

Revising railway safety regulations: Consultation responses summary

Key points from consultation:

1. Proposal for different regs for mainline and non-mainline railways. Mainline railways should have one set of regs which should be ROGS.
2. Not all duty holders are ready to take on a less prescriptive form of regulation
3. Future proofing regs for ERTMS is necessary
4. Exclusions for LUL/others could be clearer
5. Concern from landowners/agricultural sector about removal of fencing requirement (“prevention of unauthorised access”). Others have noted 19th c legislation still exists on this.
6. Some thought that many aspects of the proposed regs can be dealt with through HSWA, RGS, ROGS or TSIs.
7. Not clear what ORR is trying to remedy with a train protection management system (TPMS) and why specific regulation is required for a train protection system (TPS) but not other safety critical elements (eg brakes).
8. Any regs introduced on TPS should apply to Infrastructure Managers (IM) as well as Train Operating Companies (TOC).
9. Some TOCs already have a TPMS in place and it is not clear why ORR thinks that it needs to be a requirement.
10. Difficult to comment on the Impact assessment (IA) without guidance on what ORR would expect to see in the TPMS
11. Some support for retaining hinged door prohibition.
12. Rationale for change to kmh measurements unclear to some.
13. General support for enforcement flexibility between HSE and ORR.

ORR response to those key points, in number order

1. The hazards facing the mainline and non-mainline railway are broadly similar and it is right to have one set of regulations addressing these. Furthermore, having two sets of regulations would not meet the objective under the Red Tape Challenge of reducing regulation of industry where possible. The purpose of ROGS is different from the purpose of the proposed regulations and therefore it is not appropriate to amend ROGS in this way.
2. In our view, from our on-going monitoring of the capability of industry duty-holders to manage and control the risks they create, we think that duty-holders are able to cope with less prescriptive law but not cope with complete deregulation. However, in the area of prevention of unauthorised access to the railway (“fencing”) we agree that the balance between prescriptive and non-prescriptive law should be different to the balance we had originally proposed. Hence we intend to retain (rather than revoke) the specific requirement to prevent unauthorised access.
3. Changes have been made to the draft regulations which will (in our view) future proof them properly for the rollout of ERTMS.
4. Having considered the issue carefully, we believe that the exclusions for LUL and others are sufficiently clear.
5. We have reviewed the issues raised and concluded that the current requirement to prevent unauthorised access should be retained. Hence we have amended the proposed Regulations to include the existing requirement on preventing unauthorised access almost verbatim.
6. We note that the industry had diverging views on deregulation and therefore there is value in developing new regulations. Some of the existing requirements can be dealt with through HSWA, and that gives the rationale for the revocation of a number of the existing Regulations. However, using Railway Group Standards as the approach does not provide the same degree of public assurance that is provided by law for the issues covered by the proposed regulations.
7. The train protection management system (TPMS) provision is designed to ensure that train protection system (TPS) equipment is adequately maintained. For other safety critical components, such as brakes, we judge that the general duties of HSWA to properly maintain (so far as is reasonably practicable) and the requirements of the Work Equipment Regulations on maintenance will apply very

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| | | <p>clearly. For train protection systems we do not think there is the same legal clarity, given the different types, their evolution and the sharing of responsibility for such a system across a number of duty-holders. Hence we believe that a specific regulation for TPS is needed.</p> <ol style="list-style-type: none"> 8. The definition relating to TPMS regulation has been amended to include a duty on the IM. 9. A functioning TPS is a vital safety component on the railway. The original Regulations were designed to make sure that a TPS was installed on the railway. A key purpose of the updated Regulations is to make sure (in the public interest) that the TPS is properly operated, maintained and (where appropriate) updated. We recognise that many TOCs and Network Rail already have a management system in operation for their TPS, so this requirement will not add a regulatory burden for them. . 10. We will publish guidance on the TPMS as part of our package of guidance on the Regulations. 11. We intend to revoke the hinged door prohibition. Given the low number of hinged door rolling stock, we think it is appropriate for this to be managed either through the safety management system of the relevant company or through the condition on secondary door locking in the Mk1 prohibition. 12. We are obliged by law to consider metrication of Regulations. 13. We intend to develop our approach on enforcement flexibility with HSE. |
| General comments | | ORR comments |
| ASLEF | <p>Does NOT agree to any revocation, ORR carried out a 'better regulation' review of RSR 99 and MPR 97 in 2007-2008 and no changes were made to either set of regulations at that time. ASLEF does not see any real change since the last review.</p> <p>The current review is a politically motivated act forced through by the Government's ideological obsession with cutting "red tape".</p> | <p>The RTC was initiated by Government and we were asked by them to review certain railway-related regulations. We are also bound by section 72 of the Regulatory Enforcement and Sanctions Act 2008 which requires us to keep our functions under review and (in exercising these functions) not to impose burdens which may be unnecessary, or maintain burdens which may have become unnecessary. The regulations have been reviewed in accordance with this and in the light of technical and operational changes on the railway.</p> |
| ATOC | <p>ORR can go further with its proposals and remove those Regs which are not needed relying on any requirements being</p> | <p>Option 1 - Deregulation would result in RGS, ROGS and TSI's being used to ensure current standards and prohibitions on the mainline railway were maintained. However some safety critical aspects of the railway should not be left to voluntary standards such RGS;</p> |

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| | <p>incorporated into RGS or which are covered by TSI's.</p> <p>Three approaches could be adopted:</p> <ul style="list-style-type: none"> • Option 1 - No specific mainline regulation (preferred approach); • Option 2 -Separate mainline and non-mainline regulatory regimes; • Option 3 -Combined mainline & non-mainline regulatory regimes. | <p>TSI's are not appropriate as they do not apply to most of GB railway because it is not new interoperable railway; and ROGS are outcome based and implement the safety directive.</p> <p>Option 2 – Superficially having separate regulations for mainline railways may look attractive but actually many of the safety issues across both types of railway are broadly similar and the management approach in ROGS provides sufficient flexibility to regulate mainline and non-mainline railways in a proportionate way. The purpose of the RTC is to reduce regulation where appropriate and creating 2 sets of regulations (one for mainline and one for non-mainline railways) would not reduce the number of regulations in accordance with the aims of the RTC..</p> <p>Option 3 - We have chosen this option as we believe it provides the best way of maintaining regulation where we think it is still appropriate. It also allows for certainty of legal requirements for operations that cross between mainline and non-mainline systems, such as tram-train .</p> |
| DB Schenker | <p>Within the ROGS there is a differentiation between mainline and non mainline operations, and it is more appropriate to have separate regulations here.</p> <p>Specific benefits from this approach are regs would be clearer, more easily interpreted resulting in fewer exceptions and exemptions. It is noted that the consultation documentation refers to this but says that this could lead to confusion because operators would be subject to different statutory obligations. If a single set of regulations are maintained then this would occur, and potentially already does.</p> | <p>See our response to ATOC's similar comment on separation of regulations and the options available.</p> <p>The draft regulations contain requirements for dutyholders to meet which previously required a specific exemption from ORR. Therefore this approach provides clarity on what dutyholders must do and reduces the need for specific exemptions.</p> |
| EMT | <p>Support the intention of simplifying and updating the regulations as part of the Red Tape challenge.</p> | |
| First Group, UK Rail First Capital Connect First Hull Trains | <p>Can go further by removing all standalone regulation for the mainline railway as these can be included in RGS and ROGS and adopting risk-based approach. Separate regulations non mainline railways that fall outside the safety directive can be retained. If mainline regulation are to be retained then they should</p> | <p>See ATOC and DB Schenker responses above.</p> |

