

Stakeholder Consultation: Department for Transport consultation on the Rail Safety (Amendment) (EU Exit) Regulations 2019

1.1 Introduction

- This statutory instrument makes amendments to [The Railways and Other Guided Transport Systems \(Safety\) Regulations 2006](#)¹ (ROGS) and [The Railways \(Access to Training Services\) Regulations 2006](#)², which sets out the regulatory requirements for managing rail safety in Great Britain. The purpose of this instrument is to correct deficiencies in these regulations that would otherwise arise if they were to remain unchanged in a no-deal scenario.
- We do not want or expect a no deal outcome. We are confident that we will agree a mutually advantageous deal with the EU. However, a responsible government should prepare for all potential outcomes, and that is exactly what we are doing.
- The Department for Transport (DfT) is seeking to gather the views of stakeholders on the proposed statutory instrument that will be used to amend the ROGS, and other pieces of EU tertiary legislation that have direct effect in the UK.
- The territorial application of this instrument is Great Britain and, in respect of the directly effective tertiary, Northern Ireland. Separate domestic legislation for Northern Ireland will be produced in tandem with the Department for Instructure in Northern Ireland.
- This consultation will be open for **three weeks**. We therefore request that stakeholders email their responses on the consultation to interoperability@dft.gov.uk by **Friday 14 September 2018**.

¹ http://orr.gov.uk/_data/assets/pdf_file/0018/2547/rogs-2006-consolidated-with-amendments.pdf. This is an unofficial consolidated version of the legislation and is up to date. The ROGS regulations are only available in their original format on legislation.gov.uk.

² http://www.legislation.gov.uk/uksi/2006/598/pdfs/uksi_20060598_en.pdf

1.2 Context

- The current railway safety legislative regime in Great Britain is primarily contained in The Railways and Other Guided Transport Systems (Safety) Regulations 2006, which transpose EU Directive 2004/49/EC, “The Railway Safety Directive”, and a significant body of EU tertiary legislation that has direct effect in the UK. The purpose of this Directive was to create common safety standards within EU Member States with the aim of facilitating a single market for rail transport services in Europe.
- The UK’s rail safety regime is also supported by The Railways (Access to Training Services) Regulations 2006, which provides railway undertakings applying for a safety certificate, and infrastructure managers and relevant staff, with fair and non-discriminatory access to training services. This includes training for train drivers and staff accompanying the train, whenever such training is necessary for the fulfilment of requirements to obtain the safety certificate; and for infrastructure manager staff who perform safety critical tasks.
- The safety tertiary legislation consists of EU Regulations, Implementing Regulations and Commission Decisions, that set out the individual specifics of common safety methods for monitoring, risk evaluation, and the requirements for safety certificates and authorisations; safety certification for Entities in Charge of Maintenance (ECMs); the establishment of a register for ECMs; and common safety targets and indicators. It has the same application and extent as the domestic safety regime.
- Following the triggering of Article 50, negotiations have started between the UK and EU. The UK will remain a full member of the EU until the 29th March 2019, unless a transition period is agreed between the UK and EU. Until the 29th March, the Government will continue to negotiate, implement and apply EU legislation as a full member of the EU.

2. Background and Objectives

- DfT policy officials and legal officials have examined the regulations and proposed amendments to fix inoperabilities, which would arise if the regulations were left in their current form in a no-deal scenario.
- The changes made by the SI will maintain the regulatory status quo with respect to the safety regime and ensure services can continue to run unchanged at the point of exit. This includes provisions that no longer make sense in context (e.g. references to the UK as a “Member State”) and provisions that will become redundant (e.g. relating to safety reports that currently need to be provided to the European Union Agency for Railways, “The Agency”).
- This is to be achieved by identifying and correcting deficiencies in the domestic and EU legislation. This will be completed using section 8 of the European Union (Withdrawal) Act 2018. The new statutory instrument will make amendments to the following pieces of legislation:
 1. The Railways and Other Guided Transport Systems (Safety) Regulations 2006; and
 2. The Railways (Access to Training Services) Regulations 2006.
- Prior to the issue of this consultation document, the DfT held a workshop with the key stakeholders at the ORR on 27 July 2018 to consider and discuss the implications of potential approaches to correct deficiencies.

3. Potential approach

DfT policy officials are considering the following approach to continued recognition. In practice, this would mean the following:

- Recognition of existing EU Part A safety certificates and safety authorisations until they expire, or for a limited period of time, at which point railway undertakings and infrastructure managers will need to apply to the ORR for an equivalent UK Part A safety certificate or authorisation to continue operating in the UK.
- Railway undertakings and infrastructure managers will still require ORR-issued Part B safety certificates to operate on the UK mainline.
- Continued UK issue of:
 - a. Equivalent Part A safety certificates; and
 - b. ECM certificates for freight wagons.
- Continued use of common safety targets to be administered by the ORR, using cross-EU data.

