

## **Government response to the consultation on the draft railways (interoperability) regulations 2011**

### **Summary**

1. On 25 October 2011 the Department published a consultation on the draft Railways (Interoperability) Regulations to transpose the Interoperability Directive 2008/57, as amended by Directives 2009/131 and 2011/18, which recast earlier versions. The consultation closed on 22 November 2011. These new regulations are necessary to meet the requirements of the Directive and the deadline for implementation was 19 July 2010. The recast Directive contained new provisions for type authorisation of vehicles and for the reauthorisation process for vehicles authorised in another Member State.
2. The draft regulations will implement the Directive for England, Scotland, Wales and Northern Ireland. The reauthorisation of vehicles for the UK half of the Channel Tunnel are dealt with in bi-national safety regulations. All other requirements in the Directive in relation to the Tunnel will be implemented through these draft interoperability regulations.
3. The third consultation followed two earlier rounds of consultation published by the Department in 2009 and 2010. The first round dealt with initial proposals to implement the Directive and the second consulted on a first draft of the regulations. In March 2011 the Commission published Recommendation (2011/217/EU) on the authorisation of rail subsystems (eg vehicles and infrastructure) under the Directive. The proposals in the third consultation took account of the Recommendation and also asked some questions about longer-term strategic issues and interoperability.
4. Twenty responses were received in response to the consultation and most of these were broadly supportive of the proposals and no major objections were raised. There was general agreement that the proposals were consistent with the Commission's Recommendation 2011/217 and that it was helpful to have taken this into account. A number of response sought clarification on certain aspects of the regulations. In particular it was suggested that provisions in relation to lists of upgrade and renewal projects could be made clearer. A number of minor changes have made to the regulations as points of clarification and these are explained below. The Regulations will come into force on 13 January 2012.

**Table of organisations that responded**

Industry	12
Transport authority	4
Local Government	2
National Safety Authority	1
Other	1
Total	20

**The consultation asked six questions:**

**Question 1:** Do consultees agree that the proposed new requirement for dealing with local rules and restrictions is a practical way of meeting the requirement in article 17 of the Directive?

5. Most of the responses (fifteen) agreed with the proposal. Some asked for more detail about how the provision for the Competent Authority to grant dispensations from NNTRs would work in practice. Some responses also suggested a dispensation granted by the Competent Authority may result in a rule or restriction that is only relevant to vehicles. The Department agrees that in such cases it may not be appropriate for information about the rule or restriction to be added to an infrastructure register. The Department also agrees with the suggestion that there may be information about rules and restrictions for both vehicles and infrastructure that needs to be included in the technical file for the authorisation. The Department intends to produce a Help Note about dispensations from NNTRs and how this might fit with the established processes for projects to seek deviations from NNTRs that are also Rail Group Standards.

**Question 2.** Do consultees have any comments on how the draft regulations take account of the Commission's Recommendation 20011/217 concerning the authorisation for the placing in service of structural subsystems?

6. Most agreed with the proposals (eighteen). Some additional points were raised about the following issues: request for a deadline to be placed on the safety authority to make a decision about a first authorisation. The Government has included the deadline that is in the Directive for a decision for reauthorisation but does not consider it is appropriate to set one for a first authorisation. It was also suggested

that Regulations 20 and 27 (ongoing duty on operators) was more appropriate for inclusion in ROGs (see below).

**Question 3.** Do stakeholders agree with the analysis of the benefits in the Impact Assessment of adopting the optimal approach compared against a less optimal one, do you have any other relevant data?

7. The costs and benefits in the initial IA were based on an informal consultation with the rail industry. Following an analysis of the consultation responses, ten of these agreed with the assumptions of costs and benefits. Six responses had no comment or were unable to provide comments in the available time. Two responses were unclear in relation to whether the assumptions were valid or not.
8. Two of the responses disagreed with some of the assumptions (Alstom and Network Rail). Alstom did not challenge the assumptions about costs but suggested the assumptions about type authorisation benefits for both vehicles and non vehicles may be unrealistic, but they did not provide alternative figures. Network Rail queried if the costs of setting up the Infrastructure Register would actually be as high as estimated due to asset work that is already being undertaken. They also queried if the benefits would be as high as estimated. However, for both issues they did not provide alternative estimates.
9. One further response (Office of Rail Regulation) queried how practical it would be for a type authorisation process to be applied to upgrade and renewal projects and suggested there may be lower benefits than expected, but similarly alternative estimates were not provided.
10. There were no objections from the Office of Rail Regulation or industry to the proposal to revise the enforcement regime.

