



Request for stakeholders' views on ROGS

**Consultation as part of a post
implementation review of the
Railways and Other Guided
Transport Systems (Safety)
Regulations 2006 (ROGS)**

August 2015

Contents



1. Purpose of this document	3
2. Background to ROGS	4
3. The objectives of ROGS	6
Original objectives in 2006	6
Objectives when ROGS were amended in 2011	7
Objectives when ROGS were amended in 2013	7
4. The post implementation review (PIR) of ROGS	8
Purpose	8
Collecting evidence	8
Providing your feedback	8
Next steps	9

1. Purpose of this document

- 1.1 Regulation 34A of the Railways and Other Guided Transport Systems (Safety) Regulations 2006 [[S.I. 2006/599](#)] (as amended) (ROGS) requires that by 26 August 2016 (and every five years thereafter) the Secretary of State:
- carries out a post implementation review (PIR) of ROGS;
 - sets out the conclusions of the review in a report; and
 - publishes the report.
- 1.2 The Office of Rail and Road (ORR) is carrying out the PIR on behalf of the Secretary of State and will draw conclusions and make any recommendations for change if required. This is the first time that ORR will do this in respect of any health and safety legislation. The process will be repeated (in relation to ROGS) every five years from 26 August 2016 or from the date the initial review report is published (whichever is earlier) if the results of the review indicate that ROGS continue in force.
- 1.3 The purpose of this document, therefore, is to seek feedback from stakeholders on their views and experience of ROGS. Your views are critical to providing a sound evidence base for us to assess the effectiveness (or otherwise) of ROGS after they have been in force and operational for a nine years and address:
- the extent to which the Regulations are achieving their intended effects;
 - whether there have been any unintended effects; and
 - how well they are working and the reasons why.
- 1.4 From this consultation we hope to collect sufficient evidence to establish whether, and to what extent, ROGS:
- have achieved their original objectives;
 - have objectives which are still valid;
 - are still required and remain the best option for achieving those objectives; and
 - can be improved to reduce the burden on business and overall costs.

2. Background to ROGS

2.1 ROGS came into force in full on 1 October 2006 and have subsequently been amended by the:

- Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2006 [[S.I. 2006/1057](#)];
- Channel Tunnel (Safety) Order 2007 [[S.I. 2007/3531](#)];
- Passengers' Council (Non-Railway Functions) Order 2010 [[S.I. 2010/439](#)];
- Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011 [[S.I. 2011/1860](#)];
- Railways (Interoperability) Regulations 2011 [[S.I. 2011/3066](#)];
- Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013 [[S.I. 2013/950](#)];
- Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 [[S.I. 2013/1471](#)]; and
- Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013 [[S.I. 2013/2042](#)].

2.2 ROGS require:

- most railway operators (defined as “transport operators”) to:
 - maintain a safety management system (SMS) and hold a safety certificate or authorisation indicating that the SMS has been accepted by ORR;
 - show that they have procedures in place to introduce new or altered vehicles or infrastructure safely through a safety verification procedure using an independent competent person (if they are non-mainline transport operators);
 - carry out risk assessments and put in place the measures they have identified as necessary to make sure the transport system is run safely;
 - send ORR an annual report on their safety performance if they hold a safety certificate or authorisation for the mainline railway; and
 - cooperate with each other and work together to make sure the transport system is run safely;
- transport operators and their contractors to make sure their employees who carry out safety critical tasks are suitably competent and fit to do so;
- anyone who places in service, or uses, a rail vehicle on the mainline railway to make sure that:

- the vehicle has an entity in charge of maintenance (ECM) assigned to it; and
- the ECM is registered in the national vehicle register before the vehicle is placed in service or used; and
- an ECM to have:
 - a maintenance system in place to ensure that all vehicles it maintains are safe to run; and
 - a certificate to demonstrate this if the vehicle is a freight wagon.

2.3 ROGS transposed, in part, the Railways Safety Directive (2004/49/EC) (the rest of it was transposed by three other sets of regulations¹), which established a common framework for the regulation and development of railway safety across all European Union Member States.

