



**Review of Asbestos  
Exemption Certificate  
No. 1 of 2014  
concerning asbestos-  
containing railway  
vehicles and  
components for use in  
railway vehicles**

**Findings and conclusions from  
the stakeholder survey**

June 2019

# Contents



|  |           |
|--|-----------|
| <b>1. Introduction</b>                               | <b>3</b>  |
| Purpose of the document                              | 3         |
| Structure of the document                            | 3         |
| Confidentiality                                      | 3         |
| <b>2. Methodology</b>                                | <b>4</b>  |
| <b>3. Summary of the findings and conclusions</b>    | <b>5</b>  |
| Limitations  | 5         |
| Questions specifically to duty holders:              |           |
| Assessment and adequate controls                     | 5         |
| Removal of asbestos                                  | 6         |
| Record keeping by duty holders                       | 7         |
| Wider compliance                                     | 8         |
| General Questions for all respondents to the survey: |           |
| Provision of records by duty holders                 | 8         |
| Confidence levels in compliance                      | 9         |
| Opinions on the success of th exemption certificate  | 9         |
| Recommended next steps from respondents              | 10        |
| ORR's Conclusions                                    | 11        |
| <b>4. Detailed findings</b>                          | <b>12</b> |

# 1. Introduction

## Purpose of the document

- 1.1 In May 2018, the Office of Road and Rail (ORR) carried out a survey to assess compliance with the exemption certificate for placing on to the market asbestos-containing railway vehicles or components. The European [REACH<sup>1</sup>](#) regulations prohibit the supply, loan, leasing or selling of such rolling stock, or components for use on a railway vehicle. However, ORR can issue an exemption to this requirement to allow older railway vehicles containing asbestos to continue to be loaned, leased or sold subject to certain conditions being met. These conditions are designed to protect human health.
- 1.2 Ahead of the scheduled expiry of the certificate in December 2018, we invited stakeholders to take part in the survey. We asked a number of questions about their experiences of the certificate, its conditions and whether a further exemption certificate should be issued. Responses were requested before 18 June 2018. This document sets out our findings and conclusions from that survey.

## Structure of the document

- 1.3 Chapter 2 sets out the methodology for the survey. Chapter 3 provides a summary of the findings and our conclusions. Chapter 4 sets out detailed findings from the survey for each of the questions we asked.

## Confidentiality

- 1.4 Survey respondents could indicate whether any part of their responses should remain confidential to ORR. We also noted that our findings and conclusions report would aggregate responses and present survey results in such a way that individual respondents were not identifiable. However, we do indicate the *type* of respondent throughout this report (for example, a train operating company or heritage railway operator).

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<sup>1</sup> Registration, Evaluation, Authorisation and restriction of Chemicals

## 2. Methodology

- 2.1 The voluntary survey was sent to around 380 email recipients representing around 320 organisations. They were given six weeks to respond. There were 25 respondents, distributed as shown in Table 1.

| Table 1: Types of respondents to the 2018 survey |                     |
|--|---------------------|
| Type of respondent                               | Number of responses |
| Heritage Rail Operator                           | 6                   |
| Train Operating Company (TOC)                    | 5                   |
| Other <sup>2</sup>                               | 5                   |
| Passenger Rolling Stock Leasing Company (ROSCO)  | 4                   |
| Freight Operating Company (FOC)                  | 4                   |
| Infrastructure Manager                           | 1                   |
| Total number of respondents                      |                     |
|  | 25                  |

- 2.2 The survey was split into two sections. The first part asked a number of specific questions to duty holders who have used the asbestos exemption. The second part asked all stakeholders, including those who have not used the certificate but have an interest in it, a series of questions relating to the exemption and asbestos-containing vehicles or components. Some respondents did not answer every question put to them.
- 2.3 Table 2 shows the breakdown between the number of respondents indicating they are duty holders responsible for the supply, lease, loan or sale of asbestos, and those who were not.

| Table 2. Respondent breakdown  |        |
|--|--------|
|  | Number |
| Not a duty holder  | 12     |
| Duty holder <sup>3</sup> :   | 13     |
| > responsible only for a vehicle containing asbestos for use on the rail network | 8      |
| > Responsible only for a component containing asbestos for use in a vehicle      | 0      |
| > responsible for both components and vehicles containing asbestos               | 5      |

<sup>2</sup> further details of the 'Other' types of respondents can be found in Chapter 4.

<sup>3</sup> one heritage railway operator did not identify themselves as either a duty holder or not a duty holder. However, they completed all the questions for duty holders and their answers clearly indicated that they were a duty holder that had been responsible for placing onto the market asbestos containing vehicles.

### **3. Summary of the findings and conclusions**

#### **Limitations**

- 3.1 The survey was aimed primarily at those stakeholders who have used the exemption and their specific experiences. However, it appears evident from the responses that some did not always clearly distinguish between the general management of asbestos on the railway and the specifics of vehicles or components being loaned, leased or sold under the exemption certificate.
- 3.2 We have reported the survey responses in this findings and conclusions report as they were submitted to us. In some places, we make reference to the fact that a particular response does not appear relevant to the specifics of the exemption certificate, or raises a further question about a respondent's practices or understanding. We will be following up with individual respondents in some of these instances, where necessary clarifying with them our expectations of all those who use the exemption certificate.
- 3.3 We also note that completing the survey was voluntary. This might be a factor in the low number of responses we received. Another factor might be the low usage of the exemption. For example, we had only six responses from duty holding heritage railway operators, within which only half had placed vehicles containing asbestos onto the market.

#### **Questions specifically for duty holders**

- 3.4 We asked a number of questions (Q1-10) specifically to duty holders that are responsible for supplying, leasing, loaning or selling an asbestos-containing vehicle or asbestos-containing component for use in a vehicle. These duty holders included Passenger Rolling Stock Leasing Companies (ROSCOs), freight operating companies, a local transport authority, infrastructure managers, maintenance companies and heritage railway operators.
- 3.5 Overall, these responses indicated that there was a good level of compliance with the current exemption certificate and its conditions. These respondents firstly indicated that the exemption was being correctly being applied only to vehicles in service, or components installed, before 1 January 2005. (One respondent was not able to confirm this, but they may have misread the question and we will follow up this directly with them.)