### **Summary of amendments made to the Impact Assessment in response to comments received**

11. Some changes have been made to the regulations to deal with points of clarification that stakeholders raised during the consultation. These do not affect the Impact Assessment as they do not change the substance and therefore impact of the regulations.
12. In response to the comment that the costs and benefits for the infrastructure register provisions will be lower than previously estimated, these costs and benefits have been examined. Consultees did not provide alternative figures or specific evidence, so to assess the impact of the costs and benefits being lower a Sensitivity Test has

been run in which all costs and benefits have been reduced by 20%. The impact of this is shown as the “Low” estimates in the Summary pages for both Options 2 and 3. Because the benefits were originally so much larger than the costs (and no consultation response has suggested otherwise), the NPV of both options remains large and positive, even if somewhat less than in the “Best Estimate” cases. Option 2 continues to show a much higher NPV.

13. Some respondents’ comments suggested the benefits to be gained from extending the type authorisation process to non vehicles is lower than indicated in the IA, but no evidence or figures were provided to inform a reassessment of these benefits. Therefore, as above, the impact of a 20% reduction in benefits from this item has been included in the “Low” case shown for Option 2 (this does not affect any figures in Option 3, as this measure does not apply there). Because this facility is optional for businesses to use, it would only be used when the business perceives there to be net benefits.

**Question 4:** What might be the best way to develop Implementation Plans for TSIs and subsystems and who should lead the process DfT, RDG or industry?

14. The majority of responses (twelve) suggested this process should be led by industry with some suggestions that a suitable cross industry group should take the lead (eg TSLG, or RDG via RSSB) but developed jointly with DfT, RDG and ORR input; some of these also suggested a decision was needed about whether the priority is to make infrastructure TSI compliant first or vehicles; there were also suggestions that the process needed to be co-ordinated with existing planning processes and route utilisation strategies. A minority (four) suggested that DfT should lead the process with input from industry. One suggestion was that DfT needed to first identify how the benefits of interoperability could be maximised along corridors in order for industry to develop plans. There was one suggestion that DfT might lead on vehicles and industry could lead on infrastructure. The Government welcomes the fact that industry is putting itself forward as the best placed to lead this process and will consider with industry and ORR how best to progress Implementation Plans through existing industry forums.

**Question 5:** What are the appropriate mechanisms for restricting the variation in national technical rules?

15. There were a number of different views but some key themes emerged from the responses, including: DfT has a role to play in limiting (and where possible merging) the number of different UK networks and hence the possibility of variation in NNTRs (five); achieving value for money was an important criteria in the development of new NNTRs

(two); DfT should take the lead (two); further research into the issue was required (two); it was suggested giving a role to a single body such as TSLG, ISCC or RSSB was the best solution (two). It was also suggested that only if a network is significantly different to existing ones should additional NNTRs be applied to it. The Government will consider these views and what guidance can be issued so that where possible existing NNTRs are applied or modified instead of creating new ones.

**Question 6:** How might the Department seek advice on other issues such as: the development of UK NNTRs and dispensation from rules; derogations from TSIs; development of TSIs?

16. The majority (13) suggested that advice should be sought from existing industry bodies (in particular RSSB or ISCC). One suggested a new committee could be established. Two suggested contracts could be set up with experts. The Government will consider how to best make use of existing industry forums.