2.4 The requirement to implement the provisions of the Railway Safety Directive provided an opportunity to consolidate the pre-existing national regulatory framework in Great Britain and make significant deregulatory changes in line with Government policy. ROGS therefore:

- replaced a detailed safety case regime from the Railway Safety Case Regulations 2000 with the Directive's similar requirement for an SMS that was then assessed at a less detailed level to provide safety certificates (for train operators) and safety authorisations (for infrastructure managers on the mainline railway);
- applied similar principles for an SMS to non-mainline railways and transport systems but adapted to reflect the nature and extent of those operations (but not requiring the full certification or authorisation process provided by the Directive for the purposes of European harmonisation, or any certification requirements for some operators such as heritage and tramways);
- dispensed with the statutory technical approvals regime under the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994 to create a proportionate system of safety verification to control risks arising from the introduction of new or altered vehicles and infrastructure; and
- replaced the Safety Critical Work Regulations 1994 and introduced more goal-setting requirements for the management of safety-critical work (which implemented some recommendations from the Rt Hon Lord Cullen PC's inquiry into the Ladbroke Grove accident).

2.5 The provisions in ROGS are therefore a hybrid of European and national provisions.

¹ The Railways (Access to Training Services) Regulations 2006 [[S.I. 2006/598](#)]; the Railways (Safety Management) Regulations (Northern Ireland) 2006 [[S.I. 2006/237](#)]; and the Railways (Accident Investigation and Reporting) Regulations 2005 [[S.I. 2005/1992](#)].

3. The objectives of ROGS

3.1 The ultimate objective of ROGS is to:

Maintain national standards of rail safety in line with EU requirements and strive for continuous improvement

3.2 This ultimate objective translates into the following subsidiary objectives for ROGS (which were determined by the requirement to implement the provisions of the Railway Safety Directive (as amended) and the consolidation of the pre-existing national regulatory framework in Great Britain as explained in paragraph 2.4):

Original objectives in 2006

- **Objective 1:** (a) transferring the mainline² railway industry from a system of railway safety cases to a system of safety certification and authorisation; and (b) Ensuring the UK can respond to common safety targets in future;
- **Objective 2:** (a) reduce the number of railway operators that have to seek formal permission to work on the railway; (b) producing a minimum set of requirements for a SMS so that safety certification is more streamlined and better targeted, less bureaucratic and quicker for duty holders; and (c) redirecting inspection towards checking on the ground that operators are controlling their operational risks;
- **Objective 3:** (a) transport operators and infrastructure managers working together to ensure system safety; and (b) operators identifying appropriate forms of cooperation that complement the measures they are taking to comply with their own safety duties;
- **Objective 4:** (a) removal of the existing requirement on the non-mainline railway for formal approval by ORR before introducing new or altered works, plant or equipment; and (b) replacing this requirement so that duty holders obtain safety verification from an independent competent person;
- **Objective 5:** (a) changing the definition of 'safety critical work' from broad job titles to the actual tasks that are safety critical to the safety of the railway; (b) safety critical tasks must be carried out by a person assessed as being competent and fit for work; (c) remove the requirement for safety critical workers to carry a formal means of identification; and (d) require a change in approach from simply controlling the number of hours for preventing fatigue to one of requiring arrangements to be implemented that control risks such as the pattern of working hours and roster design;

² This requirement also applies to non-mainline duty holders where the operational speed limit is above 25km per hour.

Objectives when ROGS were amended in 2011

- **Objective 6:** establish an entity in charge of maintenance (ECM) regime applicable to the UK, which complies with the Railway Safety Directive (as amended) and is consistent with ROGS;
- **Objective 7:** clarify in Part 4 of ROGS that “work” includes voluntary workers;
- **Objective 8:** establish a method of collecting accident data which complies with the Railway Safety Directive (as amended) and is consistent with ROGS;

Objectives when ROGS were amended in 2013

- **Objective 9:** establish an ECM certification regime applicable to the UK, which complies with the Railway Safety Directive (as amended) and is consistent with ROGS by giving effect to European Commission Regulation (EU) 445/2011 on a system of certification of ECMs for freight wagons;
- **Objective 10:** provide clarification that those rail systems listed in Article 2(2) of the Railway Safety Directive are properly excluded from the mainline railway;
- **Objective 11:** remove the requirement for safety verification for mainline railway transport operators;
- **Objective 12:** remove the requirement for non-mainline transport operators to send annual safety reports to ORR;
- **Objective 13:** clarify that the monitoring arrangements of the controller of safety-critical work have to be *suitable and sufficient*, and
- **Objective 14:** make the 28-day consultation with an ‘affected party’ run concurrently with the four-month application assessment period for safety certificates and safety authorisations.

4. The post implementation review (PIR) of ROGS

Purpose

- 4.1 The purpose of the PIR is to analyse whether ROGS provides an appropriate level of regulation and to check that any regulatory burdens or costs on business remain proportionate to the objectives noted in Chapter 3.

