

Consultation on the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011 – summary of key outcomes

Exclusion of heritage vehicles from ROGS

The amending Directive allows Member States to exclude heritage vehicles that run on national networks and heritage and tourist railways that run on their own networks.

Just over half of respondents agreed that we should not change the current position on the exclusions in ROGS. Of the rest, the main objections were that the few heritage lines that run at speeds greater than 40 km/h should be excluded from requiring a safety certificate or safety management system.

Our policy is that the current position should remain. Those operating on the mainline network and those operating on non-mainline infrastructure at speeds greater than 40 km/h are required to have a safety certificate. Those operating on non-mainline infrastructure at speeds below 40 km/h are required to have a safety management system, but no certificate. The current national provisions are based on risk and are consistent with other provisions and regulatory mechanisms in place. Since operators are already subject to these requirements, no additional regulatory burden is created.

We will review this policy as we develop proposals for implementing the remainder of Directive 2008/110/EC (see below).

Alternative measures

The amending 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.

Just under half of respondents were aware of circumstances in which vehicles registered and maintained according to the laws of a non-EU country enter Great Britain. These are for heritage and museum stock or vehicles from USA/Japan/China on rare visits for test runs. Also, wagons under the former International Wagon Regulations (Regolamento Internazionale Veicoli, or RIV) that have been accepted as complying with international standard UIC503 will still be operating under their country's maintenance rules when they enter Great Britain.

Just over half of respondents said that they were aware of circumstances in which vehicles with track gauges other than standard gauge enter Great Britain. These are for narrow gauge railways, museum, or heritage railways, and do not run on the mainline. These railways are excluded from the mainline provisions of ROGS.

None of the respondents said that they were aware of 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.

Based on the responses received, the UK Government does not intend introducing any alternative measures for identifying, or subsequently certifying, the ECM. Most of the vehicles identified by consultees would normally be excluded from the scope of ECM certification. However, any that may be caught would be subject to the usual ECM certification requirements under ROGS.

Investigating accidents involving tramways in Scotland

Around three quarters of respondents agreed that RAIB should be the investigating body for accidents on tramways in Scotland. The others did not express an opinion. Whilst it remains the Government's intention to extend RAIB's powers to include tramways in Scotland, the delays to the introduction of the Edinburgh Tram service mean that it would not be possible in practice for this power to be used immediately. For better regulation reasons, the Government has therefore decided to remove the extension from these Regulations and will consider their future implementation at a point closer to the intended date of operation.

Definitions

Around three quarters of respondents commented on the new definitions.

“Vehicle”

Some respondents suggested that the definition should be aligned with that in the draft Railways (Interoperability) Regulations consulted on at the same time as the Regulations.

Part (a) of the revised definition is already included in ROGS as the definition of “vehicle”. It includes vehicles that do not operate on the mainline, such as trams. Part (b) of the definition has been added to align it with the definition of “vehicle” in the Regulations transposing Directive 2008/57/EC. This is so that there is consistency between the two sets of Regulations.

“Entity in charge of maintenance” and “keeper”

Many respondents asked for clarification on who can become an ECM. The Regulations provide that anybody who fulfils the criteria can be an ECM. Some asked whether “exploiting the vehicle as a means of transport” includes an operating lease. Our guidance, “[A Guide to ROGS](#)” ( PDF 600 Kb) will be revised to include guidance on the revisions to ROGS. Clarification on these issues will be given in the guidance.

“Maintenance rules”

A small minority of respondents thought that the term “maintenance rules” should be deleted and replaced by “national safety rules”. The term “maintenance rules” has been retained in the Regulations because it is used in the amending Directive. “National safety rules” has a wider meaning and is not restricted to the context of maintenance.

“Maintenance file”

Some respondents said that “technical and management information” can be intangible and embedded in organisational structures and the skills of staff. They suggested that the word “all” should therefore be deleted.

The definition has been changed to include the word “written”. This limits the information to items that have been recorded.

The date for registering vehicles on the NVR

Since the Regulations will enter into force after 9th November 2010, a date for registering vehicles used domestically on the NVR has not been included.

Safety critical work

Two-thirds of respondents agreed with the proposal to clarify the meaning of “work” as including “voluntary work”. We have taken forward this proposal.

Other comments

Some respondents took the opportunity to comment on other aspects of ROGS, which were not consulted on. We will consider whether further changes to ROGS may be necessary as it develops the second instrument transposing the amending Directive.

We have made some further changes to the Regulations as a result of responses to the consultation. These are:

- The definition of “placed in service” (and cognate expressions) in regulations 5(6) and 6(5) of ROGS has been deleted. A new definition of “placed in service”, harmonised with the definition in the Regulations transposing Directive 2008/57/EC, has been inserted in regulation 2(1) of ROGS. This is to make clear the meaning of “place in service” in new regulation 18A of ROGS.
- Regulation 31 of ROGS, which deals with the defence of due diligence, has been extended to include new regulation 18A(2). This is to help mitigate any concerns that a duty to ensure vehicles are safe to run on the network is:
 - a) too onerous; and
 - b) does not take into account the possibility that the duty holder has taken all reasonable steps or due diligence to avoid committing the offence under regulation 18A(2).
- Paragraph 2 of schedule 3 of ROGS now specifies that we will report on significant accidents only in its annual safety report. This is instead of including an option for us to report on all accidents.