

## Revising guidance for the Train Driving Licences and Certificates Regulations (TDLCR) 2010: Consultation responses summary

Driver fact sheet	
<i>Issue / Comment</i>	<i>ORR response</i>
Too much emphasis on employers' responsibilities rather than the driver that owns the licence.	Whilst the licence is the property of the driver, it is the employer of the driver under regulation 17 who is required to have a system to monitor the drivers to check that they adhere to the requirements for holding a licence and therefore the fact sheet should reflect this.
Medical and occupational psychological fitness requirements guide	
<i>Issue / Comment</i>	<i>ORR response</i>
Inclusion of detailed medical guidance similar to RIS-3451-TOM	We understand the reasons why some consultees consider it would be advantageous to reproduce detailed guidance within this guide. We consider that a Railway Industry Standard developed with input from the medical community and train operators remains the most appropriate place for such detailed guidance, particularly as RSSB already has in place detailed medical guidance in RIS-3451-TOM. We consider that this review of the ORR guide has highlighted a number of new areas which could be included in RIS-3451-TOM and we will work with RSSB to ensure this element is considered in any review of RIS-3451-TOM.
Reference to SEQOHS standards	Following some of the consultation responses we have amended paragraph 2.16 of the medical and occupational psychological fitness guide to reflect that SEQOHS is one of a number of standards that doctors may choose to follow.
Use of F1,F2, U1 and U2 classification	Whilst we recognise that not all train operators and doctors may use such a classification system and we therefore consider it would be helpful to include it in the guide. However we have amended the drafting to reflect the fact that not all train operators and doctors use the classification. We consider that it would be beneficial if a common classification system was used across the industry. We will work with RSSB to ensure this element is considered in any review of RIS-3451-TOM.
Mental health (including dementia)	We agree that guidance is needed on a consistent approach to assessing mental health issues. There may be situations where a recognised doctor might need advice from a specialist and we have included a general reference to specialists in the new guides. We will work with RSSB to ensure that this issue is considered for inclusion in RIS-3451-TOM.

<p>Pre-existing medical conditions, taking medication and drug stabilisation period</p>	<p>We consider that the recognised doctor is in the best position to assess, in their professional opinion, whether medication or a pre-existing medical condition is likely to cause:</p> <ul style="list-style-type: none"> <li>• sudden loss of consciousness/incapacity,</li> <li>• reduction in concentration/attention,</li> <li>• loss of balance or coordination; or</li> <li>• limit mobility ;</li> </ul> <p>as the effects of medication/pre-existing medical condition will vary between individuals.</p> <p>Similarly regarding a period of stabilisation for medication it will vary between individuals and a recognised doctor is in the best position to assess this. We will work with RSSB to ensure that this issue is considered for inclusion in any review RIS-3451-TOM.</p>
<p>Needing a medical examination after an occupational accident or any period of absence following an accident involving persons.</p>	<p>An occupational accident could occur at work (potentially whilst on driving duties) and may include trauma. The key element is the effect of this on the driver's ability to continue to meet the fitness requirements in the regulations and where there is doubt about this then the driver should undergo another medical examination. The drafting in the guide has been amended to reflect this.</p> <p>Our interpretation is that an occupational accident may include a SPAD but not in all cases. A train operator may decide that it is necessary to check a driver's medical fitness after an absence from work following a SPAD to satisfy itself that the driver meets the medical fitness requirements in the regulations.</p>
<p>Notifying ORR about absence from work because of sickness</p>	<p>We do not need to be informed about the nature of a driver's absence of more than 30 days just the start date as this helps ORR keep the register up to date.</p>
<p>Relationship between the medical examination and occupational psychological fitness examination.</p>	<p>We have restructured the medical and occupational psychological fitness examination chapters to reflect the order of testing when a train driver is recruited. We have also included drafting to show that if this order is followed then the recognised doctor can be confident that the applicant has already been through occupational psychological fitness examination. The chapter on the occupational psychological fitness examination also sets out what is tested under this examination.</p>
<p>Use of medical assessors or clinicians to carry out parts of the medical examination</p>	<p>Clinician in this context would mean someone under the supervision of a recognised doctor. In the guide we have used the term 'medical assessor'.</p> <p>While we have not specified what experience and qualifications are necessary for a medical assessor we have included drafting to reflect that the medical assessor must be able to carry out elements of the examination to the satisfaction of the recognised doctor</p>

