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Rail Interoperability Team (Interoperability Consultation)
BY EMAIL: interoperability@dft.gsi.gov.uk

Dear Sirs,

Response to Initial Proposals on the transposition of Directive 2008/57/EC

1. Thank you for inviting us to respond to the proposals you published on 9 March 2009.
2. This response is made on behalf of ORR and has been approved by our Directors. It presents our position as both safety and economic regulator. We have provided detailed responses to your questions on the pro forma response sheet. We think it would also be helpful to set out some of the key points.

Strategic plan for interoperability

3. We welcome DfT's proposal for a strategic plan for interoperability, to give industry and other stakeholders clear expectations with which to plan their businesses and to ensure that the UK is able to fully harness the opportunities available.
4. We agree that the plan must be based on a sound understanding and high level assessment of the main costs and benefits of interoperability. This will enable the extent and pace of introduction of interoperability to be driven by good underlying business cases. The benefits would include both cost efficiencies through greater standardisation and benefits to customers by reducing the barriers to market liberalisation in the provision of passenger and freight services. Production of this plan should be led by the industry parties, who are best placed to understand both costs and benefits.

Clear, simple and unambiguous obligations

5. As the authorising and enforcement body under the current regulations, we fully support DfT's intent to "help create and maintain a workable, transparent and consistent regulatory framework, which is proportionately enforced". There are a number of proposals to improve the current regulations which involve creating new processes or delegating existing or new roles to different bodies. In general and in the interests of better regulation, we would expect a robust and positive impact

assessment in terms of the overall cost to industry to justify such changes. This would itself strengthen the business case for interoperability, and so feed back to the strategic planning work.

Interoperability as a means of encouraging good industry planning and asset management

6. As explained in our current corporate strategy, we believe that “the industry is in the best position to decide how to achieve improvement, and we should not generally seek to prescribe detailed solutions to it.” We are therefore committed to “Ensuring that industry planning for the 2013 periodic review incorporates a technical strategy consistent with the best long-term whole industry outcome”¹. Nevertheless, Governments have an essential role in defining what they wish the railways to achieve and the level of public funding available. This role needs to be clear in the planning process.
7. We would note in particular the importance of agreeing the approach to strategic planning with Transport Scotland, in view of their responsibility for specifying and funding the railways in Scotland on behalf of Scottish Ministers.
8. We would expect any new planning proposals or objectives to be integrated with existing planning processes, notably the RUS process and the technical strategy, the HLOS and the periodic review.

Market liberalisation

9. As a national competition authority for the rail sector, we have some high-level points regarding competition policy and DfT’s implementation proposals.
10. The overarching principle behind competition policy is that active and healthy competition in markets leads to improved productivity, efficiency and innovation with a resulting benefit to end-users. It follows that regulatory intervention should be limited to issues where market mechanisms are failing to deliver, for example, due to blockages arising from structures (including regulation) or the behaviour of market participants. This principle, which is reflected in our corporate strategy, is entirely consistent with the aims of interoperability, which are set out clearly at paragraphs 2.1 and 2.3 of the consultation document.
11. Further, the proposed analysis to establish the costs and benefits of implementing the TSIs must factor-in the benefits of facilitating cross border services and further opening up the market. This is particularly important in the light of DfT’s published proposals on the freight-oriented network and the UK’s participation in any other European corridors.

¹ Page 22, [“Promoting safety and value in Britain’s railways – Our strategy for 2009-14”](#)

We have raised our concerns in response to question 24, which proposes requiring new entrants to have their vehicles re-authorised by the NSA.

Roles and jurisdiction

12. As we have said before finding solutions that adequately cater for HS1, the Channel Tunnel and Northern Ireland is essential to the success of the regulations and to the ability of the UK to take advantage of opportunities available in Europe.
13. Many of your proposals suggest delegating new or existing roles to various industry bodies. These proposals raise many fundamental questions about the distribution of responsibilities in addition to the more obvious, but no less complicated to resolve, issues concerning geographical jurisdiction. The decision to delegate these roles, which we support in due course, must include careful analysis and resolution of any real or perceived conflicts of interest that might arise.

Yours faithfully,

A handwritten signature in purple ink, appearing to read 'Jennifer Ablitt', written in a cursive style.

