

Our Ref:
Your Ref:

Stefano Valentino
Office of Rail Regulation
1 Kemble Street
London
WC2B 4AN

Freightliner Group Limited
3rd Floor, The Podium
1 Eversholt Street
London NW1 2FL
Tel: +44 (0) 7725 781684
Fax: +44 (0) 207 200 3975
Email: wilsoncd@freightliner.co.uk
Web: www.freightliner.co.uk

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Dear Stefano

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

I am writing to you in response to the consultation issued by ORR concerning the Railways and Other Guided Systems (Miscellaneous Amendments) Regulations. This is the formal response of Freightliner Group (Freightliner) - representing Freightliner Limited (FLL) and Freightliner Heavy Haul Limited (FLHH).

Freightliner welcomes the opportunity to respond to this consultation and is happy to engage further with ORR, should additional information be required. We are content for this response to be published in full.

General Comment

Freightliner welcomes ORR's pro-active approach towards reducing duplication in the process and reducing the consultation burden associated with certification and safety verification. Streamlining process is always welcome in reducing the administrative burden and costs to industry.

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

Freightliner welcomes the ORR as taking on the role of the certification body for ECM's. In its dealings with the ORR on the application and authorisation of Freightliner's Safety certificates, Freightliner has benefitted from the opportunity for early engagement and the open and constructive approach that ORR has taken. Initial experience is that ORR has continued with this constructive approach as applied to the application for an ECM certificate.

In fact, Freightliner would encourage the ORR, during its review as to whether it will remain a certification body in 2 years, to retain these responsibilities to secure the proactive and constructive process that minimises costs to the industry as a whole, which is of particular importance to the highly cost-sensitive rail freight industry. It should always be recognised that the process of certification of maintenance services is a cost that the road industry, as our primary competitor, does not have to bear.

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

Freightliner has no comments or objections on the new regulation 4(4A) of EARR.

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.

Freightliner has no objections to carving out specific railway systems from the mainline railway requirements. Given that the changes in respect of the regulations are broadly driven by the parallel regulations in the Railway Interoperability regulations 2011, it seems sensible to keep ROGS aligned.

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.

Freightliner has no objections to the list proposed.

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.

Freightliner has no objections to the list proposed.

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

Freightliner agrees that there should only be one certificate, as this reduces administrative burden.

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

Freightliner fully supports and welcomes ORR's objective in reducing the requirement for duplication of process in requiring both CSM and SV assessment of new or altered equipment and infrastructure. In Freightliner's view, the CSM methodology provides a structured, comparable methodology for assessing the safety impact of significant change. In many ways, the process described in the CSM as a more robust requirement than the SV process and describes more completely what compliance will look like. Freightliner has felt that the CSM process goes a long way to address the SV process anyway, but the clarity that the change in ROGS brings means that there is no dubiety. The reduction is subjectivity and the avoidance of a duplicate process is therefore welcome.

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.

Freightliner welcomes ORR's pro-active approach to reduce consultation times. Freightliner agrees that running the two processes in parallel will improve the efficiency of applications and the reduction in time will help the industry achieve change in a more efficient way.

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.

Freightliner has no views on this matter.

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.

Freightliner does not agree with the proposed change. The current duty of the controller of safety critical work is to ensure that the measures employed for monitoring are ALARP, which has good legal definition. The words suitable and sufficient have so such legal definition and are open to interpretation. This in turn may have an impact on expectation, certainty and cost to the industry that in the normal course of business can be addressed with positive engagement with the ORR (without additional costs).

The proposed change does not appear to provide additional clarity and may create more uncertainty still. A controller of safety critical work must have measures in place that ensure, as far as reasonably practicable, that safety critical workers are competent (i.e. that they are managed under a competence management system) and that the tasks they are being asked to perform fall within their competence, and that at the time that they are being asked to do the task that they are fit for duty (both well rested and medically unhindered). There are many ways to achieve this and the “controller” may rely on the business process of the company to perform an activity to give that assurance, audit, unobtrusive monitoring etc. It is arguable that the only time that these arrangements can be determined as not “suitable and sufficient” (depending on definition) is after an incident, when the competence of the staff involved in safety critical work has been shown to be inadequate. ALARP, therefore, remains the best measure.

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

No.

Do not hesitate to contact me should you require any further clarification of the points made in our response.

Yours sincerely

Chris Wilson
Rail Strategy Manager
Freightliner Group Limited