

A public consultation on revised proposals for the transposition of Directive 2008/57/EC on the interoperability of the rail system

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Executive Summary

- i.) This consultation seeks views on draft regulations concerning the interoperability of the railways. These regulations are necessary to meet the requirements of the Interoperability Directive 2008/57/EC which recast earlier versions and the deadline for implementation was 19 July 2010. The recast Directive contained new provisions for type authorisation of vehicles. It also has provisions for the reauthorisation process for vehicles authorised in another Member State which have been moved from the 2004 Safety Directive into the Interoperability Directive.
- ii.) The draft regulations will implement the Directive for England, Scotland, Wales and Northern Ireland. The reauthorisation of vehicles for the UK half of the Channel Tunnel are dealt with in bi-national safety regulations. All other requirements in the Directive in relation to the Tunnel will be implemented through these draft interoperability regulations.
- iii.) This consultation builds on two earlier rounds of consultation which were published by the Department in 2009 and 2010. The first round dealt with initial proposals to implement the Directive and the second consulted on a first draft of the regulations. In March 2011 the Commission published Recommendation 2011/217/EU on the authorisation of rail subsystems under the Directive (eg vehicles and infrastructure). The Department considers it necessary to ensure that the regulations are consistent with this Recommendation and a number of changes are proposed to achieve this.
- iv.) The consultation will be of interest to the three safety authorities in the UK and also a wide section of the rail industry, such as: railway undertakings, suppliers, train operators or owners/managers of infrastructure, conformity assessment bodies and other interested parties that may represent passengers or unions. We welcome responses from any other parties with an interest.

Legal Disclaimer

- v.) This consultation document is intended to explain provisions in the Directive, the draft regulations and the Recommendation. However, it is not a legal document and should not be relied upon as a primary source of rights or obligations, nor as an interpretative tool. Consultees should refer to the source legislation or the text of the published Recommendation and take their own legal advice concerning interpretation.

1. How to Respond

1.1 The consultation period began on 25 October and will run until 22 November, please ensure that your response reaches us by that date. If you would like further copies of this consultation document it has also been published on the Department's website and can be found at www.dft.gov.uk/consultations or you can contact us using the contact details below, if you would like alternative formats (Braille, audio CD, etc).

1.2 Please send consultation responses to

John Smith
The Department for Transport
3/19 Great Minster House
33 Horseferry Road
London
SW1P 4DR

Tel: 020 7944 5222

Fax: 020 7944 2166

Email: interoperability@dft.gsi.gov.uk

1.3 If you would prefer to respond to the consultation online, it is possible to do so at Citizen Space at <https://consultation.dft.gov.uk>.

1.4 When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

1.5 The Department has scheduled a stakeholder meeting to discuss this consultation at 10.30 am on 3 November in Great Minster House in London. If you would be interested in attending this event, please use the above contact details to register your interest.

1.6 A list of those consulted is attached at Annex A. If you have any suggestions of others who may wish to be involved in this process please contact us.

1.7 We would like to thank those who respond to our consultation in advance. We do not intend to acknowledge individual responses unless by request.

Freedom of Information

1.8 Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

1.9 If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

1.10 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

1.11 The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The Consultation criteria

1.12 The consultation is being conducted in line with the Government's Code of Practice on Consultation. The criteria are listed at Annex B; a full version of the Code of Practice on Consultation is available on the Better Regulation Executive web-site at:

[BIZ: Code of Practice on Consultation](#)

1.13 If you consider that this consultation does not comply with the criteria or have comments about the **consultation process** please contact:

Consultation Co-Ordinator
Department for Transport
Zone 2/25
33 Horseferry Road
Great Minster House
London SW1P 4DR
e-mail: consultation@dft.gsi.gov.uk

What will happen next?

1.14 A summary of responses, including the next steps will be published by 31 January on the DfT web site; paper copies will be available on request.