Jennifer Ablitt

Annex D – Response form

4.1 Implementation plans

Question 1: The Government proposes to use Implementation Plans to clarify when (a) substitution and modification work is major and so is a renewal or upgrade, and (b) must be authorised according to the interoperability process. Do you agree with this approach?

Do you agree with this approach? – ***please delete that which does not apply***

Yes

Please explain the reasons for your answer:

We support the proposal to devise evidence-based National Implementation Plans. Paragraph 2.5 of the consultation states that decisions about application of TSIs, and any other aspect of the interoperability regime such as the development of specific cases, should be considered “as part of a gradual transition to a standardised railway.” A clear articulation of what that standardised railway should look like for the UK, including Northern Ireland, HS1 and the Channel Tunnel, is essential to the success of the regulations.

Moreover, as enforcing authority for the UK mainline network, we agree fully that a clear strategy will support decisive enforcement action¹ and ultimately help to “create and maintain a workable, transparent and consistent regulatory framework, which is proportionately enforced.”²

We look forward to understanding the intended timescales and process for developing these plans, and how the long term strategy is to be implemented via the HLOS and industry business planning.

Nevertheless, in order to develop such plans, clear strategic objectives are needed. We note the focus on the cost benefits of standardisation. The benefits from through-running international services, in the context of the Freight Oriented Network or other European corridor obligations, must be factored into strategic planning. This is consistent with the Directive’s objective of fostering market liberalisation and greater competition to help drive down costs and improve services to customers. In particular, ensuring that the proposed cost benefit analysis factors in these

¹ Paragraph 4.1.1

² paragraph 3.12

possible benefits could help to ensure sufficient resource is committed to resolving the difficulties for HS1 and the Channel Tunnel.

Please enter your text here:

4.1 Implementation plans

Question 2: Who do you think should be involved in the creation, development, elaboration and monitoring of the Implementation Plans? (If you want to be involved, please outline which TSI subsystems you are interested in and the contribution you would expect to make to this work).

Please enter your text here:

As explained in our published corporate strategy, we believe that “the industry is in the best position to decide how to achieve improvement, and we should not generally seek to prescribe detailed solutions to it.” For that reason, one of our strategic objectives over the period to 2014 is to enhance industry planning by, among other things, “Ensuri[ing] that industry planning for the 2013 periodic review incorporates a technical strategy consistent with the best long-term whole industry outcome”³. Nevertheless, Governments have an essential role in defining what they wish the railways to achieve and the level of public funding available. This role needs to be clear in the planning process.

As stated in the consultation document, a first step will need to be devising appropriate means of meeting the needs of Northern Ireland, HS1 and the Channel Tunnel, as well as a strategic approach for Scotland agreed with Transport Scotland.

We would urge the Department to develop the planning processes that currently exist within the industry in order to coordinate the various strategic objectives that exist, and we are encouraged by the commitments made in paragraph 3.9 to realise these policy aims via the next HLOS for control period 5. These existing, tried and tested processes also include mechanisms to monitor and review progress as part of the regulatory framework.

Other relevant industry planning processes are the RUS process, a condition of Network Rail’s licence, and the Technical Strategy Advisory Group (TSAG) although the objectives of these planning processes are distinct, and therefore their limitations for devising

³ Page 22, Promoting safety and value in Britain’s railways – Our strategy for 2009-14

strategic solutions to policy questions should be borne in mind.

We would support extending the approach used in developing the ERTMS plan and would envisage a similar role for ORR in that process.

The consultation document explains that good asset information provision is a key part of assessing the level of technical conformity with TSI standards and from there, devising an optimal level of interoperability for the UK and planning a migration to that target level. As you are aware, we are responsible for monitoring Network Rail's compliance with its licence obligations, several of which relate to asset information. These will continue to be important requirements.

We are currently engaged in a major programme of work with the independent reporters, reviewing aspects of Network Rail's asset information strategy. Given Network Rail's work to date to improve asset information provision and the very extensive data that is available we think it is wrong to say in your consultation document that the network has not "always been fully mapped".

Finally, we note the list of factors, at paragraph 4.1.4, to be considered in making a holistic decision about the application of standards to an individual project. We are interested to know how these factors will be incorporated into the strategic planning process and highlight in this context our corporate objectives to improve customer satisfaction and to facilitate improvements for passengers with reduced mobility and other groups with specific needs. We would welcome discussions about how we might help DfT construct a methodology to assess, for example, end consumer benefit.

