Dear Stefano Valentino,
Please accept this email and its attachments as RSSB's response to the consultation on the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010.
Yours sincerely,
Andrew Sharpe

Andrew Sharpe
Director of Standards and Technical Services, RSSB
Block 2, Angel Square, 1 Torrens Street, London EC1V 1NY

From: Jon Taylor
Sent: 07 June 2010 16:43
To: Andrew Sharpe
Cc: Graham Arkwright
Subject: Consultation on the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010

Andrew

Industry Standards Coordination Committee (ISCC), at its meeting on 21 May 2010 supported the proposal that RSSB's response to the ORR's consultation on the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 should take the form of the briefing papers RSSB prepared for ISCC, together with extracts from the relevant ISCC and Safety Policy Group (SPG) minutes.

As the ORR's consultation on the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 is aligned with the DfT's consultation on the transposition of Directive 2008/57/EC on the interoperability of the rail system, the briefing papers RSSB prepared for ISCC on draft Railways (Interoperability) Regulations 2010 are also relevant, particularly as some of the issues identified within the papers relate to the interface between the two sets of regulations.

Attached are copies of the papers and extracts from the minutes.

Email consultation responses should be directed to: Stefano.valentino@orr.gsi.gov.uk.

If you are content, could you forward this e-mail to the above e-mail address as RSSB's response.

Jon T

AGENDA ITEM: 4.2

MEETING:	**Industry Standards Co-ordination Committee**
DATE:	**21 May 2010**
SUBJECT:	**Paper A4 - Draft Railways (Interoperability) Regulations 2010: Miscellaneous issues (continued)**
SPONSOR:	**Andrew Sharpe**
AUTHOR:	**Jon Taylor**

1 Purpose of the paper

1.1 The Department for Transport (DfT) initiated a consultation on a draft of the Railways (Interoperability) Regulations 2010 on 29 March 2009. These regulations transpose Directive 2008/57/EC on the interoperability of the rail system.

1.2 RSSB has produced a series of papers for ISCC discussing different aspects of the regulations.

1.3 Paper A3 in the series drew ISCC's attention to a number of miscellaneous issues relating to the draft regulations. That paper did not document every issue relating to the draft regulations – further time was needed to complete the analysis of the regulations.

1.4 This paper (Paper A4) deals with the issues identified in section 8 of Paper A3 as likely to require further analysis.

1.5 Section 2 of this paper summarises the identified miscellaneous issues. Supporting details are set out in sections 3 to 25 and recommendations are made in section 26.

2 Summary of issues

2.1 **Distinction between the rolling stock subsystem and vehicles:** In not following the Directive in distinguishing between 'rolling stock' (a structural subsystem) and 'vehicles' (a compound of subsystems or parts of subsystems), the regulations may introduce some unanticipated difficulties. See section 3.

2.2 **Determination of type:** the role of the Safety Authority, the distinction between 'rolling stock subsystem' and 'vehicle', and the determination of type when applied to the CCS, ENE and INF subsystems. See section 4.

2.3 **Implementation plans:** the scope of implementation plans, applications to the competent authority for decisions as to whether authorisation is required, and the basis for such decisions. See section 5.

2.4 **Verification assessment procedures for project subsystems:** the references to schedule 6, the meaning of 'configuration control', and the assessment of interfaces. See section 6.

2.5 **Interoperability constituents:** a potential lack of clarity as to which things are actually 'interoperability constituents', the lack of a mandatory requirement in regulation 23; the apparently mandatory use of 'European Specifications', the requirement to always use a Notified Body, the reference to 'procedures set out in Schedule 7'. See sections 7 to 9.

2.6 **Designated bodies:** the nature and use of 'designated bodies' to assess conformity with notified national technical rules. See section 10.

2.7 **The register of infrastructure:** the content of the register, structural subsystems other than rolling stock fitted to vehicles, responsibility for registers of station infrastructure, timescales for compliance. See section 11.

2.8 **The national vehicle register:** The regulations do not recognise the GB specific case exempting vehicles used in domestic traffic from carrying (that is, being marked with) the European vehicle number assigned to it. See section 12.

2.9 **Annexes from Directive 2008/57/EC:** The Annexes to the Directive are drafted in style that is significantly different from the main text of the Directive. As a result, the substantial reproduction of the Annexes as Schedules in the regulations is not always either necessary or helpful. It is suggested that the Annexes to the Directive are not simply copied into the Schedules, but are transposed (as has been done for the main body of the Directive) and subject to a proper legal review. See sections 13 to 25.

3 Distinction between the rolling stock subsystem and vehicles

3.1 One of the most significant changes introduced by Directive 2008/57/EC is that it deals with three classes of object:

- interoperability constituents (covered in Chapter III)
- subsystems (covered in Chapter IV)
- vehicles (covered in Chapter V)

3.2 The pervious Directives appear to have only dealt with two classes of object: interoperability constituents and subsystems. The introduction of 'vehicles' is probably the result of moving matters relating to the authorisation of vehicles from Article 14 of the Safety Directive (2004/49/EC) into the Interoperability Directive (2008/57/EC).

3.3 In Directive 2008/57/EC, 'rolling stock' and 'vehicles' are not the same things. Rolling stock is a structural subsystem, but a vehicle is something composed of parts of different subsystems (mainly RST, but with bits of CCS and ENE for example). This is recognised in the definitions in the Directive:

(c) 'vehicle' means a railway vehicle that runs on its own wheels on railway lines, with or without traction. A vehicle is composed of one or more structural and functional subsystems or parts of such subsystems;

(e) 'subsystems' means the result of the division of the rail system, as shown in Annex II. These subsystems, for which essential requirements must be laid down, may be structural or functional;

3.4 The Directive does not define 'rolling stock' as a term, but it does identify it in Annex II as a structural subsystem.

3.5 The draft regulations do not maintain the distinction between 'rolling stock' and 'vehicles'. They define rolling stock as:

"rolling stock" means a vehicle, or where a vehicle can only be operated as part of a fixed formation multiple unit the whole of that unit;

3.6 This definition is not what the Directive means by 'rolling stock'. In the Directive, rolling stock is only one of the subsystems from which a vehicle may be composed.

3.7 In not following the Directive in distinguishing between 'rolling stock' (a structural subsystem) and 'vehicles' (a compound of subsystems or parts of subsystems), the regulations may introduce some unanticipated difficulties.

4 Determination of type

4.1 Regulation 8(1) states:

8.—(1) If the Safety Authority has issued an authorisation under these Regulations for the placing in service of rolling stock, the Safety Authority must determine that the rolling stock is of a particular type.

(2) If the Safety Authority has issued an authorisation under these Regulations for the placing in service of a structural subsystem that is not rolling stock, the Safety Authority may determine that the structural subsystem is of a particular type.

4.2 As noted above, there is a distinction to be made between 'rolling stock' (a subsystem) and 'vehicles' (made up from different subsystems):

4.3 Directive 2008/57/EC specifically deals with vehicle types, not rolling stock types:

Article 2
Definitions

For the purposes of this Directive:

> *(w) 'type' means a vehicle type defining the basic design characteristics of the vehicle as covered by a single type examination certificate described in module B of Decision 93/465/EEC*

4.4 Regulation 8(1) should be amended to refer to the placing in service of vehicles. Regulation 8(2) should be amended by deleting the words 'that is not rolling stock'.

4.5 The extension of the concept of 'type' to structural subsystems that are not parts of a vehicle is a novelty not envisaged by Directive 2008/57/EC. Its practical application is likely to be limited.

4.6 Regulation 8 appears to place a considerable burden on the Safety Authority, as it requires the Safety Authority to determine that the rolling stock is of a particular type and, when requested by a contracting entity that the structural subsystem is of a particular type. Regulation 8(4) then requires that:

> *(4) A determination of type must describe the basic design characteristics of the structural subsystem in the same manner and to the same extent as an EC-type examination certificate issued in accordance with the procedures of Module B in Annex II to Decision 768/2008/EC of the European Parliament and of the Council of 9th July 2008 on a common framework for the marketing of products.*

4.7 This requirement is presumably derived from the definition of 'type' in Directive 2008/57/EC:

> *'type' means a vehicle type defining the basic design characteristics of the vehicle as covered by a single type examination certificate described in module B of Decision 93/465/EEC*

4.8 Decision 93/465/EEC has been superseded by Decision 768/2008/EC.

4.9 Module B in Annex II to Decision 768/2008/EC is 'EC-type examination'. It states:

> *6. Where the type meets the requirements of the specific legislative instrument that apply to the product concerned, the notified body shall issue an EC-type examination certificate to the manufacturer. The certificate shall contain the name and address of the manufacturer, the conclusions of the examination, the conditions (if any) for its validity and the necessary data for identification of the approved type. The certificate may have one or more annexes attached.*
>
> *The certificate and its annexes shall contain all relevant information to allow the conformity of manufactured products with the examined type to be evaluated and to allow for in-service control.*

4.10 It is not clear whether the regulations, when requiring a determination of type to describe the basic design characteristics of the structural subsystem 'in the

same manner and to the same extent as an EC-type examination certificate' is referring to either, or both:

- the necessary data for identification of the approved type
- all relevant information to allow the conformity of manufactured products with the examined type to be evaluated and to allow for in-service control

4.11 In either case, the reference to 'the same manner and to the same extent as an EC-type examination certificate issued in accordance with the procedures of Module B in Annex II to Decision 768/2008/EC' does not actually set out what basic design characteristics must be described.

4.12 The modules provided in Decision 768/2008/EC are applicable only to products. They are not designed or intended for the verification of subsystems. Therefore for the purpose of EC verification of subsystems the TSIs contain 'adapted' modules, specific to that purpose.

4.13 The use of Module B is only appropriate to assessment of conformity of interoperability constituents, not subsystems. It should also be noted that TSIs allow a choice of modules for the purpose of EC verification of subsystems

4.14 Therefore the information contained in the documentation supplied to the Safety Authority for the purpose of Regulation 5(2) will not necessarily 'describe the basic design characteristics of the structural subsystem in the same manner and to the same extent as an EC-type examination certificate issued in accordance with the procedures of Module B in Annex II to Decision 768/2008/EC'.

4.15 It should be further noted that Directive 2008/57/EC states in Article 26(5):

> *5. The declaration of conformity to type shall be established in accordance with:*
>
> *(a) for TSI conform vehicles, the verification procedures of the relevant TSIs;*
>
> *(b) for non-TSI conform vehicles, the verification procedures as defined in modules D or E of Decision 93/465/EEC. Where appropriate, the Commission may adopt an ad hoc verification procedure in accordance with the regulatory procedure referred to in Article 29(3).*

4.16 Some other way of defining the manner and extent to which the basic design characteristics of the structural subsystem must be described is needed.

5 Implementation plans

5.1 The term 'implementation plan' is not defined. The purpose of the implementation plans must therefore be inferred, as it is not explicit.

Implementation plans are only referenced in Regulations 12 and 13 (although there is also a passing reference to implementation plans in Schedule 6).

5.2 Regulation 12(1) states:

> *12.—(1)The Competent Authority may publish an implementation plan for a TSI.*
>
> *(2) If such a plan is published under this regulation the Competent Authority must include in the plan a list (the "regulation 12 list") that names or describes each project or type of project that—*
>
> > *(a) deals with matters covered by the TSI to which the implementation plan relates, and*
> >
> > *(b) is, in the opinion of the Competent Authority, a project or type of project for the renewal or upgrading of an existing structural subsystem.*

5.3 Regulation 13 states:

> *13.—(1) Subject to paragraph (2), in relation to a project for the renewal or upgrading of an existing structural subsystem that deals with matters covered by a TSI, a contracting entity must apply in writing to the Competent Authority for a decision as to whether an authorisation is required for that subsystem to be placed in service.*
>
> *(2) If the Competent Authority has published an implementation plan under regulation 12 for a TSI, paragraph (1) only applies in relation to that TSI if the project is named or is of a type described in the regulation 12 list.*

5.4 The implementation plans contain a list of projects or types of project that the Competent Authority has decided in advance are 'for the renewal or upgrading of an existing structural subsystem'.

5.5 There is therefore an implication (but no more than an implication) that the implementation plan will also contain a statement as to whether particular projects or types of project require an authorisation to be placed in service.

5.6 It was understood from earlier discussions between the DfT and industry representatives that the implementation plans would also contain a statement about the 'extent TSIs must apply to the project subsystem'. This element of the implementation plans has been omitted from the draft regulations. Regulation 13(9) makes no mention of implementation plans, stating:

> *13.—(9) Where the Competent Authority determines that the subsystem requires an authorisation—*
>
> > *(a) the Competent Authority must, subject to any derogations under regulation 14, decide to what extent TSIs must apply to the project subsystem; and*

(b) the Secretary of State must notify that decision to the Commission and other Member States.

5.7 It is suggested that the term 'implementation plan' is defined in regulation 2(3).

5.8 It is suggested that the regulations should be more explicit as to the content and purpose of implementation plans. Regulation 12 should at least make it explicit that the plans must also include a statement as to whether particular projects or types of project require an authorisation to be placed in service. If the omission of a statement about the extent TSIs must apply to a particular project subsystem from the implementation plans is not intentional, then this too should be included and regulation 13(9) amended accordingly.

5.9 Regulation 12(1) states that 'The Competent Authority may publish an implementation plan for a TSI'.

5.10 There are several objections to the choice of TSIs as the target for implementation plans, particularly as Regulation 12(2) then refers to 'each project or type of project':

- Projects are not undertaken in order to implement TSIs - they are undertaken for other reasons (for example, to increase speed or capacity), but in doing so it might be necessary to implement a TSI.
- Some TSIs contain requirements relevant to vehicles, infrastructure subsystems and functional subsystems – for example, the Safety in Railway Tunnels (SRT) TSI and the People with Reduced Mobility (PRM) TSI. Generally projects will not encompass all three of the subjects (vehicles, infrastructure subsystems and functional subsystems) covered by these TSIs.
- The Regulations apply to projects for which there is not yet a TSI.
- Section 5(2) of Schedule 6 specifically refers to 'the implementation plans and technical documentation concerning the subsystem'.

5.11 It is suggested that implementation plans are targeted at subsystems rather than TSIs.

5.12 Implementation plans for functional subsystems are excluded from the regulations. However, 'implementation plans' are required for some functional subsystems. For example, the Conventional Rail Operations TSIs requires:

Implementation of this TSI and conformity with the relevant sections of this TSI must be determined in accordance with an implementation plan that shall be drawn up by each Member State for the lines for which they are responsible.

5.13 [See section 7.1 of the Annex to Commission Decision 2006/920/EC of 11 August 2006 concerning the technical specification of interoperability relating

to the subsystem 'Traffic Operation and Management' of the trans-European conventional rail system.]

5.14 Consideration should therefore be given to how implementations plans required by TSIs (which are not implementation plans in the sense of the regulations) are created and given force.

5.15 Regulation 13(6)(a) refers to 'the implementation strategy provided in any applicable TSI'. To avoid confusion it is suggested that the term 'implementation strategy' is also defined in regulation 2(3).

5.16 Regulation 12(3) states:

> *(3) In deciding whether a project or type of project is a renewal or upgrade factors to be taken into account by the Competent Authority must include—*
>
> > *(c) the impact on the accessibility of the rail system to passengers of applying or not applying the TSI to the project;*

5.17 As drafted, the meaning of this requirement is not entirely clear. It is presumably intended to specifically refer to accessibility for people with reduced mobility, rather than all passengers (Regulation 48 is headed 'Accessibility for people with reduced mobility'). It is suggested the clause is redrafted to read:

> *(c) the impact on the accessibility of the rail system to people with reduced mobility of applying or not applying the TSI to the project;*

6 Verification assessment procedures for project subsystems

6.1 Most of the issues relating to verification assessment procedures for project subsystems are associated with Schedule 6, and are dealt with in the section of this paper addressing issues associated with Schedule 6. There are however a few additional issues to be considered.

6.2 Regulation 17(2) requires:

> *(2) The notified body must—*
>
> > *(a) compile a file containing:*
> >
> > > *(iv) manuals and instructions relating to the servicing, constant or routine monitoring, adjustment, maintenance and configuration controls of the project subsystem;*

6.3 This clause is based on Article 18(3) of Directive 2008/57/EC which states:

> *18(3). The notified body shall be responsible for compiling the technical file that has to accompany the 'EC' declaration of*

verification. This technical file must contain all the necessary documents relating to the characteristics of the subsystem and, where appropriate, all the documents certifying conformity of the interoperability constituents. It should also contain all the elements relating to the conditions and limits of use and to the instructions concerning servicing, constant or routine monitoring, adjustment and maintenance.