#### ***Assessment and adequate controls***

- 3.6 The Asbestos Exemption Certificate No.1 of 2014 has a condition that any person placing an asbestos-containing vehicle or component on to the market is able to demonstrate that any risks to human health have been properly assessed and are

adequately controlled. Our survey asked duty holder respondents to summarise the measures they have in place for the assessment and control of any risks to human health.

- 3.7 Clearly, the limitations of a survey did not allow a full exploration of the measures. However, the responses given indicated that a range of measures are undertaken to assess and control asbestos risks to human health as they might arise from the placing onto the market of vehicles and components. The principal measure respondents gave was the use of documentation (including registers, guidance notes and technical data sheets) to provide information on the presence of asbestos for customers or purchasers using such vehicles.

### ***Removal of asbestos***

- 3.8 The survey asked two questions of duty holders to find out whether they had taken reasonable opportunities to remove asbestos from vehicles, and, if so, whether they had replaced asbestos components with non-asbestos equivalents.
- 3.9 All but one duty holder responded that, yes, they had taken such opportunities. Specific examples were given to show how asbestos in vehicles had been removed during overhauls or maintenance. A number of duty holders explained their understanding of the boundary between what was, and what was not, '*reasonably practicable*'. Specific instances were given, such as an asbestos washer fully contained within a transformer or where removal would require extensive dismantling of a larger component. One train operating company considered that the costs of removal and the likelihood that some vehicles may become inoperable as a result, was part of its considerations about reasonably practical removal.
- 3.10 One duty holder, an infrastructure manager, noted that full records of previous campaigns to remove asbestos from its vehicle stock could not be obtained. But, a full fleet review is now being undertaken to identify all asbestos-containing vehicles and components. This review will be used to determine its future options for asbestos removal.
- 3.11 The exemption certificate conditions state that duty holders should take any reasonable opportunity to remove asbestos from railway vehicles to be placed on the market, unless it can be demonstrated that the removal of asbestos would increase the risk to human health. The comments received in ORR's survey strongly suggest that such removal is taking place, albeit within the context that there are still vehicle fleets operating with residual asbestos, often to be found within components that are not readily accessible or easily removed.
- 3.12 We also asked duty holders to tell us when they expected to have completely removed asbestos-containing components and vehicles. ROSCOs are the biggest

users of the exemption, in terms of the numbers of vehicles they loan, lease or sell. Two of the three ROSCO duty holders stated that this depended on the remaining lifespan of vehicles, with one making an estimate for complete asbestos removal across its entire fleet within the next 20 years. The third ROSCO gave a more detailed spread of fleet-by-fleet vehicle redundancy from 2019 to 2032.

- 3.13 ROSCO's expectations that the current *gradual* reduction in asbestos-containing vehicles or components will continue highlights that there is a possibility of vehicles that contain some residual asbestos being placed onto the market up until 2038. This evidence, together with opinions elsewhere in the survey, was a material consideration for ORR's decision about whether to retain the exemption certificate.

### ***Record keeping by duty holders***

- 3.14 A series of questions concerned the levels of compliance by duty holders with the record keeping conditions of the exemption certificate. We asked duty holders about their record-keeping for the location, type and condition of asbestos-containing vehicles and components within vehicles before they were placed onto the market. Eleven respondents (85%) stated they did keep such records.
- 3.15 Records for the number of vehicles believed to contain asbestos that have actually been supplied, loaned, leased or sold have been kept by eight duty-holding respondents. The remaining four respondents indicated that only partial records have been kept. For some, that was because records had not been compiled centrally, or were at a fleet, rather than individual vehicle, level. One infrastructure manager commented that it had incomplete records for transactions before 2016.
- 3.16 Nine duty holders had not placed asbestos-containing *components* onto the market. But two had done so, and had kept records. One heritage railway operator had supplied such components but stated it had not kept full records. (This respondent noted that details of individual transactions had been retained, but had not been centrally collated.)
- 3.17 All but one of the duty holders who placed either asbestos-containing vehicles or components onto the market stated they kept records of the names and addresses for the recipients for these items. One respondent, an infrastructure manager, did not indicate either way whether it had kept such records.
- 3.18 Across the four questions on different aspects of record keeping, respondents have indicated a good level of compliance with the exemption's conditions. The three ROSCOs that responded to the record keeping questions indicated a high level of compliance on this issue. However, we noted that some responses indicated that records were incomplete – sometimes for historical reasons, or because individual records have not been centrally compiled.

## ***Wider Compliance***

- 3.19 We asked duty holders whether they also complied with all other relevant obligations under the Control of Asbestos Regulations 2012 and REACH when placing vehicles or asbestos-containing components onto the market. These include obligations where ORR is not the enforcing authority. Nine duty-holding respondents indicated that they did comply in this way. Two (both heritage railway operators) indicated that they did not, but only because they don't place vehicles or components onto the market

## **General questions for all respondents to the survey**

- 3.20 There were eight questions in the survey asked to everyone, including duty holders. The findings arising from the responses are summarised below.