4. Proposed amendments

1. Part 1: Amendments to secondary legislation

- In this section the instrument will amend various provisions in ROGS pertaining to definitions and references to the EU and Member States. These proposed changes will enable recognition of EU-issued safety certificates once the UK has left the EU.

2. Parts 2 and 3: Safety Management, Certification and Authorisation and other amendments to EU retained law

- In these sections the instrument will revoke aspects of EU tertiary legislation relating to safety that are no longer relevant, or have been restated elsewhere. This includes removing the requirement for the ORR to notify the Agency of the issuing, amendment or revocation of safety certificates (Part A only) or of safety authorisations, which are required by railway undertakings and infrastructure managers.

- The section will establish UK equivalents to elements of the EU system of regulation (including Part A safety certificates and ECM certificates) where this is necessary in order to maintain the substance of the safety regime;
- This section will amend retained EU tertiary legislation relating to safety to correct inoperabilities arising as a result of EU exit, (including in respect of Northern Ireland) maintaining the regulatory requirements that are currently specified by the regulations
- The list of railway safety legislation to be amended, or revoked, for EU Exit is contained in Annex A.

Stakeholder Survey Questions

We would like your views on the questions set out below. There are four general questions for stakeholders to consider. Please enter your responses in the boxes below, explaining your responses as fully as possible.

Question 1: Do you have comments on the methods by which the Department for Transport is maintaining the status quo?

Response:

In order for our railways to continue to operate, maintaining the status quo is considered essential on Day One post-Brexit. It is accepted that changes could be made at a later stage (following appropriate consultation) in order to reflect more precisely the needs of the UK railway, but given the current uncertain circumstances this appears to be the most pragmatic approach available.

Question 2: Do you have any specific comments about the recognition of EU derived Part A safety certificates and authorisations?

Response:

It is proposed that the validity of existing certification should be maintained until the relevant certification expires. This can only be achieved through mutual recognition which reduces the complexity for multinational operators accessing the UK and vice versa after Brexit. The UK processes will therefore need to be up and running for the date that the first of such certificates expire. **This would also help NIS position.**

Question 3: Do you have any specific comments on the continued issue of UK equivalent Part A safety certificates?

Response:

We are happy that the existing Part A safety certification arrangements are fit for purpose and therefore consider that the system works well

Question 4: Do you have any specific comments on the continued use of common safety targets?

Response:

The Common Safety Target criteria are set for more serious events, which in the UK are thankfully infrequent. The cross-industry SMIS IT system enables the collection of them to be relatively easy (although it is highlighted that the serious injury definition doesn't match the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR)).

We believe that although CST's are useful for international benchmarking purposes and encourage improvement at a national level, we would not see the continuation of CST's as a key activity for the UK. Our reasoning is that continuous improvement is already embedded in the Operators' processes in order to improve safety performance based on their own incidents, not solely on CST events. Therefore CST influence can be considered minimal for the Operators – due to their infrequent nature here in the UK.

How to reply

Please provide your responses to these questions by Friday 14th September and email them to: interoperability@dft.gov.uk.

Thank you very much for participating in this consultation.

Freedom of Information Act

Information provided in response to this exercise, including personal information, may be published or disclosed in accordance with access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you would like information that you provide to be treated as confidential, please be aware that under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The DfT will process your personal data in accordance with the Data Protection Act and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. The purpose of this consultation is to inform legislation. Your personal information will only be kept for the purpose of this consultation and will not be shared with anyone else. Your information will be kept securely within DfT and destroyed within 12 months after the consultation has been completed. More information about DfT's privacy policy can be found at: <https://www.gov.uk/government/organisations/department-for-transport>.

Annex A

List of railway safety legislation to be amended for EU Exit

EU railway safety legislation to be amended for EU exit
Commission Decision 1158/2010 on a common safety method for assessing conformity with the requirements for obtaining railway safety certificates
Commission Decision 1169/2010 on a common safety method for assessing conformity with the requirements for obtaining a railway safety authorisation
Commission Regulation 1077/2012 on a common safety method for supervision by national safety authorities after issuing a safety certificate or safety authorisation
Commission Regulation 1078/2012 – common safety method for monitoring by national safety authorities after issuing a safety certificate or safety authorisation
Commission Regulation 445/2011 (consolidated) on a system of certification of entities in charge of maintenance for freight wagons

Commission Implementing Regulation 402/2013 (consolidated) on a common safety method for risk evaluation and assessment

EU railway safety legislation to be revoked for EU exit and restated in domestic legislation

Commission Regulation 653/2007 on the use of a common European format for safety certificates and application documents in accordance with Article 10 of Directive/49/EC

Commission Decision 2009/460/EC on the adoption of a common safety method for assessment of achievement of safety targets, as referred to Article 6 of Directive 2004/49/EC

Commission Decision 2012/226/EC on a second set of Common Safety Targets as regards the rail system³

Commission Implementing Decision amending Decision 2012/226/EU on the second set of Common Safety Targets for the rail system

³ Commission Decision 2010/409/EU on a first set of Common Safety Targets was repealed by this Decision.