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| <p>First Scotrail</p> <p>First Transpennine Express</p> | <p>be separate from non-mainline regulations to reflect position under ROGS. Advantage of this would be reduction in number of exemptions needed; reduction in amount of regulation; regs would clearer and easier to understand; and single set of regs (ROGS) would apply to national network. Disagree that separate regulation would be confusing as combined regs will require exemptions.</p> | |
| <p>GB Railfreight</p> | <p>Support separation of regs for mainline and non-mainline railways as would be clearer and require fewer exemptions and exceptions. Believe that single set of regulations would continue confusion.</p> | <p>See ATOC and DB Schenker responses above.</p> |
| <p>John Cartledge</p> | <p>Drafted London Travelwatch response and no longer represents those organisations but supports ORR's approach to remove specific requirements (some deriving from 19th century statutes) where covered by more recent generic legislation if no material change in terms of safety policies and practices would result.</p> <p>The proposal to allow a more pragmatic and flexible division of functions between HSE and ORR makes sense, if the current wording has proved problematic.</p> | |
| <p>London Midland</p> | <p>Supportive of the overall strategy of simplification and reduction of the legislation to meet RTC however current proposals could be taken further.</p> <p>Prefer separate regs for mainline and non-mainline railways to reflect approach in ROGS. Alternatively, a single set of section-based regulations could be introduced to enable the</p> | <p>See ATOC and DB Schenker responses above.</p> |

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| | <p>separation of the duties of mainline and non-mainline operators.</p> <p>This would ensure a significant reduction in the number of exemptions required and would reduce the overall size of the regulations. It would make content more applicable to relevant dutyholders and allow for more pragmatic interpretation. Furthermore potentially improve the response to compliance.</p> | |
| Pass Focus & London Travel Watch | <p>Welcomes ORR's work in contributing to the improvement of safety on the railways. The overall risk to passengers is significantly lower than a decade ago. No room for complacency and urge the ORR to continue in its vigilance. Concerned about potential over-reliance on the use of SMS. Although now mandatory, they are still variable in quality and usage across the industry. It will be important for the ORR to continue its evaluation of their effectiveness and of the contribution that they make to improving safety for passengers.</p> <p>Support review provision in draft regs.</p> | <p>We agree that ORR will need to continue to monitor and evaluate the effectiveness of dutyholders' safety management systems part of ORR's health and safety strategy (see http://orr.gov.uk/about-orr/what-we-do/our-vision-and-strategy/health-and-safety-strategy)</p> |
| Southeastern | <p>Support overall aims of the proposals but having a single set of regs for mainline and non mainline railway may not be the best approach as this complicates rather than simplifies. Could requirements be included in ROGs as new schedules rather than as separate regulations. Support ATOC's position on TPMS.</p> | <p>See ATOC and DB Schenker responses above.</p> <p>We do not consider that the draft regulations should be included in ROGS instead because the primary purposes of ROGS and the draft regulations are different; ROGS are high level and outcome-based whereas the draft regulations are specific and linked to societal concerns about key safety issues on the railways.</p> |
| Tyne & Wear Metro | <p>Support the objective of simplifying and modernising the regulatory framework for railways, but believe that an opportunity has been missed to further remove unnecessary regulation. Supports the ATOC response. No</p> | <p>See ATOC response above.</p> |

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| | justification for regs for mainline railways in the context of TSIs, Interoperability and Safety Directives. This would allow for a simpler set of appropriate regulations for non-mainline operators such as DBTW. | |
| Unite | <p>Note that ORR has conducted earlier (recent) reviews of railway safety legislation and concluded that no changes were necessary.</p> <p>Very concerned that the regulator for a safety critical industry is talking in terms of “red tape”, “burden on business” and “deregulation” as an excuse to weaken regulation, especially when it is acknowledged that there is still a great deal to be done to protect the safety and health of workers in the industry.</p> <p>Opposed to any changes and in particular do not consider it appropriate to move from specific duties to a reliance on general health and safety duties.</p> | <p>See ASLEF and ATOC responses above.</p> <p>Our experience of enforcement work has shown that we have relied on general powers held under the Health and Safety at Work Act 1974 for enforcement rather than using the powers we are proposing to revoke.</p> <p>We consider that retaining specific powers in the proposed Regulations s necessary for certain areas because they merit specific attention and clarity instead of being covered by the general duties of the HSWA</p> |
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| Q1: Do you agree that we should revoke Regulations 3, 5, 6 and 7 of MPR 97? If you do not support the revocation, please tell us why. | | |
| ATOC Chiltern DRS DB Schenker East Coast EMT FirstGroup, UK Rail First Capital | Yes | <p>We agree that regulations 5,6, & 7 can be revoked.</p> <p>However ORR has reconsidered its approach on regulation 3 on prevention of unauthorised access given the strong opinions made by stakeholders from the agricultural and rural landowners sectors. We note that the existing obligation is colloquially known as the duty to “fence the railway” even though it is written in law as a duty to “ prevent unauthorised access as far as reasonably practicable”. We propose to retain the existing duty, and its wording allows for the nature of the barrier to prevent</p> |

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| <p>Connect First Hull Trains First Scotrail First Transpennine Express GB Railfreight HRA London Midland Network Rail(HS) PACTS RIA RSSB Southeastern Southern</p> | | <p>unauthorised access to be assessed as to the type of hazard; e.g arable fields adjoining the railway may need a different type of barrier to prevent unauthorised access compared to any barrier needed to prevent large livestock from gaining access to the railway. The way in which railway companies meet the existing responsibility will continue as we propose to perpetuate the existing wording.</p> <p>We agree with the agricultural and rural landowners that the generic obligations in ROGS and HSWA would not adequately replace the existing obligations in the Miscellaneous Provisions Regs if they were revoked. We also note that large animals do pose a risk to the safe operation of the railway as highlighted by the derailment of a passenger train by a cow at Polmont in 1984, and by some more recent incidents. Furthermore relying on the HSWA legislation to prevent unauthorised access would increase the burden on Network Rail and each adjoining landowner because under HSWA they would be required to undertake joint assessment of the risks at every location.</p> |
| <p>CLA</p> | <p>No.</p> <p>Do not support removal of or weakening of Reg 3 and this reg cannot be replaced by HSWA as HSWA has a lower threshold and has just a general duty to protect employees and others. Reg 3 provides a very clear guide to IM to fence the track and this also includes animals. It is important to retain specific reference to animals. ROGS contain no specific mention duty to fence.</p> <p>Members have complained about the time it takes Network Rail to resolve fencing issues in some cases Network Rail's reason is financial leaving the landowner unable to use the land or erect his own fencing.</p> | <p>See response to ATOC and others above.</p> |
| <p>Dallam Tower Estate</p> | <p>No.</p> <p>Network Rail are not particularly good at maintaining boundary fences bordering</p> | <p>See response to ATOC and others above.</p> |

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| | <p>farmland & under RSR 99 there is no recourse to the land owner and occupier.</p> <p>Replacing regs this duty with a risk based approach will provide Network Rail with a greater opportunity not to and Network Rail may become more reactive than they are now.</p> <p>Under the draft regs, the maintenance of boundary fences would depend on the views of the employee carrying out the risk assessment. As land occupation and stocking varies this assessment may not accurately meet the types of boundary needed for different types of livestock used in a particular field and therefore invalidate the assessment.</p> <p>Boundary repairs can take months or years to be assessed and remedied, whereas a report of an unsecure private crossing gate gets an immediate response. Consider that this hierarchy of risk would be adopted and would see the further neglect of line side boundaries whereas the fallen boundary is no less of a risk than the private crossing gate.</p> | |
| Farmers Union of Wales | No -Extremely concerned that any moves to reduce the current statutory obligations to a risk based approach may have serious consequences for livestock and rail safety in the future. | See response to ATOC and others above. |
| Mark Heywood | <p>No.</p> <p>Manages farm between Gloucester and Stroud/Stonehouse. Mainlines to/from London and Bristol run through the farm for about 1.5 miles.</p> <p>Support the NFU response and its criticism of</p> | See response to ATOC and others above. |