2. The Proposals

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2.1 Background to Interoperability

2.1.1 Interoperability of the rail system is a European initiative aimed at improving the competitive position of the rail sector so that it can compete effectively with other transport modes, and in particular with road transport. It is intended to help create a harmonised European railway system that allows for safe and uninterrupted movement of trains. The key aims can be summarised as follows:

- ensure compatibility between European railways to allow for through running of trains between Member States;
- harmonise Member State design assessment, acceptance and approval processes to prevent barriers to trade and to promote a single European market for railway products and services; and,
- deliver benefits of standardisation through economies of scale for railway components, improving the economic performance of European railways and the environmental performance of the whole European transport system.

2.1.2 The European Commission (EC) introduced its first Directive (the “High Speed Directive”) on railway interoperability in 1996 (Directive 96/48/EC), requiring European Member States to use harmonised Technical Specifications for Interoperability (TSIs) as the set of standards to build and renew the Trans European Network (TEN) for 'High Speed' railways. This was followed by a further Directive

(the “Conventional Directive”) in 2001 (Directive 2001/16/EC), applying the same principle to key 'Conventional' railway networks that form part of the TEN, including those used for freight operations. These Directives (including amendments) have been transposed into UK law under the extant Railways (Interoperability) Regulations 2006 (RIR 2006), as amended.

2.2 Current processes for authorising new or major upgrade and renewal of subsystems

2.2.1 Under the Railways (Interoperability) Regulations 2006, if a new subsystem is to be authorised to be placed into service on the TEN railway network in the UK, the design has to comply with the relevant TSIs in order to meet the essential requirements for the whole European railway. The essential requirements cover health, safety, environment, technical compatibility and reliability.

2.2.2 The authorisation is given by the National Safety Authority (NSA), which confirms the application of the Technical Specifications for Interoperability and the application of the European harmonised verification process, which provides for presumption of conformity with the essential requirements. In Great Britain the NSA is the Office of Rail Regulation (ORR), for Northern Ireland it is the Department for Regional Development Northern Ireland (DRDNI) and for the Channel Tunnel it is the Inter-Governmental Commission (IGC).

2.3 Technical Specifications for Interoperability

2.3.1 The TSI specifications are developed and revised by the European Railway Agency (ERA) and introduced by the EC as Decisions or Regulations. The TSIs specify the design of ‘subsystems’ of the railway system, i.e. infrastructure and tunnels, rolling stock, signalling systems, power systems and provisions for access for Persons with Reduced Mobility (PRM). If an existing subsystem is to be renewed or upgraded, the parts of the subsystem being changed should be considered for compliance with TSIs, as part of a gradual transition to a standardised European railway.

2.3.2 TSIs do not yet provide a complete European specification, as they contain technical parameters that have been identified for harmonisation, but the specifications have not yet been agreed at a European level. Such gaps are known as “open points”, and the verification of such technical parameters (and associated essential requirements) is completed using Notified National Technical Rules (NNTRs) - for the GB mainline railway these are generally Railway Group Standards (RGSs).

2.3.3 Under the earlier Directives, the scope of application of TSIs is limited to the Trans European Networks (TENs) for High Speed and Conventional railways. The scope of the TEN is contained in EC Decision 1692/96/EC (as amended) which contains a map of the strategic routes across the European Union. Under the 2008 Directive the scope of application of TSIs can be extended beyond the TEN to cover the whole railway network subject to a positive Cost Benefit Analysis. TSIs have not yet been extended beyond the TEN.

2.4 The 2008 Interoperability Directive: amendments and additions since its publication

2.4.1 Directive 2008/57/EC introduced some key elements which we need to ensure are incorporated into the UK interoperability regime. It contained provisions related to the 'reauthorisation' of vehicles. This is the process that occurs when a vehicle is already authorised in one Member State and the applicant seeks to use it in another Member State. These provisions had previously been in article 14 of the Railway Safety Directive (2004/49/EC).

