

Oliver Stewart
RAIB Recommendation Handling Manager



13 October 2023

Mr Andy Lewis
Deputy Chief Inspector of Rail Accidents

Dear Andy,

RAIB Report: Derailment of a freight train at Llangennech, Carmarthenshire on 26 August 2020

I write to provide an update¹ on the action taken in respect of recommendation 9 addressed to ORR in the above report, published on 13 January 2022.

The annex to this letter provides details of actions taken in response to the recommendation and the status decided by ORR. The status of recommendation 9 is **'Closed'**.

We do not propose to take any further action in respect of the recommendation, unless we become aware that any of the information provided has become inaccurate, in which case I will write to you again.

We will publish this response on the ORR website on 16 October 2023.

Yours sincerely,

Oliver Stewart

¹ In accordance with Regulation 12(2)(b) of the Railways (Accident Investigation and Reporting) Regulations 2005

Recommendation 9

The intent of this recommendation is to address a gap in the regulatory oversight of freight wagon maintenance.

The Department for Transport and the Office of Rail and Road should jointly review the current arrangements for the oversight of entities in charge of maintenance (ECMs) and certification bodies that are not based in the UK. As a minimum the review should include consideration of:

- the effectiveness of current arrangements for the oversight of ECMs that are not based in the UK;
- current barriers to effective engagement with ECMs and certification bodies that are based outside the UK; and
- avenues for closer engagement with EU national safety authorities on matters related to rolling stock maintenance.

The outcome of the review should be used to inform any necessary changes to policy or legislation in this area.

ORR decision

1. An amendment to The Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS) to end the recognition of EU ECM certificates for domestic operators came into force on 30 June 2023. DfT and ORR have worked together to produce updated ECM guidance for industry which was published on the ORR website in August 2023².

2. After reviewing the information provided ORR has concluded that, in accordance with the Railways (Accident Investigation and Reporting) Regulations 2005, ORR has:

- taken the recommendation into consideration; and
- has taken action to close it

Status: Closed.

Previously reported to RAIB

3. On 12 January 2022 ORR reported the following:

DfT has announced its intention to end the recognition of EU ECM certificates from 30 June 2023. This period of recognition has been extended beyond the original proposed date of 1 January 2023 to allow the affected ECMs and wider freight

² <https://www.orr.gov.uk/guidance-compliance/rail/health-safety/laws/rogs/entities-charge-maintenance>.

industry sufficient time to prepare. ORR understands that ending the recognition of EU ECM certificates aligns with a wider government policy to end the unilateral recognition of EU certificates/markings and documentation for placing manufactured goods onto the GB market. The proposal has been discussed with ORR and stakeholders in the UK ECM market and there is agreement that it would address concerns about the current limitations on ORR's ability to monitor the surveillance of ECMs certified by certification bodies that are not based in the UK.

The Llangennech derailment highlighted the potential for weaknesses in the surveillance of ECMs to contribute to serious safety failings and ORR considers that ending the recognition of EU certification of ECMs would reduce this risk.

A regulatory change to the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS) will be required to end the current recognition of EU ECM certificates for ECM operating in the UK. DfT has been engaging closely with the affected ECMs who will need to seek certification by a UK based certification body in order to continue to comply with ROGs once it is amended, and with the current UK certification bodies. This is to understand the work that will be required and the timing of the change reflects the need for sufficient time for the affected ECMs to prepare their applications for UK certification.

Previously reported to RAIB

Recommendation 9

The intent of this recommendation is to address a gap in the regulatory oversight of freight wagon maintenance.

The Department for Transport and the Office of Rail and Road should jointly review the current arrangements for the oversight of entities in charge of maintenance (ECMs) and certification bodies that are not based in the UK. As a minimum the review should include consideration of:

- the effectiveness of current arrangements for the oversight of ECMs that are not based in the UK;
- current barriers to effective engagement with ECMs and certification bodies that are based outside the UK; and
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The outcome of the review should be used to inform any necessary changes to policy or legislation in this area.

ORR decision

1. DfT has announced its intention to end the recognition of EU ECM certificates from 30 June 2023. This period of recognition has been extended beyond the original proposed date of 1 January 2023 to allow the affected ECMs and wider freight industry sufficient time to prepare. ORR understands that ending the recognition of EU ECM certificates aligns with a wider government policy to end the unilateral recognition of EU certificates/markings and documentation for placing manufactured goods onto the GB market. The proposal has been discussed with ORR and stakeholders in the UK ECM market and there is agreement that it would address concerns about the current limitations on ORR's ability to monitor the surveillance of ECMs certified by certification bodies that are not based in the UK.

2. The Llangennech derailment highlighted the potential for weaknesses in the surveillance of ECMs to contribute to serious safety failings and ORR considers that ending the recognition of EU certification of ECMs would reduce this risk.

3. A regulatory change to the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS) will be required to end the current recognition of EU ECM certificates for ECM operating in the UK. DfT has been engaging closely with the affected ECMs who will need to seek certification by a UK based certification body in order to continue to comply with ROGs once it is amended, and with the current UK certification bodies. This is to understand the work that will be required and the timing of the change reflects the need for

sufficient time for the affected ECMs to prepare their applications for UK certification.

4. After reviewing the information provided ORR has concluded that, in accordance with the Railways (Accident Investigation and Reporting) Regulations 2005, ORR has:

- taken the recommendation into consideration; and
- is taking action to implement it

Status: Progressing. ORR will advise RAIB when further information is available regarding actions being taken to address this recommendation.