

List of respondents to the review of ORR's certification body function for entities in charge of maintenance of freight wagons (March-April 2017)

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Channel Commercials plc

To whom it may concern,

Thank you for your e mail dated 03 March 2017 asking for comments regarding your published ECM consultation document proposal.

Please accept this "e" mail as confirmation that Channel Commercials Plc will voice their comments & concerns via the Private Wagon Federation (PWF).

Davis Wagon Services Ltd

To whom it may concern.

We have reviewed the documentation issued to the industry on the 3rd March 2017.

Firstly, I am unsure as to whether this change has already been implemented and this consultation is a meaningless process.

I did not fully endorse the thought processes of the ORR when the ECM certification was forced onto the industry. In 2012, I raised with the ORR, my concerns that this certification process would force non-technical wagon owners to look at differing methods of owning/leasing wagons and this could retract the amount of wagon owners in the UK, affecting the accessible market.

We have tangible evidence to back up that our concerns were realised.

The only saving grace was that the ORR did not walk away from the industry and stayed central to the accreditation process.

The ORR as a central function ensured that there was a joined up approach within the industry to a common method of certification. I believe the proposed changes will dilute the recertification process. Equally, I believe it will also increase the level of risk within the industry. Considering the amount of weight that had been put onto ECM's to adopt the RM3 model, I find adding risk to any process being contradictory to the objectives of the ORR.

I cannot comment on the suggested accredited bodies to recertify as I have received no commercial offers and I do not fully understand the scope. As DWS are a "small player" within the industry, any significant costs could have an adverse effect on our viability and this change could have the same effect as the concerns in raised in 2012. The economies of scale could now drive out the smaller ECM's. Without our certification, we would no longer be a viable business.

Best wishes

John Hall
Managing Director
Davis Wagon Services Ltd

Mr Stephano Valentino,
Rail Safety Policy Adviser,
2nd and 3rd Floors,
One Kemble Street,
London,
WC2B 4AN

Freightliner Group Limited
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1 Eversholt Street
London NW1 2FL
Web: www.freightliner.co.uk

7th April 2017

Dear Stephano,

ECM certification - A review of ORR's role as a certification body

Having reviewed the ORR consultation document 'The certification body function for entities in charge of maintenance of freight wagons - A review of ORR's role' issued in March 2017 on behalf of Freightliner Limited I have following comments;

- 1) The report proposes that the ORR to withdraw from providing certification services for new Freight Wagon entities in Charge of Maintenance from 1st June 2017 and to existing certificated ECMs by the 31st of December. This provides the industry with very little notice of the change. Freightliner believes this transition period is too short for such a major change in policy.

The driver for this change is not clear as Freightliner do not have any knowledge of any immediate changes to the ECM certification regime that would mean any significant increase in workload for the ORR. We are of course aware that the European Union for Railways is investigating proposals to extend the mandatory certification of ECM's to other vehicles however this decision has not been made therefore Freightliner request that the ORR defer this decision until the position in this area has been agreed.

- 2) Despite the report's assertions in the document that there are a number of providers of certification services, Freightliner is concerned that these providers have no real experience of ECM certification in the UK.

We understand that 2 of the UKAS accredited bodies, Network Rail Certification Body (NCB) and SGS UK Ltd have not undertaken any assessments to date with the third TUV Rhineland UK Ltd not having carried out any assessment in the UK.

Freightliner as the first Railfreight Operator to be certificated as an ECM are therefore likely to be certificated by an inexperienced organisation that may result in additional costs and resource being incurred than organisations starting the process later.

- 3) As you are no doubt aware, the Railfreight industry is currently operating in an extremely difficult economic climate with extreme pressure on its cost base following major changes to the core underlying business. This proposed change will impose potentially significant additional costs on ECMs for both certification and surveillance. Has any assessment been undertaken by the ORR on the potential impact these charges will have on the Freight Wagon ECMs? Is there a risk that this change may result in some ECMs withdrawing from the market and the result reduction in number of ECMs available for wagon owners/keepers?

- 4) Freightliner as a Railfreight Operating Company contributes to the funding of the ORR through the Safety Levy and therefore can argue that it is already paying for the service. The withdrawal of this activity could be considered to be a reduction in service provided by the ORR. Railfreight Operators will therefore be penalised over other ECMs by having to pay for an activity that was previously supplied 'free'. Will the ORR consider a rebate to compensate Railfreight Operators for this additional cost?