### ***Provision of Records by duty holders***

- 3.21 We asked two questions about the experiences of users of asbestos-containing vehicles, or components, to find out if they had been supplied with clear records in order to be able to take appropriate precautions to control the risks of asbestos exposure.
- 3.22 There were 13 respondents who were users of vehicles in this way. Out of these, 70% stated that they had been supplied with sufficiently clear records. For users of components, 72% stated they had been given sufficiently clear records.
- 3.23 One train operating company commented that as a vehicle user, it had requested records from its leasing company. It noted that the leasing company had provided details of recent work on its vehicles and no asbestos had been found. But it could not definitively state whether the leased vehicles might contain embedded or hidden asbestos. Comments were made by a heritage operating company to the effect that they did not receive sufficiently clear records on an asbestos-containing component, and had relied on their own knowledge to manage the arising risks. A railway maintenance company noted that old component stock might not necessarily note the presence of asbestos.
- 3.24 As with the questions on record-keeping, the responses indicated that the conditions of the exemption certificate are being met. We note that some users highlighted an experience where records might not definitely state whether older vehicles are asbestos-free. For instance, asbestos may or may not be present in embedded components or inaccessible places and this can mean owners use caution in their records to avoid definitely stating a vehicle is asbestos free. One

scenario for incomplete records might be that the arrangements pre-date the exemption, and we will follow up those instances with the operators

### ***Confidence levels in compliance with the exemption certificate conditions***

- 3.25 We asked each respondent to give a view on how compliant they believe those that supplied, leased, loaned or sold asbestos-containing vehicles or components were with the conditions in our exemption certificate. Twenty one responses were received, out of which nine stated they didn't know, four felt compliance was somewhere between 60-100% and eight felt there was full compliance. Comments were made that the quality of information on asbestos-containing vehicles or components was variable and that some individuals within organisations did not understand the requirements of REACH.
- 3.26 These findings chime with others survey finding and comments on record keeping, namely that experiences are broadly positive, but with some instances where records or other information appears to be incomplete. It is difficult to draw a final conclusion about the reason(s) such a high proportion of respondents did not feel able to give any view on industry-wide compliance. For example, some commented that they were not aware of breaches, or were simply unsighted on this beyond their own organisation.

### ***Opinions on the success of the exemption certificate conditions***

- 3.27 We asked three questions seeking the views of respondents about whether the exemption conditions had been successful in protecting human health, had supported the progressive removal of asbestos and whether the conditions had any unintended consequences.
- 3.28 A significant majority (three quarters of respondents) considered that the asbestos exemption conditions had been positive in protecting human health. The remaining quarter stated that they did not know. Significantly, none stated that the conditions had a negative effect. One ROSCO noted that the quantity of asbestos is falling and therefore the risk of any exposure is also progressively reducing. A freight operating company stated that the exemption certificate conditions are helpful in highlighting and clarifying the requirements in relation to railway vehicles.
- 3.29 A majority (18 out of 23 respondents) believed the certificate's conditions had been successful in progressively removing asbestos from vehicles or components used in vehicles. However, within that grouping, 10 gave slightly qualified support by agreeing that this was '*somewhat successful*' rather than '*very successful*'. Some sought to explain this slight reservation, including one train operating company which noted that the remaining asbestos tended to be found in larger vehicle components, and that replacing such parts coincides with heavy maintenance, and

was therefore less frequent over the lifetime of a vehicle. This meant that the removal of asbestos could appear to be '*relatively slow progress*'.

- 3.30 Very few comments were made about whether the certificate's exemptions had any unintended consequences. Only one respondent gave a specific example, noting non-asbestos replacement materials could be inferior in terms of heat insulation or fire-resistance performance.
- 3.31 We consider that the lack of evidence for unintended consequences is a factor in support of maintaining the current exemption unchanged. Equally, there were no responses to suggest that the exemption had been anything other than positive in how it protected human health. We note here – as we do in respect of the timescales provided by duty holders for the complete removal of asbestos – that the certificate's conditions will allow asbestos components and vehicles to remain in controlled use for a considerable period.

### ***Recommended next steps from respondents***

- 3.32 We asked all respondents about their recommendations for the next steps with the exemption certificate. A very high percentage (84%) stated that the next exemption certificate should be kept as it is, with the same conditions.
- 3.33 The remaining 16% (four respondents) included two (a heritage operator and a freight operator) who didn't have a view about the future of the exemption and two others (both train operating companies) who wanted to remove the certificate; one without replacement and one with a different arrangement. The reasons given for removal of the exemption was based on one TOC's observation that all of its fleet did not contain asbestos, and therefore the certificate was not necessary. The other TOC proposed removal of the exemption certificate and suggested it should be replaced with a risk-based approach based, noting the low value of affected vehicles and their replacement with newer asbestos-free fleets. In both of these suggestions, it appears the TOCs have taken a narrower view based on their own circumstances, which does not take into account the fact that the certificate is a general exemption, applicable to all duty holders.
- 3.34 We asked a final question about whether there were any other comments in relation to the exemption certificate. A handful did use this opportunity to make ORR aware that the certificate was important in their ability to continue to operate some rolling stock. One membership body noted that without the certificate, such vehicles would have to be "*scrapped prematurely*", with another stating "*our members reply on the exemption certificate to move significant historical vehicles and components from site-to-site*". A freight operating company noted that "*In order to permit [old or heritage vehicles] to remain legally available for use if any*

*asbestos is found to be still present, we believe that it is important that the Certificate is reissued."*

## ORR's Conclusions

- 3.35 As part of ORR's considerations on whether or not to reissue the certificate, and whether any adjustments might be necessary to its conditions, we paid careful attention to the whole of the survey. **We decided to re-issue the certificate with the existing conditions unchanged.** Re-issuing the certificate will enable the controlled arrangements for leasing, loaning and selling older asbestos-containing rolling stock or components to continue. No substantial objection to the re-issuing of the certificate were received. In fact, a consensus specifically requested ORR to take that course of action. The survey responses about the current operation of the specific conditions within the certificate also supported a reissue without change.
- 3.36 Asbestos Exemption Certificate No 2 of 2019 Concerning Railway Vehicles and Components for use in Railway Vehicles was therefore issued on 5 December 2018. This revoked the previous exemption certificate. The new certificate can be found [here](#) on our website, together with an updated guidance note. The new exemption will be in place until 31 December 2023, although it may be altered or withdrawn at any time during that period. ORR will continue to monitor compliance with the exemption.
- 3.37 In the process of analysing the survey, we noted some specific issues which will assist ORR's interventions during the life of the exemption, and to target areas where there appears to be room for further improvements. These are:
- more complete data is necessary on progress being made towards the complete eradication of asbestos in railway vehicles;
  - a better understanding of the scale of vehicles or components containing asbestos that are being placed onto the market by heritage railway operators is needed, reflecting the relatively small proportion of such operators responding to this survey;
  - we should consider further opportunities to remind all duty holders on the requirements within the exemption certificate for completeness in their record-keeping.