2.4.2 The Department carried out an initial consultation on transposing the Interoperability Directive in 2009. A summary of responses, including the Government's response, was published in August 2009 and is available for download from the Department's website at:

www.dft.gov.uk/consultations/closed/interoperability/response.pdf

The 2010 consultation document is available at:

www.dft.gov.uk/consultations/closed/2010-14/index.html

2.4.3 Since the publication of the Interoperability Directive in 2008 there have been a number of updates to the Directive. These can be summarised as follows:

- Commission Directive 2009/131/EC amending Annex VII to the Directive (list of parameters for the reference document for national rules under article 27).
- Commission Decision 2011/107/EU amending Decision 2007/756/EC adopting a common specification of the national vehicle register
- Commission Decision 2011/155/EU detailing the process for the creation of a reference document for national rules.
- Commission Regulation 201/2011 for a model declaration of conformity to an authorised type of vehicle.
- Commission Directive 2011/18/EU amending annexes II (revised subsystem definitions), V (declaration of verification of subsystems) and VI (verification procedure) of the Directive.
- Commission Decision 2011/633/EU implementing Decision on the common specifications of the register of railway infrastructure.

2.5 The significance of the Commission’s Recommendation 2011/217 and the proposed changes to the draft regulations to take this into account

2.5.1 The Recommendation concerns the authorisation for the placing in service of structural subsystems and vehicles. It clarifies a number of key points about how the Directive should be correctly implemented and aims to avoid different interpretations by Member States. The following is a summary of some of the key issues that we have identified in the Recommendation that required us to revisit the proposed regulations and make revisions. This is only a summary of the key points and consultees are advised to refer directly to the Recommendation for clarification about its content.

The difference between “placing into service” and “use”

“The authorisation of a vehicle is the recognition by the Member State that the vehicle design operating state meets the essential requirements of the Directive and other EU legislation when the vehicle is intended to be used on the network of that Member State.” (Recommendation 2011/217, paragraph 5.1.3)

2.5.2 This clarifies that the “placing into service” authorisation of a subsystem is a step that precedes the actual use of the subsystem on the rail system and there will be further checks for route compatibility after the authorisation to place into service.

2.5.3 Under draft regulation 2 (definitions) it is proposed that “placing into service” refers to the Directive’s definition of a subsystem being put into its “design operating state”. Under draft regulation 4 a person is not able to first use a subsystem (ie a new subsystem, or upgrade and renewal of an existing one) on the rail system without the authorisation for placing into service. The authorisation is a necessary stage to have been completed before a subsystem can be first used but this does not mean the authorisation by itself is enough to enable the use to occur – there will be other processes outside of the interoperability regulations that need to happen, eg checks for the safe operation of the subsystem.

Authorisation is required for on and off TENs

“Authorisation for placing in service of a subsystem is required in respect of all parts of the rail system: TEN-T lines and off-TEN-T lines, either high speed lines or conventional lines, as well as the subsystems forming the vehicles running on those lines whether or not there is a relevant TSI.” Recommendation 2011/217 (5.1.1)

2.5.4 Draft regulation 4 has been amended so that the references to the TEN or other parts of the rail system where a TSI applies have been removed. The effect of the change is that an authorisation to place into service is required if the first use of the subsystem is intended for anywhere on the rail system in a Member State (if within scope). This means in the UK an authorisation will be necessary regardless of whether the first use occurs on an area where a TSI applies. The exception will be if the use is restricted to an area excluded from the scope of these regulations (see

regulation 3 “Application”). In practical terms we understand this change is unlikely to have much significance for vehicles as they will need to run both on and off TENs anyway and would go through the authorisation process even without this widening of scope. In most cases the essential requirements for the off TENs part of the rail system will be set out in the NNTRs or by reference to the same standards in a TSI where appropriate.

Meeting the essential requirements - the different processes under an interoperability authorisation and the application of the Common Safety Method (CSM)

“Safe integration is part of the essential requirements (article 15 (1)). Therefore it is covered, as a general rule, by TSIs or national rules (Article 17)...It should be noted that all the requirements for authorisation to place into service are included in Directive 2008/57/EC and that both 2008/57/EC and 2004/49/EC Directives are complied with simultaneously.” Recommendation 20011/217 (paragraph 5.3.2)

2.5.5 There are separate processes for safe integration of structural subsystems through the application of the Common Safety Method Regulation (EC Regulation No. 352/2009), which came into force on 19 July 2010 and under the interoperability authorisation process. In the 2010 consultation it was proposed that the essential requirements for interoperability were deemed to be met by conformity with TSIs and NNTRs as well as implementation of measures under the CSM process.