6.4 The requirement to include 'configuration controls' in the technical file is in addition to the requirements of the Directive. The term is also used in Regulation 7(3)(b)(iii) in a similar context.

6.5 The term is not defined in the regulations, and therefore may not be clear in its intent. It is presumably intended to refer to configuration management. A definition should be provided in Regulation 2(3).

6.6 Regulation 17(2) and 17(3) require:

(2) The notified body must—

(b) assess the interface between the project subsystem and the part of the rail system in which it will be placed in service to the extent that such an assessment is possible based on the available information referred to in paragraph (3).

(3) The assessment under paragraph (2)(b) must be only based on information available in the relevant TSI and in any registers kept in accordance with Article 34 (European register of authorised types of vehicles) and Article 35 (register of infrastructure) of the Directive.

6.7 It is not clear what 'assessing the interface' involves. The equivalent article in Directive 2008/57/EC refers to 'verification of the interfaces of the subsystem in question with the system into which it is incorporated'. Verification would seem to be the better word. Simple definitions of assess and verify are:

***assess**: to judge or decide the amount, value, quality or importance of something.*

***verify**: to prove that something exists or is true, or to make certain that something is correct.*

6.8 Verification is therefore the correct word, and the regulation should be amended to follow the Directive.

6.9 The regulations state the 'assessment' must be only based on information available in …'. This creates an explicit prohibition on using anything other than the documents listed. There is no equivalent prohibition in the Directive, which only states positively what must be used.

6.10 The register kept in accordance with Article 34 (European register of authorised types of vehicles) is kept by ERA.

6.11 The keeper of the register kept in accordance with Article 35 (register of infrastructure) of the Directive is not specified within the Directive. The Directive merely says 'Each Member State shall ensure that a register of infrastructure is published and updated'. Regulation 39 states that it is for an infrastructure manager to keep a register of its infrastructure, and ensure it is available on a publicly available website. It would therefore be better to refer to 'the registers kept in accordance with Regulation 39', rather than refer to Article 35 of the Directive.

6.12 To resolve the issues noted above, the regulation could be amended to read:

> (2) The notified body must—
>
> > (b) verify the interface between the project subsystem and the part of the rail system in which it will be placed in service to the extent that verification is possible based on the information available in the relevant TSI, the register kept in accordance with Article 34 of the Directive (European register of authorised types of vehicles) and the registers kept in accordance with Regulation 39.

6.13 Some guidance on what a notified body would need to do to comply with this element of the regulations is probably necessary.

7 Interoperability constituents: identifying interoperability constituents

7.1 Regulation 2(3) states:

7.2 Interpretation

> *2.—(3) In these Regulations—*
>
> *"interoperability constituent" means any elementary component, group of components, sub-assembly or complete assembly of equipment that is incorporated or intended to be incorporated into a subsystem upon which the interoperability of the rail system depends directly or indirectly; and the concept of a "constituent" covers both tangible objects and intangible objects such as software;*

7.3 The definition derives from the Directive.

7.4 In practice, TSIs specify requirements for a limited number of interoperability constituents. For example, the High Speed Infrastructure TSI lists only five: rail, rail fastening systems, track sleepers and bearers, switches and crossing, water filling connectors.

7.5 However, this is far from a complete list of constituents 'upon which the interoperability of the rail system depends directly or indirectly'. For example, the interoperability of the rail system depends on the strength of track, which in turn depends on the strength of rail joints, including insulated joints and welds. Neither are ICs.

7.6 In practice, it would never be possible for TSIs to contain a complete list of constituents 'upon which the interoperability of the rail system depends', and it would not be possible to exhaustively specify their requirements, particularly in the case of specialist items used in small numbers (consider for example a one-off design of expansion switch for an exceptionally long bridge).

7.7 There is therefore a problem in deciding what an IC is. According to the definition, there are many ICs for which there are no requirements in TSIs. But in practice, the working assumption is that only those constituents listed in the TSIs are 'interoperability constituents' requiring an EC declaration of conformity or an EC declaration of suitability for use.

7.8 The regulations should recognise the working assumption noted above. There is an opportunity to do so in Regulation 26:

> *26.—(1) No person may place any constituent identified as an interoperability constituent in a TSI on the market with a view to its use on the trans-European rail system or, if there is an applicable TSI, on any other part of the rail system, unless—*

7.9 This will a allow constituents that meet the strict definition of an interoperability constituent, but for which there are no requirements in TSI, to be placed on the market without an EC declaration of conformity or suitability for use.

7.10 If necessary, a new definition could be added for 'constituent':

> *"constituent" means an elementary component, group of components, sub-assembly or complete assembly of equipment that is incorporated or intended to be incorporated into a subsystem; and the concept of a "constituent" covers both tangible objects and intangible objects such as software;*

7.11 Longer term, there is a case to be made for rethinking the concept of an IC from scratch.

8 Interoperability constituents: use of notified bodies to assess conformity or suitability for use

8.1 Regulation 25(1) states:

> *25.—(1) The appropriate procedures for assessing the conformity or suitability for use of an interoperability constituent must be carried out by a notified body in accordance with—*
>
> > *(a) subject to paragraph (2), the procedures (if any) specified in any TSIs with which the interoperability constituent must comply;*

(b) the procedures (if any) specified in any European specifications with which the interoperability constituent must comply;

(c) any relevant procedures set out in Schedule 7.

8.2 If an interoperability constituent is identified as such in a TSI there should always be a procedure for assessing the conformity or suitability for use specified in Chapter 6 of the TSI.

8.3 However, not all the procedures specified in TSIs require the involvement of a notified body. For example, in the High Speed Infrastructure TSI, application of Module A, Internal Production Control, does not require the involvement of a notified body. This module may be used in certain circumstances for all interoperability constituents except rail.

8.4 The requirement in Regulation 25(1) to always employ a notified body for assessing the conformity or suitability for use of an interoperability constituent is contrary to Article 13(2) of Directive 2008/57/EC, which states:

2. Where the corresponding TSI so requires, assessment of the conformity or suitability for use of an interoperability constituent shall be carried out by the notified body with which the manufacturer or his authorised representative established in the Community has lodged the application.

8.5 In passing, it should be noted that the 'European specifications' referred to in 25(1)(b) includes, by definition, a common technical specification, and a common technical specification includes, by definition, a TSI. Formally, 25(1)(a) is probably redundant.

8.6 There are no relevant procedures for 'assessing the conformity or suitability for use of an interoperability constituent' in Schedule 7.

9 Interoperability constituents: EC declaration of conformity or of suitability for use

EC declaration of conformity or of suitability for use

23.—(1) An EC declaration of conformity or an EC declaration of suitability for use is a declaration drawn up by the relevant person in accordance with the requirements of ***Schedule 4*** *that indicates that the interoperability constituent satisfies the requirements—*

(a) of such European specifications as have been published in the Official Journal that are relevant to the interoperability constituent;

(b) of such TSIs that are relevant to the interoperability constituent;

(c) where a TSI relevant to the interoperability constituent requires compliance with a European specification that has not been published in the Official Journal, of the latest version of that draft European specification if so required by the TSI.

9.1 It should be noted that Regulation 23, as drafted, is not actually a regulation, but a definition that ought perhaps to be part of Regulation 2(3). It does not require anybody to do (or not do) anything.

9.2 The statement that a declaration 'indicates …that the interoperability constituent satisfies the requirements … of such European specifications as have been published in the Official Journal that are relevant to the interoperability constituent' may be misleading.

9.3 The interpretation of this regulation hinges on the meaning of the term 'published in the Official Journal'. If 'published' means that the full text of the European specification is set out in the Official Journal, the regulation is probably correct. However, if 'published' encompasses listing*, the regulation is misleading.

9.4 [* For example, the Official Journal publishes a list of 'titles and references of harmonised standards under the directive' for the high-speed rail system.]

9.5 An interoperability constituent does not necessarily have to satisfy the requirements of a European standard, even though the Official Journal may list it as harmonised against a TSI (and it is therefore 'relevant to the interoperability constituent'). Under the new approach, a manufacturer may choose to demonstrate that the essential requirements have been met by either conformity with the harmonised standard, or by some other way.

9.6 Again, note that 'European specifications' includes, by definition, a common technical specification, and a common technical specification includes, by definition, a TSI. Formally, 23(1)(b) is probably redundant.

10 Designated bodies and assessment of conformity with notified national technical rules

10.1 The role of the designated body is to assess conformity with notified national technical rules if any are applicable. Note that notified national technical rules apply only to subsystems, and not interoperability constituents.

10.2 The regulations expect the output from the conformity assessment to be a 'certificate of conformity with notified national technical rules'. This is a certificate issued by the designated body containing a statement from the body 'that in its opinion a subsystem conforms with the applicable notified national technical rules'.

10.3 The regulations recognise that the EC verification procedure produces more than a simple certificate, and that these outputs are to be included in the technical file.

10.4 However, there is no recognition that the output from the assessment of conformity with notified national technical rules is also likely to be far more than a certificate. For example, regulation 49 permits dispensations from notified national technical rules in accordance with Regulation 49, and that these may be conditional.

10.5 Regulation 19(2) requires:

> *(2) A contracting entity must ensure that—*
>
> > *(a) any alterations made to the project subsystem are documented;*
> >
> > *(b) the documentation recording any alterations and any maintenance manuals in relation to the project subsystem are added to and kept as part of the technical file; and*
> >
> > *(c) the safety assessment report and <u>any certificate of conformity with notified national technical rules are added to and kept as part of the technical file</u>.*

10.6 A Notified Body is not required to include the certificate of conformity with notified national technical rules in the technical file that they compile in accordance with Regulation 17(2)(a).

10.7 As Regulation 19(1) applies 'From the time a project subsystem is authorised' and points (a) and (b) of Regulation 19(2) refer to 'alterations', it can be supposed that the certificate of conformity with notified national technical rules is only included within the technical file <u>after</u> authorisation, and not before.

10.8 Article 18(3) of Directive 2008/57/EC requires:

> *18(3). The notified body shall be responsible for compiling the technical file that has to accompany the 'EC' declaration of verification. This technical file must contain <u>all the necessary documents relating to the characteristics of the subsystem</u> and, where appropriate, all the documents certifying conformity of the interoperability constituents.*

10.9 The outputs from the assessment of conformity with notified national technical rules are 'necessary documents relating to the characteristics of the subsystem' and should therefore be included in the technical file by the notified body.

10.10 Section 1 of Schedule 6 states that EC verification is the procedure whereby a notified body checks and certifies that the subsystem <u>complies with the Directive</u>. To do this, the notified body must check that conformity with notified national technical rules has been assessed, even though the assessment itself is undertaken by a separate body. To do this, the notified body will need copies of the outputs from the assessment of conformity with notified national technical rules.

10.11 The process for assessment of conformity with notified national technical rules set out in the regulations therefore does not appear to be fully integrated into the authorisation process.

10.12 One possible approach is to require the designated body to pass the certificate of conformity with notified national technical rules, together with the equivalent of a technical file relating to the assessment of conformity, to the notified body for inclusion in the technical file before authorisation. The notified body is already required to collate other conformity assessment certificates, notably for the interoperability constituents incorporated into the subsystem, but also, where necessary, the certificates produced in response to other Directives (See Schedule 6, section 1, last point).

10.13 Regulation 32(3) states that 'For the purposes of this regulation Schedule 7 applies to a designated body as it applies to a notified body'. The section of this paper addressing issues associated with Schedule 7 therefore applies as much to designated bodies as to notified bodies.

11 The register of infrastructure

11.1 Regulation 39(1) states:

39.—(1) An infrastructure manager must keep a register of its infrastructure.

11.2 The term 'infrastructure manager' is not defined in the regulations. ROGS 2006 states:

> *"infrastructure manager" means the person who—*
>
> *(a) in relation to infrastructure other than a station, is responsible for developing and maintaining that infrastructure or, in relation to a station, the person who is responsible for managing and operating that station, except that it shall not include any person solely on the basis that he carries out the construction of that infrastructure or station or its maintenance, repair or alteration; and*
>
> *(b) manages and uses that infrastructure or station, or permits it to be used, for the operation of a vehicle;*

11.3 There are therefore many infrastructure managers in UK, and there will be many infrastructure registers. It is likely that 'in relation to a station, the person who is responsible for managing and operating that station' will need to have the responsibilities imposed by the regulations specifically drawn to their attention.

11.4 Regulation 39(6) states:

(6) In this regulation—

(a) "infrastructure" means a structural subsystem, other than rolling stock;

11.5 Parts of the CCS and ENE subsystems are incorporated into vehicles (see the definition of vehicle in regulation 2(3)). Vehicles are not the responsibility of infrastructure managers, so therefore in accordance with regulation 39(1) such subsystems do not need to be recorded in an infrastructure register. However, to be clear, it would be better to revise the regulation to read:

(a) "infrastructure" means a structural subsystem, other than a structural subsystem or part of a structural subsystem composing a vehicle.

11.6 The regulations come into force on 19th July 2010, but in its application to infrastructure that is not authorised infrastructure, Regulation 39 comes into force on 19th July 2011.

11.7 Achieving compliance with Regulation 39 by these dates is likely to be challenging.

12 The national vehicle register

12.1 Regulation 40(6) requires

> *Any person who places in service a unit of rolling stock must ensure it is marked with the European vehicle number assigned to it.*

12.2 The Conventional Rail Operations TSI* contains a specific case exempting vehicles used in domestic traffic from carrying (that is, being marked with) the European vehicle number assigned to it. Note though that the vehicle will be assigned such a number.

12.3 [* Commission Decision 2006/920/EC of 11 August 2006 concerning the technical specification of interoperability relating to the subsystem 'Traffic Operation and Management' of the trans-European conventional rail system.]

> *7.3.2. LIST OF SPECIFIC CASES*
>
> *Temporary Specific Case (T2) UK*
>
> *For the implementation of Annex P of this TSI in the United Kingdom, passenger coaches and locomotives which are used solely in domestic traffic may be exempted from carrying the standard 12-digit number. This may apply also for crossborder traffic between Northern Ireland and the Republic of Ireland.*

12.4 It is suggested that the regulation be amended to read:

> Any person who places in service a unit of rolling stock must ensure it is marked with either the European vehicle number assigned to it or a number using a coding system specified in notified national technical rules, where permitted by TSIs relating to the 'Traffic Operation and Management' subsystem.

12.5 The use of domestic vehicle numbers is necessary to provide compatibility with current operating systems.

13 Annexes from Directive 2008/57/EC

13.1 All bar one of the nine Annexes from Directive 2008/57/EC are reproduced as Schedules within the regulations.

13.2 The omitted Annex is Annex VII, 'Parameters to be checked in conjunction with the placing in service of non-TSI conform vehicles and the classification of the national rules'.

13.3 All the Schedules refer back to Regulation 2(2). Regulation 2(2) contains no requirements, but merely says:

> *(2) Annexes I to VI, VIII and IX of the Directive are substantially reproduced in Schedules 1 to 8.*

13.4 The word 'substantially' implies some editing, but this is not made evident.

13.5 The Annexes to the Directive are drafted in style that is significantly different from the main text of the Directive. They have the feel of being drafted by disparate persons and without being subject to the same level of legal review that has been applied to the main body of the Directive. As a result, the substantial reproduction of the Annexes as Schedules in the regulations is not always either necessary or helpful. A detailed argument relating to each Schedule is given in the following sections.

13.6 It is suggested that the Annexes to the Directive are not simply copied into the Schedules, but are transposed (as has been done for the main body of the Directive) and subject to a proper legal review.

14 References to Schedule 1

> ***Interpretation***
>
> *2.—(3) In these Regulations—*
>
> *"trans-European rail system" means the trans-European conventional and high-speed rail systems as set out in paragraphs 1 and 2 of* ***Schedule 1*** *and includes any extensions to the networks referred to in those paragraphs;*

14.1 Only paragraphs 1 and 2 of Annex I of the Directive (and therefore Schedule 1 are required). There appears to be no reason to include paragraphs 3 and 4 in the regulations.

14.2 Further, paragraphs 1 and 2 contain extraneous matter which should be edited out, for example the statement that:

> *For the purposes of the Directive, this network may be subdivided into the following categories—*
>
> *lines intended for passenger services;*
>
> *lines intended for mixed traffic (passengers and freight);*

lines specially designed or upgraded for freight services;

passenger hubs;

freight hubs, including intermodal terminals;

lines connecting the abovementioned elements.

