

RSSB's response to the consultation on the proposed amendments to the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS 2006).

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

The proposed changes should satisfactorily give effect to the requirements to establish a common system for maintenance arrangements outlined in the revised Railway Safety Directive (RSD). However, the documentation supporting the proposed changes throws up some interesting challenges that the industry will have to address.

For GB, the DfT has notified the Commission that the NSA (ORR) **only** will be the certification body. The consultation document supporting documentation at 3.7 states that the certification body can be the NSA (in GB this is ORR) or an accredited or recognised body, which is contrary to what has been notified.

The consultation document states at 3.8 that ORR will act as certification body for ECMs for an initial period of two years, to ensure that the requirements of the RSD and ECM Regulation are met. The ORR will review its role when the position on accredited certification bodies in the UK is clearer.

For GB in the short term this approach would seem sensible. The ORR will do this using a 'flexible' approach, based on SMS certification, and freight wagon ECMs will not have to pay the ORR directly for certification. However, significant additional cost to the industry will arise when the ORR decides not to continue as the Certification Body, as ECM's will have to pay the 'going rate' for an accredited certification body. The ORR states in the key assumptions section of the Summary Analysis & Evidence Policy (Option 2) that this needs "a more thorough assessment".

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

It seems sensible to extend the powers of ORR inspectors to give them jurisdiction to enter and undertake enforcement in certain premises that are currently excluded from their remit on the grounds that they may have difficulty doing so under the current arrangements. The proposed new regulation is that this shall be for the purpose of inspection and enforcement on railway operational matters only, in premises where an ECM may have maintenance facilities. However, clear demarcation lines need to be drawn to separate operational safety from safety related activities.

It is not clear what is meant by maintenance facilities and railway operational matters. Is the ORR content that this is not too open-ended? For example, does it only mean premises with a railhead where whole vehicles are 'shopped' for maintenance? This would bring the likes of Wabtec, Railcare, Pullman Rail etc. into the scope. Does it mean anything anywhere associated with the maintenance of a wagon? For example, a wheelset overhaul at LH Group Services in Barton-Under-Needwood or a brake cylinder/damper overhaul at Sabre Rail in Newton Aycliffe, both of which have no railhead.

**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.**

It is sensible for the approach to exclusions from the mainline requirements in ROGS to mirror the approach in the Railways (Interoperability) Regulations 2011.

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

RSSB has not identified any systems that should not be on the Approved List.

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

RSSB has not identified any systems that should be on the Approved List that are not.

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

RSSB supports the proposal for issuing one safety certificate instead of two to those operators whose activities are described in 4.26 of the consultation certificate.

It is felt that the ROGS regulations or the accompanying guidance should make clear that mainline operators currently require a Part B Safety Certificate, in accordance with the Railway Safety Directive.

**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.**

The Common Safety Method (CSM) on risk evaluation and assessment came into force on 01 July 2012 for all significant safety-related changes on the GB mainline railway system.

Application of the CSM on risk evaluation and assessment requires the same requirements as safety verification, as well as imposing some new requirements. Therefore, there is no need to carry out a safety verification AND to apply the CSM on risk evaluation and assessment.

RSSB fully supports the proposal to remove from ROGS the requirement for mainline operators to carry out safety verification.

The text at 4.44 of the consultation document states that 'from 1 July 2012 the CSM will apply in full to all [other] significant technical changes and to significant operational and organisational changes. This consultation started on 30 July, so the use of the future tense is incorrect. The CSM was already fully in force when this consultation commenced.

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

We note and support the ATOC response

*'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 reports to the ORR? Please explain your answer.**

RSSB collates and submits the annual report of Common Safety Indicators (CSIs) to the ORR on behalf of the mainline operators. Non mainline operators are out with the scope of this arrangement so we do not have a view on this proposal.

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

We have no specific response to this question.

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

One of the assumptions used in the impact assessment is that the existing 26 freight wagon ECMs will require certification. The actual number is more likely to be 14.

Although not stated within the impact assessment or consultation document, the calculations appear to be based on a 'right first time' assumption. If not, the figures would appear to be somewhat over optimistic as it is inevitable that follow-up and closure of corrective/preventative actions by the ECM will be required for initial certification, on-going annual inspections and where major non-conformances are concerned. This can require considerable effort by all parties concerned.

It is not clear whether the impact assessment allows for costs associated with ECMs that may appeal decisions during the 10-year reference period.

The impact assessment does not appear to take into account the inevitable increased costs to maintain certification beyond the initial two-year period when the ORR will be acting as the certification body.

Section 3.1 of the impact assessment states that *'In the UK, the Private Wagon Registration Agreement (PWRA) was created after railway privatisation'*. This is not correct. The PWRA regime was created back in British Rail days to encourage freight onto rail.

Section 3.5 quotes DRS as a typical freight RU. In general, DRS would not be considered by many to be typical of a freight RU owing to the specialist nature of its core contract. This core contract drives its processes and practices, and therefore costs.

GM/RT2450 requires 'duty holders' to qualify suppliers of safety critical engineering products and services. This can be achieved in a number of ways which includes, but is not exclusively limited to audit.

The terms fitness-to-run examination (FTR) and Level 1 traffic examination stated in section 3.5 of the impact assessment are not consistent with GM/RT2004 Issue 5 and RIS-2702-RST Issue 1. Does 'FTR' mean 'in-service examination', as defined in clause 2.2 of RIS-2702-RST? Is 'Level 1 traffic examination' synonymous with the term 'pre-departure examination'?

Section 3.6 of the impact assessment states that *'a supplier assurance audit 'could take two person days to conduct'*. The supplier assessment audit could also take two to three hours to conduct, for example if the organisation chose to rely on a 'pre-qualification' process and the presumption of conformity provided by industry schemes such as RISAS. The assumption that the introduction of an ECM certification regime would mean that an RU would benefit from not having to conduct the supplier assurance audit is not strictly correct, as the ECM certification regime does not cover the 'procurement' elements of qualification required by GM/RT2450 and therefore it would not eliminate the need for the RU's to do this.

Section 3.6 of the impact assessment states that *'a FTR could take between 10 and 50 person-days depending on the level of intervention, which would be determined by the supplier assurance and documentation reviews'*. Could the basis of the calculation be clarified? For example, is the 10-50 days stated the time which is required to carry out a FTR on the entire fleet of long-term hire freight wagons not already registered in the PWRA? Is this figure for all FTRs on the wagon fleet over the ten-year reference period? Is it for a train consist? Without such information the claimed significant cost savings cannot be verified.

Section 12 of Annex 1: Cost and benefit calculations for Proposal 1 (which occurs in both Options 2 and 3) assumes that the ECM will currently undergo the supplier assurance audit, the documentation review and FTR examinations with three different RUs on average. This validity of this statement requires review.