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| | <p>Network Rail's performance as a neighbour and the shortcomings of NR in the management of rail boundary features. The statutory responsibilities of Network Rail in relation to boundary fences – and rail-side ditches and water courses - should be strengthened and that rail safety should <u>not</u> be the only criterion on which NR's management responsibilities are based and its performance judged.</p> <p>'Good fences make good neighbours' and Network Rail has been a very poor neighbour for some years. Boundary features including fences and ditches are in poor repair. Recent contact with Network Rail have failed to induce NR to fulfil its responsibilities in particular to clear rail-side ditches and culverts which are contributory to flash-flooding. In wet years such as 2012/2013, NR's failure to clear ditches has also caused moderate to severe waterlogging on neighbouring agricultural land. The impression given by Network Rail at a parish council meeting in May 2014, rail safety under Railway Safety legislation is the only criterion which drives action by NR to live up to its responsibilities is that in spite of NR's existing prescriptive obligations under other statute. Some action has been taken by NR in relation to long-standing complaints from Haresfield Parish Council about the pedestrian crossing in Haresfield area.</p> | |
| <p>Knight Frank (on behalf of Badminton estate)</p> | <p>No. Badminton Estate has a large section of railway running through the Estate, and strongly objects to any change in legislation</p> | <p>See response to ATOC and others above.</p> |

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| | <p>that would remove the Network Rail's prescriptive requirement to fence the railway. It is difficult enough to ensure that Network Rail comply with their existing fencing obligations and therefore any softening in this approach should be avoided. This stance will support that made by the NFU.</p> | |
| <p>National Farmers Union & National Farmers Union Cymru</p> | <p>No. Strongly object to proposal as removal of reg 3 could increase accident risk. HSWA sets minimum requirements and railway legislation often goes beyond this; in particular in relation to animals accessing the railway. Notes that ORR's annual safety report identifies there being a 76% risk to the public arising from trespass and the report also says that Network Rail does not yet have a sufficiently mature health and safety management system and is therefore heavily regulated. NFU members concerned about sections of fencing being in a poor state of repair, missing or inadequate and removal of specific reg would place greater emphasis on landowners and occupiers undertake these measures which could increase risk of unsafe situations developing.</p> | <p>See response to ATOC and others above.</p> |
| <p>New Forest National Park Authority</p> | <p>No. Regulation 3 is not a duplication of HSWA and ROGS as unlike existing MPR Reg 3(2) neither HSWA nor ROGs make specific reference to persons not at work on the transport system, nor animals. The New Forest has a large numbers of large animals that graze land alongside railway lines</p> | <p>See response to ATOC and others above.</p> |

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| | <p>and receives in excess of 13.5 million day visits a year. Shares other organisations' concerns that deleting the specific reference to both animals and persons will reduce the commitment to safety by the railway companies.</p> <p>Rail companies responsible for lines through the New Forest are subject to specific covenants on the maintenance of trackside fencing as well as the existing regulations yet on several occasions over the years Forest animals have got onto the railway line through defective fencing. Removing the specific reference to access by animals and people not working on the transport system will weaken current legislation. Not convinced that the specific issues covered by Regulation 3 are duplicated by other statutory obligations and therefore they should not be revoked.</p> | |
| Network Rail | <p>Q1 – Mixed message to withdraw MPR regs because covered in ROGS but not to do the same with the regs in the RSR. Should consider retaining general provision for the prevention of collisions and derailments.</p> <p>Sections of 19thC railway legislation also refer to fencing the railway but there is no intention to repeal this legislation.</p> | <p>See also response to ATOC and others above.</p> <p>We note Network Rail's comments about existing legislation, which we think relates to section 68 of the Railway Clauses Consolidation Act 1845 regarding fencing. However this obligation does not have the modern outcome-focussed approach to safety and in our opinion arises from the construction of the railway. The purpose of section 68 is for the benefit of owners and occupiers of adjacent land and not the general public and relates to the construction of the railway. The fencing duty in this section is to protect the landowner/occupier from the consequence of his livestock straying on the railway and prevent trespass from the railway on to adjacent land and an offence under this section is a civil rather than criminal one. We consider that it could exist alongside the draft regulations as it does not have general application and relates to liability.</p> |
| Pass Focus and London Travel Watch | No overall disagreement. | See response to ATOC and others above. |

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| TfL | Supports revocation of regulations 3 and 7. However ROGs does not cover work in depots and possessions, with the exception of Part 4 - Safety Critical Work. A specific statutory provision should be retained, in addition to the general duties under HSWA, to avoid collisions with people and assets as well as derailment in depots and possessions. The same applies for operating vehicles in depots and possessions without a suitable and sufficient braking system. Although train movements are generally slower in depots and possessions there are generally more staff on track in these locations. | We note the comments made on work being carried out in depots and during possessions but in our view any necessary enforcement can be done through HSWA. |
| Verderers of the New Forest | No. Object strongly to revocation of reg 3 of MPR. ROGS do not mention preventing person not at work on the railway or animals from accessing the railway and this is a serious omission. The lack of a specific requirement could lead to a serious incident in the New Forest. Even with current regs and contracts with Network Rail to fence the railway, defective fencing has always been a problem and the Verderers can supply examples of this. Future regs should not be weakened. | See response to ATOC and others above. |
| Q2: Do you agree that Regulation 4 (Means of Communication) should be retained in its modified form? If you do not support the retention of this provision, please say why. | | |
| ATOC EMT FirstGroup, UK Rail First Capital Connect First Hull Trains First Scotrail | For no-specific mainline regulation & separate mainline/non-mainline regs 'no' does not support retention of Reg 4 as TSI already covers MoC for mainline railway as other passenger safety systems are not subject to specific regulation. | As we have decided to keep the existing arrangements of combined regulation for mainline and non-mainline railways we note the comments on retaining the regulation in this instance. |

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| First Transpennine Express London Midland Network Rail(HS) Southern | For combined mainline/non-mainline regs 'yes' because of requirement for non-mainline railway. | |
| Chiltern | Agree that a form of communication between passengers and those in charge of the vehicle is required but do not have a strong view on how this is implemented. | |
| DB Schenker GB Railfreight Southeastern | Should be retained for non-mainline railway but not necessary for mainline railway as this is covered by the TSI. | ORR considers that the TSI covers only new vehicles and therefore it is important to retain the requirement for existing as well as upgraded vehicles. The proposed regulation also provides more detail than the TSI over the form of the means of communication. |
| DRS East Coast HRA PACTS | Yes | |
| Network Rail | Yes, TSI's do not necessarily apply to upgraded vehicles and therefore be retained. | |
| RIA | Yes but the reg should not contradict anything in the relevant TSI. | In our view retaining the regulation does not contradict the requirements of the TSI. |
| RSSB | Reasons not convincing, not clear why any confusion over regulation would arise and why the approach taken for brakes does not apply to the means of communication. However does not impose any additional burden so do not object to retention. | We have taken a different approach for means of communication because systems such as braking are covered by interoperability regulations for new rolling stock and existing rolling stock is covered by the general duties under HSWA. In our view enforcement of the requirement to specifically provide a means of communication would be difficult under the general duties of HSWA. |
| TfL | Paras 3.13 and 3.16 do not adequately support the potential introduction of ATO systems where this is not necessarily a driver or person "in charge of the vehicle" on the train itself. Such support roles may be available for communication remotely and these have been in extensive use in many existing ATO heavy and light rail systems around the world for some years now (e.g. | The drafting of the regulations includes and future proofs driverless systems in the means of communication duty. The drafting refers ' <i>to suitable and sufficient means for passengers to communicate with a person in a position to take appropriate action in the event of an emergency</i> ' and the person in a position to take appropriate action may include someone in a control of the vehicle in a driverless system. We note TfL's comments but in our view driverless systems come under the existing regulation as paragraph 27 of current guidance explicitly refers to driverless transport systems. We will include similar drafting in the draft guidance for the proposed regulations. |