This network includes traffic management, tracking and navigation systems, technical installations for data processing and telecommunications intended for long-distance passenger services and freight services on the network in order to guarantee the safe and harmonious operation of the network and efficient traffic management.

14.3 Much of the text in Annex I of the Directive should perhaps be regarded as an argument or explanation. It is neither suitable nor necessary as part of a legal definition. For example, based on the text it could be argued that items intended for short-distance passenger services are excluded from scope.

14.4 It is also questionable if reference to 'Decision No 1692/96/EC as amended by Decision No 1346/2001/EC, Decision 884/2004/EC and Council Regulation (EC) No 1791/2006' would actually allow, for example, a contracting entity to know whether or not the slow lines between Watford and Rugby were part of the trans-European rail system.

14.5 A more focused Schedule, that unambiguously defines the trans-European rail system within UK, is needed.

15 References to Schedule 2

Interpretation

2.—(3) In these Regulations—

"functional subsystem" means a functional subsystem as specified in paragraph 1(b) of ***Schedule 2****;*

"structural subsystem" means a structural subsystem as specified in paragraph 1(a) of ***Schedule 2****;*

"subsystem" means the whole, or, as the context requires, part of a subdivision of the rail system as specified in paragraphs 1(a) and 1(b) of ***Schedule 2****, namely structural subsystems and functional subsystems;*

15.1 Only paragraphs 1(a) and 1(b) are referenced in the regulations. They do not actually 'specify' anything. They simply list sub-systems without defining them.

15.2 The bulk of Schedule 2 is a 'Description of the subsystems'. In some sense these actually specify the subsystems, as for example:

Control-command and signalling

All the equipment necessary to ensure safety and to command and control movements of trains authorised to travel on the network.

Rolling stock

Structure, command and control system for all train equipment, current-collection devices, traction and energy conversion units, braking, coupling and running gear (bogies, axles, etc.) and suspension, doors, man/machine interfaces (driver, on-board staff and passengers, including the needs of persons with reduced mobility), passive or active safety devices and requisites for the health of passengers and on-board staff.

15.3 As can be seen for these examples, the drafting may lead to difficulties of interpretation. Control-command and signalling could be read as encompassing any equipment 'necessary to ensure safety'. The dividing line between Rolling Stock and Control-command and signalling is not clear.

15.4 For the purpose of the regulation, a simple list of subsystems is probably sufficient. Adapting the 'Descriptions of the subsystems' is probably too difficult and they should simply be omitted.

16 References to Schedule 3

Interpretation

2.—(3) In these Regulations—

*"essential requirements" means all the conditions set out in **Schedule 3** that must be met by the rail system, subsystems and interoperability constituents, including interfaces;*

List of projects for the renewal or upgrading of subsystems

12.—(3) In deciding whether a project or type of project is a renewal or upgrade factors to be taken into account by the Competent Authority must include—

> *(b) the impact of the project on the rail system having regard to its effect on safety, reliability and availability, health, environmental protection and technical compatibility**(a)**;*

***(a)** See the general requirements listed in **Schedule 3**.*

16.1 The problems with Schedule 3 have been discussed in section 5 of Paper A3.

17 References to Schedule 4

EC declaration of conformity or of suitability for use

*23.—(1) An EC declaration of conformity or an EC declaration of suitability for use is a declaration drawn up by the relevant person in accordance with the requirements of **Schedule 4** that indicates that the interoperability constituent satisfies the requirements—*

17.1 No particular issues have been identified with Schedule 4 itself.

17.2 It has been noted elsewhere that Regulation 23, as drafted, is not actually a regulation, but a definition. It does not require anybody to do (or not do) anything.

18 References to Schedule 5

Authorisation decision

6.—(1) The Safety Authority must issue an authorisation under these Regulations for the placing in service of a structural subsystem on or as part of the rail system, where it is satisfied that—

*(a) the verification declaration has been drawn up in accordance with **Schedule 5** or, in the case of an application under regulation 5(1)(d), in accordance with regulation 7(7);*

18.1 No particular issues have been identified with Schedule 5 itself.

18.2 Schedule 5 simply requires the EC declaration of verification and the accompanying documents to be dated and signed; to be written in the same language as the technical file; and to contain certain information. It is not a procedure setting out how the declaration should be drawn up, as might be expected by the words 'drawn up in accordance with Schedule 5'.

18.3 The reference to drawing up the verification declaration 'or … in accordance with regulation 7(7)', as an alternative in the case of an application under regulation 5(1)(d), would lead one to expect that regulation 7(7) would similarly require the declaration of verification and the accompanying documents to be dated and signed; to be written in a particular language; and to contain certain items.

18.4 However, Regulation 7(7) is quite different. It actually requires:

7.—(7) The contracting entity must draw up a declaration in relation to the project subsystem where—

(a) the contracting entity is satisfied the essential requirements are met in accordance with regulation 15 (including interfaces with the part of the rail system on which it will be placed in service);

(b) if there are applicable notified national technical rules, the body appointed under paragraph (5) has—

(i) assessed the subsystem as conforming with those rules in accordance with such procedures as are reasonably appropriate to make that assessment; and

(ii) issued a certificate of conformity with notified national technical rules.

18.5 This suggests some confusion has arisen in the drafting of the regulations as to the nature of Schedule 5.

18.6 The regulations should be amended to align the differing requirements relating to what must be satisfied in respect of how verification declarations are drawn up.

19 References to Schedule 6 in Regulation 2, Interpretation

Interpretation

2.—(3) In these Regulations—

"ISV" means an intermediate statement of verification issued by a notified body in relation to the design stage or the production stage of a subsystem in accord with paragraph 2 of ***Schedule 6****;*

"verification assessment procedure" means—

(a) the procedures specified in regulation 17(1) and the reference in ***Schedule 6*** *to "verification procedure" shall be construed as a reference to the verification assessment procedure, or*

(b) in the case of an application for an authorisation under regulation 5(1)(d), the procedure undertaken by a notified body in relation to the authorisation referred to in regulation 4(1)(c);

19.1 Article 18(4) of Directive 2008/57/EC states:

18(4). The notified body may issue intermediate statement verifications to cover certain stages of the verification procedure or certain parts of the subsystem. In such a case, the procedure set out in Annex VI shall apply.

19.2 The definition of 'ISV' in the regulations is not aligned with Directive 2008/57/EC in that it omits reference to coverage of 'certain parts of the subsystem'. The reference to paragraph 2 of Schedule 6 is not needed for the purposes of the definition.

19.3 An alternative definition could be:

"ISV" means an intermediate statement of verification issued by a notified body to cover certain stages of the verification procedure or certain parts of the subsystem;

19.4 An 'intermediate statement of verification' is actually an 'intermediate certificate of verification', and the Directive would have been clearer if the latter term had been used.

19.5 Section 2 of Schedule 6 refers to an (undefined) 'EC Declaration of intermediate subsystem conformity':

> *For the design stage (including the type tests) and for the production stage the applicant may apply for an assessment as a first step. In this case , this assessment or assessments lead to one or more intermediate statement verifications (ISV) issued by the notified body chosen by the applicant. The notified body in turn draws up an EC declaration of intermediate subsystem conformity for the relevant stages.*

19.6 It is almost certain that this is the result of a drafting error within Annex VI of Directive 2008/57/EC, and that what the Annex intended to say was:

> The applicant in turn draws up an EC declaration of intermediate subsystem verification for the relevant stages.

19.7 This would then align with Regulation 16(3) which requires the contracting entity (that is, the applicant) to draw up a verification declaration. Notified Bodies do not draw up declarations; and conformity is a term used in connection with interoperability constituents, not subsystems.

20 References to Schedule 6 in Regulation 7, Authorisation for rolling stock already authorised for another Member State

> ***Authorisation for rolling stock already authorised for another Member State***
>
> *7.—(1) This regulation applies when an application is made pursuant to regulation 5(1)(d).*
>
> *(2) When this regulation applies paragraph (3) applies instead of regulation 5(2) and paragraph (4) applies instead of regulation 5(4).*
>
> *(3) The application must be made in writing to the Safety Authority and accompanied by—*
>
> > *(a) a copy of the authorisation referred to in regulation 4(1)(c) ("the first authorisation");*
> >
> > *(b) a file containing——*
> >
> > > *(i) the items referred to in paragraph 4 of* ***Schedule 6,*** *including the certificate of verification;*

20.1 See comments on ‘References to Schedule 6 in Regulation 17(2), technical file’, below.

21 References to Schedule 6 in Regulation 16, Duties on a contracting entity

> ***Duties on a contracting entity***
>
> *16.—(3) The contracting entity must draw up a verification declaration in relation to that project subsystem where—*
>
> > *(c) a certificate of verification has been drawn up by a notified body in accordance with the procedures required by **Schedule 6**;*

21.1 See comments on ‘References to Schedule 6 in Regulation 17(1), verification assessment procedure’, below.

22 References to Schedule 6 in Regulation 17(1), verification assessment procedure

> *17.—(1) The appropriate verification assessment procedure in relation to a project subsystem is—*
>
> > *(a) in so far as that subsystem is required to conform with all or part of a TSI, the procedures specified in the TSI or part of the TSI with which that subsystem is required to conform; and*
> >
> > *(b) the procedures set out in **Schedule 6**.*

22.1 Section 1 of Schedule 6 states that:

> *1. EC verification is the procedure whereby a notified body checks and certifies that the subsystem:*
>
> > *complies with the Directive;*
> >
> > *complies with the other regulations deriving from the Treaty, and may be put into operation.*

22.2 This appears to contradict Regulation 15(1), which effectively only requires compliance to be demonstrated with TSIs, applicable national notified technical rules and ‘any necessary measures’ deriving form application of the CSM on risk evaluation and assessment.

22.3 Section 1 of Schedule 6 also gives rise to two questions:

- What does the notified body have to check <u>in addition</u> to conformity with the TSIs in order to be satisfied that the subsystem complies with the Directive?

- How does the notified body know what 'other regulations deriving from the Treaty' are relevant and how do they check conformity against these regulations?

22.4 It could be argued that Section 1 of Schedule 6 is not actually a verification assessment procedure, as it states what has to be verified (which is dealt with elsewhere in the regulations), not how it is to be verified.

22.5 It should be noted that Section 4 of Schedule 6 requires the technical file to contain 'certificate from the notified body responsible for EC verification, accompanied by corresponding calculation notes and countersigned by itself, stating that the project complies with the Directive', but makes no mention of a certificate that the subsystem 'complies with the other regulations deriving from the Treaty'.

22.6 Schedule 6 contains requirements that are not verification assessment procedures – for example, in section 7, which requires:

> *7. Each notified body must periodically publish relevant information concerning:*
>
> > *requests for EC verification received;*
> >
> > *ISVs issued or refused*
> >
> > *certificates of verification issued or refused;*
> >
> > *certificates of conformity refused.*

22.7 It would therefore be better to extract the actual verification assessment procedure (the 'how') from Annex VI of Directive 2008/57/EC and publish only that as Schedule 6.

23 References to Schedule 6 in Regulation 17(2), technical file

> *17.—(2) The notified body must—*
>
> > *(a) compile a file containing:*
> >
> > > *(i) the items required by paragraph 4 of **Schedule 6**, including the certificate of verification;*

23.1 An example of what the file must contain is:

> ***Technical file***
>
> *4. The technical file accompanying the declaration of verification must be made up as follows:*
>
> > *for infrastructure: engineering-structure plans, approval records for excavations and reinforcement, testing and inspection reports on concrete, etc;*

23.2 The list for infrastructure excludes all the specific features of a railway – track, for example. It is difficult to see how compliance with 'etc' can be assessed.

23.3 Paragraph 4 of Schedule 6 is insufficient as a regulation. An alternative should therefore be drafted that translates Paragraph 4 of Annex IV of the Directive into a set of reasonably precise (but not overly specific) requirements.

24 References to Schedule 7

Assessment procedure for interoperability constituents

25.—(1) The appropriate procedures for assessing the conformity or suitability for use of an interoperability constituent must be carried out by a notified body in accordance with—

*(c) any relevant procedures set out in **Schedule 7**.*

24.1 There are no relevant procedures for 'assessing the conformity or suitability for use of an interoperability constituent' in Schedule 7.

24.2 Schedule 7 sets 'criteria which must be taken into account by the Member States when Notifying Bodies'. However, as noted below, is drafted in the form of requirements from which criteria could be derived, rather than giving the criteria themselves. The requirements define the expected standards of behaviour of notified bodies.

24.3 If the reference to Schedule 7 is to be retained in Regulation 25(1), point (c) should be revised to read something like 'the requirements for independence, integrity and competence set out in Schedule 7'.

Appointment of notified bodies and designated bodies

*32.—(2) The Secretary of State must not appoint any person as a notified body or a designated body in accordance with paragraph (1) unless the Secretary of State is satisfied that the person is capable of meeting the criteria specified in **Schedule 7**.*

*(3) For the purposes of this regulation **Schedule 7** applies to a designated body as it applies to a notified body.*

(7) If at any time it appears to the Secretary of State in relation to a notified body appointed by the Secretary of State or the Strategic Rail Authority or in relation to a designated body that—

(a) any of the conditions of the appointment of that body are not being complied with; or

*(b) the body is not meeting the criteria specified in **Schedule 7**,*

the Secretary of State may, by notice in writing to that body, specify a date on which the appointment of that person as a body shall terminate.

*(13) Where it appears to the Secretary of State that a notified body appointed by another Member State fails to meet the criteria set out in **Schedule 7**, the Secretary of State must notify the Article 21 Committee of that fact forthwith.*

24.4 Schedule 7 is titled 'Minimum criteria which must be taken into account by the Member States when Notifying Bodies'. It is drafted in the form of requirements from which criteria could be derived, rather than giving the criteria themselves (criterion: a standard by which you judge, decide about or deal with something)

24.5 For example, section 6 of Schedule 7 says 'The body must take out civil liability insurance', rather than 'The body must be able to provide evidence of civil liability insurance'.

24.6 Section 2 of Schedule 7 requires 'The body and the staff responsible for the checks must carry out the checks with the greatest possible professional integrity and the greatest possible technical competence'. The term 'the greatest possible' does not sit easily with UK law, where reasonableness is usually seen as the key test.

24.7 Consideration should be given to redrafting Schedule 7 as a set of criteria, rather than requirements from which criteria could be derived. Section 2 of Schedule 7 should be redrafted to align with the principle of reasonableness.

25 References to Schedule 8

Exemption from need to conform with TSIs (derogations)

*14.—(3) The Competent Authority shall not make a derogation from the application of a TSI or part of a TSI unless the Secretary of State has first forwarded a file to the Commission containing the information set out in **Schedule 8**.*

25.1 In Great Britain, the Competent Authority is the Secretary of State. Schedule 8 appears to be included as a way of advising contracting entities who may be seeking a derogation for their projects of the information they will need to supply to the Secretary of State.

26 Recommendations

26.1 ISCC is asked to:

- **NOTE** the issues identified in this paper.
- **DISCUSS** the case for raising these issues formally in the industry's responses to the DfT's consultation on the draft regulations.

AGENDA ITEM: 6.1 (ISCC) / 3 (SPG)

MEETING:	**Industry Standards Co-ordination Committee / Safety Policy Group**
DATE:	**23 April 2010**
SUBJECT:	**Consultation on the new Railways (Interoperability) Regulations 2010 and Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010**
SPONSOR:	**Andrew Sharpe / Anson Jack**
AUTHOR:	**Jon Taylor**

1 Purpose of the paper

1.1 The Department for Transport (DfT) initiated a consultation on a draft of the Railways (Interoperability) Regulations 2010 on 29 March 2009. These regulations transpose Directive 2008/57/EC on the interoperability of the rail system.

1.2 Simultaneously, the ORR initiated a consultation on a draft of the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010. These regulations amend the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS 2006).

1.3 This paper introduces a series of supporting papers discussing particular issues relating to these regulations. This series of papers are formally addressed to ISCC, but are likely to be of equal interest to SPG.

1.4 This paper draws particular attention to three key issues.

2 Arrangement of supporting papers

2.1 There are six supporting papers in this series, three relating to the Railways (Interoperability) Regulations 2010 and thee relating to the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010. Each paper dealing with issues relating to one regulation has a roughly matching paper for the other regulation.