Collecting evidence

- 4.2 In 2006 ORR commissioned Nobel Denton Associates to carry out an evaluation of ROGS (the original set of regulations made in 2006) to review and assess whether ROGS had met their original objectives and if they represented value for money. They produced a [baseline report](#) in 2007 and further surveys were carried out in [2008](#) and [2009](#). A [final report](#) was published in 2010 (the 2010 report), which covers a final survey undertaken by questionnaire in late 2009 and the outcome of a workshop.
- 4.3 The 2010 report on the four-year study concluded that the majority of the objectives of ROGS had either been met or were on their way to being met. The only objective which the report concluded had not been met at the time was objective 5(d), which requires a change in approach from simply controlling the number of hours for preventing fatigue to one requiring arrangements to be implemented that control risks such as the pattern of working hour and roster design.
- 4.4 Rather than commission a further in-depth independent evaluation, ORR is intending to collect evidence for the PIR by:
- consultation with stakeholders; and
 - researching ORR data sources and published data (such as surveys conducted by the European Railway Agency; and [the 2010 report](#)).
- 4.5 The stakeholder survey mentioned below therefore focuses on finding out the impact of objectives 5(d), and 6 to 14 which are related to amendments (see Chapter 1) introduced after the original evaluation was completed, and whether they have also been met. It also seeks general feedback from stakeholder on their views and experience of ROGS.

Providing your feedback

- 4.6 We are seeking feedback from stakeholders in the form of an on-line survey and would welcome, in particular, feedback from anyone who has a duty under ROGS, or are affected by their provisions. If there is sufficient demand, we may also consider

holding a PIR workshop. We would be grateful for responses which are as comprehensive as possible and especially those which provide evidence and examples of how ROGS operate in practice and affect your business or operations. We may contact individual respondents to seek further clarification on their answers if necessary.

- 4.7 The survey is available online at: <https://www.surveymonkey.com/r/ROGSPIR> and will run until **13 October 2015**. It should take no longer than 20-25 minutes to complete. You can re-enter the survey from the same computer or device (using the same browser) to update your responses at any time before the survey closes. If you have any questions about the survey, or the PIR process, or if you would prefer to complete a Word version of the survey, please contact:

Stefano Valentino

Office of Rail and Road, 1 Kemble Street, London WC2B 4AN

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

Tel: 020 7282 2003

Next steps

- 4.8 Evidence from the review should support decisions about the next steps with ROGS. These could be either:
- renewal (i.e. ROGS should remain as they are);
 - amendment (i.e. ROGS should remain but implementation should be revised or improved);
 - removal (i.e. ROGS should be removed without replacement [see paragraph 4.9]); or
 - replacement (i.e. ROGS should be replaced or redesigned).
- 4.9 As ROGS largely transpose a European Union Directive, the option of removal of the transposition measures it contains is not directly actionable as this would conflict with the United Kingdom's treaty obligations as a Member State. However, reviewing ROGS against the policy options in paragraph 4.8 'as if they were' will provide the basis for stronger discussions with the European Commission/European Railway Agency around undertaking full European Union-level evaluations or PIRs. Although ORR is able to make recommendations to the Secretary of State on changes, if required, there is nevertheless scope to:
- make non-statutory amendments to guidance on ROGS;

- improve enforcement; and
- reduce burdens on UK businesses so that they are not put at a competitive disadvantage (by ensuring that UK transposition does not go beyond the EU minimum).

4.10 The Railway Safety Directive is currently being review as part of the Fourth Railway Package of measures from the European Commission. ORR expects the results of the PIR to feed into the transposition process for the Railway Safety Directive, when the Fourth Railway Package is finalised.

Further information

Impact assessments

- [The Railways and Other Guided Transport Systems \(Safety\) Regulations 2006](#)
- [The Railways and Other Guided Transport Systems \(Miscellaneous Amendments\) Regulations 2013](#)

Consolidated version of ROGS

- An unofficial consolidated version of ROGS can be found on [ORR's website](#).

Guidance on ROGS

- Further guidance on ROGS can be found on [ORR's website](#).

Use of the name, the Office of Rail and Road, reflects the new highways monitor functions conferred on ORR by the Infrastructure Act 2015. Until this name change is confirmed by legislation, the Office of Rail Regulation will continue to be used in all documents, decisions and matters having legal effects or consequences.



© Crown copyright 2015

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at orr.gov.uk

Any enquiries regarding this publication should be sent to us at orr.gov.uk