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| | France, Hong Kong and Singapore). The proposed wording in Regulation 5 (1) may not necessarily preclude the arrangements for communications in a full ATO system, but as drafted is open to interpretation. It would help if the regs could be drafted to future proof for full ATO as much as possible. | |
| UKTram | <p>Para 3.15 of the condoc is not quite right as the MPR define “transport system” differently as “vehicle” only means a vehicle which is being used on a transport system not qualifying for the exclusion. Where a tramway is (partly) operating line of sight on a system wholly accessible to the public, this current regulation appears not to apply.</p> <p>In the draft of the regs, the proposed reg 5 draws on the meaning of vehicle used on a transport system but to the meaning of "transport system" in ROGS which includes all types of tramway operation. This makes the new legislation more onerous and may have serious implications for operation of heritage vehicles on systems like Blackpool.</p> <p>Implications for heritage tramways may be lessened by the exclusion s of any "system if the line speed on all parts of it is 40 km/h or less", this would still catch Blackpool and the other light rail systems.</p> | <p>Most tram networks have a mix of both street-level and dedicated carriageway and have arrangements for a means of communication, therefore compliance with the current MPR regulation will mean that a means of communication is provided during on-street running.</p> <p>Use of the ROGS definition (which includes all types of tram operation; street level or dedicated carriageway etc) will not therefore substantially alter the obligations placed on tram operators. We note the comments about heritage tramways but consider that heritage tramways are subject to appropriate safety requirements for their operations. The type of means of communication encompasses a range of systems and our guidance will set out more detail in this respect. We do not envisage changes to the current approaches in use on heritage tramways such as Blackpool Tram.</p> |
| Q3: Do you agree that we should retain a regulation to mandate the use of a train protection system? If not, why? | | |
| ATOC DB Schenker East Coast FirstGroup UK Rail FCC First Hull Trains | <p>No shouldn't be retained. TPWS installation completed in '03 and requirements for a TPS can be dealt with through HSWA & ROGs along with RGS.</p> <p>Presume that tripcocks fitted to mainline trains also achieve compliance with regs. –<i>all except</i></p> | <p>In our view, a functional Train Protection System (TPS) remains fundamental to the continued safe operation of the railway and it is therefore in the public interest to retain this requirement in law. We also believe that further TPWS installation will happen in future, even though most installation is substantially complete, because track and junction configuration will continue to change and therefore the installation of train protection systems will need to change as well. Furthermore we note that amongst the</p> |

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| <p>First Scotrail First TPE GB Railfreight London Midland</p> | <p><i>East Coast, Hull Trains& LM</i></p> | <p>consultation responses there was no consensus in the rail industry on whether to retain or remove this provision and that there was support for retention of the regulation, as we had proposed.</p> <p>Some consultees were in favour of revoking the requirement and relying on other law and Group Standards to underpin continued use of a train protection system. We do not consider that either ROGS or HSWA are suitable for this purpose because neither explicitly addresses the public interest need to have such systems in place and functioning. We also consider that reliance on the essentially voluntary arrangements in Group Standards would not address the public interest need to have a high degree of assurance that there is systematic train protection on the railway.</p> <p>Mainline trains using ‘train stop’ train protection systems such as tripcocks are compliant with the proposed regulations where they operate over networks which are excluded from the train protection requirement under paragraph 3(4). Where tripcocks are in use on the mainline railway and used by mainline trains, we consider that these types of operation are capable of complying with paragraph (b)(i) in the definition of ‘train protection system’. This is because paragraph (b)(i) refers to a system which ‘causes the brakes of a train to apply automatically if the train passes without authority a stop signal such passing of which could cause the train to collide with another train,’ and is installed so as to operate at each of those stop signals (except a stop signal on the approach to an emergency crossover, and at an appropriate place on every relevant approach) which in our view may, if appropriately set up, include ‘train stop’ train protection systems such as tripcocks. We will also include in the guidance references that tripcock systems are capable of being included in the definition. Under paragraph 3(4) of the proposed regulations, all LUL trains are excluded from the requirement to fit a train protection system either on the LUL’s own network or where they are operating over another railway provided that a tripcock system is fitted. This drafting is broadly similar to the existing exclusion relating to London Underground and others in the Railway Safety Regulations 1999.</p> |
| <p>Chiltern</p> | <p>The requirement for compatible train protection systems is mandated through standards, track access agreements, operating licenses, Safety Certificates and does not need to be mandated through a further regulation.</p> | <p>See response to ATOC and others above.</p> |

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| DRS HRA Southern | Yes | |
| EMT | No. Having an operational TPS in place is now a fundamental safety requirement and is no different to having measures to prevent collisions and derailments. These specific requirements are being removed from the regs (paras 3.7 and 3.8 of the condoc) and there is no justification for including this new requirement, especially in a review that is designed to reduce red tape. | See also response to ATOC and others above. We consider that MPR regulation 5 duplicates much of the provisions in the proposed regs and is therefore not need. |
| Network Rail | Yes but see responses to Q1 and Q4. | |
| Network Rail (HS) | Yes. However, there should be flexibility within the regulation for specific types of operations that do not meet the criteria. See also response to Q4. | We have amended the provision in paragraph 3(4) so that the requirement to have a train protection system in place for the train and railway does not apply when the normal operations have been suspended to allow for engineering and maintenance works or for train testing. |
| PACTS | Yes. Though interoperability regulations may appear to replicate this for the mainline railway, consider that the proposed regulation will help ensure continued public confidence in railway safety. A secondary benefit of the regulation is that the “train stop” devices on London Underground and other metro systems are effectively mandated – something not achieved by interoperability requirements. | |
| Pass Focus & London travelwatch | Yes | |
| RIA | Not convinced that there is a need to retain this requirement. The CCS TSI now applies to the whole of the national rail network, (except where the Interop Regs explicitly exclude certain lines). Therefore, requirement to have | We consider that the CCS TSI applies to new and upgraded of the mainline railway only (with the exception of the TEN corridors) and therefore it is appropriate for the train protection system requirement to be retained. |

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| | <p>a TPS (either ERTMS or a “Class B” system such as TPWS or ATP), is already mandated. Question the additional value of retaining this regulation.</p> | |
| RSSB | <p>Should not be retained. It was right to include a specific legal requirement for TPS because of societal concern. TPS requirement should not be treated any differently from any safety critical elements of train operation which are covered by ROGS. Generic requirements in HSWA, the safety directive and ROGS which TOCs meet through the SMS are sufficient to ensure provision of TPS. Retaining the reg would not miss an opportunity meet RTC. Tripcock systems should also qualify and be explicitly included.</p> | <p>See response to ATOC and others above.</p> |
| Southeastern | <p>No because already adequately covered by RGS and requirements are now part of relevant structural subsystem.</p> | <p>See response to ATOC and others above.</p> |
| Train Protections Strategy Group | <p>No consensus in the group but feels it was right to include a specific legal requirement for TPS because of societal concern. TPS requirement should not be treated any differently from any safety critical elements of train operation which are covered by ROGS. Generic requirements in HSWA, the safety directive and ROGS which TOCs meet through the SMS are sufficient to ensure provision of TPS. Retaining the reg would not necessarily meet RTC. Tripcock systems should also qualify and be explicitly included.</p> | <p>See response to ATOC and others above.</p> |
| TfL | <p>Yes, however condoc addresses ATP, TPWS and ETRMS but there is no reference to tripcock systems. The definition in the draft regulations would cover it but greater clarity could be given for the tripcock system as a TPS.</p> | <p>See response to ATOC and others above.</p> |

