

**The Railways and Guided Transport
(Miscellaneous Amendments)
Regulations 2010:
Consultation document**

March 2010



OFFICE OF RAIL REGULATION

Contents

1. Introduction.....	1
Background	1
The consultation	3
Responses	3
Next steps	4
2. Background to Directive 2008/110/EC (the revised Railway Safety Directive) and Directive 2009/149/EC (the CSI Directive)	5
European Common Transport Policy.....	5
Purpose of the revised Railway Safety Directive	6
Desired outcome of implementing the revised Railway Safety Directive	6
Scope of the revised Railway Safety Directive	7
Exclusions from scope.....	7
Derogations	8
Background to the CSI Directive.....	10
3. Overview of proposals for the United Kingdom.....	11
4. Proposals for regulations implementing Directive 2008/110/EC and Directive 2009/149/EC in Great Britain	13
Citation, commencement and interpretation	13
Amendments to the Railways and Transport Safety Act 2003 and the Railways (Accident Investigation and Reporting) Regulations 2005.....	13
Amendments to the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS).....	14
Annex A: Consultation questions	21
Annex B: Draft regulations.....	23
Annex C: Directive 2008/110/EC.....	35
Annex D: Directive 2009/149/EC.....	41
Annex E: Impact assessment.....	51
Annex F: List of consultees.....	63
Annex G: Government Code of Practice.....	69

1. Introduction

Background

- 1.1 This document sets out proposals for implementing Directive 2008/110/EC (“the revised Railway Safety Directive”) and Directive 2009/149/EC (“the Common Safety Indicator (CSI) Directive”) in Great Britain. The revised Railway Safety Directive and the CSI Directive both amend Directive 2004/49/EC (“the Railway Safety Directive”).
- 1.2 The revised Railway Safety Directive must be transposed into UK law by 24 December 2010 and the CSI Directive by 18 June 2010. The Office of Rail Regulation (“ORR”) has responsibilities for proposing measures to the Secretary of State for Transport on railway safety. ORR proposes to recommend the Secretary of State to make the proposed regulations for the transposition of the directives in Great Britain.
- 1.3 The revised Railway Safety Directive establishes a maintenance system and aims to further develop and improve safety on the European Union’s railways. The revised Railway Safety Directive requires that an entity in charge of maintenance (“ECM”) is assigned to a vehicle and registered as such in the national vehicle register (“NVR”). This is before the vehicle is placed in service or used on the network. There are also requirements for the certification of entities in charge of the maintenance of freight wagons. The CSI Directive is concerned with definitions of Common Safety Indicators (“CSIs”) and methods to calculate accident costs.
- 1.4 Directive 2008/57/EC (“the Railway Interoperability Directive”) is concerned with the interoperability of the rail system within the European Union. The Secretary of State is responsible for transposing this directive. The UK’s implementing measures must be in force by 19 July 2010. Although the revised Railway Safety Directive requires transposition by December 2010 and the CSI Directive by June 2010, there are interfaces between the three directives.
- 1.5 Following informal consultation with key stakeholders, the Government has decided that transposition of the revised Railway Safety Directive should be brought into force at the same time as the bringing into force of the

transposition of the Railway Interoperability Directive. This will enable both regimes to be developed in tandem and allow stakeholders to understand how the two regimes will operate together. (But see below about the proposal to transpose the revised Railway Safety Directive by way of two statutory instruments).

- 1.6 The UK Government has also decided that the bringing into force of the transposition of the CSI Directive should be at the same time as the revised Railway Safety Directive. This is because the directives will be implemented by amending the same set of regulations.
- 1.7 Applying the principles of better regulation and to allow for consistency and clarity, the UK Government believes that there should be a common commencement date of 19 July 2010 for the bringing into force of the transposition of the three directives. This is subject to what is said below about transposition of the revised Railway Safety Directive through two statutory instruments.
- 1.8 We propose to implement the revised Railway Safety Directive in Great Britain through two separate statutory instruments. The first is the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 (“the Miscellaneous Amendments Regulations”).
- 1.9 The Miscellaneous Amendments Regulations are intended to implement the revised Railway Safety Directive except for that part which relates to the certification of entities in charge of the maintenance of freight wagons. They will therefore implement the requirement to assign an ECM to a vehicle and register the vehicle and details of the ECM in the National Vehicle Register (NVR) before a vehicle is placed in service or used on the network. The regulations will also implement the requirement for ECMs to establish a system of maintenance.
- 1.10 The Miscellaneous Amendments Regulations will also implement the CSI Directive, which substitutes a new Annex I into the Railway Safety Directive. The original Annex I was transposed by Schedule 3 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (“ROGS”). We therefore propose to substitute the new Annex I for the old in Schedule 3 of ROGS, which defines Common Safety Indicators (“CSIs”) and methods to calculate accident costs.

1.11 The Miscellaneous Amendments Regulations also propose changes to:

- Part 4 of ROGS in relation to safety critical work and volunteer workers;
- The Railways and Transport Safety Act 2003 and the Railways (Accident Investigation and Reporting) Regulations 2005 (“RAIR”) in relation to investigating tramway incidents in Scotland;
- Regulation 27 of ROGS in relation to appeals to the Secretary of State which are determined by someone else on his behalf.

Certification of entities in charge of maintenance

1.12 We will develop a second statutory instrument to implement measures for certifying ECMs for freight wagons. The revised Railway Safety Directive requires that an ECM for freight wagons obtains a certificate to show that it has a satisfactory system of maintenance. However, details of the system of certification and its start date will not be known until the European Commission adopts the relevant measure. The UK Government will implement the ECM certification requirements once the European Commission has adopted the measure. The second statutory instrument is not part of this consultation.

The consultation

1.13 This consultation document includes a draft of the first proposed statutory instrument and provides a commentary to explain the requirements. We seek your views on the proposed regulations and on issues where the revised Railway Safety Directive allows options in our implementation.

1.14 We are consulting on these proposals from 29 March 2010 to 7 June 2010. Please ensure that your response reaches us by 7 June 2010.

Responses

1.15 We welcome comments on any aspect of this document and the specific questions listed at Annex A.

1.16 Responses to this consultation should be sent as soon as possible, but no later than 7 June 2010, by post or email to:

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

Email: Stefano.valentino@orr.gsi.gov.uk

- 1.17 All responses will be published on our website and may be quoted from by us. If you wish all or part of your response to remain confidential you should set out clearly why this is the case. Where a response is made in confidence, it should be accompanied by a statement summarising the submission, but excluding the confidential information, which can then be used as above. We will publish the names of respondents in future documents or on our website, unless you indicate that you wish your name to be withheld.
- 1.18 Copies of this consultation document are available from our website (www.rail-reg.gov.uk/server/show/nav.1089).
- 1.19 This consultation has been produced in accordance with the Government's *Code of Practice on Consultations*¹. A copy of the Code of Practice is included at Annex G. If you consider that this consultation does not comply with the criteria or have comments about the consultation process, please contact Ken Young, ORR's director of external affairs on 020 7282 3732 or ken.young@orr.gsi.gov.uk.

Next steps

- 1.20 After the close of this consultation, we will consider all responses received and decide whether there should be any change to the proposed regulations.

¹ Whilst the essential criteria include a requirement for the consultation period to be a minimum of twelve weeks, the Code recognises that this may not always be possible, particularly where deadlines are driven by our Treaty commitments with the European Union. There is a deadline to bring the provisions of Directive 2008/57/EC into force in the UK by 19 July 2010. Since the transposition of Directive 2008/110/EC is being aligned with the transposition of Directive 2008/57/EC, it is necessary to have a reduced consultation period of ten weeks to allow for the required Parliamentary process before the draft Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 can come into force. Chris Mole, Parliamentary Under Secretary of State for Transport, has agreed that a shortened consultation period is acceptable in this case.

2. Background to Directive 2008/110/EC (the revised Railway Safety Directive) and Directive 2009/149/EC (the CSI Directive)²

European Common Transport Policy

- 2.1 The Railway Safety Directive is one of a number of directives introduced under the European Union's Common Transport Policy. Through this policy, the European Union ("EU") wishes to revitalise the railways through the creation of a single market, and by improved access to the market for railway services.
- 2.2 In December 2006 the European Commission tabled a package of revisions. The driving force behind these revisions was to improve cross acceptance for rail. Cross acceptance is the mutual recognition by Member States of each other's national rules, processes, and authorisations. This is to allow free movement of rail vehicles in an integrated common railway area. The legislative package comprised:
- *a recast Interoperability Directive*: merging three directives into one and simplifying and harmonising provisions;
 - *amendments to the Railway Safety Directive*: introducing the identification of an entity in charge of maintenance for all vehicles, responsible for ensuring that the system of maintenance keeps all the vehicles in a safe state of running; and
 - *a revised Regulation governing the European Railway Agency (ERA)*: providing the Agency with a larger mandate, in particular an enhanced role in cross acceptance.

² The full text of Directive 2008/110/EC is at Annex C and the full text of Directive 2009/149/EC is at Annex D.

Purpose of the revised Railway Safety Directive

- 2.3 Directive 2008/110/EC (“the revised Railway Safety Directive”) establishes a common system for maintenance arrangements across Europe. Under its requirements, all vehicles need to be assigned an entity in charge of maintenance (“ECM”). This should be before a vehicle is placed in service or used on the network. The ECM should be registered on the national vehicle register which, in time, will be open to access by any Member State. In respect of the maintenance of freight wagons, the ECM will need to hold an ECM certificate. The ECM certificate will provide assurance that the maintenance requirements of the directive are being met for any freight wagon for which the ECM has responsibility. This certificate will be valid throughout the EU.
- 2.4 The revised Railway Safety Directive requires that a certification body certifies each ECM for freight wagons. The certification body has to be either the national safety authority (in Great Britain this is ORR) or an accredited or recognised body.

Desired outcome of implementing the revised Railway Safety Directive

- 2.5 The revised Railway Safety Directive was published in the Official Journal of the EU in December 2008. Member States have two years to implement the directive.
- 2.6 The Government’s desired outcome of implementation is that:
 - the rail industry and ORR will have the assurance that entities in charge of maintenance are able to meet their responsibility to control the maintenance of vehicles.
 - there will be a consistent approach to vehicle maintenance across Europe. This will help establish a single maintenance regime rather than multiple regimes to meet the requirements of different railway undertakings (“RUs”).
 - it will enable better control of safety risks and costs.

Scope of the revised Railway Safety Directive

2.7 The revised Railway Safety Directive requires:

- a) Member States to put in place laws, regulations and administrative processes necessary to comply with the revised directive by 24 December 2010. In Great Britain the first set of regulations are expected to come into force by 19 July 2010. However, the freight wagon ECM certification regime does not form part of these regulations because the European Commission has not yet adopted a measure to establish the ECM certification system.
- b) the European Commission to adopt a measure establishing a system of certification of the ECM for freight wagons by 24 December 2010. This measure will be based on a recommendation made by the European Railway Agency (“ERA”). The measure for the ECM certification system may include:
 - the maintenance system to be established by the ECM;
 - the format and validity of the certificate granted to the entity;
 - the date when the ECM certification system applies; and
 - the criteria against which applications will need to be assessed .

2.8 We propose that a second set of regulations will be made once the European Commission has adopted the measure establishing the certification system for ECMS for freight wagons. Those regulations will include the requirements for freight wagon ECM certification.

Exclusions from scope

2.9 The revised Railway Safety Directive allows Member States to exclude heritage vehicles that run on national networks and heritage and tourist railways that run on their own networks. Our implementation of the original Railway Safety Directive in Great Britain excluded most heritage operations from the scope of certification/authorisation under ROGS. The exception to this is where they either operate at a line speed of greater than 40 kph, or

interface with the mainline railway **and** operate below 40 kph. In these circumstances, the heritage railway needs a certificate for the part of the railway that runs on or crosses the transport system with a running speed above 40 kph. It can also make arrangements with an approved third party to run that part of the railway. We believe that these provisions are reasonable and we propose no change to the current position.

Question 1: Do you agree that we should not change the current position on the exclusions from ROGS? If you do not agree, please explain why.

Derogations

- 2.10 The revised Railway Safety Directive gives Member States the discretion, in certain circumstances, to identify the entity in charge of maintenance and to certify it using alternative measures to the ones prescribed. This could apply to:
- a) vehicles registered in a non-EU Member State and maintained according to the law of that country;
 - b) vehicles which:
 - i. are used on networks or lines with a track gauge different from the track gauge on the main rail network within the European Union; and
 - ii. meet the requirements to have a satisfactory system of maintenance by international agreements with non-EU Member State countries;
 - c) vehicles excluded from the mainline railway, as defined in ROGS, and special transportation or military equipment requiring a permit issued by the national safety authority (ORR) on an ad hoc basis prior to being placed in service. In this case derogations can be granted for periods no longer than five years.
- 2.11 Such alternative measures could be implemented through derogations to be granted by the national safety authority (ORR) in the following circumstances:

- a) when registering vehicles pursuant to Article 33 of the Railway Interoperability Directive, as far as the identification of the entity in charge of maintenance is concerned;
 - b) when delivering safety certificates and authorisations to railway undertakings and infrastructure managers pursuant to regulations 7 to 16 of ROGS as far as the identification or certification of the ECM is concerned.
- 2.12 We have not included any of these derogations in the draft regulations. It is unclear how these circumstances would apply in Great Britain.

Question 2: Do you know of any circumstances in which vehicles registered and maintained according to the laws of a non-EU Member State enter Great Britain? If so, please explain.

Question 3: Do you know of any circumstances in which vehicles with track gauges other than standard gauge enter Great Britain? If so, please explain.

Question 4: Do you know of any circumstances in which military equipment or special transport may require an ad hoc permit to be delivered prior to being placed in service in Great Britain? If so, please explain.

Question 5: Do you know of any circumstances in which those vehicles that are excluded from the mainline railway, as defined in ROGS, may require an ad hoc permit to be delivered prior to being placed in service in Great Britain? If so, please explain.

Background to the CSI Directive

- 2.13 Article 5(2) of the Railway Safety Directive (as amended) allows revision of Annex I of the directive to include common definitions of the Common Safety Indicators (“CSIs”) and methods to calculate accident costs.
- 2.14 Information on CSIs is collected to help assess the achievement of common safety targets (“CSTs”). CSIs measure safety performance and help to assess the economic impact assessment of CSTs.
- 2.15 The European Railway Agency has been working with national safety authorities to define the content of the CSIs listed in Annex I and the directive reflects the outcome of these discussions.