	<p>who is ultimately responsible for making the recommendation to the train operator about whether the driver meets the requirements for holding a licence.</p>
Use of GP or specialist.	<p>Specialist psychologists may be used by a recognised doctor or psychologist to treat drivers after an incident, trauma or psychological illness in order to come to a view about whether the driver continues to meet the fitness requirements set out in schedule 1.</p>
Audit and recording of results	<p>We have included reference to the Good Medical Practice document published by the GMC because we consider that this shows a more complete picture of the regulatory structure and who enforces it, particularly for those outside the medical community who will also be using this guide.</p> <p>There is currently no common format for recording the results of the medical examination. We think there would be significant benefits to adopting a common approach.</p> <p>We consider that there is significant benefit to developing audit arrangements and we will work with RSSB to ensure that this element and the development of standard way of recording results is considered for inclusion in RIS-3451-TOM.</p>
Who notifies the train driver about the results of a medical examination?	<p>We consider that as the train operator employs the driver and must have a system to check that its drivers adhere to the requirements of the Regulations, the train operator is the most appropriate person to inform the driver about whether he/she may continue to drive trains.</p>
Criteria for recognition and appeal process	<p>At the next audit of the recognition process we will look at the elements of having an understanding of the railway environment, qualification in occupational medicine and whether GMC registration alone is sufficient.</p> <p>The requirements for recognition we have developed enable us to establish whether the applicant meets the criteria of independence, competence and impartiality.</p> <p>Chapter 4 of the published guide sets out when we may consider removing a doctor from the register and also sets out the process for appealing against the decision.</p>
Use of term medical examination	<p>The consultation document contained references to both medical assessment and medical examination. We agree that this is confusing and the published guide contains references to the term 'medical examination'. We have used this term as it is the same as the one used in the regulations.</p> <p>We have also changed the published version so it no longer contains references to 'passing the medical'.</p>

Age of drivers and frequency of medical examination	We have considered how to explain the requirements for drivers once they reach 55 and although there are a number of ways this could be expressed, the key point is that drivers must have an annual medical examination once they become 55 and the published guide has been amended to show this.
Occupational psychological fitness examination: criteria and type of tests	<p>The criteria in the consultation draft were contained in ORR's previous single guidance document and are also publicly available through RSSB's website and consequently we consider that they can be published.</p> <p>We have removed the reference to multi-modal tests to improve clarity of the guide.</p> <p>The appeal process has been amended to show that the time to make the decision starts once all the representations have been received.</p>
<b>Suspension and withdrawal guide</b>	
<i>Issue / Comment</i>	<i>ORR response</i>
Train driver is responsible for ensuring licence is valid and notifying ORR about incidents or driver dismissal.	<p>Whilst the licence is the property of the driver, the obligations on the train operator is outlined in two 2 regulations. Under regulation 4 the train operator must not deploy a driver who does not have a valid licence and certificate; and under regulation 17 the train operator must have a system in place to monitor drivers that <del>is</del> it employs to ensure that they continue to meet the requirements of the regulations.</p> <p>We have included a reference in the guide that operational incidents, where these might raise medical fitness or competence concerns affecting the validity of the licence, should be notified to ORR. The issues may be resolved through the ongoing competence management system, but ORR should be kept informed about the outcome of the process as it may be required to make a decision about the status of the licence. As issuer of the licence, only ORR, and not the operator, can make the decision about suspension or withdrawal of a licence.</p> <p>ORR must be informed by the train operator when a driver has been dismissed so that we can keep the register of licences up to date. Keeping the register up to date also allows ORR to answer enquiries from operators asking about the status of a licence in case a dismissed driver should seek employment elsewhere.</p> <p>As the train operator is under a legal duty not to deploy drivers who do not hold a valid licence, we would expect the results of medical examinations to be passed on to the train</p>