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| Q4: What are your views on the proposed changes to the drafting of the regulation on train protection systems? Are there any further changes you feel we should make? | | |
| ATOC DB Schenker East Coast FirstGroup, UK Rail First Capital Connect First Hull Trains First Scotrail First Transpennine Express GB Railfreight RSSB Train Protections Strategy Group | <p>If reg is retained then:</p> <p>(a) Properly functioning TPS relies on both operator and IM. A number of places where the consultation document does not refer to requirements on IM.</p> <p>(b) <i>RSSB only</i> - Drafting of regs does not clearly reflect separation of responsibilities between IM and RU set out under ROGS. Neither RU or IM should be checking up on the other and IM should not have powers of infrastructure controller. Should be redrafted to reflect subsystem approach in Interop Dir.</p> <p>(c) Concerned that ORR is implying that TOCs do not have TPMS in place already and IA asserts that TPS protection systems are not robust enough.</p> <p>(d) Pars 4.2 refers to TPS being ‘properly maintained’; this should be replaced by ‘properly functioning’</p> <p>(e) Not clear what situation ORR is trying remedy that is not covered by existing regs/general duties.</p> <p>(f) Para 4.11 refers to providing ‘monitoring and regular assessment’ which differs from the drafting in proposed reg 3(2)(c) which refers to ‘<i>continuous</i> monitoring etc ‘ and therefore suggests something different.</p> | <p>(a) We agree that the TPMS requirement should apply to both IM and operators and draft regulations have been amended to reflect this. We will publish draft guidance so that stakeholders have a better understanding of the requirements around the TPMS. In summary, the content of a TPMS is not a prescriptive list of requirements and the guidance will set out how dutyholders may achieve compliance. The TPMS is the organisation and arrangements for achieving the objective of having a functioning and properly maintained TPS. It will be part of the wider Safety Management System (SMS) required by ROGS. It will be for the IM and operators to work together to manage the TPS.</p> <p>(b) Regulation 22 of ROGS requires that transport operators cooperate with each other (as well as other persons carrying out work on premises or plant owned or controlled by a dutyholder) as far as is necessary to achieve safe operation of that transport system.</p> <p>(c) Our intention was not to imply that some operators do not already have a TPMS system in place nor that existing TPS systems are not robust enough. It is expected that TPMS will be used on the railway for some years to come, beyond the original life expectations for it, and therefore it is vital that operators management systems take account of this to ensure that safe operation of this equipment continues and is properly functioning over its remaining life. In addition, the industry is embarking on a transition away from traditional forms of signalling control, with signalling largely separate from the vehicle to one where the signalling equipment is effectively carried by it. It is therefore anticipated that operators SMS’s will have to be adapted to effectively manage this fundamental change in approach.</p> <p>(d) We agree that the proposed law should set out that the TPS should be ‘functioning’. We also consider that the duty should continue to refer to ‘properly maintained’ and so we have amended the proposed regulations so that they refer to a ‘a functioning and properly maintained train protection system’. The guidance will set out in more detail what is meant by ‘functioning’ in the regulations.</p> <p>(e) See response to ATOC and others in question 3 above.</p> <p>(f) In the draft guidance we will include an explanation of what is meant by ‘continuous monitoring’.</p> <p>(g) See response to ATOC and other in question 3 above. Furthermore it is implicit in the</p> |

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| | <p>(g) No justification for why TPS systems are singled out for different treatment to other system - eg brakes which is managed through the SMS.</p> <p>(h) Requirement to have a TPMS should be removed because:</p> <ul style="list-style-type: none"> > in the absence of any guidance on what this or 'continuous performance' means. > Monitoring of TPS systems is done through routine reliability monitoring procedures and concerns about reliability are dealt with through this. > TOCs already maintain TPS equipment through ORR-certified SMS; and > Industry should decide how properly functioning TPS is achieved. | <p>requirement to have a functioning and properly maintained train protection system that the train will have brakes to either prevent a collision or prevent exceeding the permitted speed.</p> <p>(h) See response to ATOC and other in question 3 above.</p> |
| <p>Chiltern</p> | <p>If reg is taken forward then:</p> <p>(a) It is unclear what is meant by a TPMS. Mainline TPS are the responsibility of more than 1 party and it is unclear whether each party needs its own TPMS or whether this can be collectively managed through organisations such as RSSB.</p> <p>(b) TPS involve both IMs and RUs and it is unclear as to whether regs apply to just one or both.</p> <p>(c) Suggest that reg 3(3)(b) is amended as there are a few signals that are tripcock fitted that are not used by London Underground trains but solely by our trains. (<i>see comments on regs</i>)</p> <p>(d) Reg 3(2) largely duplicates obligations that exist elsewhere in legislation or in our Safety License.</p> | <p>(a) We intend to publish draft guidance on the elements of a TPMS.</p> <p>(b) We agree that the TPMS requirement should apply to both IM and operators and draft regulations have been amended to reflect this.</p> <p>(c) The proposed regulations have been amended to exclude railway forming part of the LUL network from the requirement to have a train protection system in place to extent it has a 'train stop' train protection system in place.</p> <p>(d) See response to ATOC and others in question 3 above .</p> <p>(e) We have revised the various definitions relating to maximum speed and line speed to improve clarity.</p> <p>(f) See response directly above.</p> <p>(g) We have revised the drafting around stop signal to future proof against ECTS roll out and the guidance will deal with this in more detail.</p> <p>(h) The definitions of 'train' and 'locomotive' in the proposed regulations would include self-propelled single vehicles used by Chiltern and other operators.</p> |

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| | <p>(e) The term “line speed” is replaced by “maximum permissible speed”.</p> <p>(f) “permitted speed” is replaced by “permissible speed”. Permissible Speed is the term used in the mainline railway rule book and varies dependant on train type.</p> <p>(g) The term “stop signal” is replaced defined as “end of authority” for train protection systems without colour light signals. This then allows for ETCS roll out on national infrastructure and other in-cab signalling.</p> <p>(h) The term “train” is defined as “Light locomotive, self-propelled rail vehicle or road-rail vehicle in rail mode” as defined in the national rail rule book. Chiltern and other train operators have single vehicle multiple units in use over the national network.</p> | |
| DRS | <p>DRS always interpreted requirements of these regulations the way proposed changes are. Proposed change makes requirements in question more explicit and transparent. DRS do not foresee any further changes.</p> | |
| EMT | <p>If new regs are introduced then they should also cover IM.</p> <p>In particular, the main opportunity to reduce system risk lies with the fitment of TPWS equipment to signals not currently fitted, especially automatic signals on plain lines that protected stopping trains in platforms where faster non-stop trains use the same line.</p> | <p>The draft regulations have been amended to reflect that the duty on the TPMS also covers the infrastructure manager.</p> <p>The current Regulations do not cover the prevention of rear end collisions and we have not proposed bringing this within the proposed regulations because it would require a major change in the scope of the regulations. This decision does not of course preclude the industry from voluntarily installing a train protection system at other locations.</p> |
| HRA | <p>No issue with proposal.</p> | |

