



Consultation on ORR's proposal to withdraw from the ECM certification body function – summary of key outcomes

July 2017

Summary

ORR published a consultation document in March 2017 and invited industry stakeholders to comment on our proposals to withdraw from the certification body function for entities in charge of maintenance (ECM) of freight wagons. We received comments from 13 respondents and discussed the issues raised at a well-attended and constructive seminar we hosted on 9 June 2017 where we proposed measures to mitigate the impact of our withdrawal.

ORR's decision

1. ORR has considered the comments made and, while we have decided to continue implementing our proposal to withdraw from the ECM certification body function, we have adjusted our plans to take into account the industry's comments on the original proposal.
2. Instead of withdrawing on 31 December 2017, ORR will now cease to carry out the ECM certification body function on **31 May 2018**. We will no longer issue ECM certificates or carry out surveillance activities after that date. We have delayed our withdrawal by five months to:
 - allow ECMs to plan their budgets for the next financial year;
 - give ECMs more time to consider their options for transferring their certification to another certification body; and
 - reduce the cost impact for a greater number of ECMs.

3. We believe a reasonable cut-off time for us to stop accepting applications is six months before withdrawal (i.e. by 30 November 2017). This is in order for:
 - ORR to assess any applications and issue a certificate within four months; and
 - an applicant for an ECM certificate to respond to any request for supplementary information or to deal with any matters raised during the process.

This cut-off date is not dependent on the expiry date of the certificate of an applicant seeking recertification (contrary to what we proposed in the consultation). Therefore, any applicant, whether seeking a new certificate or a recertification from ORR, must submit the application by **30 November 2017**.

Sharing of experience

4. One of the concerns raised by some stakeholders was that the accredited certification bodies lacked the practical experience of ECM certification in the UK and of the freight sector. ORR is therefore offering any certification body the opportunity to shadow ORR as it assesses ECM certificate application and carry out surveillance activities. This will be open to certification bodies if they think that it would be beneficial for them to learn any lessons from ORR's experience as a certification body. Stakeholders at the seminar on 9 June welcomed this.
5. The shadowing experience will involve staff from the certification body meeting with ORR staff and learning how we approach assessment and surveillance in relation to applications sent to ORR. It will not include assessments or surveillance activities relating to applications sent to accredited bodies. This opportunity is voluntary for certification bodies and provided at ORR's discretion therefore ORR will not reimburse the certification body's costs.

Transfer of certification

6. Once ORR has withdrawn from the certification body function, an ECM with a valid certificate will need to transfer its certification to another certification body for ongoing surveillance. Some stakeholders were concerned that the transfer of certification would lead to the new certification bodies requiring unjustified and costly re-certification.
7. The [ECM certification scheme](#) uses the International Accreditation Forum (IAF) [Mandatory Document 2:2007 standard](#), which provides rules for transferring certification while maintaining its integrity. The transfer process is based on a pre-transfer review by the accepting certification body prior to transfer. This involves a review of documentation and a visit to an ECM and covers the following:

- confirmation that the certified activities of the ECM fall within the scope of accepting certification body's accredited activities;
 - the reasons for seeking a transfer (for example, withdrawal of the previous certification body from the role);
 - verification that the ECM has a valid certificate;
 - an evaluation of the last assessment reports;
 - the treatment of complaints and non-conformities.
8. After the pre-transfer review the accepting certification body can decide to either:
- accept the ECM certificate issued by ORR and carry out surveillance activities under the remaining validity of that certificate; or
 - offer to issue a new certificate and commence a new programme of on-going surveillance.
9. The accepting certification body will charge for the pre-transfer review and any subsequent assessment, audit and surveillance. ORR will not fund these activities.
10. We contacted the certification bodies accredited by the United Kingdom Accreditation Service to assess the likelihood of them accepting a certificate issued by ORR. The general response is that they are likely to accept ORR's certificates provided that they receive from us
- all the relevant information from assessments and audits that demonstrate compliance with the criteria; and
 - evidence of closeout of any non-conformities.
11. ORR will therefore ensure that we make these available to any certification body that requests them in order to mitigate the risk that it will not accept the certificate issued by us.