Clearly, there are many details to be considered. We will support industry work to devise solutions, including realistic and practical timescales, to bring any plans into statutory force and whether plans should be developed per line of route or per subsystem or a mixture of both.

4.2 Extension of the scope of application of TSI specifications

Question 3: How should the UK Government deal with the extension of scope of the Directive to the whole network, with respect to the expected progressive extension of scope of the application of the TSIs? Do you have a preference for any of the three options as detailed in Section 4.2, or can you suggest an alternative approach?

Please enter your text here:

The Department has made it clear that the foundation of the UK strategic approach will be evidence-based analysis of the costs and benefits, which we support. Decisions about scope, or extent of implementation, should therefore be considered alongside those relating to timing of implementation as part of the overall planning process referred to above.

This question is of most relevance to potential contracting entities and strategy should be driven by industry responses.

Nevertheless, as the enforcing and authorising authority for the GB mainline network, we note the potential resource implications for us from increases in;

- the number of authorisations,
- the scope for enforcement,
- inspection and monitoring activities,
- support to industry for individual projects,
- supporting the ERA process to revise the scope of TSI application.

Focussing on the question posed, it would seem sensible that, where part of a project is not within the scope of the relevant TSIs, the whole project is brought within the same authorisation process. We would welcome clarification of whether a voluntary decision to apply TSIs by a contracting entity would necessitate a formal authorisation from the safety authority.

However, it must also be recognised that for some subsystems, an authorised technical file for an interoperable subsystem does not cover the whole of the project. For example, for a control command and signalling project, much of the vital interlocking, train detection system and points equipment are outside of the interoperable technical specification and therefore require application of the safety verification requirements of the ROGS Regulations. In our view, it would not be expedient or cost efficient

at this time to attempt to standardise the whole CoCoSig system. Moreover, we would need to understand the detailed operation of option A. If a contracting entity opted to seek voluntary authorisation under the revised interoperability regulations for an entire project, but struggled to achieve 100% compliance, would there be any way back by way of applying ROGS safety verification?

4.3 Options to completely exclude certain railway systems from scope

Question 4: Do you think that the Regulations should exclude all of the potentially exempt categories of rail system from scope, as described in option b) (as detailed in Section 4.3.)?

Do you agree with this approach? – please delete that which does not apply		
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Please explain the reasons for your answer:

Building on our answer to question 3, in terms of making costed decisions to migrate to a target network on an extended scope, we also consider it important to harmonise the scope of the regulations implementing both the Railway Safety Directive and the Interoperability Directives to make sure there is no conflict in requirements and that the subsequent transposed regulations are enforceable.

Subject to the requirements contained in ROGs, and in particular, safety verification and application of the CSM for risk assessment, it should be possible for projects within any rail systems excluded from scope, to take advantage of standardised, and cheaper, technical solutions where available, whether or not authorisations within the interoperability framework are available.

Please enter your text here:

4.3 Options to completely exclude certain railway systems from scope

Question 5: Should the Secretary of State designate a list of rail systems to be excluded from scope, in order to provide certainty

on the application of the Regulations? If so, which rail systems should be excluded, and why?		
Do you agree with this approach? – <i>please delete that which does not apply</i>	Yes	
Please explain the reasons for your answer: As a general principle, clarity should be achieved in all of the proposed measures, and on that basis we would support a designated list or maps of the intended scope of interoperability. This would help to avoid the current problems arising from the scope of the high speed TSIs being determined by the map of the Trans European Network while the scope of the conventional rail TSIs is determined by criteria. We would stress that an effective mechanism for determining whether new or re-opened lines are within scope should be established from the outset.		
Please enter your text here:		

4.4 Competent Authority functions – the Responsible Body		
Question 6: Do you think that it is appropriate to transfer some or all of the above Member State functions from the Department for Transport to a different Responsible Body? If you think this is the right way forward in the long term, which functions do you think should be transferred, and to which body?		
Do you agree with this approach? – <i>please delete that which does not apply</i>	Yes	
Please explain the reasons for your answer: It would be helpful to clarify your statements about our existing role according to the statutory functions given to us under the current interoperability regulations. We do not seek assurance that the “notified body is competent to verify standards” indeed it is DfT responsible for appointing NoBos. It is correct to say, however, that we have a direct interest in ensuring that due process has been followed. A clear objective of any transfer of responsibilities would have to be that fulfilment of those responsibilities are improved. In general and in the interests of better regulation, we would expect a robust and positive impact assessment, in terms of the overall cost to		

industry, to justify such changes.