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| London Midland | Should apply to IM. Concerned about ORR's view that TOCs are not maintaining TPS. | See response (c) to ATOC and others above. |
| Network Rail | <p>Any regs should promote migration to latest TPS.</p> <p>A number of exemptions have been granted in respect of TPWS and these will be carried forward, however updates to RGS do not appear to consider granted exemptions that may be included and may result in Network Rail being required to fit more TPWS.</p> <p>Making ATP and TPWs definitions apply equally reduces push for industry to move to ATP or ERTMS.</p> <p>Should apply to IM as well as TOCs.</p> | <p>We consider that the inclusion of the TPMS obligation will encourage migration to the latest version of train protection system where this is appropriate.</p> <p>Following the issues raised in consultation, we have reviewed all existing TPWS exemptions held by Network Rail, many of which are historic. In most cases we have concluded that the nature of the circumstances covered by the exemptions could be addressed through drafting changes to the parts of the regulations that cover the fitment of train protection systems to the infrastructure, with no impact on safety. This will provide clarity as to where the regulations are intended to apply and will remove the need for those exemptions to carry forward once the new regulations are introduced.</p> <p>We plan to review any remaining exemptions in force (both for Network Rail and others) before the new regulations are made</p> <p>We have included a new paragraph 3(3) which requires the infrastructure manager or operator to carry out a risk assessment when moving from an ATP or ECTS system envisaged under sub-paragraph (a) (in the definition of 'train protection system') to a TPWS system envisaged under sub-paragraph (b).</p> <p>The proposed regulations have been amended to apply both to infrastructure managers as well as operators.</p> |
| Network Rail (HS) | <p>Agree broadly with the principles in the proposed changes but there should be a degree of flexibility to remove the need for specific legislative exemption for engineering trains, maintenance plant, rescue of failed trains and test trains which do not have a train protection system. IM's and TOC's / FOC's have responsibility for the safe operation of the railway system through the SMS which are subject to "co-operation" under ROGS Reg 22.</p> <p>Therefore management of safety for trains lacking a compatible TPS can be done through</p> | <p>We note the comments made about the management of risk when operating trains without a train protection system in place in specific circumstances. We have included those circumstances in the draft regulations so that a specific exemption will no longer be needed. We do not agree that rescue of failed trains should be included as this type of operation is best managed through a specific exemption and the safety management system.</p> |

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| | <p>this SMS rather than specific exemption from ORR as ROGS require appropriate SMS to be in place for the types of operation & HSWA requires employer to manage risks. RSR 1999 means that HS TOCs and IM have to have exemptions in place. HS1 rule books form part of SMS which could form mechanism to audit compliance with SMS for operating trains without a TPS.</p> | |
| PACTS | <p>The draft regs appears to be well drafted, and much clearer than the existing regs.</p> | |
| RIA | <p>Not convinced should be retained.</p> | <p>See response to ATOC and others above.</p> |
| Southeastern | <p><i>See comments on regs drafting</i></p> | |
| Southern | <p>Should be treated like other safety systems (eg brakes) are treated under ROGS reg 19. Draft Reg 3(2) should be removed.</p> | <p>See response to ATOC and others in question 3 above.</p> |
| TfL | <p>Newer signalling systems in use on LU and elsewhere no longer demarcate stopping points with a physical trackside signal. Definition of 'stop signal' could be extended to include 'the target stopping point' associated with an automatic train control system or similar.</p> <p>New specific requirement in new regulation 3(2) for a TPMS implies that ORR is expecting TOCs to have a separate system for managing TPS to the safety management system. The definition of a TPMS needs further description so RU's can understand if ORR expects a separate system for TPS management from the safety management system, a sub system or a fully integrated system. PFI maintained fleets should also be considered as information is held by the contracted train maintainer.</p> | <p>See response (g) to Chiltern above.</p> <p>See response (a) to ATOC and others above.</p> |

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| Tyne & Wear Metro | Exclusion for TWMetro should be drafted in the in the same way as LUL as TWMetro operates over its own as well as mainline infrastructure. DLR & Glasgow Subway do not. TWMetro train protection seems to meet definition of TPS as does LUL tripcock system. | We agree that the exclusion from the train protection system prohibition for TW Metro should be similar to that that we have included for LUL. |
| Q5: In the proposed new definition of “relevant approach”, should 60mph be converted to 95km/h or 100km/h? | | |
| ATOC DB Schenker East Coast FirstGroup, UK Rail First Capital Connect First Hull Trains First Scotrail First Transpennine Express GB Railfreight RSSB Train Protections Strategy Group | Unclear why imperial units are being replaced since network signage uses imperial distances. RSSB uses 100kph for 60mph and if this is to be adopted should follow RSSB. | The imperial distances are being replaced by kmh as a result of the 2009/3/EC which require the UK to use metric measurements except for measuring road distances and speeds. We have considered whether we should use the metric equivalent speeds used by RSSB. However we are concerned that using the RSSB equivalent of 100kmh will have the effect of reducing the number of locations where a TPS should be fitted with a negative impact on safety and therefore we consider that the speed in the new Regs should be 95kmh which equates to 59.03mph. |
| Chiltern | No strong view | |
| DRS | Decision should be made by ORR based on the evidence of perceived risk associated with the subject. | See response to ATOC and others above. |
| EMT | No strong views, but suggest that 100km/h is consistent with the table of speed conversions contained within GI/GN7608. | See response to ATOC and others above. |
| London Midland | Unclear why change being proposed especially when use of 2 different systems could cause confusion and potentially more safety related incidents. | See response to ATOC and others above. |
| Network Rail | Mph will exist for some years despite move | See response to ATOC and others above. |

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| | to ERTMS which uses kmh. Should quote both until industry has an agreed date for the switch. | |
| Network Rail (HS) | Yes, support move. | |
| PACTS | RSSB's suggested conversion is to 100km/h. Doubt there is much to choose in safety terms between 100km/h and 90km/h. | See response to ATOC and others above. |
| Pass Focus & London travelwatch | Urge ORR to convert 60mph to 95km/h. While we appreciate that this is slightly lower than 60mph, 100km/h is significantly higher than the current permitted speed (approx. 66mph!). | See response to ATOC and others above. |
| RIA | Not convinced by need to change this. | See response to ATOC and others above. |
| Southeastern | should be 100kmh | See response to ATOC and others above. |
| Southern | Should be 95kmh as 100kmh may permit removal of equipment protecting 60mph approaches and a reduction in safety. | See response to ATOC and others above. |
| TfL | Whilst the proposed regulations may use metric terms it is not clear whether this mandates use of metric systems. If there is to be a conversion to kph, then it needs to be accurate. This raises concerns TfL uses imperial distances and the change would require a lot of re-signing work and there would need to be a consistent application of metric speed indications on GB railways. | See response to ATOC and others above. |
| Q6: Do you agree that we should retain the regulation to prohibit the use of Mark 1 rolling stock, with the proposed changes to the exemption system? If you do not support the retention, please tell us why? | | |
| ATOC FirstGroup, UK Rail | If no specific mainline regs are implemented then this should not be retained as risk is | As we consider that the draft regulations should cover both mainline and non-mainline railways, we note the support for maintaining the prohibition in this instance. |

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| First Capital Connect First Hull Trains First Scotrail First Transpennine Express GB Railfreight | <p>very low of Mk 1 vehicles being used.</p> <p>Consider using other methods to prevent re-introduction of Mk 1 vehicles such as removing grandfather rights for vehicles not in national vehicle register or changes to RGS. Supports retaining the prohibition if combined regs are introduced and separate distinct regs are introduced. Although the prohibition should not apply to non-mainline railways.</p> | |
| Chiltern | <p>No strong view</p> | |
| London Midland | <p>If a single set of regulations Yes –However LUL are the only TOC that operates MK 1 coaching stock and may be overly prescriptive for ‘goal setting’ set of regulations.</p> <p>If a dual set of Regulations Yes - It is therefore the position of LM that these requirements are retained, but as above, consideration is given to a goal setting approach.</p> | <p>See response to ATOC and others above.</p> |
| DB Schenker East Coast EMT HRA Network Rail PACTS Pass Focus & London Travelwatch Southern TfL | <p>Yes</p> | |
| Network Rail (HS) | <p>Unclear why this is needed because interoperability requires vehicles to comply with the Reference Document Database which restricts access. Control can be</p> | <p>It is unlikely that the control could apply or be achievable through interoperability authorisations for Mark 1 vehicles. As these vehicles form a significant part of the charter and heritage railway operators fleets and it is therefore important that measures to remedy inherent poor crashworthiness are taken before carrying passengers on the</p> |