## **Changes made to the regulations in response to points raised by consultees**

### Definitions

17. The use of the term “project manager” was suggested in the consultation draft of the regulations as a way of denoting a contracting entity or manufacturer or the authorised representative established in the EU of a contracting entity or manufacturer. Stakeholders suggested “project entity” would be a more suitable term as “project manager” tended to denote a more limited and discreet function within the overall project.
18. A minor change has been made to the definition of “owner” to refer to “agreement” rather than “permission” being needed for another to use the subsystem.
19. The definition of “vehicle” no longer refers to a vehicle that can only be operated as part of a fixed formation multiple units as the definition covers such a unit in any case; this elaboration is not in the Directive’s definition of vehicle.

### Regulations 20 and 27 (duty on operators)

20. A number of consultees questioned the need to include regulations 20 and 27 which places an ongoing duty on operators of subsystems to ensure they are operated and maintained in accordance with the standards against which they are assessed for authorisation. The Department's view is that there is a significant risk that removing regulation 20 and 27 and pointing to existing ROGs provisions instead could be construed as an inadequate transposition of the Directive, particularly articles 5(2) and 10(1). In schedule 1 of ROGs the phrase "relevant technical and operational standards or other requirements" might be construed narrowly so that "relevant" means relevant to safety.
21. It might be possible to review ROGs in the future and consider if it is appropriate for it to cover non-safety issues. However, there may be policy and practical issues to consider for keeping non-safety issues outside of ROGs. The Department will keep this matter under consideration. If the Commission undertakes further recasts of the Interoperability or Safety Directives this will influence any future proposals on this issue.
22. Stakeholders should note that a minor change has been made to regulation 20 (2) (b) to provide additional flexibility for operators who have a continuing obligation to comply with standards. The change means they can either comply with the original standards that were complied with when the authorisation was granted, or if they prefer, with updated standards.

#### Regulations 12 and 13 (upgrades and renewals)

23. Following the consultation some amendments have been made to the provisions for the drawing up of lists by the Department of projects that are upgrades and renewals (the regulation 12 list). The regulations will now provide that those projects listed are deemed to be upgrades and renewals and will require an authorisation, unless the project seeks a decision from the Department which says authorisation is not required. Some additional flexibility has been added to the provisions which enable any project that considers it may be an upgrade and renewal to seek a decision from the Department about the need for an authorisation, even if a regulation 12 list does not exist, or one exists but the project is not included.
24. The Competent Authority may publish from time to time a list of projects that are in their opinion upgrades and renewals. The regulations will not restrict the development of these lists "in relation to a TSI" as this could have resulted in different lists being produced at different times and the same subsystem being covered in more than

one list. There is flexibility in the regulations so that there may only be one list.

25. In broad terms the provision for upgrades and renewals will work as follows: If a project is on a regulation 12 list it is to be assumed it needs an authorisation unless they get a decision from the Competent Authority that one is not needed. In the event a project is not listed, the project might take a view that they are not a renewal or upgrade under the regulations and proceed on that basis and not seek authorisation. However, the safety authority may take a view that they are an upgrade or renewal and that they should be authorised, so the project may wish to consider making the safety authority aware of their intentions in advance. Alternatively, the project might seek greater certainty through a Competent Authority decision before they commence work.

### Help Notes

26. The Department intends to produce a series of draft Help Notes for stakeholders to comment upon and intends that these are published on the DfT website as soon as possible to coincide with the new regulations coming into force. It is likely that the production of the Help Notes will be prioritised so that the key ones will be issued in the first phase. Some key topics for the first phase may include the following:

- The scope of the regulations
- The roles and responsibilities of different sectors
- Notified bodies and the process for becoming designated bodies
- Upgrades and renewal lists and processes
- Dispensations from NNTRs
- Technical compatibility with the rail system and networks
- The Infrastructure Register
- Type Authorisation

### Changes to NI provisions

27. Two further minor amendments have been made to remove some unnecessary provisions relating to the accessibility requirements in Northern Ireland. The first deals with the reference to exemptions from the accessibility regulations in regulation 20 (the effect of the change is that this now only refers to exemption orders that were made under RVAR 1998 and does not refer to those for RVAR NI 2001 as no exemption orders were made for Northern Ireland).