Supervision

12. Some stakeholders noted the benefits that ORR's certification activity had led to by causing us to engage more fully with the ECM sector, driving up risk management capability and learning as a result. We are equally anxious not to lose these benefits. That is why, after withdrawing from the ECM certification body function ORR will continue in its supervisory role as national safety authority to monitor, promote and, where appropriate, enforce the safety regulatory framework in respect of activities involving freight wagon maintenance. When supervising the effectiveness of the safety management systems of infrastructure managers and railway undertakings who operate freight wagons, ORR may take into account the safety performance of

ECMs. We will establish and maintain effective dialogues with certification bodies in all circumstances in order to avoid any duplication of assessment.

ORR's responses to stakeholder comments

13. The table in Annex A summarises the comments made in response to the consultation in March 2017 and at the seminar on 9 June 2017 and ORR's responses to these.

Annex A: Stakeholder comments and ORR's responses

Theme	Comment	Supported by:	ORR's response
Support for ORR's withdrawal from the ECM certification body function	ORR's resources are too stretched to deliver the ECM certification body function effectively. Becoming too embedded in the certification process interferes with ORR's role as NSA to act as enforcement agent for the regulations	Network Rail, Sconrail	Withdrawing from the certification body function is an opportunity for ORR to deploy resources towards higher priority activities (such as targeted and risk-based supervision). This will allow us to become more efficient by using our specialist resources more effectively (which could help to reduce the safety levy year on year).
Cost. funding and timing	ORR's withdrawal from the CB function will increase costs for the ECM at a time when the rail freight sector is operating in a difficult economic climate	Freightliner, Rail Delivery Group	ORR took on the role of ECM certification as an interim measure while the Department for Transport asked the United Kingdom Accreditation Service (UKAS) to develop an accreditation scheme. It was never ORR's intention to carry out the ECM certification function indefinitely and it was therefore inevitable that certification costs would emerge in due course. We said at the outset that we would review the position once there were accredited bodies available to do this work. Therefore, we expected that ECMs would anticipate this eventuality. ORR does not charge for ECM certification, but we expect that an accredited body will charge in order to recover its costs. The consultation document included a qualitative assessment of the cost impact of ORR's withdrawal on ECMs. This acknowledged that there would be an increase in cost for the ECM once ORR withdraws from ECM certification (i.e. from paying nothing to paying something). It also acknowledged that there was a risk that increased costs could
	Risk that increased costs could drive some ECMs (particularly the smaller ones) out of the market thereby reducing the market base of ECMs	Freightliner, Private Wagon Federation (PWF) (plus Channel Commercials, Rail Freight Group, VTG, Nacco), DWS, Touax	
	What assessment has there been by ORR on the cost impact?	Freightliner, Rail Delivery Group	
	The proposed timescale of no new applications by 1 June 2017 and withdrawal by ORR on 31	Freightliner, Rail Delivery Group	

	<p>December 2017 is too short a notice for such a big change, especially when ECMs have not had enough notice to plan financial resources</p>		<p>drive some ECMs out of the market. We are uncertain of the likelihood of this, but one ECM, which is part of a European-based company, commented that it is considering adopting the ECM certification obtained in France.</p> <p>ORR has not provided any quantified estimates of what costs an ECM would incur from applying to an accredited body. This is because as a competition regulator we need to be cautious about making predictions about market outcomes.</p> <p>ORR has listened to the concerns raised about costs and has delayed our withdrawal by five months to mitigate the cost impact and allow ECMs time to plan for the next financial year.</p>
	<p>The natural date for ORR's withdrawal should be 31 May. This is because 31 May 2013 was the date when ECMs for freight wagons registered on the national vehicle register on 31 May 2012 had to be certified</p>	<p>PWF (plus Channel Commercials, Rail Freight Group, VTG, Nacco)</p>	<p>While in our view there is no direct relationship in Commission Regulation 445/2011 (the ECM Regulation) between the date when a certification body withdraws its services and the date when ECMs on the national vehicle register on 31 May 2012 had to be certified (i.e. 31 May 2013), ORR has accepted the suggestion that the date of withdrawal should be 31 May instead of 1 May.</p>
	<p>Freight wagon ECMs should be able to apply to ORR for a rebate of the safety levy as ECM certification forms part of the services covered by the safety levy</p>	<p>Rail Delivery Group</p>	<p>As consultees will be aware, we calculate the total resource required to fund our health and safety regulation activities and apportion the safety levy based on relevant turnover. As part of our business planning, we consult stakeholders on the priority activities and on the way ORR operates. By taking a risk-based approach and making efficiencies in our use of resources, we have progressively reduced the total amount of the safety levy payable by all duty holders (including FOCs) for several years in succession. Our withdrawal from ECM certification is part of this prioritisation activity. We do not identify specific costs and charges for individual safety permissioning</p>
	<p>Freight Operating Companies (FOCs), who pay the safety levy, can argue that they are already paying for ECM certification.</p>	<p>Freightliner</p>	