Papers discussing how the regulations have dealt with the CSM for risk evaluation and assessment (these papers are summarised in Section 3 below):

- Paper A1 - Draft Railways (Interoperability) Regulations 2010 and the CSM on risk evaluation and assessment
- Paper B1 - ROGS Amendment Regulations 2010: Safety Verification and the CSM on risk assessment

Papers discussing how the regulations have dealt with maintenance and operation of the railway post placing into service (these papers are summarised in section 4 below):

- Paper A2 - Draft Railways (Interoperability) Regulations 2010 and requirements after subsystems have been placed in service

- Paper B2 - ROGS Amendment Regulations 2010: Maintenance of vehicles on the mainline railway

Papers discussing miscellaneous issues of lesser significance

- Paper A3 - Draft Railways (Interoperability) Regulations 2010: Miscellaneous issues

- Paper B3 - ROGS Amendment Regulations 2010: Miscellaneous issues

3 The CSM for risk evaluation and assessment

3.1 The CSM on risk evaluation and assessment is mandated by the Commission Regulation (EC) No 352/2009 of 24 April 2009 on the adoption of a common safety method on risk evaluation and assessment as referred to in Article 6(3)(a) of Directive 2004/49/EC of the European Parliament and of the Council.

3.2 The CSM requires that when a proposed change has an impact on safety, the proposer is to decide, by expert judgement, the significance of the change based on six criteria: failure consequence; novelty; complexity; the inability to monitor the change; reversibility; and additionality.

3.3 If a change is significant, the risk management process defined in the CSM is to be followed. 'Risk management' is defined as 'the systematic application of management policies, procedures and practices to the tasks of analysing, evaluating and controlling risks'.

3.4 The CSM requires an independent assessment of the correct application of the risk management process and of the results of this application by an 'assessment body'. The document containing the conclusions of the assessment performed by an assessment body is a 'safety assessment report'.

3.5 The assessment body does not itself apply the risk management process – that is done by the proposer of a change.

The Railways (Interoperability) Regulations 2010

3.6 The Railways (Interoperability) Regulations 2010 recognise the coming into force of the CSM, but contain a misunderstanding about the nature of the 'safety assessment report' and an unstated assumption that all changes requiring an authorisation for placing into service are 'significant' for the purposes of the CSM.

3.7 Supporting Paper A1 concludes that:

- References in the regulations to implementation of 'any necessary measures identified in the safety assessment report' should be deleted – as there should be none.

- The regulations should be amended to avoid any assumptions about the significance of a change or, alternatively, state in the regulations that any project requiring authorisation pursuant to the regulation is deemed to be significant for the purposes of the CSM.

Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010

3.8 The draft Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 do not take into account the coming into force of the CSM.

3.9 ROGS 2006 contains requirements relating to 'Safety Verification' and the need for independent assessment in some circumstances.

3.10 Supporting Paper B1 concludes that anything triggering Safety Verification would be a significant change in the context of the CSM, and that the application of the CSM has the same intention as Safety Verification, and also requires independent assessment.

3.11 The continuing need for Safety Verification is therefore doubtful - it appears to add nothing to the application of the CSM, but could confuse people into thinking they have to apply two separate processes to achieve the same end.

3.12 The opportunity to remove Safety Verification from ROGS (because the CSM now exists and is law) should therefore be given serious consideration.

4 Maintenance and operation of the railway post placing into service

The Railways (Interoperability) Regulations 2010

4.1 08/57-DV29EN01, 'The Authorisation Process of subsystems and vehicles under Directive 2008/57/EC', issued by the European Railway Agency (ERA) for discussion on 31 March 2010, suggests that 'it is necessary to separate regulation of the safe operation of the railway system from the regulation of authorisation to place into service'.

4.2 Unfortunately, the Railways (Interoperability) Regulations 2010 contain two regulations, Regulation 20 and Regulation 27 that set requirements that relate to 'regulation of the safe operation of the railway system' and not to 'regulation of authorisation to place into service'.

4.3 The Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 introduce into ROGS a new regulation (Regulation 18A) dealing with 'Maintenance of vehicles on the mainline railway'.

4.4 Therefore there are two sets of regulations setting out different requirements for the maintenance of the rolling stock subsystems, and those parts of other subsystems incorporated into a vehicle.

4.5 Supporting Paper A2 therefore suggests that the concurrent development of the Railways (Interoperability) Regulations 2010 and the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 present an opportunity to embed the principle of 'separate regulation of the safe operation of the railway system from the regulation of authorisation to place into service' into UK law, by transferring the requirements in Regulations 20 and 27 into ROGS.

Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010

4.6 As noted in section 4.3, the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 introduce into ROGS a new regulation (Regulation 18A) dealing with 'Maintenance of vehicles on the mainline railway'. The regulation requires that 'no person may place in service or use a vehicle on the mainline railway unless that vehicle has an entity in charge of maintenance assigned to it, and that entity is registered as such in the National Vehicle Register'.

4.7 Authorisation for placing into service is a matter for the Railways (Interoperability) Regulations 2010.

4.8 There is no doubt a distinction to be made between 'authorisation for placing into service' and the actual 'placing in service'. However, both sets of regulations express their requirements negatively, using the phrase 'No person shall place in service …'. Having separate prohibitions on placing into service in both sets of regulations is potentially confusing.

4.9 Supporting Paper B2 therefore suggests that references to 'place in service' (and cognate expressions) are deleted from the new ROGS Regulation 18A.

5 Managing Safety and Interoperability regulations

5.1 The two issues discussed in sections 3 and 4 above (and others noted in the supporting papers) are partly a consequence of the inconsistencies existing in the parent European Directives. However, they are partly the result of two separate organisations (one a government department, one a regulator) having responsibility for regulations that should be the two sides of the same coin.

5.2 The Interoperability Directive, 2008/57/EC, itself makes this clear in Article 1 by saying 'This Directive sets out to establish the conditions to be met to achieve interoperability within the Community rail system in a manner compatible with the provisions of [Railway Safety] Directive 2004/49/EC'.

5.3 If one organisation had responsibility for all regulations relating the 'design, construction, placing in service, upgrading, renewal, operation and maintenance' of the railway system (essentially, all regulations deriving from

Directives 2004/49/EC and 2008/57/EC), that organisation could, in transposing the Directives, remove contradictions and ensure a fully coherent system of regulation that avoids duplication.

6 Recommendations

6.1 ISCC and SPG are asked to:

- **NOTE** the series of papers discussing particular issues relating to the regulations currently under consultation, listed in section 2 of this paper

- **DISCUSS** the case for raising these issues identified in sections 3, 4, and 5 of this paper formally in the industry's responses to the DfT's and ORR's consultation on the draft regulations.

AGENDA ITEM: 6.2

MEETING:	**Industry Standards Co-ordination Committee**
DATE:	**23 April 2010**
SUBJECT:	**Paper A1 - Draft Railways (Interoperability) Regulations 2010 and the CSM on risk evaluation and assessment**
SPONSOR:	**Andrew Sharpe**
AUTHOR:	**Jon Taylor**

1 Purpose of the paper

1.1 The Department for Transport (DfT) initiated a consultation on a draft of the Railways (Interoperability) Regulations 2010 on 29 March 2009. These regulations transpose Directive 2008/57/EC on the interoperability of the rail system.

1.2 The draft regulations, amongst other things, take into account the coming into force of the Common Safety Method (CSM) on risk evaluation and assessment.

1.3 This paper discusses implications of the way the CSM has been addressed in the regulations, and notes that the regulations contain requirements that are not consistent with the CSM.

1.4 This paper is one of a series discussing different aspects of the regulations.

2 The CSM on risk assessment

2.1 The CSM on risk evaluation and assessment is mandated by the Commission Regulation (EC) No 352/2009 of 24 April 2009 on the adoption of a common safety method on risk evaluation and assessment as referred to in Article 6(3)(a) of Directive 2004/49/EC of the European Parliament and of the Council.

2.2 The CSM requires that when a proposed change has an impact on safety, the proposer is to decide, by expert judgement, the significance of the change based on six criteria: failure consequence; novelty; complexity; the inability to monitor the change; reversibility; and additionality.

2.3 If a change is significant, the risk management process defined in the CSM is to be followed. 'Risk management' is defined as 'the systematic application of management policies, procedures and practices to the tasks of analysing, evaluating and controlling risks'.

2.4 The CSM requires an independent assessment of the correct application of the risk management process and of the results of this application by an 'assessment body'. The document containing the conclusions of the

assessment performed by an assessment body is a ‘safety assessment report’.

2.5 The assessment body does not itself apply the risk management process – that is done by the proposer of a change.

3 References to the CSM in the regulations

3.1 The draft Railways (Interoperability) Regulations 2010 contains seven regulations that reference the CSM on risk evaluation and assessment directly or indirectly. These are reproduced in Appendix A to this paper.

3.2 There are two problems with the draft regulations – they assume that there will be a safety assessment report, and they assume that a safety assessment report contains measures that need to be applied to make the proposed change safe. These problems are discussed in sections 4 and 5 below.

4 'The' safety assessment report

4.1 The regulations always refer to 'the safety assessment report'. The (unstated) implication is that any project requiring authorisation pursuant to the regulations is 'significant' within the meaning of the CSM. Only a 'significant' change requires application of the risk management process set out in the CSM, and hence independent assessment leading to a safety assessment report.

4.2 There is a potential conflict if a project decides its change is non-significant, and is therefore unable to produce a safety assessment report.

4.3 There are two solutions:

- Amend the regulation to refer to 'any safety assessment report' ('any' is the word used when the regulation means 'if there is one' - hence 'any certificate of conformity with notified national technical rules' in regulation 5(2)(a) quoted in Appendix A to this paper).

- State in the regulations that any project requiring authorisation pursuant to the regulation is deemed to be significant for the purposes of the CSM.

4.4 In the case of the second solution, the drafting would need to be careful to not exclude the possibility of other changes, not requiring authorisation, being considered significant. The regulations would need to be notified as a 'national rule for defining whether a change is significant or not' [Article 4(1) of the CSM Regulation].

5 Any necessary measures identified in the safety assessment report

5.1 In two places the regulations refer to implementation of 'any necessary measures identified in the safety assessment report'.

5.2 The safety assessment report should not (cannot) contain 'necessary measures' - that is measures over and above the measures identified by the risk management process undertaken in accordance with Article 5 of the CSM Regulation.

5.3 There is nothing in the CSM Regulation that supports the interpretation placed on the safety assessment report in the draft Railways (Interoperability) Regulations 2010. Annex 1 to the CSM Regulation says:

> *1.1.5. Without prejudice to civil liability in accordance with the legal requirements of the Member States, the risk assessment process shall fall within the responsibility of the proposer. In particular the proposer shall decide, with agreement of the actors concerned, who will be in charge of fulfilling the safety requirements resulting from the risk assessment. This decision shall depend on the type of safety measures selected to control the risks to an acceptable level. The demonstration of compliance with the safety requirements shall be conducted according to section 3.*
>
> *1.1.7. Evaluation of the correct application of the risk management process described in this Regulation falls within the responsibility of the assessment body.*

5.4 Therefore the only 'necessary measures' are those identified by the proposer - not the assessment body. The assessment body evaluates whether or not the risk management process has been correctly applied. The assessment body does not itself apply the risk management process.

5.5 The CSM specifically notes that 'the risk management process is iterative' (Article 1.1). If the assessment body finds that that the proposer has not correctly applied the risk management process, the proposer must go around the loop again until the assessment body determines that the risk management process has been correctly applied.

5.6 Further, Annex 1 of the CSM Regulation states:

> *5. EVIDENCE FROM THE APPLICATION OF THE RISK MANAGEMENT PROCESS*
>
> *5.1. The risk management process used to assess the safety levels and compliance with safety requirements shall be documented by the proposer in such a way that all the necessary evidence showing the correct application of the risk management process is accessible to an assessment body. The assessment body shall establish its conclusion in a safety assessment report.*
>
> *5.2. The document produced by the proposer under point 5.1. shall at least include:*
>
> *(a) description of the organisation and the experts appointed to carry out the risk assessment process;*

(b) results of the different phases of the risk assessment and a list of all the necessary safety requirements to be fulfilled in order to control the risk to an acceptable level.

5.7 It is the proposer who identifies 'all the necessary safety requirements' - not the assessment body. References in the regulations to implementation of 'any necessary measures identified in the safety assessment report' should therefore be deleted.

6 Recommendations

6.1 ISCC is asked to:

- **NOTE** the reasons for amending the Railways (Interoperability) Regulations 2010 set out in this paper.
- **DISCUSS** the case for raising this issue formally in the industry's responses to the DfT's consultation on the draft regulations.

Appendix A

Extracts from draft Railways (Interoperability) Regulations 2010

Interpretation

2.—(3) In these Regulations—

"CSM Regulation" means Commission Regulation 352/2009 of 24th April 2009 on the adoption of a common safety method on risk evaluation and assessment evaluation and assessment;

"safety assessment report" means a report provided in accordance with Article 7 of the CSM Regulation;

Application for authorisation

5.—(2) An application for an authorisation under these Regulations must be made in writing to the Safety Authority and be accompanied by—

(a) the complete technical file, including the certificate of verification, the safety assessment report and any certificate of conformity with notified national technical rules; and

(b) the verification declaration.

Type authorisation

9.—(1) A person who proposes to place into service a structural subsystem that conforms to the description in a determination of type, as modified under regulation 8(5) if applicable, may make an application for an authorisation under this regulation to the Safety Authority.

(2) An application must be in writing and be accompanied by—

(d) the safety assessment report.

Authorisation for rolling stock already authorised for another Member State

7.—(1) This regulation applies when an application is made pursuant to regulation 5(1)(d).

(3) The application must be made in writing to the Safety Authority and accompanied by—

(b) a file containing—

(v) the safety assessment report;

Essential requirements for project subsystems

15.—(1) For the purposes of regulations 5(4), 6(1), 9(4) and 18(1) the essential requirements for a project subsystem are deemed to be met by—

(a) conformity with—

(i) all applicable TSIs (if any); and

(ii) where paragraph (2) applies, the requirements of all applicable notified national technical rules (if any), and

(b) implementation of—

(i) any necessary measures identified by the risk management process undertaken in accordance with Article 5 of the CSM Regulation; and

(ii) any necessary measures identified in the safety assessment report.

Retention of documents

19.—(1) From the time a project subsystem authorised under these Regulations is placed in service until it is permanently withdrawn from service (whether such service is in the United Kingdom or another Member State), a contracting entity must—

(a) keep the following documents—

(i) the technical file, including the certificate of verification;

(2) A contracting entity must ensure that—

(c) the safety assessment report and any certificate of conformity with notified national technical rules are added to and kept as part of the technical file.

Duty on operator to ensure essential requirements are met

20.—(1) This regulation applies where a project subsystem is in use on, or is part of, the rail system pursuant to an authorisation under these Regulations.

(2) Subject to paragraphs (3) and (4), the operator of the project subsystem must ensure that the project subsystem is operated and maintained—

(e) in a manner that ensures that—

(i) any necessary measures identified by the risk management process undertaken in accordance with Article 5 of the CSM Regulation; and

(ii) any necessary measures identified in the safety assessment report,

continue to be implemented.

AGENDA ITEM: 6.3

MEETING:	**Industry Standards Co-ordination Committee**
DATE:	**23 April 2010**
SUBJECT:	**Paper B1 - ROGS Amendment Regulations 2010: Safety Verification and the CSM on risk assessment**
SPONSOR:	**Andrew Sharpe**
AUTHOR:	**Jon Taylor**

1 Purpose of the paper

1.1 The ORR initiated a consultation on a draft of the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 on 29 March 2009. These regulations amend the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS 2006).

1.2 The draft regulations do not take into account the coming into force of the Common Safety Method (CSM) on risk assessment.

1.3 This paper discusses the relationship between the requirements for 'Safety Verification' set out in ROGS 2006 and the CSM on risk assessment and suggests where further amendment of ROGS 2006 might be appropriate.

1.4 This paper is one of a series discussing different aspects of the regulations.

2 The CSM on risk assessment

2.1 The CSM on risk assessment is mandated by the Commission Regulation (EC) No 352/2009 of 24 April 2009 on the adoption of a common safety method on risk evaluation and assessment as referred to in Article 6(3)(a) of Directive 2004/49/EC of the European Parliament and of the Council.

2.2 The CSM requires that when a proposed change has an impact on safety, the proposer is to decide, by expert judgement, the significance of the change based on six criteria: failure consequence; novelty; complexity; the inability to monitor the change; reversibility; and additionality.