## 4. Detailed findings

### Respondents

- 4.1 There were 25 responses to the survey. The types of respondents were broken down as follows (with the organisation names removed for anonymity):

| Ref. | Type  |
|------|---|
| 1    | Passenger Rolling Stock Leasing Company (ROSCO) |
| 2    | Train Operating Company (TOC)                   |
| 3    | Passenger Rolling Stock Leasing Company         |
| 4    | Freight Operating Company (FOC)                 |
| 5    | Railway Maintenance operator                    |
| 6    | Membership Organisation                         |
| 7    | Heritage Railway Operator                       |
| 8    | Heritage Railway Operator                       |
| 9    | Heritage Railway Operator                       |
| 10   | Train Operating Company                         |
| 11   | Train Operating Company                         |
| 12   | Railway Maintenance operator                    |
| 13   | Infrastructure Manager                          |
| 14   | Local Transport Authority                       |
| 15   | Heritage Railway operator                       |
| 16   | Passenger Rolling Stock Leasing Company         |
| 17   | Membership Organisation                         |
| 18   | Passenger Rolling Stock Leasing Company         |
| 19   | Membership Organisation                         |
| 20   | Heritage Railway operator                       |
| 21   | Heritage Railway operator                       |
| 22   | Train Operating Company                         |
| 23   | Freight Operating Company                       |
| 24   | Train Operating Company                         |
| 25   | Freight Operating Company                       |

### Questions 1 to 10

- 4.2 Questions 1 to 10 of the survey were asked to duty holders who are responsible for supplying, leasing, loaning or selling an asbestos-containing vehicle or asbestos containing component for use in a vehicle.

**Question 1: “Have you supplied, sold, leased or loaned a vehicle containing asbestos that was not in service before 1 January 2005?”**

- 4.3 The responses to this question were:

|       |    |
|-------|----|
| Yes   | 1  |
| No    | 12 |
| Total | 13 |

- 4.4 One of the conditions of the Asbestos Exemption Certificate is that the exemption only applies to railway vehicles containing asbestos that were in service before 1 January 2005. One heritage railway operator duty holder was not able to confirm this in their survey response. We will follow up that response individually, but it might prove to be a misunderstanding arising from the wording of the question.

**Question 2: “Have you supplied, sold, leased or loaned an asbestos-containing component for use in a vehicle that was not installed before 1 January 2005?”**

- 4.5 Stakeholders responded to this question as follows:

|       |    |
|-------|----|
| Yes   | 0  |
| No    | 13 |
| Total | 13 |

- 4.6 As with placing asbestos containing vehicles onto the market, ORR’s exemption certificate has a condition that only asbestos-containing components installed in a vehicle before 1 January 2005 can be exempted. All duty holders responding to the survey confirmed could confirm this point.

**Question 3a<sup>4</sup>: “Please tell us what measures you have in place to demonstrate proper assessment and adequate control of any risks to human health arising from the supply, loan, lease or sale of an asbestos-containing vehicle or component for use in a vehicle.”**

- 4.7 Respondents were asked to comment in a free text field. Most respondents took this opportunity to explain that they held a register of those vehicles, or components in vehicles, which were either known to, or potentially did, contain asbestos. Some also noted here that this information was shared with suppliers or customers (i.e purchasers or leasees). Some went further and explained that these documents were updated periodically, or that the document is supported by advice on the management of the asbestos.
- 4.8 Two respondents commented that their measures include staff training, in addition to documentation. One commented on their use of a registered asbestos remediation contractor.

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<sup>4</sup> Our survey contained a small formatting error. Two questions were labelled ‘Question 3’. In order to avoid confusion in this report, the first will be referred to as Question 3a, the second as Question 3b.

**Question 3b: “Have you taken any reasonable opportunity to remove asbestos from vehicles to be supplied, loaned, leased or sold?”**

- 4.9 All but one of the 13 duty-holding respondent stated that they had taken reasonable opportunities to remove asbestos from their vehicles. Most also provided brief explanatory comments. Three duty holders placed their own actions into the context of a longer timeframe across a vehicle's lifespan, such as noting the actions of previous owners before rail privatisation, the emergence of asbestos regulations, or the specific classes of locomotive designs that contained asbestos.
- 4.10 Ten respondents agreed that they had taken steps to remove asbestos, often at the point of a vehicle refurbishment or repair. Some specific examples were given, such as removal of white lagging tape, the complete removal of a transformer with asbestos washers or the professional stripping of sprayed blue asbestos.
- 4.11 The one respondent who answered “no”, noted that there had been several earlier campaigns to remove asbestos from their vehicles but that there were incomplete records of these activities from before 2016. The respondent noted it was currently undertaking a full review of asbestos vehicles and components, which will support any future consideration of their removal.

**Question 4: "If you have taken steps to remove asbestos from vehicles, have you replaced asbestos-containing components with non-asbestos equivalent parts?"**

- 4.12 Twelve out of 13 duty-holding respondents answered “yes”, they had replaced parts in this way. The examples given included asbestos heat shields, pivot liners and side bearers, bogie side bearer pads, insulation, gaskets or pipe lagging. Although implicit in all these responses, one freight operating company specifically noted that when asbestos components are removed, they are not refitted. One respondent, a train operating company, noted that it does not work on material containing asbestos, and it is only replaced if damaged, in less than good condition or if a major overall requires its removal.
- 4.13 One respondent did not fully answer the question, but stated that it had not undertaken a specific asbestos removal campaign.