	Therefore they should receive a rebate for ECM certification if ORR withdraws from providing this service		transactions such as certification – as industry have regularly to us this would be unwelcome – so cannot ‘rebate’ them.
	Lack of experience of the accredited certification bodies makes them uncompetitive, creates a monopoly and therefore increase costs	Rail Delivery Group	<p>ORR continues to believe that there is a viable market of accredited certification bodies. If ORR continues the certification body function without any changes, this will inevitably threaten the chance of competition between these bodies, which can help to drive down costs.</p> <p>The accredited bodies have all demonstrated to UKAS that they have the necessary competence to carry out ECM certification. UKAS developed the accreditation scheme in conjunction with the Rail Safety and Standards Board using the basis of the well-established Rail Industry Supplier Approval Scheme (RISAS) and the sectoral accreditation scheme developed by the European Union Agency for Railways.</p>
	Significantly different time inputs have been suggested by potential CBs, thus implying variation on costs	PWF (plus Channel Commercials, Rail Freight Group, VTG, Nacco)	ORR expects that there may be differences in approaches in terms of efficiency and innovation (and hence differences in costs) between the different accredited bodies in a competitive environment. However all certification bodies are required to apply the same criteria when making assessments.
	ORR should defer its decision to withdraw for at least another two years when a decision has been made by the European Commission on the extension of ECM certification to other vehicles (and the UK is clearer about its relationship with the	Freightliner, Rail Delivery Group	The European Union (Withdrawal) Bill, published on 13 July 2017, is expected to copy across all existing EU legislation into domestic UK law to ensure a smooth transition on the day after the UK leaves the EU. Therefore, it seems likely that the ECM Regulation will remain in force for some time (perhaps many years) after Brexit. ORR believes that withdrawing from the certification body function now, while it is limited to only freight wagon ECMs, will allow accredited bodies to develop further their experience in ECM certification well ahead of

	EU)		any European Commission decision to extend the scope to other vehicles.
	ORR should continue as CB for at least the next five-year certification cycle	PWF (plus Channel Commercials, Rail Freight Group, VTG, Nacco)	
	ORR should consider a transitional period in which the ECM can self-declare itself as a certified ECM before it has to apply to an accredited body. This would be similar to the self-declarations of conformity introduced in 2009	Touax	<p>The European Joint Sector Group established a self-declaration scheme around 2009/10 before the ECM Regulation was in force to bridge the information gap between railway undertakings and ECMs. As part of the scheme, ECMs could self-declare themselves as certified ECMs based on criteria in the Memorandum of Understanding signed by some EU Member States, which did not include the UK. During the transition period, the ECM Regulation recognised self-declarations as being equivalent to ECM certificates issued under that Regulation until 31 May 2013.</p> <p>There is no legal scope for the UK to introduce a new self-declaration scheme under the ECM Regulation.</p>
Safety certification and FOC ECMs	If Freight Operating Companies (FOCs) (railway undertakings) are allowed to have their ECM certification covered through their safety certificate then this is an unfair playing field and may be seen as anti-competitive (i.e. non-FOCS will have to pay for ECM certification while the FOCs don't)	Touax, PWF (plus Channel Commercials, Rail Freight Group, VTG, Nacco)	<p>Under Article 7(8)(a) of the ECM Regulation, an ECM that maintains its own wagons can either</p> <ul style="list-style-type: none"> include an ECM certificate as part of its application for a safety certificate or safety authorisation; or have its capacity as an ECM assessed as part of its application for an safety certificate or safety authority. <p>Therefore, the choice on whether to seek a separate ECM certificate from an accredited body or to ask ORR to assess its capacity as an ECM as part of its application for a safety certificate or safety authorisation will rest with the ECM. As a certification body, ORR has awarded railway undertakings and infrastructure managers ECMs</p>