An obvious potential improvement to the existing delegation of responsibilities would be the creation of a system that adequately reflected the needs of the Channel Tunnel, HS1 and Northern Ireland.

In terms of ORR's role, as a general statement, we must avoid being involved, or being seen to be involved, in developing an application which we are later required to decide upon. In other words, we must ensure that the statutory decisions we take are independent and free from any real or perceived conflicts of interest.

For example, there would appear to be synergies between our role in granting authorisations and decisions taken under the existing regulation 5 provisions (Article 20 under the new Directive) on the extent of application of TSIs to a renewal or upgrade project. However, ORR is also required to give a view on whether the overall safety level of the subsystem may be adversely affected by the works envisaged. This decision should be made entirely independently from the decision about whether to apply TSIs in the context of the relevant implementation strategy and costs imposed on the contracting entity.

This is also relevant for other decision-makers. For example, a conflict might arise if a body representative of, or funded by, industry were required to make decisions about the imposition of potential cost or risk to industry projects. This issue is particularly relevant in terms of the level of RSSB's independence from both industry and Government. Clear rules, such as contained in the Railway Group Standards Code and Manual, will need to be in place to ensure impartial decision-making.

We further believe that there are efficiencies in one body being responsible for an entire process. Therefore, where a process requires a final stage of notifying the Commission, such as applying for derogations under Article 9 of the Directive, it would seem to make sense for one body to conduct the whole process.

Finally, there are clear and established means of challenging the decisions of Government and ORR. If decision-making powers were to be delegated to other bodies, consideration would have to be given to the appropriate and readily-available means of challenging those decisions to a body or panel not otherwise involved at some other stage of the process.

The functions most suitable for delegation to a responsible body appear to be the TSI derogation process and drafting of specific cases. RSSB, with its remit for considering derogations under

RGS and associated work with NNTRs, are the obvious candidate for this role. It would be helpful if clarity was provided by DfT on the process for drafting specific cases. We believe that in either case, unless the Competent Authority relinquishes its policy lead in these areas, any other body would likely remain as a post box between GB and the Commission.

Please enter your text here:

4.4 Competent Authority functions – the Responsible Body

Question 7: Given the timescale for transposition, should the new Regulations be used to formalise a transfer of statutory functions to a Responsible Body?

Do you agree with this approach? – ***please delete that which does not apply***

No

Please explain the reasons for your answer:

For the reasons set out above in answer to question 7, we would support the transfer of some specific roles but not within the timescales of the current transposition exercise. The regulations should therefore be drafted in such a way as to allow such decisions to be taken in the future.

Please enter your text here:

4.5 Notification of advanced stage projects

Question 8: Should a Responsible Body request details of projects that are at an advanced stage derogation as and when new TSIs are published, and should the Regulations require project sponsors to advise the Responsible Body of all railway projects at inception, so that all aspects of standards change can be addressed at an early stage?

Do you agree with this approach? – ***please delete that which does not apply***

Yes

Please explain the reasons for your answer:

ORR currently has a policy of early engagement with project sponsors and contracting entities, over and above the statutory requirements for our involvement. We would therefore welcome any proposals that facilitate this approach, designed to improve efficient and fully coordinated project management.

It should be noted, however, that although infrastructure projects are coordinated over relatively long periods, rolling stock and wagons projects can be much shorter and may be disadvantaged by an annual information gathering process.

As a statutory process is being proposed, a clear challenge process will be required, including a policy for dealing with those projects that are for whatever reason left off the list.

Please enter your text here:

4.6 Identification and notification of NNTRs

Question 9; Do you agree with the proposed criteria (set out in Section 4.6) for the identification and notification of NNTRs?

Do you agree with this approach? – ***please delete that which does not apply***

Yes

Please explain the reasons for your answer:

As explained in your consultation document, standards for the GB mainline network are created and managed by RSSB committees, which ORR and DfT attend as observers. ORR also attends European Railway Agency working groups responsible for drafting TSIs.

We are intending to carry out a second phase to the review of UK standards carried out last year, to further consider our own role in devising and implementing standards. We would hope that this study will inform our approach to issues such as those touched on by this and the following two questions.