2.5.6 It is now proposed that we do not refer to the CSM processes as a way of meeting the essential requirements in the regulations. The CSM process will still apply under regulation 352/2009 anyway. However, consultees may wish to note that Annex VI of the Directive refers to the CSM process as relevant to the contents of the technical file, in paragraph 2.4 of the Annex it states:

“when safe integration is required pursuant Commission Regulation (EC) No 352/2009, the applicant shall include in the technical file the assessor’s report on the Common Safety Methods (CSM) on risk assessment referred to in Article 6 (3) of Directive 2004/49/EC.”

Limits to the checks carried out by the safety authority at the reauthorisation stage

2.5.7 It is still proposed that the reauthorisation of a vehicle already authorised in another Member State will not become mandatory if an applicant wants to use the vehicle in the UK (apart from for the UK half of the Channel Tunnel which will have a separate regime– see below). An applicant could seek a reauthorisation on a voluntary basis. Paragraphs 5.4.1 and 5.4.2 of the Recommendation refer to the additional checks that it is possible for a second Member State to carry out when reauthorising vehicles (this applies to both TSI conform and non TSI conform vehicles).

2.5.8 If the applicant seeks a voluntary reauthorisation the safety authority is constrained to checking technical compatibility of the vehicle with the rail system and

also national rules for specific cases. However, the Recommendation highlights the importance of the reference document. This is the list published by the European Rail Agency of Member State's national technical rules. The safety authority needs to take account that any of its national rules that are categorised in the document as equivalent with another Member State's rules are out of bounds for additional checks at the reauthorisation stage. The UK's current reference document is available at:

<http://www.era.europa.eu/Document-Register/Documents/NatioNal%20Reference%20Document%20for%20United%20Kingdom.pdf>

2.5.9 Under draft regulation 7 (10) there is a provision expressly providing that the safety authority can only require checks against category "B" and "C" rules in the reference document. This means national rules for technical compatibility and specific cases are out of bounds if they are mutually recognised by the UK and another Member State as equivalent and categorised as "A" rules in the document. This would mean, for example, that if a vehicle is already assessed against a rule in France that has been mutually agreed as equivalent to a UK rule it is out of bounds at the reauthorisation stage.

The Infrastructure Register, NNTRs and the assessment of technical compatibility

"Where there is no relevant TSI covering the essential requirement of technical compatibility...national rules apply (Recommendation 2011/217, paragraph 5.3.1)

"Article 35 of Directive 2008/57/EC...extended the scope of the register of infrastructure to the whole of the network.. (the register) should provide the information needed in order to establish the compatibility in a harmonised manner.." (Recommendation 2011/217, paragraph 9.2)

2.5.10 Article 18 of the Directive requires the notified body to carry out the verification of the subsystem based on information in the relevant TSIs and the registers under articles 34 and 35 (register of authorised types of vehicles and the infrastructure register). It is still proposed that under draft regulation 17 that notified bodies should assess the interface between the project subsystem and the rail system to the extent that such an assessment is possible based on the available information in the relevant TSI and registers.

2.5.11 It is now proposed that regulation 35 will require infrastructure owners to comply with the specifications contained in the Annex of the Commission Implementing Decision (2011/633/EU "on the common specifications of the register of railway infrastructure"). The owner of the infrastructure will be required to maintain a register in accordance with the specifications and make it publicly available. It is recognised that the amount of information in the infrastructure registers will increase over time. Owners of infrastructure should take note that regulation 35 cross refers to article 5 of the Decision. This means there are different transitional arrangements for a number of categories of infrastructure, including: freight corridors; infrastructure placed into service after the entry into force of Directive 2008/57/EC and before 16 March 2012 (the date the infrastructure implementing decision applies); infrastructure placed in service before the entry into force of Directive 2008/57/EC; private sidings and infrastructure placed in service after 16 March 2012. The Department will consider how to address the requirement placed upon Member

States in the Decision for providing the Commission with a national implementation plan which will impact upon the timescales for transitional arrangements.

