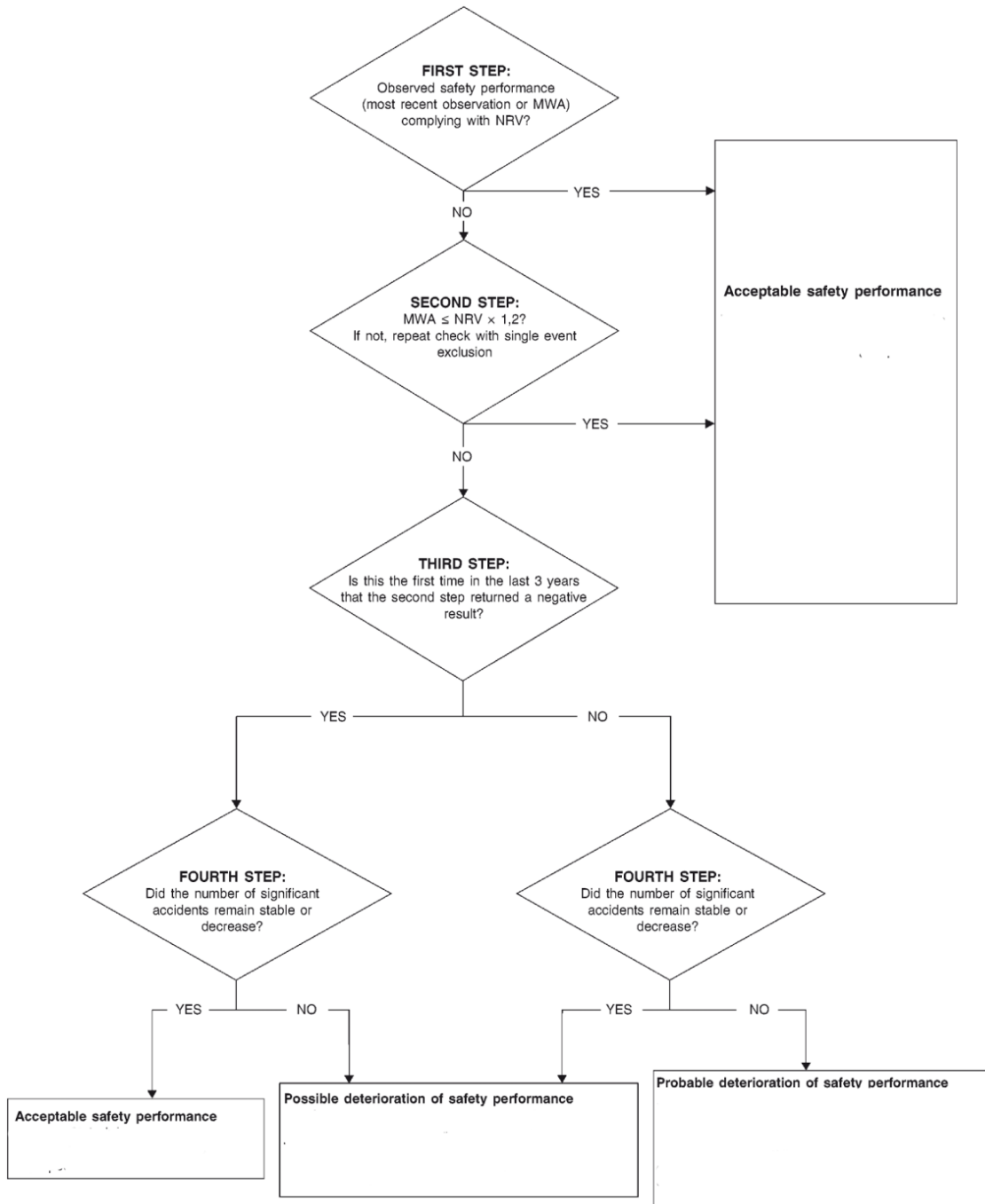
The following table sets out the measurement units for NRVs and CSTs.

<i>Risk category</i>	<i>Measurement units</i>	<i>Scaling bases</i>
1 Risk to passengers <del>Passengers</del>	1.1 Number of passenger FWSIs per year arising from significant accidents/Number of passenger train-km per year	Passenger train-km per year
	1.2 Number of passenger FWSIs per year arising from significant accidents/Number of train-km per year	Passenger-km per year
2 Risk to staff or employees, including the staff of contractors <del>Employees</del>	2 Number of employee FWSIs per year arising from significant accidents/Number of passenger-km per year	Train-km per year
3 Risk to level crossing users <del>Level crossing users</del>	3.1 Number of level-crossing user FWSIs per year arising from significant accidents/Number of train-km per year	Train-km per year
	3.2 Number of level-crossing user FWSIs per year arising from significant accidents/[(Number of Train-km per year x Number of level crossings)/Track-km]	(Train-km per year x Number of level crossings)/Track-km
4 Risk to others <del>Others</del>	4 Yearly number of FWSIs to persons belonging to the category 'others' arising from significant accidents/Number of train-km per year	Train-km per year
5 Risk to unauthorised persons on railway premises <del>Unauthorised persons on railway premises</del>	5 Number of FWSIs to unauthorised persons on railway premises per year arising from significant accidents/Number of train-km per year	Train-km per year
6 Risk to society as a whole <del>Whole society</del>	6 Total number of FWSIs per year arising from significant accidents/Number of train-km per year	Train-km per year

## Decision flowchart

15

The flowchart referred to in paragraph 8 follows.