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| | achieved through authorisation (or otherwise) of the vehicle onto the infrastructure. | mainline railway or above 40kmh. |
| RIA | No view | |
| RSSB | Retention of reg useful rather than essential. Although covered by ROGS simpler to retain regulation. | See response to Network Rail (HS) above. |
| Southeastern | Should not be retained as most Mk1 stock has been scrapped and risk of remaining Mk1 stock being introduced is unlikely to be significant. Other approaches such removing grandfather rights to stock not in the rolling stock library. <i>See also comments on reg 4.2.</i> | We consider that although there is a declining number of vehicles that may be reintroduced onto the mainline railway, these vehicles form a significant part of the charter and heritage railway operators fleets and therefore it is important that measures to remedy inherent poor crashworthiness are taken before operation on the mainline railway or above 40kmh. |
| Tyne & Wear Metro | Exclusion for TWMetro should drafted in the in the same way as LUL. | This exclusion is being removed as we consider that Mark 1 vehicles may only be operated on non-mainline railways where modifications to improve crashworthiness have been completed. |
| Q7: Do you agree that regulation 5 (prohibition of hinged doors) should be revoked? If you do not support revocation, why do you think it should be retained? | | |
| ATOC, FirstGroup, UK Rail First Capital Connect First Hull Trains First Scotrail First Transpennine Express | Hinged door prohibition can be revoked as long as the fact that other vehicles (Mk2/HST stock) which have hinged doors is taken into account possibly through change in RGS. | We note that much of the Mark 2 and Mark 3 stock with hinged doors currently in use on the railway has been modified so that the hinged doors may be centrally locked. |
| Chiltern DB Schenker DRS GB Railfreight HRA PACTS Southeastern Southern | Yes | |

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| TfL | | |
| East Coast EMT | No. EMT and EC use Mk 3 coaches on its HST fleet which have hinged doors but are protected with a Central Door Locking system. Sensible to maintain the current wording of the Regulations. | Although there are a number of vehicles which have hinged doors that are still used or may be used in the future we expect that the risks associated with operating passenger services using hinged door stock will be dealt with through the safety management system. |
| London Midland | No- any rolling stock that is used in mainline operations should have a central door locking system. Consideration should be given to communicating this in terms of a goal setting approach and avoiding the use of a historically based provision. | See response to East Coast and EMT above. |
| Network Rail | Some heritage operators intend to operate non-mk1 hinged stock on the network. VSOE Pullman cars are also not Mk1. | See response to East Coast and EMT above. |
| Network Rail (HS) | Support approach but can control/authorisation can be achieved through Reference Document Database. See response to Q6. | We note the support for the approach. See also response to question 6. |
| Pass Focus and London Travel Watch | No overall disagreement. | |
| RIA | No view | |
| RSSB | No, support retaining prohibition whilst Mk2 & 3 coaches still being used on the network. | See response to East Coast and EMT above. |
| Q8: Do you agree with our approach to issuing exemptions under the new Regulations? If not, please tell us why? | | |
| ATOC | Yes but if separate mainline/non mainline regulations issued then would not apply to non mainline regulations. If combined regulations introduced may lead to a clash with safety directive which aims to avoid specific national rules. | We think that the proposed regulations will not conflict with the Safety Directive. |

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| Chiltern EMT | Supportive | |
| DRS DB Schenker East Coast FirstGroup, UK Rail First Capital Connect First Hull Trains First Scotrail First Transpennine Express GB Railfreight HRA Network Rail PACTS RIA Southern | Yes | |
| London Midland | It is not clear what the extent, potential complexity or actual requirements of the revised system will be. Would welcome a streamlined exemptions process with appropriate assurances and decisions on permissions/refusals. A revised process which complicates the existing system is undesirable. | We re-issued our RDG for processing exemptions under the RSR 99 in May 2014. This process was amended to provide more clarity to stakeholders as well as streamline the process for considering and issuing exemptions. It is expected that the process for considering exemption applications under the proposed Regulations will be very similar to the current one. |
| Network Rail (HS) | Support approach but can control/authorisation can be achieved through Reference Document Database. See response to Q6. | We note the support for our approach, however see response to Network Rail (HS) in question 6 above. |
| RSSB | In principle yes, but ORR could adopt approach in ROGS (reg 2A). Having a list of exemptions is more transparent. | We do not consider that the broad approach to exemptions under ROGS is suitable for the specific type exemption that is required for elements of the draft regulations. |
| Southeastern | Doesn't apply to Southeastern | |
| TfL | Supports the proposal for the ORR to retain the power to grant exemptions. LU relies on | We have amended the provision in paragraph 3(4) so that the requirement to have a train protection system in place for the train and railway does not apply when the normal |

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| | <p>its current exemptions to undertake certain activities (mainly engineering-related, taking place outside the hours of passenger service) and would be concerned if the proposed review were to revoke any of these. An alternative approach would be to amend the regs to specifically allow non-compliance with the train protection requirements in engineering possessions or in non-passenger hours where there are appropriate and effective controls to ensure safety.</p> | <p>operations have been suspended to allow for engineering and maintenance works or for train testing and believe that this exclusion will also apply to LUL operations. See response to Network Rail (HS) in question 3 above.</p> |
| <p>Q9: Do you agree that the remaining provision in force [definition of a railway] can be revoked? If not, please tell us why?</p> | | |
| <p> ATOC Chiltern DRS DB Schenker East Coast EMT HRA FirstGroup, UK Rail First Capital Connect First Hull Trains First Scotrail First Transpennine Express GB Railfreight London Midland Network Rail Network Rail (HS) PACTS RIA RSSB Southeastern </p> | <p>Yes <i>HRA only</i> - Subject to changes being to definition of 'railway'.</p> | <p>HRA only - We do not agree that the definition of 'railway' should be amended to exclude heritage railways from the definition as regulation is important in ensuring continued safe operation of heritage railways.</p> |

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| Southern TfL | | |
| Q10: Do you agree with our assumptions in the impact assessment? If not please tell us why or if there are any other factors that you think we should take into account? | | |
| ATOC DB Schenker East Coast FirstGroup, UK Rail First Capital Connect First Hull Trains First Scotrail First Transpennine Express GB Railfreight London Midland | ATOC unable to comment on IA in relation to TPMS due to the lack of guidance. IA on Mk 1 stock is of limited relevance as ATOC members do not regularly use this stock. Reference on p41 'train operating systems' should be to 'train protection systems'. <i>Not DB Schenker or GB Railfreight</i> | We intend to publish draft guidance See response to ATOC and others in question 3. |
| Chiltern | The main costs arising from these new regulations will be the requirement for a "train protection management system". Unfortunately as this is not yet defined and there is no guidance, not clear how ORR can evaluate its impact. | See response to ATOC and others in question 3. |
| DRS Network Rail Network Rail (HS) | Yes | |
| EMT | No. Arguments used in the impact assessment to support the rationale to retain the existing regs are directly opposed to the arguments used to revoke regulations 3, 5, 6 and 7 of MPR. The assumption does not recognise that existing RGS (GE/RT8075) on fitment and upkeep of TPWS requires TOCs to upgrade the TPWS system when a vehicle undergoes | See response to ATOC and others above and also responses to ATOC and others on questions 3 and 4. |