Freightliner for the reasons given above therefore believe that the ORR should continue to provide ECM Certification services until it can be confirmed that the 3rd Party bodies can meet the demand and provide a competitive service to the ECMs.

Yours sincerely,

Tim Gabb
Professional Head of T&RS Engineering
Freightliner Group Limited



A CIT Company

Nacco UK Limited

6th April 2017

Mr S Valentino
Rail Safety Policy Adviser
2nd and 3rd Floors
One Kemble Street
London
WC2B 4AN

Dear Mr Valentino,

Reference your consultation document titled 'The certification body function for entities in charge of maintenance of freight wagons - A review of ORR's role'.

Thank you for forwarding your review for consultation with the ECM's and other interested parties. As you are aware Nacco UK has always been in the forefront of the implementation of ECM and was one of the first two companies who the ORR certificated.

Nacco UK is a member of the PWF and I am aware of the collective letter which Nacco inputted our opinions and thoughts but feel it would be right to make the ORR aware of my opinion as a UK ECM.

Prior to ECM certification there was very little interaction between the ORR and private wagon owners as we were somewhat invisible with the main exchanges of information taking place between the FOC and the ORR. Since the implementation of ECM the private owners and repair agents have been able to demonstrate a high level of safety and continuous improvement which has been aided by our relationship with the ORR. The implementation of RM3 is a good example as I believe the private owners and repair agents would not have been included had we not been directly connected to the ORR.

On the subject of funding I would prefer option 1 as I believe that the extra cost may again reduce the amount of competitors within the freight wagon industry and also may discourage new entrants. If it is considered that option 1 cannot be sustained I would like further consideration to be given to the funding model which may encourage existing and new companies to have UK based ECM using the ORR as the certification body.

I am currently considering the Nacco UK position for future ECM requirements. As part of a European based company I have the option of adopting the French Nacco SAS ECM certification which will be the most probable outcome in the event of the ORR withdrawing from UK ECM certification. It would be disappointing to have to adapt our operation to the mainland European model as the UK tends to lead in innovation, monitoring and improvements.



A CIT Company

The other drawback may be the changes due to Brexit where the two models may be further misaligned over the coming years and the UK may have reduced expertise with not having UK based ECM's.

I would be glad to share my views or to discuss further if required.

Yours sincerely,

A handwritten signature in black ink, appearing to be "Richard Allen". The signature is fluid and cursive, with a large loop at the end.

Richard Allen

Engineering Manager
Nacco UK, A CIT Company.

Network Rail Certification body (trading as Network Certification Body)

Stef,

There will obviously be ongoing conversations about the implementation arrangements, but we have the following specific comment on the document:

Section 3.21 – ESPA will cease to be after the end of CP5. This clause looks to imply that it will continue. I think it is trying to state that if current ESPA customers wish to continue gaining the activities they are currently in CP6 and beyond there will be a requirement for a commercial contract to be structured and therefore it will be a greater cost than at present (which is FOC).

Regards,
Sam

ORR's response

Hi Sam

Thanks for your response and for pointing out the error made in paragraph 3.21 of the consultation document. Of course, you are right and we apologise for implying that ESPA will continue after CP5.

Kind regards

Stef



Stefano Valentino
Rail Safety Policy Adviser

ORR.gov.uk

2nd and 3rd Floors, One Kemble Street, London WC2B 4AN

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Network Rail Infrastructure Ltd

Stef

I would like to add my support to the option selected by the ORR to move this responsibility to the supply chain. Due to the volume of work that the T&RS team is expected to undertake within the ORR I believe that this additional resource requirement means they are far too stretched to deliver this role effectively. I also feel it interferes with the ORRs role as NSA as they become too embedded within the process to allow them to objectively act as the enforcement agent for the regulations.

I have commenced work today to transition this role to the supply chain and it will have no impact on our operations.

Regards
Paul

Chairman: Rob Brook CEng, FIMechE

Secretary General: David C Barney B.Sc CEng FIMechE

www.PWFrail.org

Date: 6th April 2017

To whom it may concern
The Office of Road and Rail (ORR)
One Kemble Street
WC2B 4AN

Dear Colleague,

Thank you for the opportunity to give a formal PWF response to your consultation document titled 'The certification body function for entities in charge of maintenance of freight wagons - A review of ORR's role'.