2.3 If a change is significant, the risk management process defined in the CSM is to be followed. 'Risk management' is defined as 'the systematic application of management policies, procedures and practices to the tasks of analysing, evaluating and controlling risks'.

3 Requirements for Safety Verification in ROGS 2006

3.1 ROGS 2006 states:

> ***Safety management system for the mainline railway***
>
> *5. —(1) The requirements for a safety management system [for Railway Undertakings] referred to in regulation 3(1)(a) are that—*
>
> *(d) subject to paragraph (2), it ensures the control of all categories of risk including new or existing risks associated with the operation in*

question which, without prejudice to the generality of the foregoing, shall include such risks relating to the—

(iii) placing in service of new or altered vehicles the design or construction of which incorporates significant changes compared to any vehicle already in use on the transport system and which changes would be capable of significantly increasing an existing risk or creating a significant safety risk;

(4) In paragraph (1)(d)(iii) where such new or altered vehicles are intended to be placed in service, then before that placing in service the transport operator shall ensure that he has–

(a) an established written safety verification scheme which meets the requirements and contains the elements set out in Schedule 4; and

(b) appointed a competent person to undertake that safety verification, and the competent person has undertaken that safety verification in relation to the new or altered vehicles.

(7) The requirements for a safety management system referred to in regulation 3(2)(a) [for Infrastructure Managers] are the requirements in paragraphs (1) to (6) save that any reference to new or altered vehicles in those paragraphs shall be replaced with a reference to new or altered infrastructure and that—

(a) it ensures the control of all categories of risk associated with the placing in service of new or altered infrastructure the design or construction of which incorporates significant changes compared to any infrastructure already in use on the transport system and which changes would be capable of significantly increasing an existing risk or creating a significant safety risk;

Interpretation and application

2. —(1) In these Regulations—

"significant safety risk" means, in relation to new or altered infrastructure or a new or altered vehicle the design or construction of which incorporates significant changes compared to any infrastructure or vehicle already in use on the transport system, the capability of significantly increasing an existing safety risk or creating a significant safety risk to—

(a) passengers on the transport system in question; or

(b) members of the public on roads and any other location where the transport system in question operates and to which the public have access (including a place to which the public has access only on making a payment), except a location which is a crossing subject to an Order made under section 1 of the Level Crossings Act 1983[16];

4 Criteria for deciding when safety verification is required

4.1 The two tests for when safety verification is required are:

- the design or construction ... incorporates significant changes compared to any infrastructure or vehicle already in use on the transport system

- the capability of significantly increasing an existing safety risk or creating a significant safety risk to passengers on the transport system in question; or members of the public

4.2 The ORR 'Guide to the Application of Safety Verification' (HMRI Inspector Guidance, May 2007) expresses this as:

> *In coming to a view on the application of SV Duty Holders should therefore apply a two-stage "test".*
>
> *The SV process will not apply unless the new or altered equipment is both novel to the transport system and is likely to give rise to a significant new risk or a significant increase in an existing risk. The project must meet both of the following criteria:*
>
> - *Difference Test: the risk arising from the design is new, or novel to the transport system; and*
>
> - *Risk Test: there will be a new significant safety risk or a significant increase in risk*
>
> *The difference test considers the likelihood of risk arising because of the novelty of the new or altered infrastructure or rolling stock to be introduced. Where the design, construction or mode of operation of equipment is new to a particular transport system there is a greater likelihood that potential safety risks will not be properly identified. For example, failure modes and their effect on the particular transport system may not be properly understood even where the technology has been used on other transport systems. Similarly, where, for example, existing technology is used outside previous operational limits the effects on safety of design decisions may not be fully understood.*
>
> *If the difference test is satisfied, the Duty Holder then needs to consider the second test [the Risk Test] i.e. the consequence of any failure, or risk created by the way the design is operated. If there is a significant new risk to safety, or a risk is significantly increased, then SV must be applied.*

5 Comparing the safety verification criteria with the 'significance' criteria in the CSM

5.1 It would appear that the safety verification criteria map on to two of the 'significance' criteria in the CSM on risk assessment - 'novelty' and 'consequence'. The CSM has additional criteria (complexity, monitoring, reversibility and additionality). Therefore the Safety Verification criteria are a subset of the criteria by which the CSM judges significance. If Safety Verification is required, the change would be classed as 'significant' for the purposes of the CSM for risk assessment, and application of the CSM would be mandatory.

6 Comparing the scope of Safety Verification and the CSM

6.1 The scope of Safety Verification is much more restricted than that of the CSM. It only applies to new or altered infrastructure or rolling stock - effectively, structural sub-systems. But any change within the scope of Safety Verification is also within the scope of the CSM.

7 Comparing the purpose of Safety Verification and the CSM

7.1 The ORR 'A guide to ROGS' (July 2009) explains:

> *Safety verification is designed to provide an independent assessment that a project has gone through all the steps needed to reduce risks. The main difference is that the safety verification process needs an independent competent person to carry out the assessment – the safety management system change-management process may not.*

7.2 Safety verification has therefore the same intention as the CSM - 'the control of all categories of risk' as ROGS 5(1)(d) and 7(a) put it. And instead of 'an independent competent person to carry out the assessment that a project has gone through all the steps needed to reduce risks', the CSM has an 'assessment body'.

8 Conclusion

8.1 The conclusion must therefore be that anything triggering Safety Verification would be a significant change in the context of the CSM, and that the application of the CSM has the same intention as Safety Verification, and also requires independent assessment.

8.2 The continuing need for Safety Verification is therefore doubtful - it appears to add nothing to the application of the CSM, but could confuse people into thinking they have to apply two separate processes to achieve the same end.

8.3 The opportunity to remove Safety Verification from ROGS (because the CSM now exists and is law) should therefore be given serious consideration.

9 Recommendations

9.1 ISCC is asked to:

- **NOTE** the argument for the removal of Safety Verification from ROGS for the reasons set out in this paper.
- **DISCUSS** the case for raising this issue formally in the industry's responses to the ORR's consultation on the draft regulations.

AGENDA ITEM: 6.4

MEETING:	**Industry Standards Co-ordination Committee**
DATE:	**23 April 2010**
SUBJECT:	**Paper A2 - Draft Railways (Interoperability) Regulations 2010 and requirements after subsystems have been placed in service**
SPONSOR:	**Andrew Sharpe**
AUTHOR:	**Jon Taylor**

1 Purpose of the paper

1.1 The Department for Transport (DfT) initiated a consultation on a draft of the Railways (Interoperability) Regulations 2010 on 29 March 2009. These regulations transpose Directive 2008/57/EC on the interoperability of the rail system.

1.2 Simultaneously, the ORR initiated a consultation on a draft of the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010. These regulations amend the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS 2006).

1.3 This paper discusses respective scopes of the two sets of regulations, and identifies an area of overlap and therefore potential conflict relating to requirements after subsystems have been placed in service.

1.4 This paper is one of a series discussing different aspects of these regulations.

2 Background

2.1 08/57-DV29EN01, 'The Authorisation Process of subsystems and vehicles under Directive 2008/57/EC', issued by the European Railway Agency (ERA) for discussion on 31 March 2010, suggests that:

> *In order to "facilitate the progressive creation of the internal market in equipment and services for the construction, renewal, upgrading and operation of the rail system within the Community" (defined as part of the purpose of 2008/57/EC in Article 2) it is necessary to separate regulation of the safe operation of the railway system from the regulation of authorisation to place into service.*
>
> *This enables a subsystem, vehicle and vehicle type authorisations to be used by many Railway Undertakings. For example a manufacturer may apply for authorisation for a locomotive or locomotive type for a network in a Member State in order that he can later sell it to a number of different RUs, each of whom will have different arrangements in their respective SMSs for managing and maintaining locomotives. Alternatively an RU may lease an authorised locomotive previously*

operated by another RU on the same network without the need for a new authorisation.

2.2 The principle of 'separate regulation of the safe operation of the railway system from the regulation of authorisation to place into service' is a sensible one. Unfortunately, it is imperfectly carried through in Directive 2008/57/EC and, as a result, the draft Railways (Interoperability) Regulations 2010 fail to completely respect this principle.

2.3 The concurrent development of the Railways (Interoperability) Regulations 2010 and the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 present an opportunity to embed the principle of 'separate regulation of the safe operation of the railway system from the regulation of authorisation to place into service' into UK law.

3 Regulation 20: Duty on operator to ensure essential requirements are met

3.1 Regulation 20 of draft Railways (Interoperability) Regulations 2010 states that:

> *20.—(1) This regulation applies where a project subsystem is in use on, or is part of, the rail system pursuant to an authorisation under these Regulations.*
>
> *(2) Subject to paragraphs (3) and (4), the operator of the project subsystem must ensure that the project subsystem is operated and maintained …*

3.2 These requirements clearly relate to 'regulation of the safe operation of the railway system' and not to 'regulation of authorisation to place into service'.

3.3 Further, the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 introduce into ROGS a new regulation (Regulation 18A) dealing with 'Maintenance of vehicles on the mainline railway'.

3.4 Therefore there are two sets of regulations setting out different requirements for the maintenance of the rolling stock subsystems, and those parts of other subsystems incorporated into a vehicle.

4 Basis of Regulation 20

4.1 It is difficult to refer Regulation 20 back to Directive 2008/57/EC.

4.2 Article 15(3) of Directive 2008/57/EC requires:

> *After these subsystems have been placed in service, the check shall be carried out:*
>
> > *(a) for infrastructures, in the context of the granting and supervision of safety authorisations under Article 11 of Directive 2004/49/EC;*

> *(b) for vehicles, in the context of the granting and supervision of safety certificates under Article 10 of Directive 2004/49/EC.*
>
> *To that end, the assessment and verification procedures laid down in the relevant structural and functional TSIs shall be used.*

4.3 However, the reference is back to Directive 2004/49/EC, the province of ROGS.

4.4 Further, the preamble to Directive 2008/57/EC states:

> *(40) After a subsystem is placed in service, care should be taken to ensure that it is operated and maintained in accordance with the essential requirements relating to it. Under Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways (Railway Safety Directive) (1), responsibility for meeting these requirements lies, for their respective subsystems, with the infrastructure manager or the railway undertaking. Member States can check compliance with these requirements when granting safety certificates and safety approvals pursuant to Articles 10 and 11 of the Railway Safety Directive.*

4.5 Again, it is clear that operation and maintenance are matters for Directive 2004/49/EC, and therefore logically for ROGS and not the Railways (Interoperability) Regulations 2010.

5 Proposed resolution

5.1 It is suggested that requirements relating to operation and maintenance after a subsystem has been placed into service (that is, once it is in use) are all placed in ROGS, by means of the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010, irrespective of their source within European Directives.

5.2 Even if there is a basis within Directive 2008/57/EC for requirements relating to operation and maintenance after a subsystem has been placed into service, that would not be a good reason for including those requirements within the Railways (Interoperability) Regulations 2010. The UK regulations should respect the principle established by ERA of 'separate regulation of the safe operation of the railway system from the regulation of authorisation to place into service'.

6 Regulation 27: Duties on operators

6.1 Regulation 27 of draft Railways (Interoperability) Regulations 2010 states that:

> *The operator of any interoperability constituent that is in use on, or is part of the trans-European rail system located in the United Kingdom or, if there is an applicable TSI, any other part of the rail system located in the United Kingdom, must ensure that while it is so in use it is …*

6.2 In this case, there is clearer source for the requirement in Directive 2008/57/EC, in Article 10(1), which states:

> *1. Member States shall take all necessary steps to ensure that interoperability constituents:*
>
> > *(a) are placed on the market only if they enable interoperability to be achieved within the rail system while at the same time meeting the essential requirements;*
> >
> > *(b) are used in their area of use as intended and are suitably installed and maintained.*

6.3 However, the arguments for placing this requirement within ROGS is the same as for subsystems set out in section 5.2 above.

7 Recommendations

7.1 ISCC is asked to:

- **NOTE** the argument for principle established by ERA of 'separate regulation of the safe operation of the railway system from the regulation of authorisation to place into service' and the implications of this for the draft regulations.
- **DISCUSS** the case for raising this issue formally in the industry's responses to the DfT's consultation on the draft regulations

AGENDA ITEM: 6.5

MEETING:	**Industry Standards Co-ordination Committee**
DATE:	**23 April 2010**
SUBJECT:	**Paper B2 - ROGS Amendment Regulations 2010: Maintenance of vehicles on the mainline railway**
SPONSOR:	**Andrew Sharpe**
AUTHOR:	**Jon Taylor and John Barber**

1 Purpose of the paper

1.1 The ORR initiated a consultation on a draft of the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 on 29 March 2009. These regulations amend the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS 2006).

1.2 The draft regulations introduce into ROGS a new regulation (Regulation 18A) dealing with 'Maintenance of vehicles on the mainline railway'. This paper discusses the new regulation and identifies a number of issues that need to be addressed. Regulation 18A is reproduced as Appendix A to this paper.

1.3 This paper is one of a series discussing different aspects of the regulations.

1.4 There is a wider issue relating to maintenance and the relationship between ROGS and the draft Railways (Interoperability) Regulations 2010 that is discussed in a separate paper in this series.

2 Prohibition on placing in service

2.1 The new ROGS Regulation 18A introduced by the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 states:

> *Subject to paragraph (2), no person may place in service or use a vehicle on the mainline railway unless that vehicle has an entity in charge of maintenance assigned to it, and that entity is registered as such in the National Vehicle Register.*

[The 'National Vehicle Register' is 'the register of vehicles authorised in Great Britain, required by regulation 40 of the Interoperability Regulations'.]

2.2 However, requirements for the authorisation for placing into service are set out in the Railways (Interoperability) Regulations 2010:

> *4.—(1) No person shall place in service on the trans-European rail system, or if there is an applicable TSI, on any other part of the rail system, any structural subsystem which has been constructed, upgraded or renewed as a project unless …*

2.3 There is no doubt a distinction to be made between 'authorisation for placing into service' and the actual 'placing in service'. However, both sets of regulations express their requirements negatively, using the phrase 'No person shall place in service …'. Having separate prohibitions on placing into service in both sets of regulations is potentially confusing.

2.4 Requirements for placing into service should be a matter for the Railways (Interoperability) Regulations 2010, not ROGS. It should be sufficient within ROGS that 'Subject to paragraph (2), no person may use a vehicle on the mainline railway unless that vehicle has an entity in charge of maintenance assigned to it, and that entity is registered as such in the National Vehicle Register'.

2.5 It is therefore suggested that references to 'place in service' (and cognate expressions) are deleted from the new ROGS Regulation 18A.

2.6 If necessary, a requirement relating to placing into service could be included in the Railways (Interoperability) Regulations 2010, perhaps Regulation 40 (National vehicle register). However, it is not clear that such a requirement is actually needed.

3 Definition of 'placing in service'

3.1 Section 2 argues for deletion of references to 'place in service' (and cognate expressions) from the new ROGS Regulation 18A. However, in the event that this is not accepted, the definition of 'placing in service' needs to be considered.

3.2 ROGS 2006 regulation 5(6) states:

> *In this regulation placing in service shall mean first placed in service for the provision of a transport service, and in ascertaining when this takes place no regard shall be had to any trials or testing that takes place to the relevant vehicle.*

3.3 In the Railways (Interoperability) Regulations 2010, '"placed in service" has the meaning given in regulation 4(2); and cognate expressions shall be construed accordingly'. Regulation 4(2) states:

> *A structural subsystem is placed in service in relation to a part of the rail system when, having been constructed, upgraded or renewed, it is first used on or as part of that part of the rail system in the transportation of passengers or freight or for the purpose for which it was designed.*

3.4 However, the Interoperability Directive 2008/57/EC states:

> *'placing in service' means all the operations by which a subsystem or a vehicle is put into its design operating state;*

3.5 'Design operating state' is undefined. It is not immediately clear that it means 'first used in the transportation of passengers or freight'.

3.6 Consistent definitions, aligned with Directive 2008/57/EC, but making it clear what ‘design operating state’ means, would be helpful.

4 Apparent exclusion of international vehicles from scope of the regulation

4.1 The regulation states:

> *Where a vehicle in existence before 9th November 2010 is to be placed in service or used—*
>
> > *(a) on the mainline railway in accordance with paragraph (1); and*
> >
> > *(b) only within Great Britain (excluding the tunnel system within the meaning of section 1(7) of the Channel Tunnel Act 1987(a));*
>
> *the entity in charge of maintenance assigned to that vehicle must be registered as such in the National Vehicle Register by 9th November 2010.*

4.2 There is no indication of what the rules are for a vehicle in existence before 9th November 2010 which is to be used in both Great Britain and, say, France. Vehicles for use in international traffic appear to be exempt.