3. Overview of proposals for the United Kingdom

- 3.1 The Office of Rail Regulation (“ORR”) has prepared regulations to implement the revised Railway Safety Directive and the CSI Directive in Great Britain. A separate bi-national regulation to cover the Channel Tunnel will be prepared by the Intergovernmental Commission (“IGC”) using its powers in the Treaty of Canterbury. The IGC is the Safety Authority for the Channel Tunnel. The Department for Regional Development (Northern Ireland) will prepare separate regulations for Northern Ireland.
- 3.2 The draft regulations also amend Part 4 of ROGS (which relates to safety critical work) to clarify its application to voluntary work.
- 3.3 At the request of the Department for Transport the draft regulations also amend the Railways and Transport Safety Act 2003 and the Railways (Accident Investigation and Reporting) Regulations 2005 to provide the Rail Accident Investigation Branch (“RAIB”) jurisdiction to investigate tramway incidents in Scotland. The construction of a tramway in Edinburgh means there is now a need for an investigating authority for tramway incidents in Scotland.

4. Proposals for regulations implementing Directive 2008/110/EC and Directive 2009/149/EC in Great Britain

Citation, commencement and interpretation

Regulation 1(1)

- 4.1 The regulations are proposed to come into force on 19 July 2010. This is intended to align the transposition of the CSI Directive and the revised Railway Safety Directive with transposition of the Railway Interoperability Directive. (See Chapter 1).

Amendments to the Railways and Transport Safety Act 2003 and the Railways (Accident Investigation and Reporting) Regulations 2005

Regulations 2 and 3

Investigation of accidents involving tramways in Scotland

- 4.2 These amendments to the Railways and Transport Safety Act 2003 and the Railways (Accident Investigation and Reporting) Regulations 2005 extend the powers of the Rail Accident Investigation Branch (“RAIB”) to investigating accidents on tramways in Scotland.
- 4.3 RAIB investigates accidents and incidents on:
- the national railway networks of Great Britain and Northern Ireland,
 - the Channel Tunnel (in co-operation with its equivalent operation in France),
 - the London and Glasgow underground systems and other metro systems),
 - tramways, except in Scotland,

- Heritage railways (including narrow gauge systems over 350mm gauge), and
 - cable-hauled systems of 1km or longer.
- 4.4 With the construction of a tramway in Edinburgh there is now a need to establish an independent investigating authority for tramways in Scotland. DfT believes that from a financial perspective, the benefits of expanding the role of RAIB clearly outweighs the costs of setting up a new investigating authority.
- 4.5 Regulation 2 repeals section 14(2) of the Railways and Transport Safety Act 2003. Regulation 3 amends the Railways (Accident Investigation and Reporting) Regulations 2005 to make it clear that they apply to tramways in Scotland.

Question 6: Do you agree that RAIB should be the investigating body for accidents on tramways in Scotland?

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

Regulation 4(2)

- 4.6 This adds new definitions to regulation 2(1) of ROGS.

Definition of “entity in charge of maintenance”

- 4.7 The revised Railway Safety Directive states that, “A railway undertaking, an infrastructure manager, or a keeper *may* be an entity in charge of maintenance.” The definition of “entity in charge of maintenance” therefore provides flexibility about who can be an ECM. We believe that this means bodies or individuals other than a railway undertaking, infrastructure manager or keeper could be ECMs. We plan to produce guidance to expand on who may become an ECM.

Definition of “keeper”

- 4.8 The definition of “keeper” substantially reproduces the definition in the revised Railway Safety Directive.

Definition of “national vehicle register”

- 4.9 The definition of “national vehicle register” refers to regulation 40 of the Railways Interoperability Regulations 2010. (See also paragraphs 4.14 to 4.17).

Definition of “maintenance file”

- 4.10 The definition of “maintenance file” amalgamates and summarises the definitions in Railway Group Standard GM/RT2004 and European Commission Decision 2006/861/EC (the freight wagon technical specification for interoperability).

Definition of “maintenance rules”

- 4.11 The definition of “maintenance rules” has been drafted to make clear that, as these regulations apply only in Great Britain, maintenance rules refers to any rule that is applicable in Great Britain. Any reference to maintenance rules in the technical specifications for interoperability (“TSIs”) would also apply, as these are directly applicable in Great Britain.

Definition of “vehicle”

- 4.12 The definition of “vehicle” has two parts. Part (b) incorporates the definition in the revised Railway Safety Directive. As this only applies to the mainline railway, part (a) is needed to include vehicles that do not operate on the mainline, such as trams.

Question 7: Do you have any comments on the new definitions? If you have any objections, please could you explain why and suggest an alternative.

Regulation 4(3)

- 4.13 Regulation 4(3) inserts a new regulation (regulation 18A) which deals with the maintenance of vehicles on the mainline railway.

Maintenance of vehicles on the mainline railway

- 4.14 Regulation 18A applies to all vehicles, including passenger and freight vehicles. The National Vehicle Register (“NVR”) is a database of vehicles

authorised or operated in the UK under the Railways (Interoperability) Regulations 2006. It requires certain information to be recorded about all vehicles prior to their introduction into service. In Great Britain, the NVR operates in conjunction with the Rolling Stock Library governed under Railway Group Standard GM/RT 2453. GM/RT 2543 is currently being amended to reflect the NVR's requirements.

- 4.15 The required format and content of the NVR are contained in European Commission Decision 2007/756/EC³ (the Decision). The Decision prescribes, in addition to other requirements, that all vehicles must have an entity in charge of maintenance ("ECM") assigned to them before they can be used on the mainline railway. The Decision, which requires the ECM's name, postal address and email contact information, is already in force in Great Britain. New regulation 18A(1) in ROGS is designed to make clear to the ECM that this requirement is a prerequisite to ensuring that vehicles are maintained safely.
- 4.16 In addition to authorised vehicles, the Decision also requires the migration of existing vehicles used in international or domestic traffic into the NVR by 9 November 2009 and 9 November 2010 respectively.
- 4.17 Regulation 18A(2) therefore requires that the ECM assigned to a vehicle being used domestically is identified and registered in the NVR by 9 November 2010.

Question 8: Do you agree that these regulations should contain the date by which vehicles used domestically have to be registered in the NVR? Please give reasons for your answer.

- 4.18 Regulations 18A(3) and (4) require that the ECM ensures that, through a system of maintenance, vehicles are safe to run. The system of maintenance must contain requirements laid down in relevant TSIs, as applicable, the maintenance file for each vehicle, and maintenance rules. The maintenance file is an integral part of the maintenance arrangements of an ECM. The maintenance file will enable the ECM to demonstrate that it has suitable

³ Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:305:0030:0051:EN:PDF>

maintenance arrangements in place to ensure that there is on-going compliance with relevant rules and regulations.

Regulation 4(4)

- 4.19 This regulation makes consequential amendments to regulation 20(1)(c) of ROGS to take into account the new Schedule 3. (See regulation 4(8)).

Regulation 4(5)

Safety critical work

- 4.20 Part 4 of ROGS relates to safety critical work. We propose to amend part 4 of ROGS to clarify that “work” includes work carried out by volunteers. The amendment makes clear to volunteer-run organisations that they are within the scope of part 4 of ROGS.

- 4.21 Regulation 4(5)(b) therefore extends the meaning of “work” in part 4 of ROGS to include voluntary work.

- 4.22 Safety critical tasks are carried out by various people on the railway and other guided transport systems. These include

- employees of undertakings requiring a safety management system, safety certificate or authorisation under part 2 of ROGS;
- contractors and sub-contractors;
- agency staff;
- the self-employed; and
- volunteers.

- 4.23 We consider that **anyone** who carries out a ‘safety critical task’ should have the necessary competence and fitness to perform that work. The regulations are therefore based on risk factors and not employment status.

Question 9: Do you have any comments on the proposal to extend the meaning of work to include voluntary work?

Regulation 4(6)(a)

- 4.24 Regulation 27(4) of ROGS states that if the Secretary of State appoints someone to determine an appeal on his behalf, that hearing shall be a statutory inquiry for the purposes of the Tribunals and Inquiries Act 1992. The Tribunals and Inquiries Act 1992 allows regulations to be made by the Lord Chancellor, following consultation with the Administrative Justice and Tribunals Council, which govern the procedure followed in statutory inquiries or classes of such inquiries.
- 4.25 The proposed new Regulation 27(4A) to be inserted into ROGS incorporates the duty of the Administrative Justice and Tribunals Council to review and report on statutory inquiries. This duty was introduced in Schedule 7 of the Tribunals Courts and Enforcement Act 2007, which came into force after ROGS. We therefore propose to incorporate the duty now, as it assists the Lord Chancellor when exercising his power under Regulation 27(4) of ROGS.

Regulation 4(6)(b)

- 4.26 This regulation updates the wording to "Treasury", following a transfer of functions from the Minister for the Civil Service to the Treasury.

Regulation 4(6)(c)

- 4.27 This regulation corrects the sense of regulation 27(8) in ROGS, which currently refers to "the said section 44" without indicating earlier that section 44 comes from the Health and Safety at Work etc Act 1974.

Regulation 4(7)

- 4.28 This is a consequential amendment to substitute the Railway Interoperability Regulations 2010 for the Railway (Interoperability) (High-Speed) Regulations 2002, as these have been repealed.

Regulation 4(8)

Common Safety Indicators

- 4.29 This regulation replaces Schedule 3 of ROGS, which reproduces the original Annex I of the Railway Safety Directive. This annex, which sets out common safety indicators ("CSIs") relating to incidents, was updated by Directive

2009/149/EC (“the CSI Directive”). The CSI Directive introduces common definitions for CSIs and methods to calculate the economic impact of accidents.

- 4.30 The new Annex I, which we propose to substitute for the old one in Schedule 3 of ROGS, aims to improve reporting and data quality. It also aims to improve consistency between CSI and Eurostat⁴ data. CSI data are collected to help assess the achievement of the common safety targets (“CSTs”). Schedule 3 of ROGS currently contains CSIs that relate to the costs of accidents borne by the railway. The new Schedule 3 changes the emphasis of CSIs from the impact of accidents on the railway to the impact of accidents on society. The aim of this is to help measure safety performance and make the economic impact assessment of CSTs more effective. The relevant data are already collected in Great Britain.

Question 10: Do you have any other comments to make in relation to this consultation document?

⁴ Eurostat is the statistical office of the European Union situated in Luxembourg. It provides the European Union with statistics at European level to enable comparisons between countries and regions.

Annex A

Consultation questions

Question 1: Do you agree that we should not change the current position on the exclusions from ROGS? If you do not agree, please explain why.

Question 2: Do you know of any circumstances in which vehicles registered and maintained according to the laws of a non-EU Member State enter Great Britain? If so, please explain.

Question 3: Do you know of any circumstances in which vehicles with track gauges other than standard gauge enters Great Britain? If so, please explain.

Question 4: Do you know of any circumstances in which military equipment or special transport will require an ad hoc permit to be delivered prior to being in service? If so, please explain.

Question 5: Do you know of any circumstances in which those vehicles that are excluded from the mainline railway, as defined in ROGS, may require an ad hoc permit to be delivered prior to being placed in service in Great Britain? If so, please explain.

Question 6: Do you agree that RAIB should be the investigating body for accidents on tramways in Scotland?

Question 7: Do you have any comments on the new definitions? If you have any objections, please could you explain why and suggest an alternative.

Question 8: Do you agree that these regulations should contain the date by which domestic vehicles should have been registered in the NVR?

Question 9: Do you have any comments on the proposal to extend the meaning of work to include voluntary work?

Question 10: Do you have any other comments to make in relation to this consultation document?

S T A T U T O R Y I N S T R U M E N T S

2010 No. *

HEALTH AND SAFETY

The Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010

Made - - - - -

21st June 2010

Laid before Parliament

Coming into force

19th July 2010

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

- (a) section 2(2) of the European Communities Act 1972(a); and
- (b) sections 15(1), (2), (3)(c), 47(2), 52(2) and 82(3)(a) of, and paragraphs 1(1)(a) and (c), 1(2), 5 and 6(1) of Schedule 3 to, the Health and Safety at Work etc Act 1974(b).

He is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to railways and railway transport(c).

He makes these regulations for the purpose of giving effect without modifications to proposals submitted to him by the Office of Rail Regulation under paragraph 2(5) of Schedule 3 of the Railways Act 2005(d), in respect of which the Office of Rail Regulation has carried out consultations in accordance with paragraph 2(6) of Schedule 3 of the Railways Act 2005.

Citation and commencement

1.—(1) These Regulations may be cited as the Railways and Other Transport Systems (Miscellaneous Amendments) Regulations 2010 and come into force on 19 July 2010.

Amendment to the Railways and Transport Safety Act 2003

2. In section 14 of the Railways and Transport Safety Act 2003(e) (extent), delete subsection (2).

-
- (a) 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1) (a). The enabling powers of section 2(2) were extended by virtue of the amendment of section 1(2) of the 1972 Act by section 1 of the European Economic Area Act 1993 (c.51).
 - (b) 1974 c. 37; section 15 was amended by the Employment Protection Act 1975 (c.71), section 116 and Schedule 15, paragraph 6; the general purposes of Part I referred to in section 15(1) were extended by section 117 of the Railways Act 1993 c. 43; section 15(1) was amended by S.I. 2002/794, article 5(2) and Schedule 2; there are amendments to the Act not relevant to these Regulations.
 - (c) SI 1996/266, to which there are amendments not relevant to these Regulations.
 - (d) 2005 c. 14, to which there are amendments not relevant to these Regulations.
 - (e) 2003 c.20.

Amendments to the Railways (Accident Investigation and Reporting) Regulations 2005

3.—(1) The Railways (Accident Investigation and Reporting) Regulations 2005(a) are amended as follows.

(2) In regulation 17 (Scotland)—

- (a) the provisions of the regulation shall become paragraph (1) of the regulation; and
- (b) after that paragraph insert—

“(2) With effect from the repeal of section 14(2) of the Railways and Transport Safety Act 2003 these Regulations shall also apply to tramways in Scotland.”.

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

4.—(1) the Railways and Other Guided Transport Systems (Safety) Regulations 2006(b) are amended as follows.

(2) Regulation 2(1) (Interpretation and application) is amended as follows—

- (a) after the definition of “engineering possession” insert—

““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;”;

- (b) for the definition of “Interoperability Regulations” substitute—

““Interoperability Regulations” means the Railways (Interoperability) Regulations 2010(c);”;

- (c) after the definition of “Interoperability Regulations” insert—

““keeper” means the person that, being the owner of a vehicle or having the right to use it, exploits the vehicle as a means of transport and is registered as being a keeper in the National Vehicle Register;”;

- (d) after the definition of “mainline railway system” insert—

““maintenance file” means all the technical and management information that is necessary to carry out the maintenance of a vehicle;

““maintenance rules” means any rules, applicable to the whole of Great Britain, which set out requirements relating to the maintenance of vehicles;”;

- (e) after the definition of “national safety rules” insert—

““National Vehicle Register” means the register of vehicles authorised in Great Britain, required by regulation 40 of the Interoperability Regulations;”;

- (f) in the definition of “technical specifications for interoperability”—

(i) at the end of paragraph (a) of the definition, delete “or”;

(ii) at the end of paragraph (b) of the definition, insert “or”;

(iii) after paragraph (b) of the definition, insert “(c) Article 6.1 of 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(d),”;

- (g) for the definition of “vehicle” substitute—

““vehicle”—

- (a) includes a mobile traction unit; and

(a) S.I. 2005/1992, amended by SI 2005/3261.

(b) S.I. 2006/599 as amended by S.I. 2007/3531 and to which there are other amendments not relevant to these Regulations.

(c) S.I. 2010/****

(d) O.J. No. L191, 18.7.2008, p. 1.

(b) in respect of the mainline railway, means a vehicle suitable for circulation on its own wheels on railway lines, with or without traction, and composed of one or more structural and functional subsystems or parts of such subsystems;”.

(3) After regulation 18 (Notification to the European Railway Agency regarding safety certificates and safety authorisations relating to the mainline railway), insert—

“Maintenance of vehicles on the mainline railway

18A.—(1) Subject to paragraph (2), 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 is registered as such in the National Vehicle Register.

(2) Where a vehicle in existence before 9th November 2010 is to be placed in service or used—

- (a) on the mainline railway in accordance with paragraph (1); and
- (b) only within Great Britain (excluding the tunnel system within the meaning of section 1(7) of the Channel Tunnel Act 1987(a));

the entity in charge of maintenance assigned to that vehicle must be registered as such in the National Vehicle Register by 9th November 2010.

(3) 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.

(4) The requirements for a system of maintenance referred to in paragraph (3) are that a vehicle must be maintained in accordance with—

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

(4) In regulation 20(1)(c) (Annual safety reports), for “paragraphs 1(1)(a)(vii), 1(1)(b)(v) and 3”, substitute, “2(1)(a)(vi), 2(1)(b)(v) and 6”.

(5) In regulation 23(1)—

- (a) in the definition of “safety critical work”, delete the words “or voluntary work”;
- (b) after the definition of “telecommunications system”, insert—

““work” includes voluntary work.”.

(6) In regulation 27 (Appeals)—

- (a) after paragraph (4), insert—

“(4A) A hearing held by a person appointed in pursuance of paragraph (2) shall be a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007(b) (functions etc of Administrative Justice and Tribunals Council).”;

- (b) in paragraph (6), for “Minister for the Civil Service” substitute “Treasury”;
- (c) in paragraph (8), for the words “sub-section (1) of the said section 44” substitute “section 44(1) of the 1974 Act.”.

(7) In paragraph 2 of Part 1 of Schedule 2 (Application for a safety certificate)—

- (a) for “Railways (Interoperability) (High-Speed) Regulations 2002 (“2002 Regulations”)” substitute “Interoperability Regulations”;
- (b) for “2002 Regulations” substitute “Interoperability Regulations”.

(8) For Schedule 3 (Common safety indicators) substitute—

(a) 1987 c.53, to which there are amendments not relevant to these Regulations.

(b) 2007 c.15.

“SCHEDULE 3

Regulation 20(1)(c)

COMMON SAFETY INDICATORS

(This Schedule substantially reproduces, with minor modifications, the provisions of Annex I to the Directive and its Appendix)

Part 1

COMMON SAFETY INDICATORS

Interpretation

1. In this Part, the definitions for the common safety indicators and the methods used to calculate the economic impact of accidents in Part 2 apply.

Indicators relating to accidents

2.—(1) Total and relative, to train-kilometres, number of—

- (a) significant accidents and a break-down of the following types of accidents—
 - (i) collisions of trains, including collisions with obstacles within the loading gauge;
 - (ii) derailments of trains;
 - (iii) level-crossing accidents which shall include accidents involving persons at level-crossings;
 - (iv) accidents to persons caused by rolling stock in motion except for suicides;
 - (v) fires in rolling stock; and
 - (vi) any other types of accidents;

and each significant accident shall be reported under the heading of the primary accident even where the consequences of any secondary accident are more severe such as where a fire follows a derailment;

- (b) persons seriously injured or killed by type of accident divided into the following categories—

- (i) passengers;
- (ii) persons carrying out work or voluntary work directly in relation to the operation;
- (iii) level crossing users;
- (iv) unauthorised persons on premises of the transport system; and
- (v) any other types of person;

and the number of passengers seriously injured or killed shall also be indicated in relation to the total number of passenger-kilometres.

(2) The provisions of Regulation 91/2003 of the European Parliament and the Council on rail transport statistics(a) shall be applied to any information provided under this paragraph.

(a) O.J. No. L14 of 21.1.03, p. 1.

Indicators relating to dangerous goods

- 3.** Total and relative, to train-kilometres, number of accidents involving the transport of dangerous goods—
- (a) involving at least one vehicle transporting dangerous goods; and
 - (b) number of such accidents in which dangerous goods are released.

Indicators relating to suicides

- 4.** Total and relative, to train-kilometres, number of suicides.

Indicators relating to precursors of accidents

- 5.** Total and relative, to train-kilometres, number of—
- (a) broken rails;
 - (b) buckled rails;
 - (c) wrong-side signalling failures;
 - (d) signals passed at danger; and
 - (e) broken wheels and axles on rolling stock in service;

and all such precursors are to be reported, whether or not they result in accidents and where they result in a significant accident, they shall be reported under paragraph 2 of this Schedule.

Indicators to calculate the economic impact of accidents

- 6.—(1)** Total in Euros and relative, to train-kilometres—
- (a) number of deaths and serious injuries multiplied by the Value of Preventing a Casualty (VPC);
 - (b) cost of damage to the environment;
 - (c) cost of material damage to rolling stock or infrastructure;
 - (d) cost of delays as a consequence of accidents.
- (2) The Office of Rail Regulation shall indicate in each annual safety report submitted in accordance with regulation 20 whether the report includes the economic impact of all accidents or of significant accidents only.
- (3) The VPC is the value society attributes to the prevention of a casualty and must not form a reference for compensation between parties involved in accidents.

Indicators relating to technical safety of infrastructure and its implementation

- 7.** The—
- (a) percentage of tracks with a train protection system, within the meaning of regulation 2(1) of the Railway Safety Regulations 1999, in operation;
 - (b) percentage of train-kilometres with a train protection system falling within paragraph (a) in operation;
 - (c) number of (total per line-kilometre and per track-kilometre)—
 - (i) active level crossings with—
 - (aa) automatic user-side warning;
 - (bb) automatic user-side protection;
 - (cc) automatic user-side protection and warning;
 - (dd) automatic user-side protection and warning, and rail-side protection;
 - (ee) manual user-side warning;
 - (ff) manual user-side protection;

- (gg) manual user-side protection and warning; and
- (ii) passive level crossings.

Indicators relating to management of safety

8. Internal audits carried out by transport operators pursuant to the procedures referred to in paragraph 2(k) of Schedule 1 and the number of such audits which have been carried out and that number expressed as a percentage of the audits which were planned for that year.

PART 2

COMMON DEFINITIONS AND METHODS TO CALCULATE THE ECONOMIC IMPACT OF ACCIDENTS

1. Indicators relating to accidents

- (1) “significant accident” means any accident involving at least one rail vehicle in motion, resulting in at least one killed or seriously injured person, or in significant damage to stock, track, other installations or environment, or extensive disruptions to traffic. Accidents in workshops, warehouses and depots are excluded;
- (2) “significant damage to stock, track, other installations or environment” means damage that is equivalent to €150 000 or more;
- (3) “extensive disruptions to traffic” means that train services on a main railway line are suspended for six hours or more;
- (4) “train” means one or more railway vehicles hauled by one or more locomotives or railcars, or one railcar travelling alone, running under a given number or specific designation from an initial fixed point to a terminal fixed point. A light engine, i.e. a locomotive travelling on its own, is considered to be a train;
- (5) “collision of trains, including collisions with obstacles within the clearance gauge” means a front to front, front to end or a side collision between a part of a train and a part of another train, or with—
 - (a) shunting rolling stock;
 - (b) objects fixed or temporarily present on or near the track (except at level crossings if lost by a crossing vehicle or user);
- (6) “train derailment” means any case in which at least one wheel of a train leaves the rails;
- (7) “level crossing accidents” means accidents at level crossings involving at least one railway vehicle and one or more crossing vehicles, other crossing users such as pedestrians or other objects temporarily present on or near the track if lost by a crossing vehicle/user;
- (8) “accidents to persons caused by rolling stock in motion” means accidents to one or more persons who are either hit by a railway vehicle or by an object attached to, or that has become detached from, the vehicle. Persons who fall from railway vehicles are included, as well as persons who fall or are hit by loose objects when travelling on board vehicles;
- (9) “fires in rolling stock” means fires and explosions that occur in railway vehicles (including their load) when they are running between the departure station and the destination, including when stopped at the departure station, the destination or intermediate stops, as well as during re-marshalling operations;
- (10) “other types of accidents” means all accidents other than those already mentioned (train collisions, train derailments, at level crossing, to persons caused by rolling stock in motion and fires in rolling stock);
- (11) “passenger” means any person, excluding members of the train crew, who makes a trip by rail. For accident statistics, passengers trying to embark/disembark onto/from a moving train are included;

(12) “employees (staff of contractors and self-employed contractors are included)” means any person whose employment is in connection with a railway and is at work at the time of the accident. It includes the crew of the train and persons handling rolling stock and infrastructure installations;

(13) “level crossing users” means all persons using a level crossing to cross the railway line by any mean of transport or by foot;

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

(15) “others (third parties)” means all persons not defined as “passengers”, “employees including the staff of contractors”, “level crossing users” or “unauthorised persons on railway premises”;

(16) “deaths (killed person)” means any person killed immediately or dying within 30 days as a result of an accident, excluding suicides;

(17) “injuries (seriously injured person)” means any person injured who was hospitalised for more than 24 hours as a result of an accident, excluding attempted suicides.

2. Indicators relating to dangerous goods

(1) “accident involving the transport of dangerous goods” means any accident or incident that must be reported in accordance with: (i) Regulations concerning the International Carriage of Dangerous Goods by Rail, appearing as Appendix C to the Convention concerning International Carriage by Rail (COTIF) concluded at Vilnius on 3 June 1999 (RID); and (ii) section 1.8.5 of the European Agreement concerning the International Carriage of Dangerous Goods by Road, concluded at Geneva on 30 September 1957.

(2) “dangerous goods” means those substances and articles the carriage of which is prohibited by RID, or authorised only under the conditions prescribed therein.

3. Indicators relating to suicides

(1) “suicide” means an act to deliberately injure oneself resulting in death, as recorded and classified by the competent national authority.

4. Indicators relating to precursors of accidents

(1) “broken rails” means any rail which is separated in two or more pieces, or any rail from which a piece of metal becomes detached, causing a gap of more than 50 mm in length and more than 10 mm in depth on the running surface;

(2) “track buckles” means faults related to the continuum and the geometry of track, requiring track obstruction or immediate reduction of permitted speed to maintain safety;

(3) “wrong side signalling failure” means any failure of a signalling system (either to infrastructure or to rolling stock), resulting in signalling information less restrictive than that demanded;

(4) “signal passed at danger (SPAD)” means any occasion when any part of a train proceeds beyond its authorised movement to an unauthorised movement;

“unauthorised movement” means to pass—

(a) a trackside colour light signal or semaphore at danger, order to STOP, where an Automatic Train Control System (ATCS) or train protection system (as described in paragraph 7(a) of Part 1 of this Schedule) is not operational;

(b) the end of a safety related movement authority provided in an ATCS or train protection system;

(c) a point communicated by verbal or written authorisation laid down in regulations; or

(d) stop boards (buffer stops are not included) or hand signals,

but excludes cases in which—

- (e) vehicles without any traction unit attached or a train that is unattended run away past a signal at danger; or
- (f) for any reason, the signal is not turned to danger in time to allow the driver to stop the train before the signal are not included,

(The Office of Rail Regulation may report separately on items (a) to (d) and shall report at least an aggregate indicator containing data on all four items).

(5) “broken wheels and broken axles” means a break affecting the essential parts of the wheel or the axle and creating a risk of accident (derailment or collision).

5. Common methodologies to calculate the economic impact of accidents

(1) The Value of Preventing a Casualty (VPC) is composed of—

- (a) Value of safety *per se*: Willingness to Pay (WTP) values based on stated preference studies carried out in Great Britain;
- (b) direct and indirect economic costs, appraised in Great Britain, composed of
 - (i) medical and rehabilitation costs;
 - (ii) legal and court costs, police, private crash investigations and emergency service costs and administrative costs of insurance;
 - (iii) production losses: value to society of goods and services that could have been produced by the person if the accident had not occurred.

(2) Common principles to appraise the value of safety *per se* and direct and indirect economic costs—

- (a) For the value of safety *per se*, the assessment of whether available estimates are appropriate or not shall be based on the following considerations—
 - (i) estimates shall relate to a system for valuation of mortality risk reduction in the transport sector and follow a WTP approach according to stated preference methods;
 - (ii) the respondent sample used for the values shall be representative of the population concerned. In particular, the sample has to reflect the age / income distribution along with other relevant socio-economic / demographic characteristics of the population;
 - (iii) method for eliciting WTP values: survey design shall be such that questions are clear / meaningful to respondents.
- (b) direct and indirect economic costs shall be appraised on the basis of the real costs borne by society.

(3) “cost of damage to environment” means costs that are to be met by transport undertakings or infrastructure managers, appraised on the basis of their experience, in order to restore the damaged area to its state before the railway accident;

(4) “cost of material damage to rolling stock or infrastructure” means the cost of providing new rolling stock or infrastructure, with the same functionalities and technical parameters as that damaged beyond repair, and the cost of restoring repairable rolling stock or infrastructure to its state before the accident. Both are to be estimated by railway undertakings or infrastructure managers on the basis of their experience. Also includes costs related to leasing rolling stock, as a consequence of non availability due to damaged vehicles;

(5) “cost of delays as a consequence of accidents” means the monetary value of delays incurred by users of rail transport (passengers and freight customers) as a consequence of accidents, and is calculated by the following model—

VT = monetary value of travel time savings—

- (a) Value of time for a passenger of a train (an hour) (VTP)—

$VTP = [VT \text{ of work passengers}] \times [\text{Average percentage of work passengers per year}] + [VT \text{ of non-work passengers}] \times [\text{Average percentage of non-work passengers per year}];$

VT is measured in €per passenger per hour;

- (b) Value of time for a freight train (an hour) (VTF)—

$VTF = [VT \text{ of freight trains}] \times [(Tonne-Km) / (\text{Train-Km})];$

VT is measured in €per freight tonne per hour;

Average tonnes of goods transported per train in one year = $(\text{Tonne-Km}) / (\text{Train-Km})$;

- (c) $CM = \text{Cost of 1 minute of delay of a train}$

- (i) Passenger train—

$CMP = K1 \times (VTP/60) \times [(\text{Passenger-Km}) / (\text{Train-Km})]$

Average number of passengers per train in one year

= $(\text{Passenger-Km}) / (\text{Train-Km})$;

- (ii) Freight train—

$CMF = K2 \times (VTF/60),$

factors $K1$ and $K2$ are between the value of time and the value of delay, as estimated by stated preference studies, to take into account that the time lost as a result of delays is perceived significantly more negatively than normal travel time.

- (d) Cost of delays of an accident = $CMP \times (\text{Minutes of delay of passenger trains}) + CMF \times (\text{Minutes of delay of freight trains}).$

Scope of the model

Cost of delays is to be calculated for all accidents, both significant and non-significant.

Delays are to be calculated as follows—

- (a) real delays on the railway lines where accidents occurred;

- (b) real delays or, if not possible, estimated delays on the other affected lines.

6. Indicators relating to technical safety of infrastructure and its implementation

(1) “Automatic Train Supervision” means a system that enforces obedience to signals and speed restrictions by speed supervision, including automatic stop at signals;

(2) “level crossing” means any level intersection between the railway and a passage, as recognised by the infrastructure manager and open to public or private users. Passages between platforms within stations are excluded, as well as passages over tracks for the sole use of employees;

(3) “passage” means any public or private road, street or highway, including footpaths and bicycle paths, or other route provided for the passage of people, animals, vehicles or machinery;

(4) “active level crossing” means a level crossing where the crossing users are protected from or warned of the approaching train by the activation of devices when it is unsafe for the user to traverse the crossing, as follows—

- (a) protection by the use of physical devices, including half or full barriers or gates;

- (b) warning by the use of fixed equipment at level crossings, including lights, audible devices such as bells, horns or klaxons and physical devices such as vibration due to road bumps;

active level crossings are classified as—

- (a) “level crossing with crossing-user-side automatic protection and/or warning” which means a level crossing where the crossing protection and/or warning are activated by the approaching train. These level crossings are classified as—

- (i) automatic user-side warning;
 - (ii) automatic user-side protection;
 - (iii) automatic user-side protection and warning;
 - (iv) automatic user-side protection and warning, and rail-side protection;
- “rail-side protection” means a signal or other train protection system that only permits a train to proceed if the level crossing is user-side protected and free from incursion; such freedom from incursion to be achieved by means of surveillance and/or obstacle detection.
- (b) “Level crossing with crossing-user-side manual protection and/or warning” which means a level crossing where protection and/or warning is manually activated and there is not an interlocked railway signal showing, to the train, a running aspect only when protection and/or warning of level crossing are activated. These level crossings are classified as—
 - (i) manual user-side warning;
 - (ii) manual user-side protection;
 - (iii) manual user-side protection and warning;
- (5) “Passive level crossing” means a level crossing without any form of warning system and/or protection activated when it is unsafe for the user to traverse the crossing.

7. Indicators relating to the management of safety

(1) “audit” means a systematic, independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to which audit criteria are fulfilled.

8. Definitions of the scaling bases

(1) “train-kilometres” (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 shall be used;

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

(3) “line-kilometres” (line-km) means the length measured in kilometres of the railway to which these Regulations apply. For multiple-track railway lines, only the distance between origin and destination is to be counted;

(4) “track-kilometres” (track-km) means the length measured in kilometres of the railway, to which these Regulations apply. Each track of a multiple-track railway line is to be counted.”.

Signed by authority of the Secretary of State for Transport

21st June 2010

Chris Mole
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations transpose certain provisions of Directive 2008/110/EC (the “Revised Safety Directive”) amending Directive 2004/49/EC (the “Railway Safety Directive”) on safety on the Community’s railways. (The Railway Safety Directive was transposed by the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (“ROGS”) and through Part 1 (Investigation of Railway Accidents) of the Railways and Transport Safety Act 2003 and the Railways (Accident Investigation and Reporting) Regulations 2005). The transposition of the Revised Safety Directive provisions is effected by amendments to ROGS.

Regulation 4(3) introduces a new regulation 18A to ROGS which prohibits a person from operating a vehicle on the mainline railway unless an entity in charge of maintenance has been assigned to it, such entity having been registered as such on the National Vehicle Register. The entity in charge of maintenance must put in place a system of maintenance for vehicles to which it has been assigned. Regulation 4(8) replaces Schedule 3 in ROGS with a new Schedule 3 in accordance with Article 1(4) of the Revised Safety Directive, which sets out a revised list of Common Safety Indicators and incorporates new common definitions and methods to calculate the economic impact of accidents. Regulation 4(4) makes consequential amendments to regulation 20(1)(c) (Annual safety reports) of ROGS, as a result of inserting the new Schedule 3.

Regulation 4(5) amends regulation 23(1) (Interpretation and application of Part 4) of ROGS to clarify that in Part 4 of ROGS, the definition of “work” includes voluntary work. Regulation 4(6) inserts a new regulation 27(4A) into regulation 27 (Appeals) of ROGS to reflect the role of the Administrative Justice and Tribunals Council in supervising statutory inquiries. It also substitutes the approval of the Treasury for the approval of the Minister for the Civil Service in regulation 27(6) following a transfer of functions, and clarifies the reference to section 44 of the Health and Safety at Work etc. Act 1974 in regulation 27(8) of ROGS. Regulation 4(7) updates two references in ROGS to regulations relating to interoperability that are revoked by the Railways (Interoperability) Regulations 2010.

Regulation 1 extends the scope of Part 1 (Investigation of Railway Accidents) of the Railway and Transport Safety Act 2003 to include tramways in Scotland and Regulation 2 makes amendments to the associated Railways (Accident Investigation and Reporting) Regulations 2005 to make clear that the Railways Accident Investigation Branch can investigate tramway accidents in Scotland.

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

DIRECTIVES

DIRECTIVE 2008/110/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 December 2008

amending Directive 2004/49/EC on safety on the Community's railways (Railway Safety Directive)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and
Social Committee (⁽¹⁾),

After consulting the Committee of the Regions,

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

Whereas:

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

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

(3) The entry into force of the 1999 Convention concerning International Carriage by Rail (COTIF) on 1 July 2006 brought in new rules governing contracts for the use of vehicles. According to the CUV (Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic) appended thereto, wagon keepers are no longer obliged to register their wagons with a railway undertaking. The former 'Regolamento Internazionale Veicoli' (RIV) Agreement between railway undertakings has ceased to apply and was partially replaced by a new private and voluntary agreement (General Contract of Use for Wagons, GCU) between railway undertakings and wagon keepers whereby the latter are in charge of the maintenance of their wagons. In order to reflect these changes and to facilitate the implementation of Directive 2004/49/EC as far as safety certification of railway undertakings is concerned, the concept of the 'keeper' and the concept of 'entity in charge of maintenance' should be defined, as well as the specification of the relationship between these entities and railway undertakings.

(4) The definition of the keeper should be as close as possible to the definition used in the 1999 COTIF Convention. Many entities can be identified as a keeper of a vehicle, for example, the owner, a company making business out of a fleet of wagons, a company leasing vehicles to a railway undertaking, a railway undertaking or an infrastructure manager using vehicles for maintaining its infrastructure. These entities have the control over the vehicle with a view to its use as a means of transport by the railway undertakings and the infrastructure managers. In order to avoid any doubt, the keeper should be clearly identified in the National Vehicle Register (NVR) provided for in Article 33 of the Railway Interoperability Directive.

⁽¹⁾ OJ C 256, 27.10.2007, p. 39.

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

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

⁽⁴⁾ OJ L 235, 17.9.1996, p. 6.

⁽⁵⁾ OJ L 110, 20.4.2001, p. 1.

⁽⁶⁾ OJ L 191, 18.7.2008, p. 1.

- (5) In order to ensure consistency with existing railway legislation and avoid undue burden, Member States should be allowed to exclude heritage, museum and tourist railways from the scope of this Directive.
- (6) Before a vehicle is placed in service or used on the network, an entity in charge of its maintenance should be identified in the NVR. A railway undertaking, an infrastructure manager or a keeper could be an entity in charge of maintenance.
- (7) Member States should be allowed to fulfil the obligations to identify the entity in charge of maintenance and to certify it through alternative measures in the case of vehicles registered in a third country and maintained according to the law of that country, vehicles which are used on networks or lines the track gauge of which is different from that of the main rail network within the Community and for which the requirement to identify an entity in charge of maintenance is ensured alternatively by international agreements with third countries and vehicles used by heritage, museum and tourist railways or military equipment and special transport requiring an ad hoc national safety authority permit to be delivered prior to the service. In these situations the relevant Member State should be allowed to accept vehicles on the network for which it is competent without an entity in charge of maintenance being assigned to these vehicles or without such an entity being certified. However, such derogations should be subject to formal decisions of the relevant Member State and be analysed by the European Railway Agency (hereinafter referred to as the 'Agency') in the context of its report on safety performance.
- (8) When a railway undertaking or infrastructure manager uses a vehicle for which no entity in charge of maintenance is registered or for which the entity in charge of maintenance is not certified, it should control all risks associated with the use of such a vehicle. The capacity to control such risks should be demonstrated by the railway undertaking or the infrastructure manager through the certification of their safety management system and, where applicable, through their safety certification or authorisation.
- (9) For freight wagons, the entity in charge of maintenance should be certified according to a system to be developed by the Agency and to be adopted by the Commission. Where the entity in charge of maintenance is a railway undertaking or an infrastructure manager, this certification should be included in the procedure for safety certification or authorisation. The certificate delivered to such an entity would guarantee that the maintenance requirements of this Directive are met for any freight wagon of which it is in charge. This certificate should be valid in the whole Community and should be delivered by a body able to audit the maintenance

system set up by such entities. As freight wagons are frequently used in international traffic and as an entity in charge of maintenance may want to use workshops established in more than one Member State, the certification body should be able to perform its controls in the whole Community.

- (10) Maintenance requirements are being developed in the context of the Railway Interoperability Directive, in particular as part of the 'rolling stock' technical specifications for interoperability (TSIs). As a result of the entry into force of this Directive there is a need to ensure coherence between these TSIs and the certification requirements for the entity in charge of maintenance to be adopted by the Commission. The Commission will achieve this by modifying, where appropriate, the relevant TSIs using the procedure envisaged by the Railway Interoperability Directive.
- (11) Since the objective of this Directive, namely further developing and improving safety on the Community's railways, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (12) The measures necessary for the implementation of Directive 2004/49/EC should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽¹⁾.
- (13) In particular, the Commission should be empowered to revise and adapt the Annexes to Directive 2004/49/EC, to adopt and revise common safety methods and common safety targets, and also to establish a maintenance certification system. Since those measures are of general scope and are designed to amend non-essential elements of Directive 2004/49/EC, inter alia, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (14) A Member State which has no railway system and which does not envisage having one in the near future, would be under a disproportionate and pointless obligation if it had to transpose and implement this Directive. Therefore, such a Member State should be exempted, for as long as it has no railway system, from the obligation to transpose and implement this Directive.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

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

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments

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

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

(d) heritage vehicles that run on national networks provided that they comply with national safety rules and regulations with a view to ensuring safe circulation of such vehicles;

(e) heritage, museum and tourist railways that operate on their own network, including workshops, vehicles and staff.;

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

(s) "keeper" means the person or entity that, being the owner of a vehicle or having the right to use it, exploits the vehicle as a means of transport and is registered as such in the National Vehicle Register (NVR) provided for in Article 33 of Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (recast) (*), (hereinafter referred to as the "Railway Interoperability Directive");

(t) "entity in charge of maintenance" means an entity in charge of maintenance of a vehicle, and registered as such in the NVR;

(u) "vehicle" means a railway vehicle suitable for circulation on its own wheels on railway lines, with or without traction. A vehicle is composed of one or more structural and functional subsystems or parts of such subsystems.

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

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

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

5. Article 6 shall be amended as follows:

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

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

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

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

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

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

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

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

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

(¹) OJ C 321, 31.12.2003, p. 1.

6. Article 7 shall be amended as follows:

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

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

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

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

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

7. Article 10 shall be amended as follows:

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

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

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

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

8. the following Article shall be inserted:

'Article 14a

Maintenance of vehicles

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

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

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

(a) the maintenance file of each vehicle;

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

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

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

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

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

The measure shall include the requirements concerning:

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

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

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

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

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

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

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

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

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

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

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

- (a) point (a) shall be replaced by the following:
 - '(a) authorising the placing in service of the structural subsystems constituting the rail system in accordance with Article 15 of the Railway Interoperability Directive and checking that they are operated and maintained in accordance with the relevant essential requirements;'

- (b) point (b) shall be deleted;
- (c) point (g) shall be replaced by the following:
- ‘(g) supervising that vehicles are duly registered in the NVR and that safety related information contained therein, is accurate and kept up to date’;
10. the following point shall be added to Article 18:
- ‘(e) the derogations that have been decided in accordance with Article 14a(8).’;
11. Article 26 shall be replaced by the following:
- ‘Article 26
- Adaptation of the Annexes**
- The Annexes shall be adapted to scientific and technical progress. This measure, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a);’;
12. Article 27 shall be amended as follows:
- (a) the following paragraph shall be inserted:
- ‘2a. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.’;
- (b) paragraph 4 shall be deleted;
13. point 3 of Annex II shall be deleted.

Article 2**Implementation and transposition**

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

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

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

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

Article 3**Entry into force**

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

Article 4**Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 16 December 2008.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

B. LE MAIRE

DIRECTIVES

COMMISSION DIRECTIVE 2009/149/EC

of 27 November 2009

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

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety of the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive) (1), and in particular Article 5(2) thereof,

Having regard to the recommendation of the European Railway Agency (ERA/REC/SAF/02-2008) of 29 September 2008,

Whereas:

(1) Article 5(2) of Directive 2004/49/EC, as corrected, provides for the possibility to revise Annex I to the said Directive in order to include common definitions of the Common Safety Indicators (CSIs) and methods to calculate accident costs.

(2) In accordance with Article 5(1) of Directive 2004/49/EC information on CSIs is to be collected to facilitate the assessment of the achievement of the Common Safety Targets (CSTs). In conformity with Article 7(3) of the said Directive, the CSTs should be accompanied by an assessment of the economic impact in terms of societal acceptance of risk. The main purpose of CSIs should be to measure safety performance and to facilitate the economic impact assessment of CSTs. Therefore, it is necessary to move from indicators related to costs of all accidents borne by railways to indicators related to the economic impact of accidents on society.

(3) Attributing monetary values to improved safety should be seen in the context of limited budget resources of public policy actions. Therefore, in order to select

initiatives that ensure an efficient allocation of resources, it becomes necessary to prioritise across the different actions.

(4) Article 9 of Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency (Agency Regulation) (2) mandates the Agency to set up a network with the national authorities responsible for safety and the national authorities responsible for the investigations in order to define the content of the CSIs listed in Annex I to Directive 2004/49/EC. In response to this mandate, on 29 September 2008 the Agency delivered its recommendation on the revision of Annex I to Directive 2004/49/EC: common definitions for the CSIs and methods to calculate the economic impact of accidents (ERA/REC/SAF/02-2008).

(5) Annex I to Directive 2004/49/EC should therefore be amended.

(6) The measures provided for in this Directive are in accordance with the opinion of the Committee set up by Article 21 of Directive 96/48/EC,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 2004/49/EC is replaced by the text in the Annex to this Directive.

Article 2

1. Member States shall adopt and publish, by 18 June 2010 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

⁽¹⁾ OJ L 164, 30.4.2004, p. 44.

⁽²⁾ OJ L 164, 30.4.2004, p. 1.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 3

This Directive shall enter into force 20 days after its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 27 November 2009.

For the Commission

Antonio TAJANI
Vice-President

ANNEX

'ANNEX I

COMMON SAFETY INDICATORS

Common safety indicators shall be reported annually by the safety authorities. The first reporting period shall be 2010.

Indicators relating to activities referred to in Article 2(2), (a) and (b), should be accounted for separately, if they are submitted.

If new facts or errors are discovered after the submission of the report the indicators for one particular year shall be amended or corrected by the safety authority at the first convenient opportunity and at the latest in the next annual report.

For indicators relating to accidents under heading 1, Regulation (EC) No 91/2003 of the European Parliament and of the Council of 16 December 2002 on rail transport statistics⁽¹⁾ shall be applied as far as the information is available.

1. Indicators relating to accidents

1.1. Total and relative (to train-kilometres) number of significant accidents and a break-down on the following types of accidents:

- collisions of trains, including collisions with obstacles within the clearance gauge,
- derailments of trains,
- level crossing accidents, including accidents involving pedestrians at level crossings,
- accidents to persons caused by rolling stock in motion, with the exception of suicides,
- fires in rolling stock,
- others.

Each significant accident shall be reported under the type of the primary accident, even if the consequences of the secondary accident are more severe, e.g. a fire following a derailment.

1.2. Total and relative (to train-kilometres) number of persons seriously injured and killed by type of accident divided into the following categories:

- passengers (also in relation to total number of passenger-kilometres and passenger train-kilometres),
- employees including the staff of contractors,
- level crossing users,
- unauthorised persons on railway premises,
- others.

2. Indicators relating to dangerous goods

Total and relative (to train-kilometres) number of accidents involving the transport of dangerous goods divided into the following categories:

- accidents involving at least one railway vehicle transporting dangerous goods, as defined by the Appendix,
- number of such accidents in which dangerous goods are released.

⁽¹⁾ OJ L 14, 21.1.2003, p. 1.

3. Indicators relating to suicides

Total and relative (to train-kilometres) number of suicides.

4. Indicators relating to precursors of accidents

Total and relative (to train-kilometres) number of:

- broken rails,
- track buckles,
- wrong-side signalling failures,
- signals passed at danger,
- broken wheels and axles on rolling stock in service.

All precursors are to be reported, both resulting and not resulting in accidents. Precursors resulting in an accident shall be reported under the CSIs on precursors; the accidents that occurred, if significant, shall be reported under the CSIs on accidents referred to in heading 1.

5. Indicators to calculate the economic impact of accidents

Total in euro and relative (to train-kilometres):

- number of deaths and serious injuries multiplied by the Value of Preventing a Casualty (VPC),
- cost of damages to environment,
- cost of material damages to rolling stock or infrastructure,
- cost of delays as a consequence of accidents.

Safety authorities shall report either the economic impact of all accidents, or the economic impact of significant accidents only. This choice shall be clearly indicated in the annual report referred to in Article 18.

The VPC is the value society attributes to the prevention of a casualty and as such shall not form a reference for compensation between parties involved in accidents.

6. Indicators relating to technical safety of infrastructure and its implementation

6.1. Percentage of tracks with Automatic Train Protection (ATP) in operation, percentage of train-kilometres using operational ATP systems.

6.2. Number of level crossings (total, per line kilometre and track kilometre) by the following eight types:

(a) active level crossings with:

- (i) automatic user-side warning,
- (ii) automatic user-side protection,
- (iii) automatic user-side protection and warning,
- (iv) automatic user-side protection and warning, and rail-side protection,
- (v) manual user-side warning,
- (vi) manual user-side protection,
- (vii) manual user-side protection and warning.

(b) passive level crossings.

7. Indicators relating to the management of safety

Internal audits accomplished by infrastructure managers and railway undertakings as set out in the documentation of the safety management system. Total number of audits accomplished and the number as a percentage of audits required (and/or planned).

8. Definitions

Common definitions for the CSIs and methods to calculate the economic impact of accidents are laid down in the Appendix.

Appendix**Common definitions for the CSIs and methods to calculate the economic impact of accidents****1. Indicators relating to accidents**

- 1.1. “significant accident” means any accident involving at least one rail vehicle in motion, resulting in at least one killed or seriously injured person, or in significant damage to stock, track, other installations or environment, or extensive disruptions to traffic. Accidents in workshops, warehouses and depots are excluded.
- 1.2. “significant damage to stock, track, other installations or environment” means damage that is equivalent to EUR 150 000 or more.
- 1.3. “extensive disruptions to traffic” means that train services on a main railway line are suspended for six hours or more.
- 1.4. “train” means one or more railway vehicles hauled by one or more locomotives or railcars, or one railcar travelling alone, running under a given number or specific designation from an initial fixed point to a terminal fixed point. A light engine, i.e. a locomotive travelling on its own, is considered to be a train.
- 1.5. “collision of trains, including collisions with obstacles within the clearance gauge” means a front to front, front to end or a side collision between a part of a train and a part of another train, or with:
 - (i) shunting rolling stock,
 - (ii) objects fixed or temporarily present on or near the track (except at level crossings if lost by a crossing vehicle or user).
- 1.6. “train derailment” means any case in which at least one wheel of a train leaves the rails.
- 1.7. “level crossing accidents” means accidents at level crossings involving at least one railway vehicle and one or more crossing vehicles, other crossing users such as pedestrians or other objects temporarily present on or near the track if lost by a crossing vehicle/user.
- 1.8. “accidents to persons caused by rolling stock in motion” means accidents to one or more persons who are either hit by a railway vehicle or by an object attached to, or that has become detached from, the vehicle. Persons who fall from railway vehicles are included, as well as persons who fall or are hit by loose objects when travelling on board vehicles.
- 1.9. “fires in rolling stock” means fires and explosions that occur in railway vehicles (including their load) when they are running between the departure station and the destination, including when stopped at the departure station, the destination or intermediate stops, as well as during re-marshalling operations.
- 1.10. “other types of accidents” means all accidents other than those already mentioned (train collisions, train derailments, at level crossing, to persons caused by rolling stock in motion and fires in rolling stock).
- 1.11. “passenger” means any person, excluding members of the train crew, who makes a trip by rail. For accident statistics, passengers trying to embark/disembark onto/from a moving train are included.
- 1.12. “employees (staff of contractors and self-employed contractors are included)” means any person whose employment is in connection with a railway and is at work at the time of the accident. It includes the crew of the train and persons handling rolling stock and infrastructure installations.
- 1.13. “level crossing users” means all persons using a level crossing to cross the railway line by any mean of transport or by foot.
- 1.14. “unauthorised persons on railway premises” means any person present on railway premises where such presence is forbidden, with the exception of level crossing users.

1.15. "others (third parties)" means all persons not defined as "passengers", "employees including the staff of contractors", "level crossing users" or "unauthorised persons on railway premises".

1.16. "deaths (killed person)" means any person killed immediately or dying within 30 days as a result of an accident, excluding suicides.

1.17. "injuries (seriously injured person)" means any person injured who was hospitalised for more than 24 hours as a result of an accident, excluding attempted suicides.

2. Indicators relating to dangerous goods

2.1. "accident involving the transport of dangerous goods" means any accident or incident that is subject to reporting in accordance with RID (¹)/ADR section 1.8.5.

2.2. "dangerous goods" means those substances and articles the carriage of which is prohibited by RID, or authorised only under the conditions prescribed therein.

3. Indicators relating to suicides

3.1. "suicide" means an act to deliberately injure oneself resulting in death, as recorded and classified by the competent national authority.

4. Indicators relating to precursors of accidents

4.1. "broken rails" means any rail which is separated in two or more pieces, or any rail from which a piece of metal becomes detached, causing a gap of more than 50 mm in length and more than 10 mm in depth on the running surface.

4.2. "track buckles" means faults related to the continuum and the geometry of track, requiring track obstruction or immediate reduction of permitted speed to maintain safety.

4.3. "wrong side signalling failure" means any failure of a signalling system (either to infrastructure or to rolling stock), resulting in signalling information less restrictive than that demanded.

4.4. "Signal Passed at Danger (SPAD)" means any occasion when any part of a train proceeds beyond its authorised movement.

Unauthorised movement means to pass:

— a trackside colour light signal or semaphore at danger, order to STOP, where an Automatic Train Control System (ATCS) or ATP system is not operational,

— the end of a safety related movement authority provided in an ATCS or ATP system,

— a point communicated by verbal or written authorisation laid down in regulations,

— stop boards (buffer stops are not included) or hand signals.

Cases in which vehicles without any traction unit attached or a train that is unattended run away past a signal at danger are not included. Cases in which, for any reason, the signal is not turned to danger in time to allow the driver to stop the train before the signal are not included.

National Safety Authorities may report separately on the four indexes and shall report at least an aggregate indicator containing data on all four items.

4.5. "broken wheels and broken axles" means a break affecting the essential parts of the wheel or the axle and creating a risk of accident (derailment or collision).

(¹) RID, Regulations concerning the International Carriage of Dangerous Goods by Rail, as adopted under Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (OJ L 260, 30.9.2008, p. 13).

5. Common methodologies to calculate the economic impact of accidents

5.1. The Value of Preventing a Casualty (VPC) is composed of:

1. Value of safety *per se*: Willingness to Pay (WTP) values based on stated preference studies carried out in the Member State for which they are applied.
2. Direct and indirect economic costs: cost values appraised in the Member State, composed of:
 - medical and rehabilitation cost,
 - legal court cost, cost for police, private crash investigations, the emergency service and administrative costs of insurance,
 - production losses: value to society of goods and services that could have been produced by the person if the accident had not occurred.

5.2. Common principles to appraise the value of safety *per se* and direct/indirect economic costs:

For the value of safety *per se*, the assessment of whether available estimates are appropriate or not shall be based on the following considerations:

- estimates shall relate to a system for valuation of mortality risk reduction in the transport sector and follow a WTP approach according to stated preference methods,
- the respondent sample used for the values shall be representative of the population concerned. In particular, the sample has to reflect the age/income distribution along with other relevant socio-economic/demographic characteristics of the population,
- method for eliciting WTP values: survey design shall be such that questions are clear/meaningful to respondents.

Direct and indirect economic costs shall be appraised on the basis of the real costs borne by society.

5.3. "Cost of damage to environment" means costs that are to be met by Railway Undertakings/Infrastructure Managers, appraised on the basis of their experience, in order to restore the damaged area to its state before the railway accident.

5.4. "Cost of material damage to rolling stock or infrastructure" means the cost of providing new rolling stock or infrastructure, with the same functionalities and technical parameters as that damaged beyond repair, and the cost of restoring repairable rolling stock or infrastructure to its state before the accident. Both are to be estimated by Railway Undertakings/Infrastructure Managers on the basis of their experience. Also includes costs related to leasing rolling stock, as a consequence of non availability due to damaged vehicles.

5.5. "Cost of delays as a consequence of accidents" means the monetary value of delays incurred by users of rail transport (passengers and freight customers) as a consequence of accidents, calculated by the following model:

$VT = \text{monetary value of travel time savings}$

Value of time for a passenger of a train (an hour)

$$VT_p = [VT \text{ of work passengers}][\text{Average percentage of work passengers per year}] + [VT \text{ of non-work passengers}][\text{Average percentage of non-work passengers per year}]$$

VT measured in EUR per passenger per hour

Value of time for a freight train (an hour)

$$VT_f = [VT \text{ of freight trains}][\text{(Tonne-Km)/(Train-Km)}]$$

VT is measured in EUR per freight tonne per hour

Average tonnes of goods transported per train in one year = $(\text{Tonne-Km})/(\text{Train-Km})$

$C_M = \text{Cost of 1 minute of delay of a train}$

Passenger train

$$C_{MP} = K_1 * (VT_p/60) * [(\text{Passenger-Km})/(\text{Train-Km})]$$

Average number of passengers per train in one year = (Passenger-Km)/(Train-Km)

Freight train

$$C_{MF} = K_2 * (VT_F/60)$$

Factors K_1 and K_2 are between the value of time and the value of delay, as estimated by stated preference studies, to take into account that the time lost as a result of delays is perceived significantly more negatively than normal travel time.

Cost of delays of an accident = $C_{MP} * (\text{Minutes of delay of passenger trains}) + C_{MF} * (\text{Minutes of delay of freight trains})$

Scope of the model

Cost of delays is to be calculated for all accidents, both significant and non-significant.

Delays are to be calculated as follows:

- real delays on the railway lines where accidents occurred,
- real delays or, if not possible, estimated delays on the other affected lines.

6. Indicators relating to technical safety of infrastructure and its implementation

6.1. "Automatic Train Protection (ATP)" means a system that enforces obedience to signals and speed restrictions by speed supervision, including automatic stop at signals.

6.2. "level crossing" means any level intersection between the railway and a passage, as recognised by the infrastructure manager and open to public or private users. Passages between platforms within stations are excluded, as well as passages over tracks for the sole use of employees.

6.3. "passage" means any public or private road, street or highway, including footpaths and bicycle paths, or other route provided for the passage of people, animals, vehicles or machinery.

6.4. "active level crossing" means a level crossing where the crossing users are protected from or warned of the approaching train by the activation of devices when it is unsafe for the user to traverse the crossing.

— Protection by the use of physical devices:

- half or full barriers,
- gates.

— Warning by the use of fixed equipment at level crossings:

- visible devices: lights,
- audible devices: bells, horns, klaxons, etc.,
- physical devices, e.g. vibration due to road bumps.

Active level crossings are classified as:

1. "Level crossing with crossing-user-side automatic protection and/or warning" means a level crossing where the crossing protection and/or warning are activated by the approaching train.

These level crossings are classified as:

- (i) automatic user-side warning,
- (ii) automatic user-side protection,
- (iii) automatic user-side protection and warning,
- (iv) automatic user-side protection and warning, and rail-side protection.

"Rail-side protection" means a signal or other train protection system that only permits a train to proceed if the level crossing is user-side protected and free from incursion; the latter by means of surveillance and/or obstacle detection.

-
2. "Level crossing with crossing-user-side manual protection and/or warning" means a level crossing where protection and/or warning is manually activated and there is not an interlocked railway signal showing, to the train, a running aspect only when protection and/or warning of level crossing are activated.

These level crossings are classified as:

- (v) manual user-side warning,
 - (vi) manual user-side protection,
 - (vii) manual user-side protection and warning.
- 6.5. "Passive level crossing" means a level crossing without any form of warning system and/or protection activated when it is unsafe for the user to traverse the crossing.

7. Indicators relating to the management of safety

- 7.1. "audit" means a systematic, independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to which audit criteria are fulfilled.

8. Definitions of the scaling bases

- 8.1. "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 shall be used. Only the distance on the national territory of the reporting country shall be taken into account.
 - 8.2. "passenger-km" means the unit of measure representing the transport of one passenger by rail over a distance of one kilometre. Only the distance on the national territory of the reporting country shall be taken into account.
 - 8.3. "line km" means the length measured in kilometres of the railway network in Member States, whose scope is laid down in Article 2. For multiple-track railway lines, only the distance between origin and destination is to be counted.
 - 8.4. "track km" means the length measured in kilometres of the railway network in Member States, whose scope is laid down in Article 2. Each track of a multiple-track railway line is to be counted.'
-

Summary: Intervention & Options		
Department /Agency: Office of Rail Regulation	Title: Impact Assessment of the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010	
Stage: Consultation	Version: 1	Date: January 2010
Related Publications:		

Available to view or download at:

<http://www.rail-reg.gov.uk/server/show/nav.1089>.

Contact for enquiries: Stefano Valentino

Telephone: 020 7282 2003

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

The proposed regulations transpose the requirements of Directive 2008/110/EC (to establish a maintenance system for rail vehicles and improve safety on the EU's railways) and Directive 2009/149/EC (to include common definitions of Common Safety Indicators (CSIs) and methods to calculate accident costs). They also propose amendments: (a) to clarify that, in relation to safety critical work in part 4 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS), "work" includes voluntary work, (b) provide jurisdiction to the Rail Accident Investigation Branch (RAIB) to investigate tramway accidents in Scotland and (c) make some adjustments to the appeal mechanism in ROGS.

What are the policy objectives and the intended effects?

The proposed regulations aim to (a) provide assurance that the entity in charge of maintenance (ECM) of a rail vehicle is able to safely maintain it (b) improve reporting and data quality of CSIs to help measure safety performance more accurately, (c) make clear to volunteer-run organisations that they are within scope of part 4 of ROGS (d) give RAIB jurisdiction to investigate tramway accidents in Scotland so that if any accidents occur, provision is in place for them to be properly investigated and lessons learned to prevent reoccurrence and (e) improve the appeals mechanism in ROGS.

What policy options have been considered? Please justify any preferred option.

Option 1: Do nothing

Option 2: Implement Directive 2008/110/EC in one stage, along with Directive 2009/149/EC; amend part 4 of ROGS to clarify that volunteer-run organisations are within the scope of part 4 of ROGS; create a new investigation body for tramways in Scotland;

Option 3: Implement Directive 2008/110/EC in two stages with a second statutory instrument (SI) implementing requirement to certify entities in charge of the maintenance (ECMs) of freight wagons; implementing Directive 2009/149/EC; clarify that volunteer-run organisations are within the scope of part 4 of ROGS; extend the jurisdiction of RAIB to include tramways in Scotland

The preferred option was option 3. This is because: (a) it meets the UK Government's obligation under EU law to transpose the Directives; (b) it postpones implementation of the certification scheme for ECM for freight wagons until the details of the scheme have been developed by the Commission following recommendations from the European Railway Agency; (c) it improves clarity for volunteer-run organisations; (d) it represents the most effective use of public resources by utilising RAIB's existing expertise and best practice.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Five years from when the regulations come into force.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

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

Signed by the responsible Minister:

.....Date:

Summary: Analysis & Evidence

Policy Option: Option 3	Description: Implement Directive 2008/110/EC in two stages with a second SI implementing the requirements to certify freight wagon ECMs; Implement Directive 2009/149/EC; extend RAIB powers to Scotland; amend ROGS		
----------------------------	--	--	--

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition)	Yrs	
	£ negligible		
	Average Annual Cost (excluding one-off)		
	£ negligible		Total Cost (PV) £ negligible
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£ negligible		
	Average Annual Benefit (excluding one-off)		
	£ negligible		Total Benefit (PV) £ negligible
Other key non-monetised benefits by 'main affected groups'			

Key Assumptions/Sensitivities/Risks

There is a risk of infraction for late implementation of the requirements for certification of entities in charge of the maintenance of freight wagons, but in terms of legal risk, this option is the least risky.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ negligible	NET BENEFIT (NPV Best estimate) £ negligible
-----------------	-------------------	--	--

What is the geographic coverage of the policy/option?	Great Britain			
On what date will the policy be implemented?	19 July 2010			
Which organisation(s) will enforce the policy?	ORR			
What is the total annual cost of enforcement for these organisations?	£ negligible			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ unknown			
What is the value of changes in greenhouse gas emissions?	£ unknown			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)	(Increase - Decrease)		
Increase of £	Decrease of £	Net Impact	£ negligible

Annual costs and benefits: Constant Prices

(Net) Prices

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Impact Assessment of the proposed Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010

Date: January 2010	Stage: Draft
PID reference: #344066	Version: 1

Available at: <http://www.rail-reg.gov.uk/server/show/nav.1089>

Contact for enquiries: Stefano Valentino

Section 1: The issue

What is the issue?

1.1. The Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 are being proposed to:

- transpose the requirements of European Directive 2008/110/EC ("The revised Railway Safety Directive") that do not concern the certification of entities in charge of the maintenance of freight wagons in Great Britain,
- transpose the requirements of European Directive 2009/149/EC ("The Common Safety Indicator (CSI) Directive") in Great Britain, which concerns the collection of common safety indicators ("CSIs") to measure safety performance
- make amendments to part 4 of the Railways and Other Guided Transport (Systems) Safety Regulations 2006 (ROGS), which concerns safety critical work,
- make amendments to the Railways and Transport Safety Act 2003 and the Railways (Accident Investigation and Reporting) Regulations 2005 ("RAIR"), which concerns the investigation of accidents on tramways in Scotland.

Why are we intervening?

The revised Railway Safety Directive

- 1.2. The UK Government is required to transpose the revised Railway Safety Directive's provisions into UK implementing measures by 24 December 2010. The Office of Rail Regulation ("ORR") has responsibilities for proposing measures to the Secretary of State on railway safety. Therefore ORR has proposed the regulations to the Secretary of State for the transposition of the revised Railway Safety Directive in Great Britain. The Intergovernmental Commission will propose implementing measures for the Channel Tunnel. The Department for Regional Development (Northern Ireland) will propose implementing measures for Northern Ireland. Separate impact assessments will be prepared by them.
- 1.3. The revised Railway Safety Directive establishes a maintenance system and aims to further develop and improve safety on the European Union's railways. The revised

Railway Safety Directive requires that an entity in charge of maintenance (“ECM”) is assigned to a vehicle and registered as such in the national vehicle register (NVR). This is before the vehicle is placed in service or used on the network. There are also requirements for the certification of entities in charge of the maintenance of freight wagons.

The CSI Directive

- 1.4. The UK Government is required to transpose the CSI Directive’s provisions into UK implementing measures by 18 June 2010. ORR has responsibilities for proposing measures to the Secretary of State on railway safety. Therefore ORR has proposed the regulations to the Secretary of State for the transposition of the CSI Directive in Great Britain.
- 1.5. The CSI Directive substitutes a new Annex I into the original Railway Safety Directive (2004/49/EC) in order to include common definitions of Common Safety Indicators (CSIs) and methods to calculate accident costs.

Safety critical work

- 1.6. Various people on the railway and other guided transport systems carry out safety critical tasks. These include: employees of those undertakings requiring a safety management system; safety certificate or authorisation under Part 2 of ROGS; contractors; sub-contractors; agency staff; the self-employed; and volunteers. ORR considers that any person who carries out a ‘safety critical task’ should have the necessary competence and fitness to perform that work. Part 4 of ROGS relates to safety critical work. ORR is proposing to amend part 4 of ROGS to clarify that “work” includes voluntary work.

Investigation of accidents involving tramways in Scotland

- 1.7. Section 14(1) of the Railways and Transport Safety Act 2003 gives the Rail Accident Investigation Branch (RAIB) powers to investigate accidents throughout the United Kingdom. However, section 14(2) removes this jurisdiction in relation to tramways in Scotland. Until now, there has not been a need for an investigating authority for tramway incidents in Scotland. But the construction of a tramway in Edinburgh creates the need for one.
- 1.8. The Department for Transport ((DfT) is proposing to amend the Railways and Transport Safety Act 2003 and Railways (Accident Investigation and Reporting) Regulations 2005 to provide RAIB jurisdiction to investigate tramway incidents in Scotland. The regulations contain provisions to give effect to this.

What is the desired outcome?

Revised Railway Safety Directive

- 1.9. The desired outcome of the UK Government’s implementation of the revised Railway Safety Directive is that:
 - The actors in the rail transport chain and ORR will have the assurance that the entity in charge of maintenance (ECM) is able to meet its responsibility to control the process of maintenance of vehicles.
 - There will be a consistency of approach to vehicle maintenance across Europe. This will help the ECM to establish a single maintenance regime rather than

multiple regimes to meet the requirements of different Railway Undertakings (RUs).

- It will enable better control of safety risks and costs.

The CSI Directive

- 1.10. The new Annex I, which we propose to include in the new Schedule 3 of ROGS, aims to improve reporting and data quality. It also aims to improve consistency between CSI and Eurostat data. CSI data are collected to facilitate the assessment of the achievement of Common Safety Targets (CSTs). Schedule 3 of ROGS currently contains CSIs that relate to the costs of accidents borne by the railway. The new Schedule 3 changes the emphasis of CSIs from the impact of accidents on the railway to the impact of accidents on society. The aim of this is to help measure safety performance and make the economic impact assessment of CSTs more effective. The relevant data are already collected in Great Britain.

Safety critical work

- 1.11. Part 4 of ROGS already applies to volunteer-run organisations such as heritage railways. ORR's proposal to amend part 4 of ROGS aims to makes clear to volunteer-run organisations that they remain within scope of part 4 of ROGS.

Investigation of accidents involving tramways in Scotland

- 1.12. RAIB investigates accidents and incidents on:
 - the national railway networks of Great Britain and Northern Ireland,
 - the Channel Tunnel (in co-operation with its equivalent operation in France),
 - tramways, except in Scotland
 - heritage railways (including narrow gauge systems over 350mm gauge), and
 - cable-hauled systems of 1km or longer
- 1.13. With the construction of a tramway in Edinburgh there is now a need to establish an investigating authority in Scotland. RAIB's purpose for investigating an accident or incident is to improve the safety of the railways and tramways, and to prevent further accidents from occurring

When will we review the success of the intervention?

- 1.14. ORR will aim to review the regulations five years from when they enter into force.

Section 2: The options

The revised Railway Safety Directive

Option 1: Do nothing

- 2.1. Each Member State is required to transpose the revised Railway Safety Directive into domestic legislation. We are therefore not in a position to do nothing.

Option 2: Implement the revised Railway Safety Directive in one stage to give effect in Great Britain

- 2.2. This option meets the UK Government's obligations under EU law. However, this is not the preferred option because it would be premature with regard to the proposed certification scheme for ECMs for freight wagons. The EU scheme for certification has not been developed and published yet. The European Railway Agency is developing proposals for the approval of the Commission. Until those proposals are approved and published we are not able to indicate in the regulations what its requirements will be. The Commission is to adopt a measure setting out a system of certification of ECMs by 24 December 2010.
- 2.3. It would not be in accordance with UK lawmaking practice to make provisions in the regulations for the Commission to provide details of the certification scheme in due course. Doing so would, in effect, sub-delegate the relevant part of the regulations to the Commission. This would mean that the requirements of the scheme would not be set out on the face of the regulations.

Option 3: Implement the revised Railway Safety Directive in two stages to give effect in Great Britain

- 2.4. This meets the UK Government's obligations under EU law and is the preferred option. This is because it avoids the problems outlined in Option 2.
- 2.5. Member States are required to put in place laws, regulations and administrative processes necessary to comply with the revised Railway Safety Directive. This must be by 24 December 2010. In Great Britain, the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 are proposed to come into force by 19 July 2010 to align with the transposition of the Interoperability Directive (2008/57/EC). However, under this option the freight wagon ECM certification regime will not be contained in these regulations. This is because the European Commission still has to publish a measure to establish the ECM certification system. A second set of regulations will come into force once the European Commission has adopted the measure establishing the certification system for ECMs for freight wagons. The Commission must do this by 24 December 2010. There is a risk of infraction for late implementation of this component of the revised Railway Safety Directive, but this is believed to be low.
- 2.6. The Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 would implement the requirement of the Directive apart from ECM certification provisions.

The CSI Directive

Option 1: Do nothing

- 2.7. Each Member State is required to transpose the revised Railway Safety Directive into domestic legislation. We are therefore not in a position to do nothing.

Option 2: Implement the CSI Directive to give effect in Great Britain

- 2.8. This is the preferred option as it meets the UK Government's obligations under EU law.
- 2.9. Member States are required to put in place laws, regulations and administrative processes necessary to comply with the CSI Directive. This must be by 18 June 2010. In Great Britain, the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 are proposed to come into force by 19 July 2010. This is later than 18 June 2010 because transposition of the CSI Directive will make amendments to the same set of regulations that the revised Railway Safety Directive will amend. The date for transposing the Interoperability Directive is 19 July 2010. With a view to better regulation and to allow for consistency and clarity, the UK Government believes that there are benefits in working to a common commencement date of 19 July 2010 for implementing the three Directives.
- 2.10. The CSI Directive substitutes a new Annex I into the Railway Safety Directive, which was transposed in Schedule 3 of ROGS. ORR is proposing that Schedule 3 of ROGS is substituted with the new provisions to implement the amended Annex I. The relevant data are already collected in Great Britain by duty holders.

Safety critical work

Option 1: Do nothing

- 2.11. Although part 4 of ROGS already applies to volunteer-run organisations, doing nothing would continue to leave these organisations uncertain about whether they were within scope of part 4 of ROGS. ORR has decided, therefore, that this is not a preferred option.

Option 2: Amend part 4 of ROGS to clarify that volunteer-run organisations are within the scope of part 4 of ROGS

- 2.12. This is the preferred option.
- 2.13. Part 4 of ROGS already applies to volunteer-run organisations. However, some volunteer-run organisations have been uncertain about whether this part of the regulations applies to them. Making an amendment will make it clear that the regulations apply to them.

Investigation of accidents involving tramways in Scotland

Option 1: Do nothing

- 2.14. Doing nothing would create an inconsistency of approach to the investigation of tramway incidents in Great Britain.

Option 2: Create a new investigating body for tramways in Scotland

2.15. This was not considered to be the preferred option, for the following reasons:

- creating a new statutory body would be less cost effective than empowering RAIB given that RAIB already has jurisdiction in Scotland other than for tramways; already investigates tramway accidents elsewhere in the UK; and already has the expertise, resources and infrastructure;
- a new statutory body just for tramways in Scotland would create an inconsistency in the administrative machinery for the investigation of tramway accidents in the UK;
- creating a separate investigation body for Scotland would necessitate primary legislation with consequent resource, timing and cost implications which would not appear to be merited in this case.

Option 3: Extend the jurisdiction of RAIB to include tramways in Scotland

2.16. This is the preferred option because:

- it brings the legislative authority to investigate tramway accidents in Scotland in line with that which applies to the rest of the UK;
- it represents the most cost effective and efficient use of public resources by utilising existing expertise and best practice; and
- it limits the risk of additional financial or operational burden on tramway operators.

Section 3: The preferred option

Impact on stakeholders/duty holder

The Revised Railway Safety Directive

- 3.1. The requirement to assign an ECM to a vehicle and register it as such in the NVR effectively duplicates mandatory provisions already in force under European Commission Decision 2007/756/EC. The regulations differ from the Decision requirements in that the duty is placed on parties other than the Member State (owner, keeper, etc). Decision 2007/756/EC adopts a common specification for NVRs in which this information will be recorded. The information which must be provided concerns only contact details and covers name and postal and email address. It is envisaged that the regulatory burden created through the supply and updating of this information is negligible.
- 3.2. The requirement for an ECM to ensure that, by means of a system of maintenance, any vehicle for which it has responsibility for maintenance is in charge is in a safe state of running formalises measures already in place either through legislation or administratively. These are as follows:
 - (i) Sections 2 and 3 of the Health and Safety at Work etc Act 1974 require duty holders to do all that is reasonably practicable to conduct their undertaking safely. Implicit in this will be the requirement to maintain railway vehicles.
 - (ii) Regulation 5(1)(d)(1) of ROGS requires that a duty holder has a safety management system that ensures the control of risks relating to the supply of maintenance and material. The safety management system is established to ensure that it conforms to relevant national safety rules and relevant safety requirements laid down in Technical Specifications for Interoperability.
 - (iii) The Railway Group Standard GM/RT2004 has been used by the railway industry to demonstrate that they comply with the requirement to keep vehicles for which they are responsible safely maintained.
 - (iv) It is a condition of an operator's licence issued under section 8 of the Railways Act 1993 (as amended) to comply with Railway Group Standards that are applicable to its licensed activities.
- 3.3. ORR envisages that the impact of the maintenance requirements in the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 on ORR and duty holders will be negligible. The benefit of introducing these regulations is that it will help to achieve consistency of approach to rail vehicle maintenance across Europe.

The CSI Directive

- 3.4. CSI data have been collected by duty holders and reported by ORR to ERA under regulation 20 of ROGS since 2006. The requirements of the CSI Directive introduce common definitions and methods to calculate accidents costs. This benefits duty holders and ORR by helping to collect more accurate data. ORR therefore considers that the impact of these regulations will be negligible.

Safety critical work

- 3.5. As part 4 of ROGS already applies to volunteer-run organisations ORR considers that no new impacts on duty holders and ORR will be created by the regulations.

Investigation of accidents involving tramways in Scotland

- 3.6. No cost implications have been identified and the proposal to extend RAIB's jurisdiction is considered to be cost neutral.

Impact on the Administrative Justice and Tribunals Council

- 3.7. These regulations make an amendment to ROGS to incorporate the duty of the Administrative Justice and Tribunals Council to review and report on statutory inquiries. As this duty was already introduced by the Tribunals Court and Enforcement Act 2007, we do not consider that there are new impacts.

Impact on specific consumer groups

Disability

- 3.8. We envisage no impact on disability.

Gender

- 3.9. We envisage no impact on gender.

Race

- 3.10. We envisage no impact on race.

Other

- 3.11. We do not consider that the regulations would create new impacts across consumer groups.

Impact on health and safety

- 3.12. Major incidents on the railway and other guided transport systems are rare, but when they occur, they have the potential to cause a large impact on the confidence of users. They can also lead to injuries and fatalities as well as physical disruption of the railway. Indirectly, these incidents can undermine public confidence in the operation of the railways.

- 3.13. Implementing the measures in these regulations is likely to provide assurances that safety risks are being managed appropriately.

Impact on sustainable development, carbon emissions and the environment

- 3.14. The consistent framework adopted across Europe should allow for easier movements across member states, which may encourage the movement of traffic from the roads onto the rail network resulting in environmental benefits from lower carbon emissions.

Impact on competition

- 3.15. These regulations help to achieve consistency in approach to rail vehicle maintenance. This helps to breakdown barriers to competition by increasing confidence in actors that the ECM is able to meet its responsibility to control the process of maintenance of vehicles.

Geographic impacts

3.16. None, other than the extension of RAIB responsibility in Scotland.

Statutory duties

3.17. These regulations do not impact on our statutory duties in relation to economic regulation under section 4 of the Railway Act 1993.

Impact on small firms

3.18. Some of the private wagon owners are small and medium-sized enterprises. However, we envisage that the impact on these will be negligible for the reasons set out in paragraphs 3.1 to 3.3. There are no disproportionate impacts on costs as these regulations build on existing arrangements. The costs we envisage on these parties are the costs involved with familiarisation of the new regulations. As these costs are materially very small they have been classed as negligible.

Impact on legal aid

3.19. We do not consider that these regulations create new impacts on legal aid.

Human rights

3.20. We do not consider that these regulations are incompatible with Convention rights.

Rural proofing

3.21. We do not consider that these regulations create new impacts on rural communities. However, they may benefit from improved management of safety risks.

Overall impact

3.22. Overall, the benefits of the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 are cost neutral. That said, we envisage that once the second set of regulations implement the ECM certification requirements, the benefits in relation to increasing competition and confidence on safety arrangements will be realised.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No

Annex F

LIST OF THOSE CONSULTED

A V Dawson
Administrative Justice & Tribunals Service
Advanced Transport Systems
Advenza Freight Ltd
AEA Technology Plc
Aggregate Industries
Alcan Primary Metal Europe
Alcan Smelting & Power UK
Alstom Transport Ltd
Amey Plc
Angel Trains Plc
Arriva plc
Arriva Trains Wales
ASLEF
Association of British Chamber of Commerce
Association of Chief Police Officers in Scotland
Association of Community Rail Partnerships
Association of London Government
Association of Railway Industry Occupational Physicians (ARIOPS)
Association of Train Operating Companies (ATOC)
Association of Transport Coordinating Officers (ATCO)
Atkins Rail
Avon Valley Railway
Axiom Rail
BAA Rail
Babcock Rail
Bala Lake Railway
Balfour Beatty plc
Bluebell Railway Plc
Bombardier Transportation
Bombardier Transportation Prorail Ltd
BP Oil UK Ltd
Brett Aggregates Ltd
British Gypsum
British International Freight Association
British Nuclear Fuels Ltd
British Ports Association
British Transport Police
BUPA
Buxton Lime Industries Ltd
C2c Rail Ltd
Cabinet Office
Campaign for Better Transport
Carillion Rail

Cawoods of Northern Ireland
Cemex UK Cement Ltd
Centro (West Midlands Passenger Transport Executive)
Channel Tunnel Safety Authority
Chartered Institute of Logistics & Transport
Chiltern Railways Co Ltd
City of Edinburgh Council
Civil Aviation Authority
Colas Rail Ltd
Commission for Integrated Transport
Confederation of British industry (CBI)
Confederation of Passenger Transport UK (CPT)
Consumer Focus
Convention of Scottish Local Authorities
Correl Rail Ltd
Corus Construction & Industrial
Corus Plc
CrossCountry
D B Schenker (formerly EWS)
Dartmoor Railway Ltd
Defence Rail & Container Services
DeltaRail
Department for Business Innovation and Skills
Department for Children, Schools and Families
Department for Regional Development Northern Ireland
Department for Transport
Department for Work and Pensions
Department of Health
Department of the Environment, Food & Rural Affairs
Derby City Council
Direct Rail Services Ltd
Disabled Persons Transport Advisory Committee (DPTAC)
E G Steele & Co Ltd
East Lancashire Railway
East Midlands Trains Ltd
Esso Petroleum Company Ltd
Eurotunnel Plc
Fastline
Federation of Small Businesses
First Capital Connect Ltd
First Engineering Ltd
First GB Railfreight
First Great Western Co Ltd
First Group plc
First ScotRail Ltd
First Transpennine Express
Freight Transport Association
Freightliner Ltd
G E Capital Rail Services
Gatwick Express Ltd

GE Transportation Systems Ltd
Go-Ahead Group
Government Office East England
Government Office East Midlands
Government Office North East
Government Office North West
Government Office North West
Government Office South East
Government Office South West
Government Office West Midlands
Government Office Yorkshire & Humber
Grand Central Railway Co Ltd
Greater Manchester PTE
Greater Manchester Waste Ltd
Halcrow Group Limited
Harsco
Health and Safety Executive
Health and Safety Executive, Northern Ireland
Health and Safety Inspectorate, Guernsey
Heathrow Express Ltd
Heritage Railway Association
High Speed 1
Hitachi Europe Ltd
HM Treasury
Home Office
HSBC Rail (UK) Ltd
Hull Trains
Hunslett-Barclay
ICENI Enterprises Ltd
Inclusive Mobility and Transport Advisory Committee
Institution of Engineering and Technology
Institution of Mechanical Engineers
Institution of Occupational Safety & Health
Interfleet Certification Ltd
Intergovernmental Commission for the Channel Tunnel
International Railway Journal
IRSE
JacksonEve Infrastructure Services
Jafco Tools
Jarvis Rail
Keolis UK Ltd
Lafarge Cement
Lafarge Redlands Aggregates Ltd
Light Rail Transit Association
Light Rapid Transit Forum
Lloyd's Register MHA Ltd
Lloyd's Register Rail Ltd
Local Government Association
London & South Eastern Railway (trading as Southeastern)
London and Continental Railways Ltd

London Development Agency
London Midland Trains
London Overground Rail Operations Ltd
London Travel Watch
London Underground Ltd (LUL)
Marcroft Engineering Ltd
Marsh UK Ltd
Mendip Rail Ltd
Mersey Rail
Merseytravel
Metro (West Yorkshire Integrated Transport Authority and West Yorkshire Passenger Transport Executive)
Middleton Railway Trust Ltd
Ministry of Defence
Ministry of Justice
Modern Railway Magazine
Mott MacDonald Railway Approvals
Mowlem Plc
N. Green
NACCO (UK) Ltd
National Assembly for Wales
National Express East Anglia
National Express East Coast
National Specialist Contractors Council
National Union of Rail, Maritime and Transport Workers (RMT)
Network Rail Infrastructure Ltd
Nexus
North Yorkshire Moors Railway
Northern Ireland Railways
Northern Rail Ltd
Parliamentary Advisory Council for Transport Safety (PACTS)
Passenger Focus
Passenger Transport Executive Group (PTEG)
Peter Wainwright (Esso consultant)
Plasmor Ltd
Porterbrook Leasing Company Ltd
Praxis HIS Ltd
Pre Metro Operations Ltd
Private Wagon Federation
Quintec Assoc Ltd
Rail Accident Investigation Branch
Rail Charter Services Ltd
Rail Freight Group
Rail Safety and Standards Board (RSSB)
Railfuture
Railway Approvals Ltd
Railway Forum
Railway Gazette International
Railway Industry Advisory Committee Freight Group (Chair)
Railway Industry Association

Railway Magazine
Rheilfford Ffestiniog Railway
Riviera Trains Ltd
RoSPA
Safety Cases Ltd
Scientifics Ltd
ScotRail Railways Ltd
Scottish Consumer Council
Scottish Executive
Scottish Trade Union Congress (STUC)
Serco Docklands Ltd
Serco Integrated Transport
Serco Rail Group
Siemens Transportation Systems Ltd
Signalling Solutions Ltd
South Tynedale Railway Preservation Society
South Yorkshire PTE
Southern Railway
Stagecoach South Western Trains Ltd
Stagecoach Supertram
Strathclyde Partnership for Transport
STVA UK Ltd
Trade Union Congress (TUC)
Transport for London (TfL, London Rail)
Transport Research Laboratory
Transport Salaried Staffs' Association (TSSA)
Transport Scotland
Trinity Rail
Tubelines
UK Major Ports Group Ltd
UK Tram Ltd
Union Railways (North)
Unite the Union
United Kingdom Accreditation Service (UKAS)
University College London
Venice Simplon Orient Express Ltd
Virgin Trains
Volker Rail Group
VTG Rail UK Ltd
W & M Thompson (Quarries) Ltd
W H Davis Ltd
Wabtec Rail Ltd
WBB Minerals
Welsh Assembly Government
West Coast Railway Co Ltd
Westinghouse Rail Systems Ltd
Wrexham and Shropshire Railway Co Ltd



HM Government

Code of Practice on Consultation



FOREWORD

This Government is committed to effective consultation; consultation which is targeted at, and easily accessible to, those with a clear interest in the policy in question. Effective consultation brings to light valuable information which the Government can use to design effective solutions. Put simply, effective consultation allows the Government to make informed decisions on matters of policy, to improve the delivery of public services, and to improve the accountability of public bodies.

The Government has had a Code of Practice on Consultation since 2000 setting out how consultation exercises are best run and what people can expect from the Government when it has decided to run a formal consultation exercise.



This third version of the Code is itself the result of listening to those who regularly respond to Government consultations. This Code should help improve the transparency, responsiveness and accessibility of consultations, and help in reducing the burden of engaging in Government policy development.

As part of the Government's commitment to effective consultation, we will continue to monitor how we consult and we appreciate feedback on how we can improve.

A handwritten signature in black ink, appearing to read "John Hutton".

John Hutton
BERR SoS

July 2008

THE SEVEN CONSULTATION CRITERIA

Criterion 1 When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2 Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3 Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4 Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5 The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6 Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7 Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria should be reproduced in consultation documents.

INTRODUCTION

Ongoing dialogue between Government and stakeholders is an important part of policymaking. This dialogue will, at times, need to become more formal and more public. When developing a new policy or considering a change to existing policies, processes or practices, it will often be desirable to carry out a formal, time-bound, public, written consultation exercise. This kind of exercise should be open to anyone to respond but should be designed to seek views from those who would be affected by, or those who have a particular interest in, the new policy or change in policy.¹ Formal consultation exercises can expose to scrutiny the Government's preliminary policy analysis and the policy or implementation options under consideration.

STATUS OF THE CODE

This Code sets out the approach the Government will take when it has decided to run a formal, written, public consultation exercise. It supersedes and replaces previous versions of the Code. The Code does not have legal force and cannot prevail over statutory or mandatory requirements. The Code sets out the Government's general policy on formal, public, written consultation exercises. A list of the UK departments² and agencies adopting the Code is available on the Better Regulation Executive's website.³ Other public sector organisations are free to make use of this Code for their consultation purposes, but it does not apply to consultation exercises run by them unless they explicitly adopt it.

Ministers retain their existing discretion not to conduct formal consultation exercises under the terms of the Code. At times, a formal, written, public consultation will not be the most effective or proportionate way of seeking input from interested parties, e.g. when engaging with stakeholders very early in policy development (preceding formal consultation) or when the scope of an exercise is very narrow and the level of interest highly specialised. In such cases an exercise under this Code would not be appropriate. There is, moreover, a variety of other ways available to seek input from interested parties other than formal consultation.⁴ Such engagement work is not the subject of this Code. When departments decide only to carry out engagement with interested parties in ways other than formal, written consultation, they are encouraged to be clear about the reasons why the methods being used have been chosen.

¹ In order to reach certain groups this may mean going beyond the traditional, written consultation exercise - see criterion 5

² Reference to "department" includes reference to non-Ministerial departments and other organisations that this Code applies to. Reference to a "Minister" includes the senior decision maker(s) in those organisations, e.g. the chief executive or the board responsible for the consultation.

³ <http://www.berr.gov.uk/bre>

⁴ In addition to the guidance supporting this Code, useful information on alternative forms of engagement may be found at www.peopleandparticipation.net.

This Code is not intended to create a commitment to consult on anything, to give rise to a duty to consult, or to be relied on as creating expectations that the Government will consult in any particular case. The issues on which the Government decides to consult depend on the circumstances in each case.

Moreover, deviation from the Code will, at times, be unavoidable when running a formal, written, public consultation. It is recommended that departments be open about such deviations, stating the reasons for the deviation and what measures will be employed to make the exercise as effective as possible in the circumstances.

Under some laws there are requirements for the Government to consult certain groups on certain issues. This Code is subject to any such legal requirement. Care must also be taken to comply with any other legal requirements which may affect a consultation exercise such as confidentiality issues and equality schemes. More information on such matters can be found in the guidance which accompanies this Code.⁵

This Code should also be used in conjunction with the *Consultation and Policy Appraisal – Compact Code of Good Practice* which supports the Compact on Government's Relations with the Voluntary and Community Sector⁶ and with the *Central-Local Government Concordat* which establishes a framework of principles for how central and local government work together to serve the public.⁷

The Better Regulation Executive in the Department for Business, Enterprise and Regulatory Reform welcomes feedback regarding the effectiveness of the Code and the accompanying guidance. If you have any comments, please feel free to contact the Better Regulation Executive at:

Better Regulation Executive
Department for Business, Enterprise and Regulatory Reform
1 Victoria Street
London
SW1H 0ET

Telephone: 020 7215 0352
E-mail: regulation@berr.gsi.gov.uk

⁵ See <http://www.berr.gov.uk/bre>

⁶ <http://www.thecompack.org.uk/information/100023/publications/>

⁷ <http://www.communities.gov.uk/publications/localgovernment/centrallocalconcordat>

Criterion 1 When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

- 1.1 Formal, written, public consultation will often be an important stage in the policymaking process. Consultation makes preliminary analysis available for public scrutiny and allows additional evidence to be sought from a range of interested parties so as to inform the development of the policy or its implementation.
- 1.2 It is important that consultation takes place when the Government is ready to put sufficient information into the public domain to enable an effective and informed dialogue on the issues being consulted on. But equally, there is no point in consulting when everything is already settled. The consultation exercise should be scheduled as early as possible in the project plan as these factors allow.
- 1.3 When the Government is making information available to stakeholders rather than seeking views or evidence to influence policy, e.g. communicating a policy decision or clarifying an issue, this should not be labelled as a consultation and is therefore not in the scope of this Code. Moreover, informal consultation of interested parties, outside the scope of this Code, is sometimes an option and there is separate guidance on this.⁸
- 1.4 It will often be necessary to engage in an informal dialogue with stakeholders prior to a formal consultation to obtain initial evidence and to gain an understanding of the issues that will need to be raised in the formal consultation. These informal dialogues are also outside the scope of this code.
- 1.5 Over the course of the development of some policies, the Government may decide that more than one formal consultation exercise is appropriate. When further consultation is a more detailed look at specific elements of the policy, a decision will need to be taken regarding the scale of these additional consultative activities. In deciding how to carry out such re-consultation, the department will need to weigh up the level of interest expressed by consultees in the initial exercise and the burden that running several consultation exercises will place on consultees and any potential delay in implementing the policy. In most cases where additional exercises are appropriate, consultation on a more limited scale will be more appropriate. In these cases this Code need not be observed but may provide useful guidance.
- 1.6 Consultation exercises should not generally be launched during election periods. If there are exceptional circumstances where launching a consultation is considered absolutely essential (for example, for safeguarding public health), departments should seek advice from the Propriety and Ethics team in the Cabinet Office. If a consultation is ongoing at the time an election is called, it should continue. However, departments should avoid taking action during election periods which will compete with candidates for the attention of the public.⁹

⁸ See <http://www.berr.gov.uk/bre>

⁹ For further guidance see <http://www.berr.gov.uk/bre>

Criterion ② Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

- 2.1 Under normal circumstances, consultations should last for a minimum of 12 weeks. This should be factored into project plans for policy development work. Allowing at least 12 weeks will help enhance the quality of the responses. This is because many organisations will want to consult the people they represent or work with before drafting a response to Government and to do so takes time.
- 2.2 If a consultation exercise is to take place over a period when consultees are less able to respond, e.g. over the summer or Christmas break, or if the policy under consideration is particularly complex, consideration should be given to the feasibility of allowing a longer period for the consultation.¹⁰
- 2.3 When timing is tight, for example when dealing with emergency measures, or international, legally-binding deadlines, or when the consultation needs to fit into fixed timetables such as the Budget cycle, consideration should be given to whether a formal, written, public consultation is the best way of seeking views. Where a formal consultation exercise is considered appropriate and there are good reasons for it to last for a shorter period (e.g. to seek views to inform the UK's negotiating position on EU proposals soon to be discussed in the Council of Ministers), the consultation document should be clear as to the reasons for the shortened consultation period and ministerial clearance (or equivalent, e.g. in non-Ministerial departments) for the shorter timeframe should be sought. In such circumstances it is important to consider the provision of additional means through which people can express their views.
- 2.4 When planning a consultation, it is important to take steps to raise awareness of the exercise among those who are likely to be interested. In particular, departments should consider ways to publicise consultations at the time of, or if possible before, the launch-date so that consultees can take advantage of the full consultation period to prepare considered responses.

¹⁰ For more on this, see the accompanying guidance at <http://www.berr.gov.uk/bre>

Criterion 3 Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

- 3.1** Consultation exercises should be clear about the consultation process, i.e. what has taken place in the development of the policy prior to the consultation exercise, how the consultation exercise will be run and, as far as is possible, what can be expected after the consultation exercise has formally closed.
- 3.2** Consultation exercises should be clear about the scope of the exercise, setting out where there is room to influence policy development and what has already been decided, and so is not in the scope of the consultation.
- 3.3** Estimates of the costs and benefits of the policy options under consideration should normally form an integral part of consultation exercises, setting out the Government's current understanding of these costs and benefits. A "consultation stage Impact Assessment"¹¹ should normally be published alongside a formal consultation, with questions on its contents included in the body of the consultation exercise. An Impact Assessment should be carried out for most policy decisions and consultation of interested parties on the Impact Assessment and on equality assessments can bring greater transparency to the policymaking process and should lead to departments having more robust evidence on which to base decisions. It is important to read the guidance on specific impact tests, including the race equality impact assessment which is required by statute.¹²
- 3.4** Consideration should also be given to asking questions about which groups or sectors would be affected by the policy in question, and about any groups or sectors (e.g. small businesses or third sector organisations) that may be disproportionately affected by the proposals as presented in the consultation document. Consultation exercises can be used to seek views on the coverage of new policies, ideas of how specific groups or sectors might be exempted from new requirements, or used to seek views on approaches to specific groups or sectors that would ensure proportionate implementation.
- 3.5** The subject matter, any assumptions the Government has made, and the questions in the consultation should all be as clear as possible. A mixture of open and closed questions will often be desirable, and consideration should be given to offering consultees the opportunity to express views on related issues not specifically addressed in the questions.

¹¹ See guidance on impact assessment at <http://www.berr.gov.uk/bre/policy/scrutinising-new-regulations/page44076.html>

¹² See <http://www.berr.gov.uk/bre/policy/scrutinising-new-regulations/preparing-impact-assessments/toolkit/page44263.html>

Criterion 4 Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

- 4.1** It is essential that interested parties are identified early in the process so that consultation exercises can be designed and targeted accordingly. When consultation exercises need to reach a diverse audience, several approaches may be required. In the consultation document it should be stated what ways are available for people to participate, how exactly to get involved, and why any supplementary channels have been chosen. Over-reliance on standard lists of consultees to disseminate consultation papers can mean that key groups are excluded and others receive consultation documents that are not relevant to them.
- 4.2** As far as is possible, consultation documents should be easy to understand: they should be concise, self-contained and free of jargon. This will also help reduce the burden of consultation. While consultation exercises on technical details may need to seek input from experts, when the views of non-experts are also required, simpler documents should be produced.
- 4.3** It is vital to be proactive in disseminating consultation documents. Careful consideration should be given to how to alert potential consultees to the consultation exercise and how to get views from relevant sectors of the community and the economy. While many interested parties can usually be contacted directly, there will often be other interested parties not known to Government or who can only be reached through intermediary bodies. Working with appropriate trade, community or third sector organisations can help the Government to hear from those who would otherwise go unheard. Using specialist media or events can also help promote consultation exercises among interested groups.
- 4.4** Thought should also be given to alternative versions of consultation documents which could be used to reach a wider audience, e.g. a young person's version, a Braille and audio version, Welsh and other language versions, an "easy-read" version, etc., and to alternative methods of consultation. Guidance on methods to support formal consultation exercises to help reach specific groups and sectors (regional, public meetings, online tools, focus groups, etc.) is available.¹³
- 4.5** It is important that people can decide quickly whether a consultation exercise is relevant to them. For this reason, a standard table of basic information should be used for all consultation exercises produced by any public body. This will mean that all the key information is readily accessible when potential consultees are first presented with a new consultation document and that regular consultees will become familiar with the format.¹⁴

¹³ See <http://www.berr.gov.uk/bre>

¹⁴ For an example template which can be used to provide key information at the beginning of a consultation document, see the guidance available at <http://www.berr.gov.uk/bre>

Criterion 5 The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

- 5.1 When preparing a consultation exercise it is important to consider carefully how the burden of consultation can be minimised. While interested parties may welcome the opportunity to contribute their views or evidence, they will not welcome being asked the same questions time and time again. If the Government has previously obtained relevant information from the same audience, consideration should be given as to whether this information could be re-used to inform the policymaking process, e.g. is the information still relevant and were all interested groups canvassed? Details of how any such information was gained should be clearly stated so that consultees can comment on the existing information or contribute further to this evidence-base.
- 5.2 If some of the information that the Government is looking for is already in the public domain through market research, surveys, position papers, etc., it should be considered how this can be used to inform the consultation exercise and thereby reduce the burden of consultation.
- 5.3 In the planning phase, policy teams should speak to their Consultation Coordinator and other policy teams with an interest in similar sectors in order to look for opportunities for joining up work so as to minimise the burden of consultations aimed at the same groups.
- 5.4 Consultation exercises that allow consultees to answer questions directly online can help reduce the burden of consultation for those with the technology to participate. However, the bureaucracy involved in registering (e.g. to obtain a username and password) should be kept to a minimum.
- 5.5 Formal consultation should not be entered into lightly. Departmental Consultation Coordinators and, most importantly, potential consultees will often be happy to advise about the need to carry out a formal consultation exercise and acceptable alternatives to a formal exercise.¹⁵

¹⁵ Guidance on alternative means of seeking input are available. See <http://www.berr.gov.uk/bre>

Criterion 6 Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

- 6.1** All responses (both written responses and those fed in through other channels such as discussion forums and public meetings) should be analysed carefully, using the expertise, experiences and views of respondents to develop a more effective and efficient policy. The focus should be on the evidence given by consultees to back up their arguments. Analysing consultation responses is primarily a qualitative rather than a quantitative exercise.
- 6.2** In order to ensure that responses are analysed correctly, it is important to understand who different bodies represent, and how the response has been pulled together, e.g. whether the views of members of a representative body were sought prior to drafting the response.
- 6.3** Consultation documents should, where possible, give an indication as to the likely timetable for further policy development. Should any significant changes in the timing arise, steps should be taken to communicate these to potential consultees.
- 6.4** Following a consultation exercise, the Government should provide a summary of who responded to the consultation exercise and a summary of the views expressed to each question. A summary of any other significant comments should also be provided. This feedback should normally set out what decisions have been taken in light of what was learnt from the consultation exercise. This information should normally be published before or alongside any further action, e.g. laying legislation before Parliament.¹⁶ Those who have participated in a consultation exercise should normally be alerted to the publication of this information.
- 6.5** Consideration should be given to publishing the individual responses received to consultation exercises.
- 6.6** The criteria of this Code should be reproduced in consultation papers alongside the contact details of the departmental Consultation Coordinator. Consultees should be invited to submit comments to the Consultation Coordinator about the extent to which the criteria have been observed and any ways of improving consultation processes.

¹⁶ Where Statutory Instruments are being brought forward it is a requirement to include within the accompanying Explanatory Memorandum a summary of the consultation exercise and its outcome (*Statutory Instrument Practice* paragraph 4.12 refers <http://www.opsi.gov.uk/si/statutory-instrument-practice.htm>)

Criterion 7 Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

- 7.1 Every organisation to which this Code applies should appoint a Consultation Coordinator. The Consultation Coordinator should be named in consultation documents as the person to contact with any queries or complaints regarding consultation process (the policy lead should be the contact point for queries regarding content).
- 7.2 Policy officials who are to run a consultation exercise should seek advice from their Consultation Coordinator early in the planning stages.
- 7.3 Government departments should monitor the effectiveness of their consultation exercises. Learning from consultation exercises should be shared with the department's Consultation Coordinator who will facilitate the sharing of lessons learned within the department and between departments and agencies.

Better Regulation Executive
Department for Business, Enterprise
and Regulatory Reform
3rd Floor, 1 Victoria Street
London SW1H 0ET

Tel: 020 7215 0352
Website: www.bre.berr.gov.uk

Publication date: July 2008
URN 08/1097
© Crown copyright 2008

The text in this document may be reproduced free of charge in any format or media without requiring specific permission. This is subject to material not being used in a derogatory manner or in a misleading context. The source of the material must be acknowledged as Crown copyright and the title of the document must be included when being reproduced as part of another publication or service.