## Values for NRVs

16

The following table sets out the values of the NRVs for the purposes of this Schedule.

<i>NRV</i>	<i>Risk category</i>	<i>Value</i>
1.1 (x 10 <sup>-9</sup> )	Risk to passengers	2.73
1.2 (x 10 <sup>-9</sup> )		0.028
2 (x 10 <sup>-9</sup> )	Risk to staff or employees, including the staff of contractors <del>Risk to employees</del>	5.17
3.1 (x 10 <sup>-9</sup> )	Risk to level crossing users	23.5
3.2		n/a
4 (x 10 <sup>-9</sup> )	Risk to others <del>Risk to persons classified as others</del>	7.00
5 (x 10 <sup>-9</sup> )	Risk to unauthorised persons on railway premises	84.5
6 (x 10 <sup>-9</sup> )	Risk to society as a whole <del>Societal risk</del>	120.0

## Values for CSTs

17

The following table sets out the values for the CSTs.

<i>Risk category</i>	<i>CST value (x 10<sup>-6</sup>)</i>	<i>Measurement units</i>
Risk to passengers	CST 1.1	0.17
	CST 1.2	0.00165
Risk to staff or employees, including the staff of contractors <del>Risk to employees</del>	CST 2	0.0779
Risk to level crossing users	CST 3.1	0.710
	CST 3.2	n/a
Risk to others	CST 4	0.0145
Risk to unauthorised persons on railway premises	CST 5	2.05
Risk to society as a whole	CST 6	2.59

## EXPLANATORY NOTE

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

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

Part 2 and regulation 20 of the Regulations implement, insofar as they apply to the mainline railway, in relation to Great Britain, Directive 2004/49/EC (OJ No L164, 30.04.04 p 44) of the European Parliament and the Council on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of transport undertakings and Directive 2001/14/EC on the allocation of infrastructure capacity and the levying of charges for use of infrastructure and safety certification ("the Rail Safety Directive"), except in relation to access to training facilities, placing in service of in-use rolling stock and accident and incident investigation.

Part 1 contains the interpretation provisions. Part 2 contains prohibitions in relation to the operation of trains or vehicles on railways and other guided transport systems and the management and use of infrastructure unless a person has established and is maintaining a safety management system and in specified cases has a safety certificate in relation to the operation of vehicles or a safety authorisation in relation to the management and use of infrastructure. Part 2 also makes provision in relation to the requirements for a safety management system and the issuing, amendment and revocation of safety certificates and authorisations by, and for the giving of notices to, the Office of Rail Regulation.

Part 3 provides for general duties on transport operators subject to the duties in Part 2 to carry out risk assessment, co-operate with each other and certain other persons and to prepare an annual safety report to the Office of Rail Regulation. It makes provision in relation to annual reports to the European Railway Agency and for the issuing, keeping and public inspection of documents.

Part 4 makes provision in relation to the carrying out of safety critical work on guided transport systems. It imposes obligations on those controlling the carrying out of such work to ensure that it is only carried out by fit and competent persons, and that safety critical workers do not carry out such work when fatigued, and it imposes related co-operation requirements.

Part 5 makes provision for appeals in relation to decisions relating to safety certificates and authorisations, for transitional provisions and savings in relation to compliance with the provisions of Parts 2 and 4, for the granting of exemptions and for a defence in relation to the safety verification requirements in regulations 5 and 6. Regulation 32 amends the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations (ROTS) (SI 1994/157). Regulation 33 makes consequential amendments and regulation 34 revokes ROTs, the Railways (Safety Critical Work) Regulations 1994 (SI 1994/299), the Railways (Safety Case) Regulations 2000 (S.I 2000/2688), regulations 2 to 16 of the Railway Safety (Miscellaneous Amendments) Regulations 2001 (SI 2001/3291), the Railways (Safety Case) (Amendment) Regulations 2003 (SI 2003/579) and regulation 31 of the Cableways Installations Regulations 2004 (SI 2004/129).

Technical Specifications for Interoperability are published in the Official Journal of the European Communities. Common Safety Methods and Common Safety Targets are to be developed pursuant to the Rail Safety Directive and will be published in the Official Journal of the European Communities.

A copy of the regulatory impact assessment and of the transposition note for Directive 2004/49/EC 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.