4.3 The ORR consultation document states:

> *The required format and content of the NVR are contained in European Commission Decision 2007/756/EC (the Decision). The Decision prescribes, in addition to other requirements, that all vehicles must have an entity in charge of maintenance (“ECM”) assigned to them before they can be used on the mainline railway. The Decision, which requires the ECM’s name, postal address and email contact information, is already in force in Great Britain. New regulation 18A(1) in ROGS is designed to make clear to the ECM that this requirement is a prerequisite to ensuring that vehicles are maintained safely.*
>
> *In addition to authorised vehicles, the Decision also requires the migration of existing vehicles used in international or domestic traffic into the NVR by 9 November 2009 and 9 November 2010 respectively.*

4.4 It is possible that, because the date by which international vehicles needed to be registered on the National Vehicle Register (09 November 2009) has passed, it was felt that it did not need to be addressed in the new Regulations. However, the consultation document goes on to note that 'The regulations differ from the Decision requirements in that the duty is placed on parties other than the Member State (owner, keeper, etc)' - that is, Commission Decision 2007/756/EC ‘is addressed to the Member States’ (Article 6) and not to the owners or keepers of vehicles.

4.5 Therefore, irrespective of compliance dates, there is still a formal need to require owners or keepers to register the entity in charge of maintenance assigned to international vehicles in the National Vehicle Register (otherwise the obligation rests with the member state).

4.6 To avoid confusion, the rules for vehicles for use in international traffic should be made explicit in the regulations.

5 Ensuring a vehicle is in a safe state of running

5.1 The regulation states:

> *Each entity in charge of maintenance must ensure, by means of a system of maintenance, that a vehicle for which it is in charge of maintenance is in a safe state of running.*

5.2 The ISCC approved 'Guide for persons involved in the development of Technical Specifications for Interoperability' notes that:

> *It is not possible for anything to be guaranteed in the strict legal sense (and the TSIs effectively have the force of law). A possible alternative is assure depending on the context, but efforts should normally be made to re-word any clauses which use the terms guarantee, ensure or assure so as to eliminate the need for such a term in the first place.*

5.3 Requiring an entity in charge of maintenance to ensure a vehicle is in a safe state of running is too onerous, and does not take account of the reasonable practicability.

5.4 It would be better if the regulation simply required entities in charge of maintenance to have a system for maintaining vehicles ('a system of maintenance') in a safe state of running.

6 Definition of 'maintenance file'

6.1 The regulations define 'maintenance file' as:

> *"maintenance file" means all the technical and management information that is necessary to carry out the maintenance of a vehicle;*

6.2 Some of the 'technical and management information' required to carry out the maintenance of a vehicle is in a sense embedded with companies' organisational structures and the acquired skills of staff. It is therefore suggested that the word 'all' is deleted. The meaning of the definition is not altered, but removing the word 'all' may discourage an overly legalistic interpretation.

7 Future certification system for entities in charge of maintenance

7.1 The Commission is to adopt measures to establish a system for the certification of entities in charge of maintenance for freight wagons. This will

be based on recommendations made by the European Railway Agency that are likely to include:

- the maintenance system to be established
- the format and validity of the certificate
- the date from when the certification system will apply
- assessment criteria.

7.2 ORR intends to develop a second statutory instrument to implement these measures for certifying entities in charge of maintenance for freight wagons.

7.3 However, this intention does not affect the proposals made elsewhere in this paper.

8 Recommendations

8.1 ISCC is asked to:

- **NOTE** the issues identified in this paper.
- **DISCUSS** the case for raising these issues formally in the industry's responses to the ORR's consultation on the draft regulations.

Appendix A

Maintenance of vehicles on the mainline railway

18A.—(1) Subject to paragraph (2), no person may place in service or use a vehicle on the mainline railway unless that vehicle has an entity in charge of maintenance assigned to it, and that entity is registered as such in the National Vehicle Register.

(2) Where a vehicle in existence before 9th November 2010 is to be placed in service or used—

(a) on the mainline railway in accordance with paragraph (1); and

(b) only within Great Britain (excluding the tunnel system within the meaning of section 1(7) of the Channel Tunnel Act 1987(**a**));

the entity in charge of maintenance assigned to that vehicle must be registered as such in the National Vehicle Register by 9th November 2010.

(3) Each entity in charge of maintenance must ensure, by means of a system of maintenance, that a vehicle for which it is in charge of maintenance is in a safe state of running.

(4) The requirements for a system of maintenance referred to in paragraph (3) are that a vehicle must be maintained in accordance with—

(a) the maintenance file for the vehicle;

(b) applicable maintenance rules; and

(c) applicable TSIs.”.

(**a**) 1987 c.53, to which there are amendments not relevant to these Regulations.

AGENDA ITEM: 6.6

MEETING:	**Industry Standards Co-ordination Committee**
DATE:	**23 April 2010**
SUBJECT:	**Paper A3 - Draft Railways (Interoperability) Regulations 2010: Miscellaneous issues**
SPONSOR:	**Andrew Sharpe**
AUTHOR:	**Jon Taylor**

1 Purpose of the paper

1.1 The Department for Transport (DfT) initiated a consultation on a draft of the Railways (Interoperability) Regulations 2010 on 29 March 2009. These regulations transpose Directive 2008/57/EC on the interoperability of the rail system.

1.2 This paper draws ISCC's attention to a number of miscellaneous issues relating to the draft regulations. The paper does not document every issue relating to the draft regulations – further time is needed to complete the analysis of the regulations. The paper is very much a 'work in progress'. Section 8 identifies the principal issues likely to require further analysis. However, some other, more significant, issues are dealt with in other papers on the draft regulations.

1.3 Section 2 of this paper summarises the identified miscellaneous issues. Supporting details are set out in sections 3 to 7 and recommendations are made in section 9.

1.4 This paper is one of a series discussing different aspects of the regulations.

2 Summary of issues

2.1 **Definition of 'contracting entity':** The definition expands on the definition in Directive 2008/57/EC, but in doing so it misinterprets the Directive by including a reference to the 'keeper of a unit of rolling stock'. This reference should be deleted from the definition.

2.2 **Authorisation decision:** It is interesting to note that the requirement in Article 15(1) of Directive 2008/57/EC for the member state (that is, the Safety Authority) to check 'safe integration' is omitted as a part of the authorisation process. The decision is welcome, as 'safe integration' should not be a matter for authorisation for placing into service.

2.3 **Essential requirements:** In some places the regulations refer to 'meeting the essential requirements in accordance with regulation 15' and in others to 'meeting the essential requirements'. In the former case, the requirements of TSIs and notified national technical rules are to be met (supplemented by any necessary measures identified by the CSM risk management process). In the latter case, the requirements in Schedule 3 (reproducing Annex III of

Directive 2008/57/EC) are to be met. They are not the same. It is suggested that including unqualified requirements to 'meet the essential requirements' should be avoided in the regulations.

2.4 **Functional subsystems:** The regulations are effectively silent on the subject of the functional subsystems (traffic operation and management, maintenance, telematics applications for passenger and freight services). To avoid potential confusion it is suggested that the scope of the regulations should explicitly exclude functional subsystems.

2.5 **Dispensation from notified national technical rules:** The regulations grant the Secretary of State (as the 'Competent Authority') powers to grant dispensations from notified national rules. This is in conflict with the current system, set out in the Railway Group Standards Code and the Standards Manual, of granting deviations from Railway Group Standards that are notified national technical rules. The paper proposes an alternative that is consistent with the current system.

3 Definition of 'contracting entity'

3.1 The draft regulations define a contracting entity as:

> *"contracting entity" means the person in relation to a project who—*
>
> > *(a) designs or manufactures or intends to design or manufacture the project on his own account;*
> >
> > *(b) contracts or intends to contract with another person for that other person to design or manufacture the project; or*
> >
> > *(c) is the keeper of a unit of rolling stock.*
>
> *and includes an authorised representative established in the EU appointed by the contracting entity to act on the contracting entity's behalf;*

3.2 This definition expands on the definition in Directive 2008/57/EC, but in doing so it misinterprets the Directive, which states:

> *'contracting entity' means any entity, whether public or private, which orders the design and/or construction or the renewal or upgrading of a subsystem. This entity may be a railway undertaking, an infrastructure manager or a keeper, or the concession holder responsible for carrying out a project*

3.3 The Directive definition is in two parts – the formal definition of a contracting entity as 'any entity, whether public or private, which orders the design and/or construction or the renewal or upgrading of a subsystem'. There is then an explanatory statement that 'This entity may be a railway undertaking, an infrastructure manager or a keeper, or the concession holder responsible for carrying out a project'. The point is that the contracting entity (as the term implies) is the entity who 'orders' something – that is, they contract for it.

3.4 By saying '"contracting entity" means the person in relation to a project who is the keeper of a unit of rolling stock', the regulations incorporate part of the Directive's explanatory statement into the definition.

3.5 The keeper is simply the person who, being the owner of a unit of rolling stock or having the right to use it, exploits the unit of rolling stock as a means of transport. They may not necessarily have ordered 'the design and/or construction or the renewal or upgrading of a subsystem'. That is more likely to have been done by the manufacturer – in which case, the regulations will confusingly cause two entities to be the contracting entity, one of whom (the keeper) will not be in a position to comply with the regulations (for example, regulation 16(2), defining when a notified body is to be appointed).

3.6 If a keeper does order 'the design and/or construction or the renewal or upgrading of a subsystem', then they are captured by the words 'the person in relation to a project who …'.

3.7 The reference to the 'keeper of a unit of rolling stock' should be deleted from the definition.

4 Authorisation decision

4.1 The draft regulations state:

> *6.—(1) The Safety Authority must issue an authorisation under these Regulations for the placing in service of a structural subsystem on or as part of the rail system, where it is satisfied that—*
>
> > *(a) the verification declaration has been drawn up in accordance with Schedule 5 or, in the case of an application under regulation 5(1)(d), in accordance with regulation 7(7);*
> >
> > *(b) the project subsystem has been so designed, constructed and installed as to meet the essential requirements in accordance with regulation 15 relating to that subsystem when placed in service on that rail system; and*
> >
> > *(c) the project subsystem is compatible with the part of the rail system into which it is being placed in service.*

4.2 The requirements of Directive 2008/57/EC actually require:

> *To this end, Member States shall take all appropriate steps to ensure that these subsystems may be placed in service only if they are designed, constructed and installed in such a way as to meet the essential requirements concerning them when integrated into the rail system. In particular, they shall check:*
>
> *— the technical compatibility of these subsystems with the system into which they are being integrated,*

— the safe integration of these subsystems in accordance with Articles 4(3) and 6(3) of Directive 2004/49/EC.

4.3 It is interesting to note that the requirement for the member state (that is, the Safety Authority) to check 'safe integration' is omitted as a part of the authorisation process.

4.4 The decision is welcome, as 'safe integration' is not a matter for authorisation for placing into service, as the references to the Railway Safety Directive, 2004/49/EC make clear. It is a matter for duty holders' safety management systems.

4.5 In this respect Directive 2008/57/EC is poorly drafted, as it fails to observe the principle set out in 08/57-DV29EN01 ('The Authorisation Process of subsystems and vehicles under Directive 2008/57/EC', issued by the European Railway Agency (ERA) for discussion on 31 March 2010), that 'it is necessary to separate regulation of the safe operation of the railway system from the regulation of authorisation to place into service'.

5 Essential requirements

5.1 The draft regulations state:

15.—(1) For the purposes of regulations 5(4), 6(1), 9(4) and 18(1) the essential requirements for a project subsystem are deemed to be met by—

(a) conformity with—

(i) all applicable TSIs (if any); and

(ii) where paragraph (2) applies, the requirements of all applicable notified national technical rules (if any), and

(b) implementation of—

(i) any necessary measures identified by the risk management process undertaken in accordance with Article 5 of the CSM Regulation; and

(ii) any necessary measures identified in the safety assessment report.

5.2 'Essential requirements' are defined as 'all the conditions set out in Schedule 3 that must be met by the rail system, subsystems and interoperability constituents, including interfaces'. Schedule 3 simply reproduces, with all its flaws, Annex III to Directive 2008/57/EC.

5.3 In some places, the regulations explicitly refer to meeting the 'essential requirements in accordance with regulation 15' (regulations 5(4), 6(1), 9(4) and 18(1)). But in other places the regulations refer to the essential

requirements without any qualification (see for example regulations 9(3), 20(2)(a) and 24(1)(a)).

5.4 There is a considerable difference between ‘meeting the essential requirements in accordance with regulation 15’ and ‘meeting the essential requirements’. In the former case, the requirements of TSIs and notified national technical rules are to be met (supplemented by any necessary measures identified by the CSM risk management process). In the latter case, the requirements in Schedule 3 are to be met. They are not the same.

5.5 In practice, TSIs were drafted without reference to the detail in Annex III to Directive 2008/57/EC, attention only being paid to the overarching principles of Safety, Reliability and availability, Health, Environmental protection and Technical compatibility. Further, it is unlikely that Annex III to Directive 2008/57/EC was intended to be applied directly, unmediated by TSIs and national technical rules.

5.6 Therefore including unqualified requirements to ‘meet the essential requirements’ should be avoided in the regulations. Ideally, Schedule 3 should be deleted and replaced with the simple list of the five overarching principles (Safety, Reliability and availability, Health, Environmental protection and Technical compatibility), but expressed as aspirations - for example 'The railway system must be designed, built, operated, maintained and decommissioned in a way that respects the environment'.

6 Functional subsystems

6.1 The functional subsystems are:

- traffic operation and management,
- maintenance,
- telematics applications for passenger and freight services.

6.2 The traffic operation and management subsystem is the subject of the High Speed Operations TSI and the Conventional Rail Operations TSI.

6.3 There is no TSI for the maintenance subsystem (defined as ‘the procedures, associated equipment, logistics centres for maintenance work and reserves allowing the mandatory corrective and preventive maintenance to ensure the interoperability of the rail system and guarantee the performance required’.) Notionally, requirements for the maintenance subsystem are included in the TSIs relating to the structural subsystems.

6.4 There are TSI for both telematics applications for passenger and freight services.

6.5 Compliance with TSIs for telematics applications is (or will be) mandated directly through Commission Regulations, so that the Railways (Interoperability) Regulations 2010 need say nothing about these subsystems.

6.6 However, the regulations are virtually silent on the subject of the other functional subsystems. The only explicit reference is in Regulation 20:

> *20.—(1) This regulation applies where a project subsystem is in use on, or is part of, the rail system pursuant to an authorisation under these Regulations.*
>
> *(2) Subject to paragraphs (3) and (4), the operator of the project subsystem must ensure that the project subsystem is operated and maintained—*
>
> > *(d) in conformity with any functional TSI applying to that subsystem; and*

6.7 It has been argued elsewhere in this series of papers that Regulation 20 should be removed from the regulations. If this is accepted, there will be no requirements relating to functional subsystems, and more specifically the Operations TSI, in the regulations.

6.8 The one remaining point to be addressed is that of implementation plans. Both Commission Decision 2008/231/CE and Commission Decision 2006/920/EC, adopting the Operations TSIs, state in Article 4 that 'Member States shall establish a national implementation plan of the TSI in accordance with the criteria specified in Chapter 7 of the Annex' (the Annex being the TSI itself).

6.9 However, the regulations do not address these Commission Decisions. Where the regulations refer to implementation plans (in Regulation 12), it is implicit that the plans only deal with a 'project or type of project for the renewal or upgrading of an existing structural subsystem'.

6.10 Effectively, the regulations deal only with structural subsystems (together with associated interoperability constituents and registers). Therefore, to avoid any potential confusion, it is suggested that the scope of the Railways (Interoperability) Regulations 2010 should explicitly exclude functional subsystems.

6.11 Should it be thought necessary to make provision for the Operations TSIs in regulations, then the logical pace to do so is in ROGS, following the principle established by ERA in 08/57-DV29EN01 of 'separate regulation of the safe operation of the railway system from the regulation of authorisation to place into service'.