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| | <p>alteration and the type of alteration provides a reasonable opportunity to bring the vehicle into conformity.</p> <p>This should provide sufficient assurance that the proposed changes will be delivered, without the need for regulation.</p> | |
| RSSB | Proposals will not cause industry to do anything differently so no reduction in costs to industry. | |
| Southeastern | <p>unable to comment on IA in relation to TPMS due to the lack of guidance but there would be a cost to any railway undertakings if draft reg 3(2)(c) were used to force an upgrade of TPWs equipment.</p> <p>IA on Mark 1 rolling stock is not relevant to Southeastern.</p> | See response to ATOC and others above, the responses to ATOC and others on questions 3 and 4 and also the response to Network Rail in question 4. |
| Southern | See answer to Q4. | |
| TfL | <p>Agree that impact on costs is small. Some of the labour rates used in Table 5 in Annex B are considerably lower than TfL expects to pay in the London area.</p> <p>5.1 (16) third paragraph contains the statement "There is therefore an ongoing need to preserve this important passenger safety provision which covers the mainline, non-mainline railways (for example LU) and tramways currently, particularly when driver-only operations are increasing on the network." This does not adequately account for ATO operations, existing operations on LU as well as that will be used on parts of the Thameslink core route. This is more than just DOO. These comments follow on from response to question 2.</p> | We will review the impact assessment in light of these comments. |

| Q11: Do you have any views that would help inform our development of an enforcement flexibility proposal? | | |
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| ATOC DB Schenker East Coast EMT FirstGroup, UK Rail First Capital Connect First Hull Trains First Scotrail First Transpennine Express GB Railfreight RIA | No views but support ORR's intention. | |
| Chiltern DRS RSSB Southern | No view on this | |
| London Midland | Beneficial for a degree of certainty to exist in these matters and should not be an overly complex matter to resolve, as both organisations have similar enforcement powers and technical knowledge base. Unlikely to directly affect any of the TOC's as it's an exercise of cooperation and likely to be cost neutral. HSE 'Fees for Intervention' approach may change position were this to be an additional cost enforced by HSE. Want assurance that there would be no increase in the NET cost to LM from Enforcement activity, regardless of which organisation was involved. | Since consulting on this general policy principle we have established that it will be necessary to amend primary legislation before we can introduce a flexibility provision to the regulations which govern the enforcement allocation arrangements. We will assess the impact of the policy, including any costs, in more detail when, and if, we have an opportunity to develop the necessary legal proposals. |

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| Network Rail | Further information needed for full response in particular on criteria for allocation and whether investigation needed specialist railway knowledge. | |
| Office for Nuclear Regulation | Content with on ORR proposals on flexibility. | |
| PACTS | Clarity of enforcement responsibilities between the different agencies involved, helps both regulators and those regulated. Swift resolution of ambiguities on enforcement responsibilities in cases of doubt can only be beneficial. | |
| Southeastern | support ORR's intention 8, however it is important that both HSE and ORR take a consistent approach to risk. | |
| TfL | Support any sensible enforcement flexibility proposal aimed at providing clarity and avoiding confusion. | |
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Comments of drafting of the regulations

| | | Consultee | ORR comments |
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| Regulation 1 | | | |
| Regulation 2 | Definition of 'Stop Signal' should be amended to take into account move to ETCS which does not use physical signals but grants movement authority to trains. Should be updated to include 'end of authority' (i.e stop signal) for ECTS. | ATOC, First Capital Connect, First Group, First Capital Connect, First Hull Trains, First Scotrail, First Trans Pennine express, Network Rail, RSSB, TPS Group, TfL | Definition has been amended so can include non-physical signals. |
| | The definition of 'stop signal' - LU uses signals for shunting and hand signals, both of which include stop signals | TfL | See above. |
| | Definitions relating to speed are confusing. It may be better to define 'speed restriction' as permitted speed reductions'. | Network Rail | Have amended the various definitions of speed to improve clarity. |
| | Definition of 'vehicle' suggest this includes vehicles used on platforms, as at the moment it seems to only be those of a rail mounted nature; it would benefit from clarification In (2) there is a repetition of "in"; it should read "is in | TfL | Disagree. The regulations are drafted to only apply to vehicles on rails and not platform vehicles. |
| | An exclusion for "heritage railways" as defined in regulation 2 of ROGS. | HRA | As set out in our response to HRA to question 9, we consider that it is important that this aspect of the regulations continues to apply to heritage railways. |
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| Regulation 3(1) | Draft Regulation 3.(1) is set in the context of operation of a train on a railway. As a result, whilst it may be intended to also cover the infrastructure manager's responsibility to provide a properly functioning train protection | Southeastern | This error has been corrected in revised draft regulations. |

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| | system, this is not explicit. | | |
| Regulation 3(2) | <p>Draft Regulation 3.(2) refers to the system being “properly maintained.” , believe that this should instead refer to it being “properly functioning”, i.e. the requirement should be defined in terms of the effect (output) rather than the action (input).</p> <p>Draft Regulation 3(2)(c) appears to introduce a new requirement for continuous monitoring. It is not clear whether this is intended simply to mean that TPWS performance should be monitored or whether the intent is to require continuous monitoring of TPWS in the driving cab. If the latter this appears to be an attempt to mandate fitment of Mark 3 (or later) TPWS control units to all mainline rolling stock, although several studies have concluded that the costs of such a change would be grossly disproportionate to the safety benefits.</p> | Southeastern | <p>The draft regulations have been amended, see ORR response (d) to ATOC and others comments in question 4.</p> <p>This will be explained in more detail in the draft guidance.</p> |
| | Reg 3(2)(c)Not clear why the word ‘continuous’ has been included when referred to in consultation document. | ATOC | This will be explained in more detail in the draft guidance. |
| Regulation 3(3) | Regulation 3.(3)(b) appears to create an unintended exemption for London Underground Limited by effectively allowing LUL to operate trains anywhere on the railway system without having a train protection system in use. | Southeastern, Network Rail | The exclusion has been amended to include network which LUL operates over but the exclusion only applies as long as there is a system in place to automatically apply the brakes of the train (such as a tripcock system). |
| | Appears to exemption trains operating between Gunnersbury and Richmond or Queens Park - Harrow & Wealdstone from being fitted with a TPS. Unclear if the regulation should say that trains should be fitted with LUL train stop equipment to operate over this part of the railway. | ATOC | See above. |

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| | Reg 3(3)(b) should state for infrastructure that “London Underground is the Infrastructure Manager for”. | Chiltern | See above. |
| | <p>The precedence of the ‘or’ & ‘and’ terms in relation to the sub clauses of draft Regulation 3(3) is unclear. It is suggested renumbering these sub-clauses (a)(i), (a)(ii), and (b) respectively might aid understanding (if this is consistent with the intended precedence).</p> <p>Draft Regulation 3(3)(b); there are a small number of areas of the network owned by LU over which LU does not operate a train service, e.g. Amersham to Mantles Wood, where the traditional LU trainstop/tripcock system is in use rather than a full train protection system. Therefore that 3(3)(b) should read ‘is used by London Underground Limited or forms part of the London Underground network’.</p> | TfL | See above. |
| Regulation 3(4) | | | |
| Regulation 4(1) | | | |
| Regulation 4(2) | Contains redundant elements exempting Mark 1 rolling stock being operated on lines where it could not physically be operated, including Docklands Light Railway and the Glasgow Subway, as well as apparently allowing London Underground Limited to operate Mark 1 rolling stock wherever it may wish to do so. Better if mainline and non-mainline railways dealt with under separate legislation. | Southeastern | This provision has been removed. |
| | This reg appears to grant LUL the ability to operate Mk1 stock anywhere on the mainline railway, not clear why the reg has been drafted this way. | ATOC | See response to Southeastern above. |

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| Regulation 5 | | | |
| Regulation 6 | | | |
| Schedule | Concerned about the proposed definition of "railway" in the Schedule to the draft Regulations since the exclusion of heritage railways hangs on the exemption in paragraph 1(e) (the system is not to operate at a speed of 40kph or more). | HRA | Not proposing to amend the definition of railway as we believe that some of the provisions should apply to heritage railways if they operate over 25mph. |
| | The definition of "tramway" refers to rails laid along a "road". Since road has no definition in the proposed Regulations suggest that the definition of "road" contained in regulation 2 of ROGS be adopted, since the definition of tramway itself is derived from that contained in ROGS . | HRA UKTram | We do not consider that a separate definition is required in the draft regulations given that 'road' is defined ROGS, the Road Traffic Regulation Act 1984 and the Road Traffic Act 1988. |