			<p>certificates separately from their safety certificates or safety authorisations (except for those that did not need to apply for an ECM certificate until their safety certificate or safety authorisation expired). These ECMs may decide to continue to seek separate ECM certificates or they could ask ORR make an assessment as part of their safety certificate or safety authorisation application. There is no legal scope for ORR to deny applicants this right.</p> <p>If the ECM asks ORR to assess its capacity as an ECM as part of its application for a safety certificate or safety authorisation, ORR will do so as a national safety authority under regulations 7 to 12 of the Railways and Other Guide Transport Systems (Safety) Regulations 2006 (as amended). ORR does not believe it will be competing with certification bodies when it awards a safety certificate or safety authorisation. Where relevant, we will liaise with the accredited bodies to avoid any duplication of assessment.</p>
Experience and competence of accredited bodies	Concern that the accredited bodies have no real experience of ECM certification in the UK (two of the UKAS-accredited ones have not undertaken any assessments to date)	Freightliner, Rail Delivery Group	The accredited bodies have all demonstrated to UKAS that they have the necessary competence to carry out ECM certification. UKAS developed the accreditation scheme in conjunction with the Rail Safety and Standards Board using the basis of the well-established Rail Industry Supplier Approval Scheme (RISAS) and the sectoral accreditation scheme developed by the European Union Agency for Railways. However, ORR is offering an opportunity for any accredited body to shadow ORR to learn any lessons from ORR's experience as a certification body.
	No commercial offers received from the accredited certification bodies	PWF (plus Channel Commercials, Rail Freight Group, VTG, Nacco), DWS	It is for the ECM to approach the accredited certification body of its own accord. We understand that some ECMs are already doing this. A list of accredited certification bodies is available on the European Railway Agency Database of Interoperability and Safety:

			https://eradis.era.europa.eu/safety_docs/ecm/certBodies/default.aspx
	There are differences in approach by the three UKAS-accredited certification bodies. Should there be a unified approach?	PWF (plus Channel Commercials, Rail Freight Group, VTG, Nacco)	ORR expects that there may be differences in approaches in terms of efficiency and innovation between the different accredited bodies in a competitive environment. However all certification bodies are required to apply the same criteria when making assessments.
	Concern that the accredited bodies will not be able to meet demand and provide a competitive service	Freightliner, Rail Delivery Group	ORR has received confirmation from the bodies accredited by UKAS that they would be able to meet the demand.
	Lack of clarity on whether the UKAS-accredited bodies are able to certify all four certification functions. Can an ECM obtain certification against one function, say, the Maintenance Delivery function? Clarification is needed on whether ORR's certification covered only the Management function	PWF (plus Channel Commercials, Rail Freight Group, VTG, Nacco)	<p>As required by the ECM Regulation, ORR has issued ECM certificates that cover the following four functions:</p> <ul style="list-style-type: none"> a) the management function, which supervises and coordinates the maintenance functions referred to in points (b) to (d) and ensures the safe state of the freight wagon in the railway system; b) the maintenance development function, which is responsible for the management of the maintenance documentation, including the configuration management, based on design and operational data as well as on performance and return on experience; c) the fleet maintenance management function, which manages the freight wagon's removal for maintenance and its return to operation after maintenance; and d) the maintenance delivery function, which delivers the required technical maintenance of a freight wagon or parts of it, including the release to service documentation. <p>UKAS accredited three bodies to deliver ECM certification for all four</p>
	Clarification needed on whether RISAS S4 certification can be taken as Maintenance Delivery function accreditation	PWF (plus Channel Commercials, Rail Freight Group, VTG, Nacco)	