As a first step, we have recently re-organised our internal structure to support better working in this area. Specifically, those involved in the development of domestic and European standards now work more closely with those responsible for ORR’s work on industry planning, major projects and industry monitoring.

In the meantime and as already stated above, a system which accommodates the Channel Tunnel, HS1 and Northern Ireland (to facilitate arrangements with the Republic of Ireland) is essential if

cross border services are to be facilitated by interoperability.

Particular care should be taken in developing processes to solve specific problems, an example of which is the process to use non-Railway Group Standards to fill open points for particular projects, which has recently finally been resolved satisfactorily. A clear re-statement of respective industry roles and responsibilities should inform any development of these processes.

Please enter your text here:

4.6 Identification and notification of NNTRs		
Question 10: Should the Government seek to create a single UK-wide process for identifying and notifying NNTRs?		
Do you agree with this approach? – <i>please delete that which does not apply</i>	Yes	
Please explain the reasons for your answer: We have already stated the necessity of developing processes for interoperability that accommodate both the Channel Tunnel, HS1 and Northern Ireland if the full range of benefits are to be gained.		
Please enter your text here:		

4.6 Identification and notification of NNTRs		
Question 11: Do you agree that industry should manage this work on behalf of Government, and if so, which stakeholder body or bodies would be best-placed to deliver this activity?		
Do you agree with this approach? – <i>please delete that which does not apply</i>	Yes	
Please explain the reasons for your answer: In addition to the comments made above, we would repeat the general principle that, in whatever way existing processes are changed, the end result should be that the process is improved, either in terms of cost, speed or the quality of the NNTRs themselves. With this in mind, there may be efficiencies to be gained in RSSB leading this process, subject to the very real		

obstacles in terms of geographical jurisdiction.

Please enter your text here:

4.7 National Interpretation Panel for TSIs		
Question 12: Do you agree that a National Interpretation Panel should be created in the UK to support the consistent interpretation of TSIs?		
Do you agree with this approach? – <i>please delete that which does not apply</i>	Yes	
<p>Please explain the reasons for your answer:</p> <p>We believe that the creation of a national interpretation panel would be helpful. We would propose the panel being run and managed by RSSB, but that it should include representatives from DfT and ORR, and possibly one or more NoBos.</p> <p>For the reasons identified in the consultation document, the panel would need a broad remit to be effective, including ownership of UK TSI drafting guidance, and the link to the NB rail Q&C and RFU processes.</p> <p>In order to avoid jeopardising the objectives of interoperability, the panel would need to remain aware of the way that TSIs were being interpreted across Europe. This process may also need to be notified in accordance with the proposals for cross acceptance being developed by the European Rail Agency.</p> <p>Clearly, care should be taken to ensure that decisions of the panel would not fetter the NSA’s decision to authorise in accordance with the provisions of the Directive.</p>		
Please enter your text here:		

4.7 National Interpretation Panel for TSIs
Question 13: If you agree to the creation of a National Interpretation Panel, what arrangements would be required for its constitution and governance?

Please enter your text here:

It is important to clarify what the legal status of the National Interpretation Panel would be, and whether its decisions would be regarded as guidance or would somehow bind the parties. Clear governance arrangements would need to be created for the panel, including dispute resolution and appeal.

Our involvement on the panel would need to ensure that we would not compromise our role as authorising or enforcing body later on in the project. Similarly, we would need to consider how to proceed with an authorisation where we disagree with the process used by the Panel for arriving at a decision.

4.8 Appeals Body (for Safety Authority decisions)

Question 14: Do you agree that the body designated in the new Regulations to deal with appeals against negative decisions by the Safety Authority should be an employment (or industrial) tribunal (option d)) (as described in Section 4.8)? If not, which body should be designated for this role?

Do you agree with this approach? – <i>please delete that which does not apply</i>		
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Please explain the reasons for your answer:

As set out in the consultation document, appeals against enforcement action taken under the Health and Safety at Work Act 1974 are heard by the Employment Tribunal. Subject to the responses received for Question 26 of this consultation and any decision to change the statutory approach to enforcement, the same body hearing appeals against authorisation decisions and also enforcement action would support consistent decision-making.

We are mindful of the need to ensure an efficient and proportionate appeals process for authorisation decisions. The Employment Tribunal has no particular expertise in terms of the interoperability regulations and would therefore need to call expert witnesses. These are likely to be the same experts required by an ad hoc panel, such as might be convened by the Secretary of State to hear appeals, at considerably less expense, bearing in mind the cost to all parties including the Tribunal. We would also note that appointing the Employment Tribunal will most probably include an amendment to the Employment Tribunals (Constitution

and Rules of Procedure) Regulations 2004.