**Questions 5: “Before supplying, loaning, leasing or selling an asbestos-containing vehicle or asbestos-containing component for use in a vehicle, have you kept clear records of the location, type and condition of the asbestos?”**

- 4.14 Duty holders were asked to choose one option from the three responses as shown below:

|   |           |
|---|-----------|
| Yes, I have made them available to the person to whom I have supplied, loaned, leased or sold the vehicle or component        | 11        |
| Yes, but I have <b>not</b> made them available to those whom I have supplied, loaned, leased or sold the vehicle or component | 1         |
| No, I have not kept any records   | 1         |
| <b>Total</b>  | <b>13</b> |

- 4.15 One freight operating company noted that it controlled the maintenance of all its vehicles. As such, its customer's actions are limited to the loading and unloading of vehicles and there is no asbestos risk to them. Their answer to question 6 below also indicates that they have records of the vehicles which contain asbestos and the location of the asbestos. One ROSCO noted that it did not maintain a record of all locations for asbestos containing materials and their status, but they do produce a guidance note to tell vehicle leasees about the location of asbestos and methods for managing them.

**Question 6: “have you kept records of the number of vehicles believed to contain asbestos you have supplied, loaned, leased or sold?”**

- 4.16 In the answers given to this question, there was a degree of divergence between duty holders in the option they selected, as follows:

|  |   |
|--|---|
| Yes ( <b>please tell us the number</b> )   | 8 |
| No, I have not supplied, loaned, leased or sold any vehicles containing asbestos | 1 |
| No, I have not kept records of the number of vehicles                            | 4 |

- 4.17 From the eight respondents selecting 'Yes', the following additional information on the number of vehicles was supplied:

| Respondent                | Number of asbestos containing vehicles put onto the market |
|---------------------------|--|
| Local Transport Authority | 90   |
| Freight Operating Company | 64   |
| Freight Operating Company | 4  |
| Heritage Railway Operator | 1  |

|   |       |
|---|-------|
| Passenger Rolling Stock Leasing Company | 1,476 |
| Railway Maintenance Operator            | 1     |
| Passenger Rolling Stock Leasing Company | 1,239 |
| Train Operating Company                 | 226   |

- 4.18 There were four respondents selecting ‘No’ and who have not kept records. One infrastructure manager noted that complete records before 2016 were not available. One heritage railway operator noted that these records were kept, but not compiled centrally. One ROSCO noted that records were only at fleet (not vehicle) level and one heritage operator stated they had not sold vehicles in the last 10 years.

**Question 7: “Have you kept records of the number of asbestos-containing components for use in a vehicle you have supplied, loaned, leased or sold?”**

- 4.19 Only two duty-holding respondents indicated that they had kept records for asbestos-containing components. One, a local transport authority, noted these were held in vehicle maintenance records and a central asbestos register. The other, a freight operating company, specified that these components were 264 side bearer liners and eight centre pivot liners.
- 4.20 Of the remaining duty holders, nine had not supplied, loaned, leased or sold any components believed to contain asbestos.
- 4.21 One, a heritage railway operator, had not kept records, stating that whilst records of individual transactions had been kept, there was no record of the total number of transactions.

**Question 8: “Have you kept records of the name and address of those to whom you have supplied, loaned, leased or sold asbestos-containing vehicles or asbestos-containing components for use in a railway vehicle?”**

- 4.22 Ten respondents to this question indicated that they did keep these records. One heritage railway operator indicated they did not but with the explanation that they have not placed asbestos-containing vehicles/components onto the market. One infrastructure manager gave no definitive answer, but referred to its answer to Question 6, noting pre-2016 records were not available.

**Question 9: “When you have supplied, loaned, leased or sold asbestos-containing vehicles or asbestos-containing components for use in vehicles, have you complied with all other relevant obligations under the Control of Asbestos Regulations 2012 and REACH as appropriate?”**

- 4.23 Nine respondents indicated that they had complied with these relevant regulations. Two heritage railway operators indicated that they had not, but in their commentary explained this was because they have not put asbestos-containing

vehicles/components onto the market. One infrastructure manager gave no indication either way, but in its commentary again made a reference to its pre-2016 records being incomplete.

**Questions 10: “When do you expect to have completely removed asbestos-containing vehicles and asbestos-containing components from the vehicles and components you supply, loan, lease or sell?”**

- 4.24 All 13 duty holders commented on this question. Their comments are repeated below, categorised by type of respondent and anonymised where necessary. Some responses appear to be generalised across all vehicles or components, rather than specifically about removal of asbestos from vehicles or components supplied, loaned, leased or sold.

|   |  |
|---|--|
| Freight Operating Companies                 | <p><i>Due to wear rates it is only the low use vehicles that still contain asbestos side bearers and centre pivots. We expect all asbestos components to be changed by 2022.</i></p> <p><i>[We have] has no current plans to further reduce the already very low asbestos content of its vehicles until they reach the end of their operational life outside the normal overhaul regime of components. All new vehicles procured will be asbestos free</i></p>   |
| Local Transport Authority                   | <p><i>All 90 cars are completed, 86 cars at the ¾ life refurbishment project at [x] (August 2010-June 2015) and the four remaining cars [non-x refurbished] completed at the depot by June 2015. Contractor used at the depot was [x]. [x] used [x] as and when required at Doncaster.</i></p>   |
| Passenger Rolling Stock Operating Companies | <p><i>This is difficult to predict as for those components not practicable to replace it will depend on vehicle lives and leasing opportunities which are difficult to estimate.</i></p> <p><i>The vehicles below contain very low or trace levels of asbestos that is not practicable to remove. Our estimate for the elimination of these fleets based on our current forecasts is as follows: Class [x]: 2019, Class [x]: 2021, Class [x]: 2023, Class [x]: 2026, Class [x]: 2032 (if converted for use with alternative fuel types): Class [x]: 2032 (if converted for use with alternative fuel types):Class [x]: 2032 (if converted for use with alternative fuel types): Class [x] locomotive: 2021, Mk [x] coach [x]: 2026, Mk [x] coach: 2026</i></p> |
| Heritage Railway Operators                  | <p><i>It is impossible to give an exact figure as the rail leasing market is constantly varying. We do however currently forecast that all vehicles containing Asbestos will be withdrawn from service within 20 years.</i></p> <p><i>We will continue to remove asbestos from our rolling stock and components where reasonably practicable. We have not set a target date for the complete removal of all asbestos as this is not reasonably practicable in some cases; for example where the asbestos is internal to electrical machines or diesel engines and there is no risk to the end user. Our policy is to remove asbestos from areas where there is a risk of exposure to staff and volunteers</i></p>  |