	operator by their occupational health provider, so that it can carry out its monitoring duties under the regulations (including requiring any reassessment).
Use of the term 'train operator'	This guide should also be read in conjunction with the operator guide which makes it clear that the use of the term 'train operator' includes both railway undertaking and infrastructure manager.
Inclusion of reference to RIS 3751 in respect of transfer of safety information	We consider that the inclusion of a reference to the RIS is helpful and is included at paragraph 1.15 of the published guide.
Interaction of train operator withdrawing/suspending a certificate and ORR withdrawing/suspending a licence.	As ORR relies on information supplied by the train operator to make a decision about whether a licence should be suspended or withdrawn, we think it is unlikely that there would be different triggers for suspending or withdrawing certificates or licences .
Prohibiting a driver from driving trains in Great Britain	ORR may prohibit a driver from driving trains in Great Britain under regulation 21 if we consider that the driver is a serious threat to the safety of the railway and regardless if the licence has been issued by another NSA. Other NSA's may exercise their powers in a similar way.
Copying the letter notifying the driver about a licence suspension or withdrawal to a former employer	We do not consider that this breaches GDPR rules as the train operators supply information regarding possible licence suspensions or withdrawals. Furthermore we are also under an obligation to disclose licence status when requested by employers of train drivers under regulation 26.
Destruction of withdrawn licences	Once the licence is withdrawn it is no longer valid and should be destroyed. We would not destroy the licence where the holder of a withdrawn licence had appealed against our decision to the Secretary of State.
Appeal to the Secretary of State	We note concerns made about the unavailability of a visible appeal process against our decisions on the licences and will raise this with the Department for Transport.
<b>Train operator guide</b>	
<i>Issue/comment</i>	<i>ORR response</i>
Pregnancy and notification of absence	We have amended the guide to reflect the fact that pregnant drivers must be treated in accordance with equality legislation.
Applicants for train driver positions who have previously had their licence withdrawn or suspended	There is concern about trainee drivers applying for a driver position after holding a licence which was withdrawn or suspended. We keep records of licences that we have withdrawn or suspended and operators can ask us to check whether any trainee driver applicant has previously held a licence that was withdrawn or suspended.

Examples of demonstrating satisfactory evidence to an inspector if a driver does not have the licence when driving	The published guide has been amended to reflect the legal requirement that the train operator must take reasonable steps to ensure that the driver has it with them while driving. This may include electronic copies.
Driver notifying the operator about competence issues	There is no specific requirement in the TDLCR for a driver to notify their employer of doubts as to competence in the same way as there is for a driver raising concerns about his/her state of health affecting their ability to drive trains. However operators may want to consider including such an element in their competence management cycle and we have covered this in the published guide.
Keeping an electronic register of certificates	The information held on the train operators register of certificates may be kept electronically.
Demonstrating that applicant has had 9 years of education	We would expect candidates to be asked to confirm their level of educational achievement as part of the selection process. There is a requirement to stay in education until 18 in the UK for those applicants educated in the UK.
ORR contacting the TOC with the date of the next medical examination	We ask to see the date when a driver passes the medical examination as we use this information to maintain and keep up to date our register of train licences as required by the TDLCR. This generates a new date by which the driver has to have the next medical examination.
Issuing a new licence if the driver needs to start wearing corrective lenses or hearing aids.	The published guide now reflects that we will re-issue an amended the licence in this situation.
Language skills requirement	<p>The train operator issues the certificate to the train driver once the operator is satisfied that the driver meets all the conditions including possessing the required language skills. The train operator may decide that passing the examinations for occupational psychological fitness and general professional competence are sufficient to meet the language requirement. The train operator may also decide to include a language component in the specific professional knowledge examinations.</p> <p>Language does not need to be tested specifically in the periodic checks on infrastructure and rolling stock knowledge but a train operator may decide to test the language element specifically where there is doubt that the driver does not have the required language skills.</p>
<b>Training and examination requirements guide</b>	
<i>Issue/Comment</i>	<i>ORR response</i>
Training and examination in relation to new rolling stock or lines	Following consultation responses we have included guidance on this in paragraphs 2.19 - 2.20 of the guide.

Use of recognition number on application form for a licence	When making an application for a licence via the SharePoint system, this requires the recognition number of the training or examination centre to be included. This is because such training or examination must be done by a centre on the register in order for the driver to be issued with a licence.
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