Finally, it is important to bear in mind the different powers available to the various bodies and the type of appeal required. The usual route of appeal from ORR's administrative decisions is judicial review. This process, which scrutinises closely whether the decision was properly made, but imposes less stringent review of the substance of the decision, is costly and time consuming. A tribunal, on the other hand, would seek to open up the decision, relying on expert witnesses where necessary. This might be a preferred option if applicants believe that a tribunal could make a better, or more correct, decision than the safety authority.

The DfT would also need to consider the impact of implementation of the Tribunals Court and Enforcement Act 2007.

The consultation document explains the link between the appeals body designated by the interoperability regulations and those implementing the Railway Safety Directive (ROGS). This is one of a number of important connections between the two sets of regulations which will need to be carefully coordinated, particularly bearing in mind the likely period between the two implementation dates.

Finally, we would agree that hearing appeals at a higher level within ORR, whilst in our view possible, would not offer contracting entities the robust and independent appeals process they should be entitled to.

Please enter your text here:

4.8 Appeals Body (for Safety Authority decisions)

Question 15: Do you support our proposal to widen the provisions to include right of appeal against stipulations or restrictions attached (or not attached) to a vehicle authorisation, and against the revocation of a vehicle authorisation?

Do you agree with this approach? – ***please delete that which does not apply***

Yes

Please explain the reasons for your answer:

We entirely agree with the Department's concern to achieve "a... transparent and consistent regulatory framework, which is

proportionately enforced” and believe that a practical appeal process for regulatory decisions is an essential aspect of this.

For this reason, we would support the appeals process contained in the regulations being extended to the decision to revoke authorisations, noting that, in any event, a right of appeal would exist by way of judicial review.

In respect of the decision to authorise subject to conditions and limitations, it is important to note that there are different interpretations of what this provision, set out at Article 21 (6) of the Directive, might mean. We support industry’s desire for a degree of flexibility, where bringing a project into service can be shown to be safe so far as is reasonably practicable.

Nevertheless, devising fair, transparent and evidenced based criteria to allow authorisation decisions, where technical files are effectively non-compliant with legal obligations, will be extremely complex. We will need to balance the need for a simple and efficient process with the need for a system that can accommodate varied and complex circumstances. Poor decision-making criteria create a greater risk of appeals, which are highly resource intensive for all parties, and could well impact upon work planned to meet our other statutory obligations.

Please enter your text here:

4.9 Type approval of vehicles		
Question 16: Do you agree that the review of a type authorisation should only be considered when a contracting entity is considering a new project that could rely on a type authorisation?		
Do you agree with this approach? – <i>please delete that which does not apply</i>	Yes	
Please explain the reasons for your answer:		
Please enter your text here: In the interests of better regulation, we would support any practicable initiative, within the confines of the originating directive, to reduce the burden on industry in complying with the		

interoperability regulations. Clearly, any processes devised to achieve this improvement would need to be efficient and proportionate, as compared with pursuing a fresh authorisation.

In this light, we note that the Directive offers other similar options, such as authorising a series of vehicles (Art 21(13) and Art 18(5) in terms of the NoBo process) and interim statement verifications issued by NoBos (Art 18 (4)). The processes required to take advantage of these options are ill-defined in the Directive. It is important to ensure that all these mechanisms are developed consistently and distinctly, to avoid ambiguity and inefficiency when deciding under which provisions to progress a project.

We would also make the general point that the rules for type approval, ISVs and authorising series of vehicles should not operate to stifle innovation.

4.9 Type approval of vehicles

Question 17: Which body would be best placed to decide whether a type authorisation remains valid, in light of standards change? Would it be the relevant Safety Authority or a single UK body?

Please enter your text here:

As the authorising body, we would be supportive of anything that would make the whole process cheaper and simpler for the contracting entity, including taking responsibility for decisions as to whether a type approval remains valid.

4.9 Type approval of vehicles

Question 18: Do you support our proposal that the type approval mechanism should be available for upgrades and renewals and, if possible, that a type authorisation for an upgrade/renewal should include a decision on whether subsystem renewal or upgrade authorisation is necessary (under Regulation 5) (on the extent that TSIs apply to an upgrade/renewal)?