PWF is the UK trade association representing the interests of rail freight wagon owners, keepers, users, designers, manufacturers, hirers, consultants, ECMs, maintainers and operators in Great Britain. As you know we played an important facilitation role in the initial process to implement wagon ECM certification and were pleased that together we achieved this by the legal deadline, unlike much of the rest of the EU. We have continued to maintain a close interest in this important area since its implementation to assist the new arrangements to bed down and progress forward.

Our Member companies include eight wagon ECMs and we believe that we currently represent most of the major non-FOC wagon ECMs with wagons operating in Great Britain.

We have carefully studied with both our ECM and our non-ECM Members the documentation that you issued. Although your proposals are primarily of direct concern to the former, the latter have expressed concern that a change to your option two or three proposals risks reducing further the market base. They recall that as a direct effect of the initial ECM certification introduction nearly

half of the players in the British wagon field sold their wagons or withdrew as direct players. This was a particularly perverse result as at the time the general view was that there was no direct safety benefit to be derived from implementing this change in the UK and that the upheaval and cost involved were incurred primarily to comply with an EU requirement due to safety concerns on mainland Europe.

Our considered comments to your consultation proposals are as follows:

1. We feel that we must say that the wording of some parts of the Consultation Document seem to imply that a decision to proceed with option three has already been taken. If this is indeed the case we are concerned as this would make the consultation a rather meaningless process.

2. The fact that the ORR themselves conducted the initial round of ECM certification in Great Britain ensured that a common 'level playing field' approach was applied, that this was proportionate and that it took account of the actual safety risk profile of our industry. We have a serious concern that a change to option three would in practice seriously prejudice this rational and logical approach. Evolution to a blind procedure-driven 'box ticking' exercise, however thorough, could ultimately introduce serious safety risks.

It appears to us that there are significant differences between the three certification bodies that you mention in your document, in their nature and their direct experience of wagon operation on the UK operating railway. Will it be possible in practice to ensure that a unified approach is adopted? Would moving to your option three risk moving in the opposite direction to the continuous improvement stimulus encouraged by the your RM3 model which you are strongly promulgating throughout the industry?

3. Having looked-up the apparent scopes of the three certification bodies that you mention in your documentation it would appear that at least one has the ability for certification of each of the four ECM Functions defined in EU445/11 independently. This possibility does, of course, exist within this Regulation but it is our understanding that the original ORR certification only actually directly certificated the ECM Management Function itself. Clarification would be appreciated on this matter. On the one hand, it could be helpful for some of our Members to obtain, say, voluntary Maintenance Delivery Function certification but it would be unfortunate if there were to be any misunderstanding in this area. To further confuse matters we are also being informally told within the industry that RISAS S4 certification can be taken as Maintenance Delivery Function accreditation but is there any formal documentary evidence in the public domain to support this?

4. You make the point that non-FOC wagon ECMs do not directly pay for the ORR's services. We believe that this is a pedantic point. In practice the GB freight railway industry is one of great intertwined interdependency. FOCs are dependent for a very significant part of their business upon the ECMs that we represent. In our view, efficient certification of these ECMs is as integral to a FOC's direct business as is their own Part A/B operating certification, and indeed their own ECM certification.

On a related point, we are nervous that if option two or three were adopted there would be pressure from FOC's to revert to the initial arrangements whereby their ECM certification was covered

within their part A/B safety certification. This would mean that non-FOC ECMs were being charged for their certification whereas FOC's would effectively not be.

5. In relation to costs for certification under your options two and three, these would obviously be very unwelcome. It is worth noting that we represent ECMs responsible for under 100 wagons to those with several thousand. Any additional cost would obviously be more serious the smaller players and some have indicated that any significant ECM certification and surveillance cost would cause them to seriously consider their options, thus potentially yet again reducing the size of the market place, as alluded to in our introduction. It is, of course, not possible to be definitive yet about this aspect as we understand that, at the point of writing this response, none of our Members have yet received any indicative or formal commercial offers from any of the three organisations listed in your document. It is reported, however, that it appears that significantly different time inputs have been suggested by potential certification bodies, thus supporting our concerns expressed in point 2. above.

We would also mention that several of our Members are subsidiaries of companies based elsewhere in the EU. Some of these have indicated that imposition of your options two or three may well lead to them not renewing their UK ECM certification and embracing their GB registered wagons within their existing EU mainland certificate. As you will know as the NSA, on mainland Europe FOCs and ECMs are generally GCU signatories and maintenance practices and standards commonly differ significantly from those customary in Great Britain. Unless steps are taken to ensure knowledge is retained of these differences experience has shown that there is the potential for potentially dangerous erroneous assumptions to be made. We do not believe it to be an accident that the UK railway system is one of the safest in Europe! This point is also one for consideration in the Brexit context.

In conclusion, we would summarise by saying that we believe as argued above that your option one is by far the best way ahead. After careful consideration, we consider that it is in the best interests of UK railway safety, our Members, the FOCs, the wider UK rail freight industry and its customers and that the ORR continue to offer their wagon ECM certification and supervision service to UK-based ECMs without making a direct charge to them for at least for the next five-year certification cycle.

We would, of course, be very pleased to discuss in more detail any of the points made in this response. Also, we confirm that we are happy for it to be put into the public domain.

Thank you again for the opportunity to respond.

Yours faithfully,

David Barney

Secretary General

PWF

Stefano Valentino
Rail Safety Policy Adviser
Office of Rail and Road
2nd and 3rd Floors
One Kemble Street
LONDON
WC2B 4AN

05 April 2017

Re: ORR Consultation: The certification body function for entities in charge of maintenance of freight wagons – A review of ORR's role.

Dear Stefano,

Thank you for the opportunity to provide comments on this consultation.

Whilst RDG understand ORR's need to keep their certification body role under review, we have identified the following areas of concern with ORR's proposals:

1. Transition Period

RDG note that ORR are proposing to effectively cease their Certification of Entities in Charge of Maintenance (C-ECM) activities for new entrants on 1st June 2017 and your consultation therefore represents less than 2 months' notice to the industry of this change. This is considered much too short notice of such a fundamental change.

We therefore ask that you review this proposed timescale.

We also do not quite understand the apparent 'rush' to implement these proposals. Whilst we accept that the European Union Agency for Railways (EUAR) is investigating proposals to widen the mandatory C-ECM activities to all other vehicles, it would seem more sensible to us - especially in the light of the EU Referendum decision, to hold off making any significant changes in this sphere.

2. Costs

You will no doubt be aware of the extremely tough trading conditions that the rail freight sector is experiencing currently. We would therefore like to understand what assessment has been undertaken by ORR that the potential charges levied by the Accreditation Bodies will be reasonable and can be commercially accommodated by the freight wagon ECMs.

According to ORR's proposals, ECM Certification in the future will be carried out in a competitive environment therefore the Accreditation Bodies fees are not regulated and it follows that cost is meant to be controlled by market forces. However, we have concerns that the lack of experience in some of these organisations (see our point 3. below) may initially make them uncompetitive, create a monopoly and therefore increase industry costs.

You will also be aware that freight wagon ECMs currently do not directly pay ORR for C-ECM services, since this forms part of the services covered by the safety levy. Therefore, compared to paying via the safety levy, this additional cost for the freight businesses will be significant and will not have been anticipated when they developed their respective budgets

for this financial year.

If ORR decide that they will no longer continue with their C-ECM role, in order to make this cost-neutral to the freight wagon ECM's, RDG would like to suggest that freight wagon ECMs should be able to apply to the ORR for a rebate on their safety levy - for the full amount they are charged for C-ECM by the Accreditation Bodies – thereby generating the market conditions that ORR would like to create, together with not penalising the freight wagon ECMs by having to pay for a service that they previously effectively received for 'free.'

3. Market Maturity

It is understood that whilst UKAS have accredited three ECM Certification Bodies, namely Network Rail Certification Body (NCB); SGS UK Ltd. and TUV Rheinland UK Ltd. (TRUK), we believe that only TRUK can claim any real experience of C-ECM against Annex III of 445/2011 – and that is not as a result of work undertaken in the UK.

We also do not believe that either NCB or SGS have undertaken any C-ECM activities to date.

In the light of this, RDG therefore have strong reservations about ORR's statement that the market is sufficiently mature to cope with ORR ceasing their activities forthwith.

4. ORR CECM - Insurance Policy?

If ORR are incorrect in their assessment of market maturity, what would happen if the bodies cannot cope or cannot resource the demand from Freight ECMs?

It is our view that ORR should therefore remain an available option to undertake C-ECM activities – should such difficulties be experienced by a freight wagon ECM and more importantly until it is clearly demonstrated that the Accredited bodies can meet the demand and an effective market has been established.

5. In Conclusion

For the reasons stated in **1. – 4.** above, RDG therefore believe that ORR should continue to certify for at least a further 2 years.

By which time we will all collectively be more certain of our future relationship with the EU and we will also have more clarity on the implications and outcome of the EUAR proposed extension of C-ECM to other vehicles – both of which may alter the market / requirements for ECM Certification in the near future.

Kind Regards,

Mark Molyneux
Head of Engineering

Rail Freight Group

This email is to confirm that RFG supports the attached response from Private Wagon Federation,

Many thanks,

Maggie Simpson
Executive Director

Sconrail UK Ltd

Dear Stefano

Thank you for bringing this consultation to our attention.

Below are SCONRAIL's comments on the ORR document 'The certification body function for entities in charge of maintenance of freight wagons. A review of ORR's role. March 2017'

1. We generally support ORR's thinking and the conclusions.

2. Clause 4.1:

For your information, SCONRAIL AG, Switzerland, is already accredited by the Swiss Accreditation Service (SAS) as an ECM CB. It already operates as ECM CB Europe-wide and would be available to customers in the UK market.

3. Clauses 4.1 to 4.8:

We believe the proposed transfer process will achieve the all-important smooth handover to the certification bodies (CBs).

4. Clause 4.10:

There already exists a well-established platform to share information between ECM CBs. This is the CCB (Coordination for Certification Bodies) meeting organised by the European Union Agency for Railways in Lille two to three times a year. In addition to ACBs (Accredited Certification Bodies), the meeting is attended by RCBs (Recognised Certification Bodies) and NSAs acting as Certification Bodies.

Since ECM is a trans-European matter, with or without Brexit, we believe there is little value to be had from a separate UK-specific forum. Given that many NoBos are likely to become ECM CBs, it would be more efficient to simply add the ECM topic on the agenda of the existing NoBo Forum. This would allow brief reporting from the last Lille meeting for the benefit of those who did not attend, and for general aligning of thoughts.

Regards

Ziad

Dr Ziad Mouneimne

BSc PhD CEng FIEE

SCONRAIL

SCONRAIL UK Limited

Swiss Association for Quality and Management Systems (SQS)

Dear Mr Valentino,

Dear Sir or Madams

We thank you for your information and your interest in our services.

We confirm that SQS is a certification body according to Commission Regulation (EU) 445/2011.

The "Swiss Association for Quality and Management Systems (SQS)" is domiciled in Switzerland.

We have international experience since 2011 in the certification of entities in charge of maintenance (ECM) of freight wagons.

Our body is accredited by the "Swiss Accreditation Service" (acc. to ISO/IEC 17065:2012) and also well recognized within the EU.

[REDACTED].

Please do not hesitate for more information.

Kind regards

Michael Bergk

ECM Auditor

Swiss Association
for Quality and Management
Systems (SQS)

Touax Rail Ltd

Dear Stefano,

Touax are not really affected by this announcement, but I would make the comment below based on my experience of ECM accreditation in both the UK and mainland Europe.

- It is common practice in Europe for the ECM to choose their accreditation body from any available in any EU member state. The same should be applicable in the UK although I have heard that the ORR will mandate that only UKAS accredited bodies are used. Taking into account the open practice for the ECM to appoint the accreditation body they wish to use, a mandate of this kind would seem anti-competitive. Hopefully this is not the ORR's position.
- The cost of the use of an outside accreditation body can seem excessive to some smaller ECM's and may in fact reduce further the number of UK ECM's which may have an adverse effect on the freight industry, as it may then restrict the number of certified ECM's and so the possible building, leasing companies and operators of wagons fleets.
- If FOC's are allowed to cover their ECM requirements through their Train Operator's certification (which they get for free from the ORR I believe), then this would seem to create an unfair playing field and may be seen as anti-competitive, and so detrimental to the success of the UK Rail Freight Industry.

I hope you find my comments useful

Best regards – Mit freundlichen Gruben

Les Bryant CEng MIET

European Engineering Manager - **Rail Services**

VTG Rail UK Ltd

Dear Stef,

On behalf of VTG Rail UK, thank you for the opportunity to respond to the consultation.

To try and reduce inputs, VTG has been part of the PWF response and all our comments are included in the joint submission.

Regards
Nigel Day
Head of Engineering.
VTG Rail UK Ltd