28. The second change deals with the deemed authorisation provisions under regulation 44 which does not need to apply in Northern Ireland in the same way as it does for the rest of the UK. RVAR NI 2001 was not amended in the same way as RVAR 1998, so the NI accessibility regulations did not scope out heavy rail from the regulations in the same way as for the rest of the UK.

### Essential requirements

29. A change has been made to clarify that project entities have to gain authorisation for vehicles and infrastructure by either meeting technical standards in full, or where those standards cannot be met in every respect, by demonstrating that the “essential requirements” for safety and technical compatibility are met.
30. In a number of places in the Regulations the references to the essential requirements no longer refer to “in accordance with regulation 15” (eg. regulation 5 (4); 7 (2) (c); 9 (3) (c); 18 (1). ); Regulation 15 provides that the essential requirements are deemed to be met if the project complies with the applicable TSIs and NNTRs. It is possible that the essential requirements could still be demonstrated to be met without a NNTR being fully complied with.
31. A minor amendment has been made to regulation 15 to refer to a dispensation from a NNTR which can be granted by the Competent Authority under regulation 46 (1).

### Dispensation from NNTRs

32. As explained above the essential requirements could be met by either meeting technical standards in full, or where those standards cannot be met in every respect, by demonstrating that the “essential requirements” for safety and technical compatibility are met. Although regulation 15 deems that the essential requirements are met when TSIs and NNTRs (subject to dispensations granted by the Competent Authority) are complied with, it is possible that a NNTR is not fully complied with but the essential requirements are met in other ways.
33. For example, when there has not been a dispensation granted for the NNTR by the Competent Authority under regulation 46 but where there is enough evidence supplied by the project and designated body assessing compliance that the essential requirements can be met in other ways. This might happen in the event of a deviation from a NNTR agreed through an established industry process which results in the

designated body adding details to the technical file about how an alternative means of meeting the essential requirements is possible for the project. It will be possible for the safety authority to consider this information on how the essential requirements are met when giving their authorisation.

34. Stakeholders may wish to note that following the consultation a minor amendment has been made to the provision dealing with Dispensations so that regulation 46 now clarifies that the Competent Authority needs to be satisfied when making a dispensation that it is consistent with the essential requirements.

#### Regulation 8 Type Authorisation

35. A simplification has been made to regulation 8 to give more flexibility to the safety authority to act in accordance with EU developments in relation to type approval for vehicles and to develop its own procedures in relation to infrastructure type approvals consistent with the Directive. The reference to an EC type examination certificate and Decision 768/2008/EC (common framework for the marketing of products) has been deleted. This does not prevent a determination made by the safety authority being consistent with the Decision but it gives them more flexibility should they need to depart from the requirements of the Decision, for example in the case of a non vehicle type determination.
36. Regulation 9 (5) now clarifies that a declaration of conformity to type need only be consistent with the Commission Regulation 201/2011 (model declaration of conformity to type) if the application for authorisation is for a vehicle. This provides flexibility that a declaration of conformity to type for a non vehicle subsystem may be made in a different format to the model declaration. The Office of Rail Regulation may wish to specify in guidance the expected format.

#### ERATV Decision

37. Following the publication on 4 October 2011 of the Commission's implementing Decision for the European register of authorised types of railway vehicles 2011/665/EU and amendment has been made to regulation 8 to cross refer to Annex II of the Decision. This places a requirement on the safety authority to notify the European Railway Agency about a determination of type for the placing in service of a vehicle in accordance with the requirements of the Decision.

#### Regulation 17 Checking of NNTRs and technical compatibility

38. Stakeholders suggested there might be a need to refer explicitly to the role of NNTRs as a means of assessing technical compatibility in regulation 17 (3) which refers to the assessment of the interface between the project subsystem and the rail system. The Department considered this request but decided that other parts of regulation 17 deal with the body carrying out an assessment in relation to NNTRs by reference to Annex VI of the Directive, so the requirement to add information about compliance with NNTRs that deal with technical compatibility is dealt with in the Regulations.