Do you agree with this approach? – ***please delete that which does not apply***

Yes

Please explain the reasons for your answer:

We support the proposal to allow type approvals of upgrades and renewals and would encourage DfT to create regulations with sufficient flexibility to allow contracting entities to use aspects of type approvals to achieve authorisation.

Please enter your text here:

4.10 Interoperability Constituents

Question 19: Do you think that the current Regulations contain requirements that hinder the economic benefits that could be gained from the use of Interoperability Constituents? If so, what are they, and why do they cause difficulties?

Do you agree with this approach? – ***please delete that which does not apply***

Please explain the reasons for your answer:

We very much support DfT's aim of promoting an active market in interoperability constituents as a mean to achieving standardisation and economies of scale, but without stifling innovation or creating unproductive processes for industry. We further agree that moves to improve the likelihood of realising economic benefits of ICs would be helpful.

Please enter your text here:

4.10 Interoperability Constituents

Question 20: How can the use of Interoperability Constituents, across the entire European network, be improved in order to deliver effective economies of scale? (If possible, please provide examples of your experience with Interoperability Constituents and your views on how they can best be used in the future).

Please enter your text here:

One particular problem we have experienced in our work in this area is that an IC when forming part of a subsystem must meet all of the necessary criteria to achieve an authorisation. However,

this may not necessarily ensure that the IC will work as designed within a specific interoperable sub-system, due to the variations in the non-interoperable subsystem to which it may be integrated.

Finally, ICs should be drafted so that they do not create a barrier to projects, where for example they stipulate the use of a very narrow specification or particular manufacturer.

4.10 Interoperability Constituents

Question 21: Should the Government seek to influence the development, specification and use of Interoperability Constituents that have more common physical interfaces and are more 'interchangeable' - i.e. 'multiple use ICs that have specific characteristics' for railway use?

Do you agree with this approach? – ***please delete that which does not apply***

Yes

Please explain the reasons for your answer:

We would support Government in influencing ERA so that IC's are included in TSIs as non-mandatory and as such, are provided as only one way of demonstrating compliance with the essential requirements. An example of this would be the limited availability of wheelsets permitted as ICs.

A further improvement would be to more particularly define the functional interface characteristics, to avoid economies of scale being lost because of slight differences in output when placed into a wider subsystem.

Please enter your text here:

4.11 Register of Infrastructure

Question 22: Should the new Regulations place responsibility for maintaining and publishing the infrastructure register(s) directly on the infrastructure managers (option a)) or should they provide for the appointment of a registration body, as is currently the case for the National Vehicle Register (option b)))? (Options are described in Section 4.11)

Do you agree with this approach? – <i>please delete that which does not apply</i>		
Please explain the reasons for your answer:		
<p>Please enter your text here:</p> <p>Firstly and most importantly, we believe that clarity is required on what the ERA infrastructure register is intended to contain, what its purpose is and who is most likely to benefit from it.</p> <p>In the UK, ORR monitors Network Rail’s compliance with its licence obligations, which include reviewing asset data quality and sufficiency, provision of information to external stakeholders and ensuring that the required information is and remains fit for purpose. Network Rail must be able to answer requests from customers and potential customers on all relevant compatibility issues.</p>		

4.11 Register of Infrastructure		
Question 23: If you consider that the appointment of a registration body is the preferred approach to managing the infrastructure register, who do you think that the body should be, for example, the infrastructure manager, the Safety Authority, or another body, and if so, who?		
<p>Please enter your text here:</p> <p>If option B is chosen as the preferred option and if the infrastructure register contains only authorised infrastructure then the Safety Authority could become the registration entity as it is responsible for issuing the authorisations to place into service. Forwarding registers compiled by contracting entities to ERA would be conceivable.</p>		

4.12 Cross acceptance: reauthorisation of non-UK vehicles		
Question 24: Do you agree that the UK should require reauthorisation of vehicles that have been authorised in another Member State, where either the vehicle or the UK infrastructure is not compliant to fully specified TSIs?		
Do you agree with this approach? – <i>please</i>		No