			<p>functions. It has advised ORR that it has not placed any restriction on any of the three accredited bodies undertaking ECM certification. Therefore, there is a presumption that a body can certify an ECM for all four functions (a) to (d) and organisations seeking certification for separate functions individually from (b) to (d).</p> <p>UKAS has confirmed that RISAS S04 can be used as the basis of a maintenance workshop [function (d)] assessment and RISAS S01 can be used as the basis of ECM functions (a), (b) & (c) – this is explained in the RISAS briefing note (BN-008).</p>
Safety risk	<p>As a certification body, ORR ensured that a common ‘level playing field’ approach was applied that took account of the actual safety risk profile of our industry. ORR’s withdrawal could seriously prejudice this rational and logical approach. Evolution of a blind procedure-driven ‘box-ticking’ exercise could ultimately introduce safety risks</p>	<p>PWF (plus Channel Commercials, Rail Freight Group, VTG, Nacco)</p>	<p>The ECM Regulation provides a system of certification to demonstrate that an ECM has established its maintenance system. ECM certification supports the building of trust between stakeholders, in particular between RUs and ECMs, by facilitating the control of the risks. In practice, this means that it aims to provide assurance that the has arrangements in place that makes it able to maintain wagons to ensure they are in a safe state of running by assuring that:</p> <ol style="list-style-type: none"> 1. the management of maintenance activities and exchange of information is done through procedures for which their effectiveness and conformity against Articles 5(2), 5(3), 5(4) and 5(5) and Annex III have been assessed; 2. the maintenance of wagons is carried out in such a way that the wagons conform to applicable legislation; 3. the necessary engineering and technical competences for maintaining freight wagons are available; and 4. there is coherence between the outputs and inputs of processes related to maintenance development, fleet maintenance management and maintenance delivery.
	<p>The proposed changes will dilute the recertification process and increase the level of risk within the industry.</p>	<p>Davis Wagon Services</p>	

			<p>ECM certification is therefore a process-based system which carries out conformity assessment in two parts:</p> <ol style="list-style-type: none"> a) an assessment of the management of the maintenance system as set out in point 1 above; and b) inspections on a set of selected processes of the maintenance system (selected in maintenance development, fleet maintenance management and maintenance delivery), covering points 2 – 4 above. <p>Nothing stated above will change by ORR withdrawing from the certification body function. Whether ORR awards the ECM certificate or an accredited body the ECM will still have to:</p> <ul style="list-style-type: none"> • identify and control risks using the common safety method for risk evaluation and assessment (Commission Regulation 402/2013, as amended); and • ensure that its contractors implement risk control measures through the application of the CSM on monitoring (Commission Regulation 1078/2012) and that this is stipulated in contractual arrangements to be disclosed upon request by ORR, another national safety authority, or the European Union Agency for Railways.
	<p>Maintenance practices and standards differ between signatories of the General Contract of Use for Wagons (GCU) across mainland Europe and Great Britain. Unless steps are taken to ensure knowledge is retained of these differences</p>	<p>PWF (plus Channel Commercials, Rail Freight Group, VTG, Nacco)</p>	<p>The issues identified here do not depend on whether an ECM applies to ORR for an ECM certificate or an accredited body. However, ORR has raised the issue around the differences in maintenance practices with the European Union Agency for Railway as part of the Working Party to revise the ECM Regulation. This is a wider issue about ECM certification generally and not who does the certification.</p>

	there is potential for dangerous erroneous assumptions to be made.		
	Considering the amount of weight that has been put on ECMs to adopt the use of RM3, adding risk to any process is contradictory to ORR's objectives. Would ORR's withdrawal risk moving in the opposite direction to the continuous improvement stimulus encouraged by the RM3 model which ORR is strongly promulgating throughout the industry?	PWF (plus Channel Commercials, Rail Freight Group, VTG, Nacco), Davis Wagon Services	We have not been presented with any evidence that our withdrawal from certification activity would lead to an increase in safety risk.
Sharing information	The ECM certification bodies' cooperation (ECMCB) group chaired by the European Union Agency for Railways meets three times a year. It's attended by accredited, recognised and NSA acting as CBs. Therefore there is little value in a separate UK-specific forum. Given that many NoBos are likely to become ECM CBs, it would be more efficient to simply add the ECM topic on the agenda of the existing NoBo Forum.	Sconrail	We have noted these comments. However, once ORR is no longer a certification body it will not be able to attend the ECMCB group. ORR would support the addition of ECMs on the agenda for the existing NoBo Forum.



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