### Accessibility Requirements

39. Some stakeholders referred to the 2020 deadline for rail vehicles to comply with the PRM TSI. However, this is not a new requirement imposed by the Regulations. It was suggested that the requirement is contrary to the Interoperability Directive and may put UK operators at a disadvantage. The Government is committed to making public transport more accessible. We recognise that the legal deadline of 2020 for all rail vehicles to be accessible will have a cost, and expect this to be reflected in bids when franchises are re-let. Commensurate investment in station accessibility, including but not limited to the £370m Access for All programme, will see the percentage of journeys beginning or ending at a station with step-free access rising from 52% (2005) to 80% (2015).

40. The requirement is placed upon anyone who uses a vehicle for the carriage of passengers on the TENs in the UK, regardless of the country of origin of the vehicle. We note that new cross-Channel operators plan to use trains that are PRM TSI compliant, so it is unclear how locally based operators are disadvantaged. The Department has not formed a list of fleets which must be made accessible by 2020, as it is for operators to decide which fleets are in use at that point. Instead it has given the industry 10 years notice of what corrective work must be undertaken on older fleets if they are to remain in service beyond 2019. It is for the industry to decide how to deliver this work, given the Government's intention to intervene less.

41. One stakeholder also queried if the 2020 accessibility requirement deadline is consistent with the reauthorisation provisions in the Interoperability Directive. The Department does not consider that the reauthorisation provisions in the Directive prevent the UK placing this requirement on users of rail vehicles in the UK as we are not requiring a reauthorisation only compliance with the standard in the TSI (or non compliance if a dispensation has been granted).

Miscellaneous issues

42. Regulation 22 – the reference to the IGC being the Competent Authority has been deleted.
43. Regulation 23 - an unnecessary provision has been deleted from the regulations that explained that “nothing in these regulations shall preclude a person from placing an interoperability constituent on the market for a purpose other than use on the rail system”. This was considered unnecessary as regulation 23 (1) already restricts the scope of the regulation to use on the rail system so the extra qualification was considered superfluous.
44. Regulation 24 – an amendment has been made so that the procedure for assessing the conformity or suitability for use of an interoperability constituent must be undertaken by a notified body only if the TSI requires it. The Department recognises that self assessment is a possibility in some circumstances. The reference to the requirement of notified bodies complying with the requirements of Annex VIII has been removed as this was considered unnecessary as this provision is already included elsewhere.

Use of Vehicles and Scope

45. DfT recognises that in the first instance it is appropriate for heritage vehicles to contact DfT about whether they are within scope of the regulations (rather than ORR as stated in the consultation document). DfT would seek views from ORR.

List of Excluded Lines

46. TfL suggested that the East London Railway should be added to the list of excluded lines under article 1 (3) (a) because it offers a metro style service similar to that run by London Underground. In their opinion the core ELR was designed to operate a metro style service only and it cannot accommodate other types of trains. The following suggestions for addition to the list of exclusions was made:

*Highbury & Islington station to New Cross station and New Cross Gate station via Whitechapel. (only those tracks used exclusively by the ELR between Highbury & Islington and Dalston Junction).*

*Surrey Quays station to Old Kent Road Junction where the ELR will meet the existing rail route between South Bermondsey and*

*Queen's Road Peckham stations. (under construction expected to be open 2012)*

47. The Department agrees with this view and has added both of the above suggestions to the list of excluded lines.
48. A further amendment to the list has been made so that it refers to Croydon Tramlink rather than the London Tramlink. The Department also agrees that the text in bold should be added to the reference to London Underground:

*London Underground (including infrastructure, vehicles running over Network Rail infrastructure and heritage vehicles, including infrastructure necessary for LU vehicles to operate)*

### **List of Organisations that Responded**

HS1  
Porterbrook  
Interfleet  
Merseytravel  
Crossrail  
Railway Industry Association  
Alstom Transport  
ATOC  
Network Rail  
Private Wagon Federation  
Lloyds Register  
Angel Trains  
Centro  
The Heritage Railway Association  
Rail Safety and Standards Board  
Kent County Council  
Transport for London  
Transport for Greater Manchester  
Ashford Borough Council  
Office of Rail Regulation