<i>delete that which does not apply</i>		
<p>Please explain the reasons for your answer:</p> <p>We would question the statement at 4.12.4 “experience has shown that the light approach for cross-accepting foreign vehicles has caused some confusion for some operators, or has not provided a timely mechanism for accepting non-UK vehicles onto our network”.</p> <p>In the context of the overall aims of the Directive and interoperability generally, this proposal to introduce reauthorisation of non-UK vehicles appears a significant retrograde step. To introduce wholesale reauthorisation would introduce barriers to international traffic and to the use of non-UK vehicles in the UK.</p> <p>We would want to be convinced of the overall benefit of requiring such a process, which imposes specific time limits on the infrastructure manager and obligations on the safety authority.</p> <p>A further consideration would be the appropriate role for an NSA in industry compatibility processes. This would need to take into account;</p> <ul style="list-style-type: none">• our stated objectives to wherever possible, create the incentives to allow industry to run their businesses for the benefit of customers, and• our approach to safety regulation, encouraging duty holders to take responsibility for risk assessing and implementing changes to their business and operations, without detailed involvement from the safety authority. <p>We would also need to understand how the proposals for European cross acceptance would work in this context.</p> <p>We do, however, have some sympathy with the arguments put forward relating to the complexity of requirements imposed upon potential service providers under the current system. We recognise also that such a process is common across Europe and therefore widely understood and accepted by service providers. However, even if creating a simpler process were to be the main objective of such a change, re-authorisation in this country would still require sound safety management practices and risk assessment by the relevant duty holder, in line with the structure of requirements in the Railways Safety Directive.</p>		
Please enter your text here:		

4.13 Cross acceptance: compatibility testing of vehicles

Question 25: Do you agree that a Code of Practice published by the infrastructure manager would ensure that applicants for rolling stock reauthorisation would have their testing needs met?

Do you agree with this approach? – ***please delete that which does not apply***

Yes

Please explain the reasons for your answer:

We would support an industry-owned process that creates clear expectations and would support the proposal to provide transparent and clear requirements for facilitating cross border services.

Please enter your text here:

4.14 Enforcement

Question 26: Do you think that different enforcement powers from those in the current Regulations would enable the obligations in the new Regulations to be enforced more effectively?

Do you agree with this approach? – ***please delete that which does not apply***

No

Please explain the reasons for your answer:

Please enter your text here:

As the body with statutory responsibility for enforcing the current regulations, we requested that this question be included and look forward to understanding stakeholder views on the enforcement regime.

4.15 Issues to be covered in the second Consultation Document

Question 27: Have we missed any issues relating to the current interoperability framework or the transposition of the new Directive that need to be covered in the next round of consultation, and if so what are they?

Please enter your text here:

4.15 Issues to be covered in the second Consultation Document

Question 28: Are there any additional impacts (costs or benefits) arising from our proposals and that need to be addressed in the Impact Assessment that will accompany the detailed proposals in the next consultation? (Please explain your answer and, where possible, provide evidence of any costs or benefits).

Do you agree with this approach? – ***please delete that which does not apply***

Yes

Please explain the reasons for your answer:

At the moment, a single authorisation typically involves 4 - 8 ORR man hours. However, supporting a project, depending on the applicant's position in the industry and knowledge of the regulations, can amount to 5 times this amount for a new wagon project, and much more resource for projects such as the ERTMS trials on Cambrian, and the GSM-R project in Scotland.

To give an overall sense of the resource implications for ORR, we have identified the following possible sources of additional resource requirements;

- (a) Increase in authorisations, particularly with regard to ORR policy on early engagement with projects.
- (b) A more complicated process to allow authorisations with conditions or limitations, for projects which are not 100% compliant with requirements;
- (c) A process for revoking authorisations;

- (d) Re-authorising vehicles, initially authorised in another member state. This is likely to involve taking some kind of role in the vehicle compatibility processes to ensure access for new entrants and smooth operation of the emerging cross acceptance rules.
- (e) Creation and resourcing of both an internal and external appeals process from our authorisation decisions.
- (f) (not specifically related to transposition of the Directive, but likely to involve the same skilled resource) substantially redrafting the TSIs from 2010 – 2012;
- (g) Possibly taking on decision-making under the rules in Article 20 of the Directive, to determine which standards are applicable and to what extent for renewal or upgrade projects.
- (h) Administering processes to allow type approval of new or refurbished vehicles, including determining whether an approval for a type of vehicle is still valid after a TSI has been amended.
- (i) Market surveillance of interoperable constituents (essentially, licensed designs) to ensure they meet the requirements.

Please enter your text here: