



ASSOCIATION of TRAIN OPERATING COMPANIES

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Consultation on the Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations

Dear Stefano

Thank you for the opportunity to comment upon the proposed changes to the ROGS Regulations. We are supportive of ORR's efforts to make the regulations more streamlined but at the same time, relevant; on the whole, we are supportive of the changes proposed.

Yours sincerely

Louise Shaw
Head of Engineering

Question 1: *Do you have any comments on ORR's role as certification body? If so, please state.*

ATOC's members would support mechanisms for the certification requirements for Entities in Charge of Maintenance (ECM) to enable delivery in the most efficient, best value way. The creation of a market for such services is conventionally thought of as being a way to ensure that services are value for money; at this stage it is hard to say whether a market exists or will exist. In the absence of such a market, the use of ORR's capabilities to deliver certification seems appropriate.

As Railway Undertakings, each of whom requires a Safety Certificate in order to operate, we have confidence that ORR's processes and tools efficiently ensure a proper examination of competence of potential ECMs.

Question 2: *Do you have any comments on the proposed new regulation 4(4A) of EARR? If so, please state.*

No

Question 3: *Do you agree with the proposed approach for carving out specific railway systems from the mainline railway requirements in ROGS through the use of an Approved List? Please explain your answer.*

The use of an Approved List of exemptions is a pragmatic solution to clarify where the mainline exists, or not, and is easier to maintain than listing the UK mainline by routes which would be the alternative approach.

Question 4: *Are there any systems that should not be on the Approved List? Please identify them if so and explain why they should not be exempted.*

ATOC is not aware of such systems.

Question 5: *Are there any systems that are not on the Approved List that should be? Please identify them if so and explain why they should be included.*

ATOC is not aware of such systems.

Question 6: *Do you agree with the proposal to issue one safety certificate instead of two? If not, please explain why.*

Issuing one certificate removes any potential conflicts between submissions as presumably only one combined submission and associated SMS is required and needs to be maintained. This is both less costly for the applicant and regulator. It is therefore a sensible approach.

Question 7: *Do you agree with the proposal to remove from ROGS the requirement for mainline operators to carry out safety verification? Please explain your answer.*

Yes for two reasons: The introduction of the CSM on Risk Assessment and Evaluation has caused the SV requirement to be redundant; prior to the existence of the CSM RAE, we could think of almost no circumstances for rolling stock in which a change which triggered the requirement for SV which didn't also trigger the requirement for Authorisation to Place into Service, with all that entails; the only circumstances we could envisage SV being used involved rolling stock not in scope of the Interoperability Regs. Change management processes are part of the requirements of an SMS, so we foresee no circumstances for mainline operators of conventional trains to have to apply SV.

The proposal to remove SV from the regulations, and hence remove the doubt that may have otherwise existed is welcomed.

Question 8: *Do you agree with the proposal to make the 28-day consultation period run concurrently with ORR's four month processing time? Please explain your answer.*

Yes. The 28 day "suspension" in the process awaiting consultation responses adds no value to the task. It generally take ORR around 6 weeks to draft an issue log based on their own review, it is a simple matter to run both ORR and external review concurrently and combine issue logs. The proposal also reduces pressure on new franchisees to produce a new submission for Safety Certificate/Authorisation within a very short time frame.

Question 9: *Do you agree with the proposal to remove the requirement for non-mainline operators to submit annual safety reports to ORR? Please explain your answer.*

Yes, we agree but with some reservations; we would raise concern with the risks and safety performance when such operators are running on the mainline e.g. Pelaw-Sunderland. Presently such operations are included within the statistics used for safety risk modelling and would be now excluded by this proposal. The revised Reg 20 appears not to require such operators to submit their data when running on the mainline. This requires clarification.

Question 10: *Do you agree with the proposal to clarify that the monitoring arrangements of the controller of 'safety-critical work' have to be suitable and sufficient? Please explain your answer.*

No, as this is already in place during assessment of the application for a safety certificate/authorisation where it clearly states that risks have to be identified, controlled, and monitored. The Competence Management System is a risk control measure and is included in the application. If an applicant's measures are not "suitable and sufficient" then this would form grounds for refusal to issue the certificate, and/or issuing of an Improvement Notice as they are not monitoring their risk control measures. Regulation 19 already requires "effective" monitoring to be in place, and Regulation 24 requires so far as reasonably practicable, management and supervision arrangements to be in place.

This will be further reinforced by CSM Monitoring in coming months. Adding the words "suitable and sufficient" does not remove the need for some form of value judgement to be made and would be argued in the Courts regardless of their inclusion. It also raises the point that if "suitable and sufficient" is added for this one activity, it would need to be added uniformly throughout the Regulations, otherwise implying that other control measures are not required to be (as) suitable and sufficient!

Question 11: *Do you have any other comments in relation to the issues raised in this consultation document (and annexes)?*

It is helpful to have access to a consolidated version of the draft regulations as part of the consultation process.