7 Dispensation from notified national technical rules by the Competent Authority

7.1 The draft regulations state:

> *49.—(1) The Competent Authority may grant a conditional or unconditional dispensation from notified national technical rules.*

(2) This regulation does not apply to the Rail Vehicle Accessibility Regulations 2010 or the Rail Vehicle Accessibility regulations (Northern Ireland) 2001.

7.2 Dispensation: 'A special permission, especially from the Church, to do something that is not usually allowed' (Cambridge Advanced Learner's Dictionary). In Railway Group Standards terminology, a dispensation is a deviation, which may be a derogation or a temporary non-compliance (a temporary non-compliance is a conditional dispensation, the condition being the time limit).

7.3 The Competent Authority' is, in Great Britain, the Secretary of State.

7.4 For the GB mainline railway, most notified national technical rules are Railway Group Standards. Management of Railway Group Standards (including the granting of derogations and temporary non-compliances) is subject to the Railway Group Standards Code (the Code), which is approved by the Office of Rail Regulation (the Safety Authority defined by the regulations).

7.5 The Code states:

All deviations from RGSs shall be in accordance with the procedure defined in part 6 [of the Code] and any supporting provisions defined in the Standards Manual.

7.6 Section 14 of the Standards Manual (the Manual) deals with 'Management of Railway Group Standards as national technical rules'. This states:

14.4.2 The procedure for deviations from RGSs set out in part 6 of the Code and part 10 of the Standards Manual shall apply to derogations from notified NTRs which are measures in RGSs, save to the extent that an alternative requirement is described in this section 14.4.

14.4.3 No party shall submit an application for a temporary non-compliance from a notified NTR.

14.4.4 A derogation from a notified NTR may be granted to any party who is entitled to seek a derogation from a TSI in accordance with the Railways (Interoperability) Regulations 2006.

7.7 There is therefore an inherent contradiction between the proposed regulation and the rules for granting derogations (that is, dispensations) from Railway Group Standards that are National Technical Rules established by the Safety Authority.

7.8 The Explanatory Note attached to the regulations explains 'Regulation 49 enables dispensations from notified national technical rules to be granted'.

7.9 The current mechanism for enabling dispensations from Railway Group Standards that are notified national technical rules is to notify the Code itself

as a notified national technical rule. It is possible that DfT feel that this is an insufficiently robust legal basis for enabling dispensations, although it has yet to be challenged.

7.10 The regulation does more than enable dispensations from notified national technical rules to be granted. It gives the power to grant such dispensations to the Secretary of State, without any safeguards or governance arrangements equivalent to those set out in the Code.

7.11 Given that it is the Safety Authority that issues authorisations, it seems inappropriate to give the power of granting dispensations to the Secretary of State.

7.12 If the intention of the regulation is to enable dispensations from notified national technical rules to be granted, this could be done in a manner that is entirely consistent with the Code. A possible form of words might be:

> *49.—(1) The Safety Authority shall appoint a person who may grant a conditional or unconditional dispensation from notified national technical rules.*
>
> *(2) The Safety Authority shall determine the basis on which the appointed person may grant such dispensations and shall arrange for basis on which the appointed person may grant dispensations to be available on a publicly accessible website.*
>
> *(3) This regulation does not apply to the Rail Vehicle Accessibility Regulations 2010 or the Rail Vehicle Accessibility regulations (Northern Ireland) 2001.*

7.13 The suggested regulation above is for all practical purposes the current arrangement. The ORR (The Safety Authority) appoints RSSB to grant ('authorise' in the language of the Code) dispensations (deviations) on the basis set out in the Code, which is publically available on RSSB's website.

7.14 If Regulation 49 is not revised, the consequences will depend entirely on how the Secretary of State chooses to exercise the powers it confers.

8 Issues requiring further analysis

8.1 Section 1 noted that this paper does not document every issue relating to the draft regulations – further time is needed to complete the analysis of the regulations. The following list identifies the principal issues likely to require further analysis.

- Determination of type (particularly the role of the Safety Authority, the distinction between 'rolling stock subsystem' and 'vehicle', and the determination of type when applied to the CCS, ENE and INF subsystems).

- Implementation plans (particularly scope of implementation plans, applications to the competent authority for decisions as to whether authorisation is required, and the basis for such decisions).

- Verification assessment procedures for project subsystems (particularly the references to schedule 6, the meaning of 'configuration control', and the assessment of interfaces).

- Interoperability constituents (particularly a potential lack of clarity as to which things are actually 'interoperability constituents', the lack of a mandatory requirement in regulation 23; the apparently mandatory use of 'European Specifications', the requirement to always use a Notified Body, the reference to 'procedures set out in Schedule 7').

- The nature and use of 'designated bodies' to assess conformity with notified national technical rules.

- The register of infrastructure (particularly the content of the register, structural subsystems other than rolling stock fitted to vehicles, application to infrastructure that is not authorised infrastructure, responsibility for registers of station infrastructure).

- The national vehicle register (particularly the relationship with the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 in respect of entities in charge of maintenance, the 'further information as the registration body may reasonably require', designation of a person to be the registration body 'independent of any Railway Undertaking').

- Reproduction of Annexes from Directive 2008/57/EC as schedules within the regulations (inappropriate use, poor drafting, non-mandatory content, ambiguity, and unintended consequences).

9 Recommendations

9.1 ISCC is asked to:

- **NOTE** the issues identified in this paper.
- **DISCUSS** the case for raising these issues formally in the industry's responses to the DfT's consultation on the draft regulations.

AGENDA ITEM: 6.7

MEETING:	**Industry Standards Co-ordination Committee**
DATE:	**23 April 2010**
SUBJECT:	**Paper B3 - ROGS Amendment Regulations 2010: Miscellaneous issues**
SPONSOR:	**Andrew Sharpe**
AUTHOR:	**Jon Taylor**

1 Purpose of the paper

1.1 The ORR initiated a consultation on a draft of the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 on 29 March 2009. These regulations amend the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS 2006).

1.2 This paper draws ISCC's attention to a number of miscellaneous issues relating to the draft regulations. Other, more significant issues are dealt with in other papers on the draft regulations.

1.3 Section 2 of this paper summarises the identified miscellaneous issues. Supporting details are set out in sections 3 to 6 and recommendations are made in section 7.

1.4 This paper is one of a series discussing different aspects of the regulations.

2 Summary of issues

2.1 **Title of the Regulations**: for consistency with ROGS 2006, it is suggested that the regulations are re-titled the Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2010

2.2 **Definition of "vehicle"**: the definition in the regulations is different from that proposed for the Railway (Interoperability) Regulations 2010; too wide in application; and based on a mistranslation from the French. It is suggested the definition be amended to:

> *"vehicle" means a railway vehicle that:*
>
> > *(i) runs on its own wheels on railway lines of a gauge of at least 350 millimetres, with or without traction; and*
> >
> > *(ii) is designed and intended to operate signalling and control systems; and*
> >
> > *(iii) is composed of one or more structural and functional subsystems or parts of such subsystems;*

2.3 **Definition of "national safety rules"**: no amendment to the definition of 'national safety rules' is proposed in the regulations. However, the current definition in ROGS 2006 (deriving directly from Directive 2004/49/EC) is that NSRs are rules that apply to Railway Undertakings only – clearly not the intention. The definition needs revision to something like 'all rules containing railway safety requirements imposed at Member State level on Railway Undertakings and Infrastructure Managers, irrespective of the body issuing them, provided that the rules applicable to Railway Undertakings are applicable to more than one Railway Undertaking'.

2.4 **Basic elements of a safety management system**: a safety management system must contain the elements set out in Schedule 1 to ROGS 2006, which includes the following requirement:

> *2. The basic elements of a safety management system are—*
>
> *(d) procedures and methods for carrying out risk evaluation and implementing risk control measures when—*
>
> *(i) there is a change in the way in which the operation in question is carried out; or*
>
> *(ii) <u>new material</u> is used in the operation in question,*
>
> *which gives rise to new risks in relation to any infrastructure or the operation being carried out;*

The term 'new material' is a simple mistranslation from the French. The opportunity could be taken to correct Schedule 1 by amending 2(d)(ii) to read 'new or altered vehicles or new or altered infrastructure are used in the operation in question'.

2.5 **Indicators to calculate the economic impact of accidents:** The regulations are not specific as to whether the economic impact of all accidents or of significant accidents only will be reported. The requirement to include the economic impact of all accidents would be a significant amount of extra (and unnecessary) work, and therefore it is suggested that only the economic impact of significant accidents should be reported.

3 Title of the Regulations

3.1 The regulations are called the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010. The words 'Other' and 'Systems', found in the title of the Railways and Other Guided Transport Systems (Safety) Regulations 2006, are omitted from the amendment regulations.

3.2 This is probably because the regulations do more than amend ROGS 2006. They also make minor amendments to:

- the Railways and Transport Safety Act 2003

- the Railways (Accident Investigation and Reporting) Regulations 2005

The amendments to the Railways and Transport Safety Act 2003 and the Railways (Accident Investigation and Reporting) Regulations 2005 provide the Rail Accident Investigation Branch (RAIB) jurisdiction to investigate tramway incidents in Scotland.

3.3 However, for consistency with ROGS 2006, it is suggested that the regulations are re-titled the Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2010

4 Definition of "vehicle"

4.1 The current definition of 'vehicle' in ROGS 2006 is

> *"vehicle" includes a mobile traction unit;*

4.2 It is proposed to amend this to:

> *"vehicle"—*
> *(a) includes a mobile traction unit; and*
> *(b) in respect of the mainline railway, means a vehicle suitable for circulation on its own wheels on railway lines, with or without traction, and composed of one or more structural and functional subsystems or parts of such subsystems;*

4.3 Part (b) of the definition is modelled on the definition in Directive 2008/110/EC, amending Directive 2004/49/EC. The use of the word 'circulation' in this context indicates the original text of the Directive was very likely to have been French:

> *"véhicule", un véhicule ferroviaire apte à circuler sur ses propres roues sur une ligne ferroviaire, avec ou sans traction. Un véhicule se compose d'un ou plusieurs sous-systèmes de nature structurelle et fonctionnelle ou de parties de ces sous-systèmes.*

4.4 According to the UIC dictionary, the term 'apte à circuler' actually translates as 'suitable for running'. 'Circulation' is a mistranslation. 'Suitable' probably does not imply a value judgement. It is likely to mean no more than 'capable of'. So 'apte à circuler' could legitimately be translated using the words 'that runs', used by the Railways (Interoperability) Regulations 2010 (see below).

4.5 The definition of a vehicle proposed in the draft Railways (Interoperability) Regulations 2010 is:

> *"vehicle" means a railway vehicle that runs on its own wheels on railway lines of a gauge of at least 350 millimetres, with or without traction and is composed of one or more structural and functional subsystems or parts of such subsystems;*

4.6 The definition is modelled on Directive 2008/57/EC, with the addition of the words ‘of a gauge of at least 350 millimetres’. The French text of Directive 2008/57/EC is identical to that in Directive 2004/49/EC:

> *“véhicule”: un véhicule ferroviaire apte à circuler sur ses propres roues sur une ligne ferroviaire, avec ou sans traction. Un véhicule se compose d'un ou plusieurs sous-systèmes de nature structurelle et fonctionnelle ou de parties de ces sous-systèmes;*

4.7 Both definitions in respect of the mainline railway are very broad, and may inadvertently include items of plant and equipment that should be excluded.

4.8 The ‘interoperability definition’ could include, for example, permanent way trolleys and possession-only vehicles. But, if the mistranslation from the French is ignored, it could be argued that they are not 'suitable for circulation' according to the ‘safety definition’. The interpretation of the term ‘suitable for circulation’ would depend on what is meant by ‘circulation’ and making a subjective judgement as to ‘suitability’.

4.9 The point has been raised with ERA by CEN experts on plant, and for the purposes of interoperability the following has been agreed:

> *There was a common understanding that the ‘big’ machines which can be transported as a train or part of a train to be considered as vehicles and on the ‘small’ machines transported on another wagon not to be considered as vehicles. The main issue on this subject is to delimit the border between “big and small” machines. It has been agreed that all machines that are designed to trigger train control and signaling [sic] system are considered as vehicles. Others are not in the technical approach following the logic of the EN-standards.*

4.10 This is documented in the ‘Minutes of the meeting with CEN on OTMs Held on 24th February 2010’. The final agreed definition was ‘designed and intended to operate signalling and control systems’.

4.11 The definitions of ‘vehicle’ in both sets of regulations ought to be harmonised, (recognising that ‘circulation’ is a mistranslation of the French word for ‘running’) and extended to exclude items of plant that were never intended to be included. This is probably best done on the basis of the understanding reached between ERA and CEN on this matter. A suggested definition for both sets of regulations is:

> *“vehicle” means a railway vehicle that:*
>
> > *(i) runs on its own wheels on railway lines of a gauge of at least 350 millimetres, with or without traction; and*
> >
> > *(ii) is designed and intended to operate signalling and control systems; and*
> >
> > *(iii) is composed of one or more structural and functional subsystems or parts of such subsystems;*

5 Definition of “national safety rules”

5.1 No amendment to the definition of ‘national safety rules’ is proposed. However, the current definition in ROGS 2006 is:

> *"national safety rules" means any legislation and other requirements—*
> *(a) applicable to the whole of Great Britain; and*
> *(b) which contain requirements (including common operating rules) relating to railway safety which are imposed on more than one railway undertaking,*

5.2 The implication of the definition of national safety rules (NSRs) in ROGS 2006 (deriving directly from Directive 2004/49/EC) is that NSRs are rules that apply to Railway Undertakings only, and that rules that apply to Infrastructure Managers are excluded - that is, the 'and' is a logical 'and', and both conditions must be true (it is a principle of English law that ‘what is not included is excluded’). However, it is clear that NSRs had been intended to include those rules applying to Infrastructure Managers, as would logically be expected.

5.3 If it was the intention that NSRs apply to Infrastructure Managers, then the definition needs revision to something like 'all rules containing railway safety requirements imposed at Member State level on Railway Undertakings and Infrastructure Managers [and Keepers or Entities in Charge of Maintenance?], irrespective of the body issuing them, provided that the rules applicable to Railway Undertakings are applicable to more than one Railway Undertaking’.

5.4 The definition depends on the term ‘railway undertaking’. Unfortunately, the term ‘transport undertaking’ was adopted for general use in ROGS. A definition of ‘railway undertaking’ needs to be added to complete the definition of ‘national safety rules’.

6 Indicators to calculate the economic impact of accidents

6.1 The regulations provide a revised version of Schedule 3, Common Safety Indicators, for inclusion in ROGS. This relates to Regulation 20(1)(c), requiring transport operators to send to the Office of Rail Regulation an annual safety report. Schedule 3 includes the following:

> ***Indicators to calculate the economic impact of accidents***
>
> *6.—(2) The Office of Rail Regulation shall indicate in each annual safety report submitted in accordance with regulation 20 whether the report includes the economic impact of all accidents or of significant accidents only.*

6.2 [The reference to ‘the report submitted in accordance with regulation 20’ is presumably a reference to regulation 20(3), requiring ORR to ‘publish and send to the European Railway Agency an annual report relating to the previous calendar year. The reference should be made more precise.]

6.3 Whilst the option to report the economic impact of all accidents or of significant accidents only is permitted within the Railway Safety Directive, ORR should be specific about what will be reported, rather than leaving it in doubt as to which they will require. The requirement to include the economic impact of all accidents would be a significant amount of extra (and unnecessary) work, and therefore it is suggested that only the economic impact of significant accidents should be included.

7 Basic elements of a safety management system

7.1 A safety management system must meet the requirements and contains the elements set out in Schedule 1 to ROGS 2006, 'adapted to the character, extent and other characteristics of the operation in question'.

7.2 Schedule 1 substantially reproduces the provisions of Annex III to Directive 2004/49/EC. It includes the following requirement:

> *2. The basic elements of a safety management system are—*
>
> *(d) procedures and methods for carrying out risk evaluation and implementing risk control measures when—*
>
> *(i) there is a change in the way in which the operation in question is carried out; or*
>
> *(ii) <u>new material</u> is used in the operation in question,*
>
> *which gives rise to new risks in relation to any infrastructure or the operation being carried out;*

7.3 As noted on section 3.3, the original text of the Directive was very likely to have been French. The term 'new material' is mistranslation from the French that leads to a significant lack of clarity.

7.4 The French text of the Directive uses 'matériel', meaning 'equipment'. 'Material' should therefore be interpreted as 'equipment that you need for a particular activity', not 'a physical substance which things can be made from'.