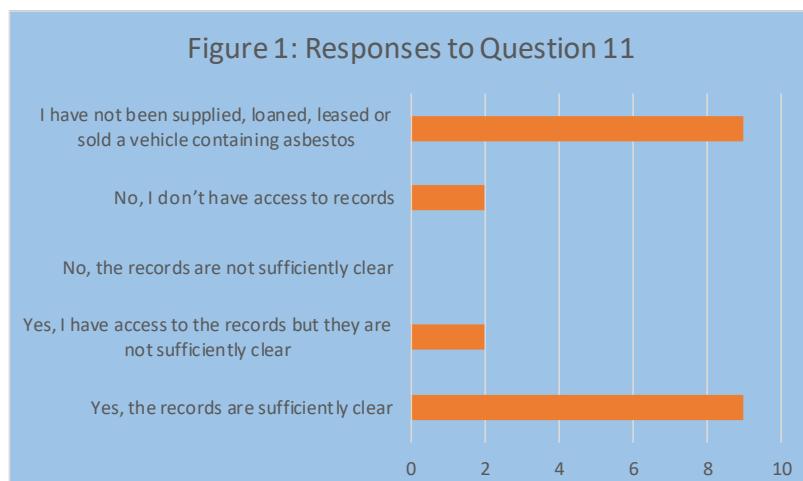
|                              |  |
|------------------------------|--|
|                              | <i>undertaking maintenance and overhaul work but only to undertake removal in other cases when there is a major intervention on the equipment. In all cases, we seek to fully comply with the Control of Asbestos Regulations 2012.</i>  |
|                              | <i>The vehicle in question is privately owned. As and when a significant overhaul is required then this will be addressed with the owner (who is another heritage railway company)</i>   |
|                              | <i>We don't supply, loan out or lease out vehicles and have no plans to sell them at present. We have no plans to completely remove asbestos from all vehicles that we own</i>   |
|                              | <i>We do not supply, loan, lease or sell vehicles or components</i>  |
| Train Operating Company      | <i>There are no current plans in this respect</i>  |
| Railway Maintenance Operator | <i>This depends on when the vehicles are overhauled or repairs to the remaining asbestos components mean that they are removed. As a number of the vehicle are heritage, this could mean that it could be several years due to the usage.</i>  |
| Infrastructure organisation  | <i>We do not have plans to remove all asbestos from all vehicles and components. We take a risk based approach to minimise the risk to staff from asbestos, either through controlled removal or leaving in situ with control measures in place (e.g. encapsulation or labelling).</i> |

## Questions 11 to 18

- 4.25 Questions 11-18 were asked to all stakeholders invited to take part in the survey (including duty holders).

**Question 11: “If you are a user of an asbestos-containing vehicle, has the person that supplied, leased, loaned or sold it to you provided sufficiently clear records to allow you to take appropriate precautions to control the risk of any exposure to asbestos?”**

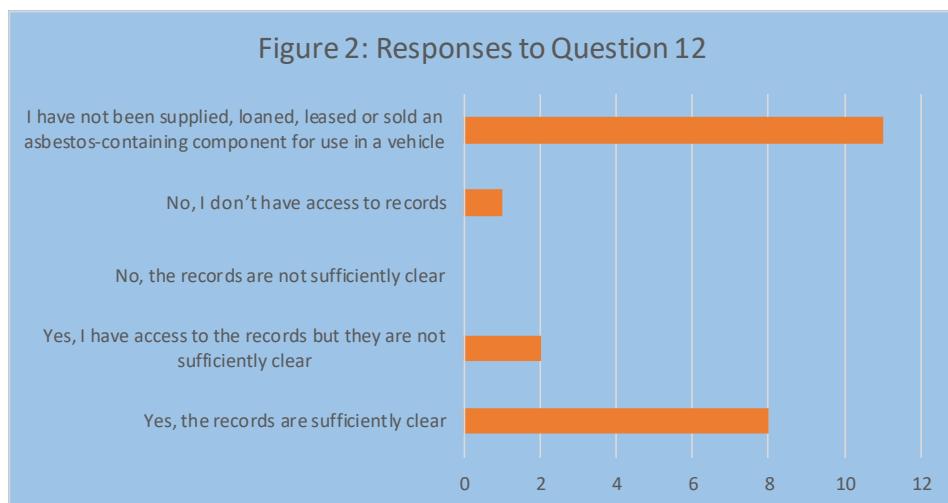
- 4.26 Twenty two respondents answered this question, as shown in Figure 1:



- 4.27 Two respondents, a train operating company and a freight operating company, indicated that they were users of asbestos-containing vehicles, but did not have access to the appropriate clear records. The train operating company commented to the effect that the information it had received only provided strong circumstantial evidence that the vehicles are clear of asbestos. The freight operating company did not provide additional details.
- 4.28 The largest group of respondents - the 10 who considered the records were sufficiently clear – included four heritage railway operators. But one heritage operator had received asbestos-containing vehicles and considered that the records were not sufficiently clear. They noted records were of variable quality, and in some cases they were relying on their own knowledge of the likely presence of asbestos to manage risk. Similarly, one freight operating company did have access to clear records, but no further details were given.