7.5 The French text of the Regulation uses 'nouveau', meaning new in the sense 'different to one that existed earlier'. 'New' should therefore be interpreted in the sense of 'different to one that existed earlier', not 'not previously used or owned'. As such, 'new' encompasses 'altered'.

7.6 'New material' should therefore be interpreted as being equivalent to the terms 'new or altered vehicles' and 'new or altered infrastructure' used in Regulations 5(1)(d)(iii) and 5(7)(a) of ROGS.

7.7 The opportunity could be taken to correct Schedule 1 by amending 2(d)(ii) to read 'new or altered vehicles or new or altered infrastructure are used in the operation in question'.

7.8 Notes:

- Definitions of ‘material’ and ‘new’ taken from the Cambridge Advanced Learner's Dictionary.

- Often in railway usage ‘matériel’ is understood as referring to rolling stock only. This narrow interpretation could be inferred by the reference in Annex III to Directive 2004/49/EC to ‘new risks on the infrastructure or on operations’. However, if this narrow interpretation was intended, the regulation would probably have referred to ‘matériel roulant’. The German text uses ‘Material’, which, as in French, is usually understood as referring to rolling stock only.

- The main text of ROGS also uses the term ‘material’ in another context, with what appears to be a different meaning (‘supply of maintenance and material’), defining the term ‘material’ by saying ‘“material” includes plant’.

8 Recommendations

8.1 ISCC is asked to:

- **NOTE** the issues identified in this paper.
- **DISCUSS** the case for raising these issues formally in the industry’s responses to the ORR’s consultation on the draft regulations.

EXTRACT FROM
INDUSTRY STANDARDS CO-ORDINATION COMMITTEE (ISCC)

Approved Minutes of meeting held on 23 April 2010
Parker meeting room, Block 2, Angel Square

Present	Representing	Status
Tim Gilbert (TG)	Independent	Chairman
Andrew Sharpe (AS)	RSSB	Member
Laurence Gregory (LG)	ROSCOs	Member
Neil Ovenden (NO)	Passenger train operators	Alternate Member
Louise Shaw (LS) from 13:00	Passenger train operators	Member
Brian Donnelly (BD) from 13:00	Passenger train operators	Guest
Francis How (FH)	Suppliers	Member
Julian Lindfield (JL)	Infrastructure Manager	Member
Jonathan Ellis (JE)	Infrastructure Manager	Member
Glenn Leighton (GL)	Infrastructure Manager	Alternate Member
Tim Shakerley (TS)	Freight Operators	Member
Jon Taylor (JT)	RSSB	Alternate Member
Steve Roberts (SR) for Items 3.1 and 3.2	Traffic Operation and Management Standards Committee	Guest
Alan Jones (AJ) for Items 2.1	Traffic Operation and Management Delivery Unit	Guest
Chris Carr (CCa)	Department for Transport	Observer
Paul Hooper (PH)	Office of Rail Regulation	Observer
Daniella Phillips (DP)	Office of Rail Regulation	Observer
Marie Marks (MM)		Secretary

Apologies

Keith Watson (KW)	HS1 (previously CTRL)	Co-opted Member
Andy Doherty (AD)	Infrastructure Manager	Alternate Member
Paul Antcliff (PA)	Freight Operators	Alternate Member
David Clarke (DC)	Department for Transport	Observer
Peter Browne (PB)	Department for Transport	Observer
Alan Bell (AB)	Office of Rail Regulation	Observer
Vacancy (Francis How covering)	Infrastructure contractors	Member

Number	Minute	Action

6 Interoperability (RSSB analysis and discussion)

6.1 Consultation on the new Railways (Interoperability) Regulations 2010 and Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010

6.1.1 Introduction:

This paper was introduced by Jon Taylor. It introduced a series of supporting papers discussing issues relating to the Department for Transport (DfT) initiated consultation on draft revised Railways (Interoperability) Regulations 2010 on 29 March 2009 and on the ORR initiated consultation on draft revised Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010.

The papers covered three topics:

i) the CSM on risk evaluation and assessment

ii) maintenance and operation of the railway post placing into service

iii) miscellaneous issues

6.1.2 The CSM on risk evaluation and assessment:

The draft Railways (Interoperability) Regulations 2010 imply that if an asset requires member state authorisation, then its introduction is deemed to be significant in respect of the CSM for risk assessment. ISCC was asked for views on this position.

ISCC commented that this might not always be the case, particularly where a new subsystem is of the same type as one that has been authorised previously.

The regulations also assumed that the safety assessment report produced by the Assessment Body required by the CSM on risk evaluation and assessment would contain 'necessary measures'. In RSSB's understanding of the CSM, this was not the case: ISCC shared this view.

The Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS) contain a requirement for 'safety verification'. Safety verification appears to be encompassed by the CSM on risk evaluation and assessment, and therefore it was suggested that the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 could be used to withdraw the requirement for safety verification, to avoid duplication.

In discussing this point, ISCC expressed considerable sympathy with the goal of avoiding the potential for duplication and confusion. It was observed that the term 'safety verification' has become established within some parts of the industry, and a number of views were expressed on whether this should or should not argue for the term to be retained in regulations. ISCC did not wish to express a definitive view at this time.

Number	Minute	Action
6.1.3	Decisions: ISCC **supported** the principle that anything that needs MS authorisation is not automatically 'significant' in the context of the CSM on risk assessment, and that the regulations should be amended to reflect this. ISCC **supported** the deletion of 'any necessary measures identified in the safety assessment report', as there should be no such measures.	
6.1.4	Maintenance and operation of the railway post placing into service: It was noted that ERA's draft DV29 on 'The Authorisation Process of subsystems and vehicles under Directive 2008/57/EC' agreed for the separation of regulation of the safe operation of the railway system from regulation of authorisation to place into service, although this was not entirely in accord with the Directives concerned. The draft Railways (Interoperability) Regulations 2010 contain two regulations relating to the operation and maintenance of the railway system, Regulations 20 and 27. The Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 also introduced a new Regulation 18A into ROGS, on maintenance of vehicles. It was suggested that, for clarity, and to avoid any contradiction, requirements relating to the operation and maintenance of the railway system are only stated once, in the ROGS regulations not RIR. Regulations 20 and 27 should therefore be integrated into Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010. The requirement for a maintenance schedule to be provided at the point of authorisation was discussed. It was pointed out that maintenance schedules of vehicles in use would vary being based on time, distance run and number of operations and it would therefore be difficult to stipulate these at the point of authorisation. It was also noted that maintenance practices can change over time. However, at the point of authorisation there will be some information on maintenance supplied by the manufacturer, setting out the in-service limits within which their equipment should be maintained. How the operator puts this into practice will differ based on a number of operating factors and conditions. The question was raised as to whether it is always the case that the operator of the equipment is captured by the need for a safety certificate or a safety authorisation. DfT to check. The Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 require that the entity in charge of maintenance assigned to a vehicle intended to be used in domestic service only must be registered as such in the National Vehicle Register.	**CCa**

Number	Minute	Action
	However, vehicles intended for use in international service appear to be exempt. ORR said that they had thought carefully about this regulation and this was not the case, but they would review it further if the intention was not clear.	
6.1.5	Decision: ISCC **supported** transferring and integrating regulations 20 and 27 into ROGS – based on the idea of authorisation being contained within RIR and operations and maintenance within the ROGS Regulations.	
6.1.6	Miscellaneous issues (dispensation from notified technical rules): Attention was drawn to the provision for dispensation from notified technical rules by the competent authority. It was pointed out that the Railway Group Standards (RGS) Code provides a mechanism for seeking dispensation from RGS and is notified for this purpose. The provision in the regulations may contradict this. The DfT commented that RGS are not (or may not be) the only NTRs. There may be some relating to, for example, HS1. This is intended to permit derogations from NTRs that are not RGSs. RSSB responded that a fair proportion are (and probably will be) RGSs and asked whether the DfT would expect the powers created in the draft regulations only to be invoked in respect of those that are not RGSs. DfT responded that there was no intention to set up a parallel process for those NNTRs that are RGSs.	
6.1.7	Discussion about authorisation for placing subsystems into service In drafting the regulations, DfT had sought to allow for several scenarios, particularly for rolling stock: • 'Off the shelf' - designed without a specific operator in mind • Designed for a specific operator - with potential for wider use • Designed for a specific operator - little potential for wider use The Regulations, and the process of applying the CSM on risk evaluation and assessment must flexibly cover these scenarios. It was noted that the draft Regulations currently allow for an authorisation for placing into service which includes conditions eg restrictions or limitations. The ORR were currently of the view that to issue an authorisation a complete suite of documents, including the technical file, must be presented and there is no scope for including conditions.	

Number	Minute	Action
	It was also noted that the definition of 'placing into service' in the regulations referred to a structural subsystem being placed in service when 'it is first used on or as part of that part of the rail system.' This would make it difficult for a manufacturer or owner to obtain authorisation for a generic design for a vehicle which was not going into service straight away. The definition of 'placing into service' within Directive 2008/57/EC was to be preferred in this respect, although it was acknowledged that an authorisation could be obtained against TSI conforming infrastructure. DfT and ORR agreed to have further bilateral discussions on this point with a view to agreeing the way forward. DfT will look at ways in which what is required can be made more explicit in the regulations.	
6.1.8	Action: CCa to check whether it is always the case that the operator of equipment is captured by the need for a safety certificate or a safety authorisation.	**CCa**
6.1.9	Action: ISCC members to respond to the consultations on the RIR and the ROGS regulations on the basis of the discussions.	**All**
6.1.10	DfT and ORR thanked ISCC for the useful comments and suggestions, noting that they would give further consideration to the issues raised by ISCC, and encouraging members of ISCC to submit their formal responses to the consultations.	

7 Interoperability – general

7.1 Summary discussion:

The deliberations and decisions on the regulations are documented under section 6 above.

7.2 Significant issues to be raised at RSSB Board level:

ISCC considered whether there were any issues relating to the draft regulations which were of such significance that they ought to be the subject of an industry response from RSSB Board. ISCC decided that, given the willingness expressed by DfT and ORR to give serious consideration to the issues raised during the meeting, no industry response from the RSSB Board was required.

EXTRACT FROM
SAFETY POLICY GROUP 27/04/2010

Draft notes of meeting

Attendance:

Name	Representing		Name	Representing
Louise Shaw (LS)	Passenger TOCs		Anson Jack (AJ)	RSSB (Chair)
Chris Carr (CC)	DfT		Colin Dennis (CD)	RSSB
Julian Lindfield (JL)	Network Rail		Jen Phillips (JP)	RSSB (note taker)
Keith Watson (KW)	HS1		Graham Arkwright (GA)	RSSB (meeting manager)
Francis How (FH)	Suppliers		John Abbott (JA)	RSSB
Chris Hext (CH)	Infrastructure Contractors		Jon Taylor (JT) (items 3 and 4 only)	RSSB
Alan Tordoff (AT)	DB Schenker		Michael Woods (MW) (item 9 only)	RSSB
Jen Ablitt (JenA)	ORR			
Rupert Lown (RL) (Item 5 only)	ORR			
Andrew Eyles (AE) (Item 5 only)	ORR			

Apologies were received from:
Sally Williams, Rod Reid, Tim Gilbert

3. Implementation of the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 and the Railways (Interoperability) Regulations 2010

JT introduced a series of papers which constituted a review of the consultation documents relating to the implementation of the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 and the Railways (Interoperability) Regulations 2010, and identified issues which JT considered should be addressed in the RSSB responses to the consultations. There were two areas of particular significance which the Group was invited to consider, the application of the CSM for risk evaluation and assessment and issues surrounding the placing into service of rolling stock and their ongoing operation and maintenance, together with numerous less significant issues.

The main issue relating to the CSM was that its introduction will supersede the need for separate ‘safety verification’ as all the requirements of safety verification, and more, are contained within the CSM. JT proposed that the requirement for safety verification be removed from ROGS for the mainline railway.

JL commented that the term ‘safety verification’ has recently become established within the industry and to remove it now would cause confusion. He recognised that the CSM was in effect an enhanced form of safety verification but urged consistent use of terminology. The supporting guidance should be used to explain the linkage between safety verification and the CSM.

The RIR make an assumption that all changes requiring an authorisation for placing into service are ‘significant’ for the purposes of the CSM but JT suggested that this should not be the case and a separate test for ‘significance’ should be undertaken as set out in the CSM.

CC remarked that he would like the guidance to contain some examples of projects where the need for authorisation might apply.

Regarding the maintenance of rolling stock, the two proposed sets of Regulations currently set out two different requirements for this. JT proposed that the principle of ‘separate regulation of the safe operation of the railway system from the regulation of authorisation to place into service’ should be embedded into legislation by transferring the requirements in Regulations 20 and 27 of RIR into ROGS.

There was lengthy discussion around all of the issues raised by JT and the group thanked him for the extensive work undertaken in preparing the papers. It was agreed that JT should develop draft responses to the two consultation documents, taking account of the discussion, and submit them to the next meeting of ISCC for consideration and endorsement.

Action: JT to present draft responses to consultation to ISCC

EXTRACT FROM

INDUSTRY STANDARDS CO-ORDINATION COMMITTEE (ISCC)

Minutes (draft) of meeting held on 21 May 2010
Parker meeting room, Block 2, Angel Square

Present	Representing	Status
Tim Gilbert (TG)	Independent	Chairman
Andrew Sharpe (AS)	RSSB	Member
Laurence Gregory (LG)	ROSCOs	Member
Neil Ovenden (NO)	Passenger train operators	Alternate Member
Francis How (FH)	Suppliers	Member
Tim Shakerley (TS)	Freight Operators	Member
Jonathan Ellis (JE)	Infrastructure Manager	Member
Louise Shaw (LS) (for item 3.4)	Passenger train operators	Member
Glenn Leighton (GL)	Infrastructure Manager	Alternate Member
Jon Taylor (JT)	RSSB	Alternate Member
Cliff Cork (CCo)	Rolling Stock Standards Committee	Guest
Richard Barrow (RB) for Items 2.2 and 2.3	CCS & ENE Delivery Unit	Guest
Toni Luke (TL) for Item 3.1	TOM Delivery Unit	Guest
Steve Roberts (SR) for Item 3.1	TOM Delivery Unit	Guest
Richard Lockett (RL) for item 3.4	European Railways Agency	Guest
Chris Carr (CCa)	Department for Transport	Observer
Paul Hooper (PH)	Office of Rail Regulation	Observer
Daniella Phillips (DP)	Office of Rail Regulation	Observer
Chris Simms (CS)	Office of Rail Regulation	Guest Observer
Marie Marks (MM)		Secretary

Apologies

Julian Lindfield (JL)	Infrastructure Manager	Member
Vacancy (Francis How covering)	Infrastructure contractors	Member
Andy Doherty (AD)	Infrastructure Manager	Alternate Member
Paul Antcliff (PA)	Freight Operators	Alternate Member
Keith Watson (KW)	HS1 (previously CTRL)	Co-opted Member
David Clarke (DC)	Department for Transport	Observer
Peter Browne (PB)	Department for Transport	Observer
Alan Bell (AB)	Office of Rail Regulation	Observer

Number	Minute	Action

4.2 RSSB Response to consultation on draft revised RIR and ROGS regulations

4.2.1 Introduction:

This paper was presented by Jon Taylor who drew attention to some specific points that might interest the committee. Notably:

- The distinction made in Directive 2008/57/EC between interoperability constituents, subsystems and vehicles. Introducing vehicles as a distinct class of objects is new, but not recognised by the draft Railways (Interoperability) Regulations 2010. The consequences of this are not certain.
- The lack of a clear definition of the purpose of implementation plans. The original DfT idea that they would include a statement about the extent to which conformity with a TSI was required for a given project had been omitted from the Regulations.
- The difficulty in deciding exactly which components were interoperability constituents. The definition in the Regulations conflicted with the common understanding that ICs were only those listed in a TSI.
- The incomplete integration of the outputs from the Designated Bodies assessment of conformity with notified national rules and the outputs from the Notified Body process.
- The decision to copy the Annexes from Directive 2008/57/EC as schedules within the Regulations, rather than transposing them. This leads to a number of specific difficulties.

It was also highlighted that RSSB's response to the consultation will include the papers produced for both this meeting and the April meeting of ISCC, together with the ISCC minutes documenting views expressed at these meetings.

4.2.2 Discussion/comments: DfT welcomed the papers and commented that they would be very helpful in going through the issues in detail with their lawyers.

4.2.3 Decision: ISCC **noted** the issues raised in the paper.