**Question 12: “If you are a user of an asbestos-containing component for use in a vehicle, has the person that supplied, leased, loaned or sold it to you provided sufficiently clear records to allow you to take appropriate precautions to control the risk of any exposure to asbestos?”**

- 4.29 As with Question 11, we received twenty two answers to this question, with the breakdown shown below in Figure 2:

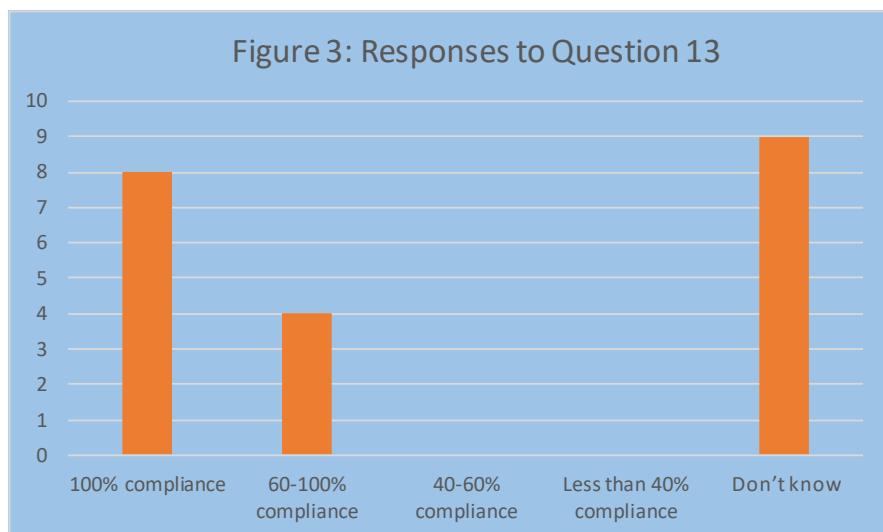


- 4.30 One heritage railway operator did not have access to the records, but did not provide further details.
- 4.31 Two respondents – a heritage railway operator and a railway maintenance operator - had access, but only to insufficiently clear records. The heritage operator, as with their response to Question 11 above, noted whilst they had access to records, they sometimes relied on their own knowledge of the likely presence of asbestos as these records could be of “variable quality”. The railway maintenance operator made two points. The first was that old component stock may not necessarily note the presence of asbestos. Secondly, they stated that

some vehicles they have bought came from owners who did not understand the requirements of REACH. In mitigating both these points, the respondent explained its own assessment approach of components and vehicles, including sourcing non-asbestos components and updating its Asbestos Register.

**Question 13: “*To what extent do you believe those that supply, lease, loan or sell asbestos-containing vehicles or components for use in a vehicle comply with the exemption certificate conditions?*”**

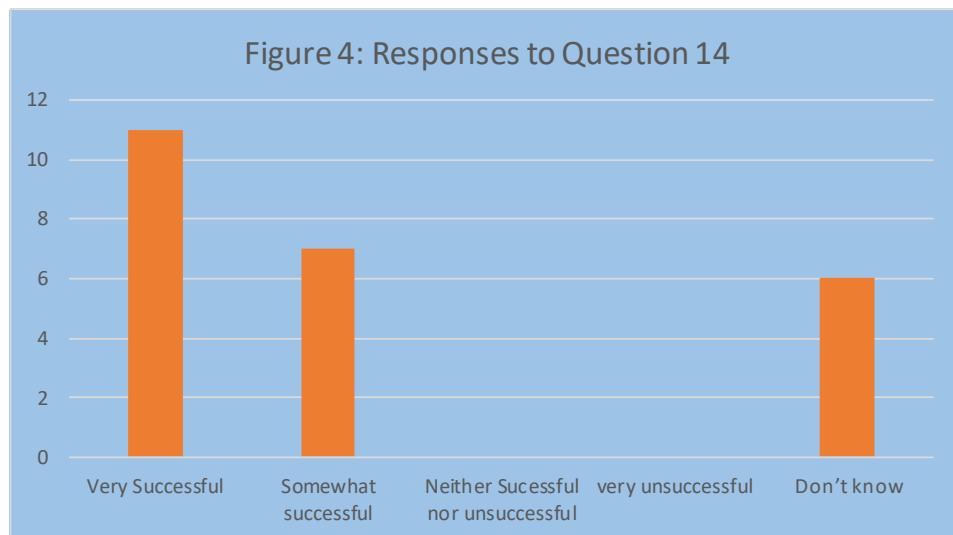
- 4.32 This question asked respondents to indicate their view against five options for the percentage of compliance as they perceived it within the rail industry. The views are shown in Figure 3 below:



- 4.33 Twenty-one responses to this question were received. Approximately 43% of respondents didn't know the extent of compliance with the REACH Asbestos Exemption Certificate by those placing asbestos-containing vehicles or components used in vehicles on to the market. Within this group, many noted that they thought compliance was very high, but they did not have data or sufficient visibility of the marketplace to give a fuller answer.
- 4.34 Within the group who indicated they believed it to be ‘100% compliance’ (i.e just over one third of all respondents), their further comments often showed that this judgement had been arrived at based on their own organisation’s experience, and not necessarily from wider industry knowledge.
- 4.35 The remaining 19% of respondents all judged compliance was below 100%, but above 60%. Comments here included the point that often it is individuals – not organisations – who do not fully understand REACH or that it is often the quality of information (as explored in previous questions about record keeping) that is variable.

**Question 14: “To what extent have the exemption certificate conditions been successful in ensuring a high level of protection to human health?”**

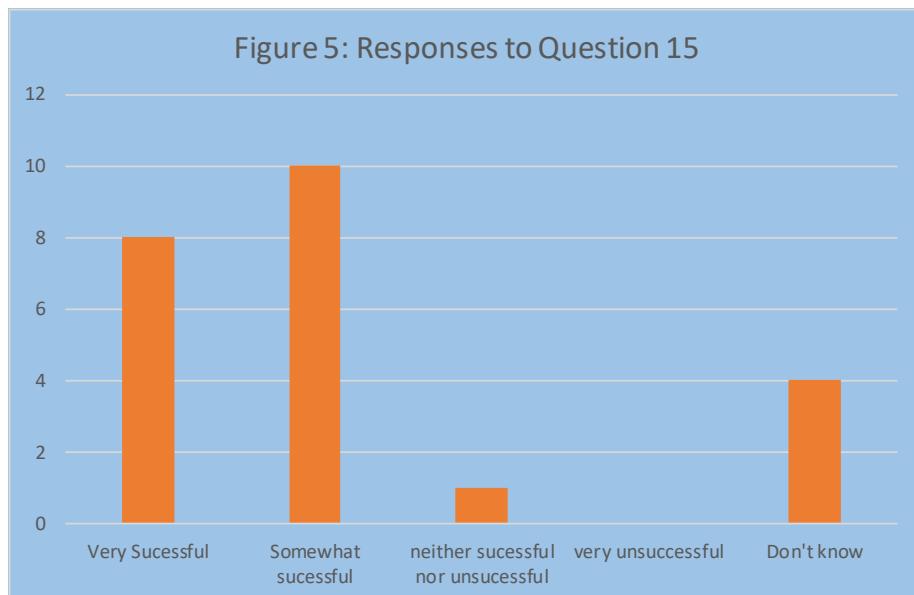
- 4.36 The breakdown of the 24 responses received are shown in Figure 4 below:



- 4.37 A significant majority (75%) considered the exemption certificate conditions had been positive – either somewhat or very successful. No respondent considered the exemption had had no effect, or a negative effect.
- 4.38 Comments made by respondents forming the largest group, those who considered the exemption conditions have been very successful, included a local transport authority stating the exemption allowed it to continue using vehicles whilst the procurement process for new ones ran in parallel. Also, a maintenance operating company noted that the exemption prevented vehicles being stored in a deteriorating state, which may have posed a greater risk to human health than allowing them to operate in a controlled state.
- 4.39 Those who thought ORR's current exemption certificate was somewhat successful included two freight operating companies, two train operating companies, one Passenger Rolling Stock Leasing Company, one infrastructure manager and one membership organisation. Explanatory comments here included an infrastructure manager stating that the rail industry's awareness and management of risk has generally improved as a result of the exemption. A membership organisation considered that the certificate's conditions are helpful in making the requirements clear to its membership.
- 4.40 Four of the six respondents selecting ‘don’t know’ to this question did not provide any explanatory comments. The two that did noted that either they were not sufficiently sighted on the data to select a different choice, or considered the question only from their own organisations standpoint.

**Question 15: “To what extent have the exemption certificate conditions been successful in progressively removing asbestos from vehicles or components used in vehicles”**

- 4.41 The responses given to this question are shown below in Figure 5:



- 4.42 The largest number of responses to this question, 10 out of 23 (43%), considered the exemption had been ‘somewhat successful’ in progressively removing asbestos. One heritage operator considered that whilst the exemption has “improved communication”, the main driver for the progressive removal of asbestos has been the Control of Asbestos Regulations 2012, specifically the risks of exposure to an individual. A train operating company noted that the presence of asbestos within larger components has meant removal coincides with heavy maintenance events, which by their nature are infrequent.
- 4.43 The eight respondents to this question who answered ‘very successful’ frequently made a reference to their own removal programmes as evidence of the success of the exemption. Within such answers, it was also often pointed out that the number of vehicles containing asbestos is lessening over time.

**Question 16: “Are you aware of any unintended effects resulting from the asbestos exemption?”**

- 4.44 All but one response to this question were either ‘no’ or ‘don’t know’. One train operating company did suggest an unintended consequence was that sometimes non-asbestos materials are inferior to the asbestos parts they replace. The example was given where asbestos has been used as a heat insulator, but that the replacement Glass Reinforced Plastic (GRP) is less fire resistant.

**Question 17: “What would be your recommendation for the next steps for the exemption certificate?”**

- 4.45 The overwhelming majority of responses, 21 out of 25 (84%) wanted to keep the exemption certificate (i.e No.1 Exemption Certificate of 2014) with the same conditions.
- 4.46 The remaining four had a different response. Two (a heritage railway operator and a maintenance operator) replied that they didn't know what to recommend. A further two - both train operating companies - suggested removing the exemption certificate and not replacing it. One of these explained its position was based on the fact that all its vehicles were 100% asbestos free and therefore they had no requirements for a certificate. The second train operating company suggested ORR should take a risk-based approach, noting that the value of asbestos containing vehicles was low and these could be replaced with newer asbestos free vehicles as and when they are released from current leases.

**Question 18 “Do you have any additional comments in relation to the exemption certificate?”**

- 4.47 All the surveyed organisations could make use of this question to provide any final comments that had not be captured in their other responses. Seven respondents made use of this offer.
- 4.48 One membership organisation pointed out that the exemption maximised the use of existing (asbestos-containing) assets, which might otherwise have been scrapped. Another membership body commented that its members relied of the exemption to move vehicles from site to site. The third membership body to reply to the survey noted the high levels of awareness about asbestos risk amongst its membership.
- 4.49 A freight operating company noted that should an older vehicle be found to contain asbestos, the exemption was important because it allowed the vehicle to remain legally available for use. A railway maintenance operator stated that the exemption allows the controlled use of vehicles and components and for “*potential problem vehicles*” to be traded into companies that fully comply with the requirements of REACH.
- 4.50 One maintenance operator noted its own vehicles did not contain asbestos. Finally, one heritage operating company noted that, practically, asbestos-containing materials coming into their possession do not present themselves with an exemption certificate. (see paragraph 3.33 above for further details on this point).



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