2.5.12 The role of the designated body under Annex VI (as revised by Commission Directive 2011/18/EU) is to carry out a verification procedure for national rules for the rail system. Paragraph 3.2 of Annex VI refers to the designated body dividing the certificate into two parts, one part including the references to those national rules strictly related to the technical compatibility between the vehicle and the network concerned, and the other part for all other national rules. Therefore the technical compatibility checks at the authorisation to place into service stage will be based on a combination of sources, including: TSIs, the registers for infrastructure and vehicle types and national rules for technical compatibility. The Recommendation refers to more specific compatibility checks for the route being undertaken under the Safety Management System process (paragraph 6.2) which can be undertaken after the authorisation has been given.

Geographically limited authorisations

“To avoid geographical specificity and the need to re-authorise a vehicle ...any conditions of use attached to a vehicle authorisation for placing in service...should be specified in terms of the parameters of the technical design characteristics of the infrastructure (e.g. to operate only on track circuits of xxHz frequency) and not in terms of geography.” (Recommendation 2011/217/EU, paragraph 5.1.3)

2.5.13 To achieve greater consistency with the Recommendation the draft regulations have been amended to delete the references to an authorisation *“to be placed in service wholly or partly on a part of the rail system”* in regulation 5. It is expected that where possible an authorisation is given for all of the UK rail system. If the applicant decides an authorisation for all of the rail system is inappropriate (for example the prohibitive cost of a “go anywhere” vehicle) there is still flexibility in draft regulation 6 for the restrictions or limitations attached to the authorisation to be used as a way of excluding areas of the rail system from the authorisation. The conditions and restrictions could make reference to technical characteristics that effectively limit the authorisation to certain networks.

2.6 Other proposals and responses to the previous consultation

2.6.1 The Department received 35 responses to the 2010 consultation. In general most consultee’s generally supported the following proposals. The key issues are summarised below:

Consolidating the changes into one new regulation:

2.6.2 This was widely supported and making changes via one set of new regulations rather than further amendments to the 2006 interoperability regulations was preferable;

List of exclusions:

2.6.3 The majority of responses supported the use of the blanket exclusion for: privately owned infrastructure and vehicles used for freight; and railways with a gauge less than 350mm and vehicles used on such lines. The use of an “Approved List” for exclusions from scope of the regulations was also generally supported. Some minor modifications have been made to the list at Annex E.

2.6.4 A concern was expressed about how to determine if a vehicle (eg heritage) used partly on the main network is in scope. The 2010 consultation referred to the need to take into account where the principal use occurs in order to determine whether it is in scope. In such cases where an operator of a vehicle considers it is difficult to determine where the principal use occurs it is suggested they discuss this with the Safety Authority. It will be possible to add individual vehicles to the exclusion list.

2.6.5 A minority of responses identified the potential administrative burden of maintaining an exclusion list. On balance the Department considers this is a preferred means of establishing more certainty about what is excluded while recognising there will be some resource implications in maintaining the list. The draft regulations include the same provisions for application.

2.6.6 Where a part of the rail system is listed as excluded but a project perceives benefit in the authorisation process it will be possible to seek a voluntary authorisation. If a project believes it should be added to the exclusion list they may also contact the Department.

Voluntary authorisation if out of scope:

2.6.7 The facility for a voluntary authorisation process to be made available for lines and vehicles in areas that are excluded from scope was widely supported. Note that the intended change to the scope of the regulations to apply to both on and off TENs will bring more of the rail system within scope in any case. It will still be possible for lines and vehicles outside of the scope to be authorised where applicants perceive there is a benefit to be gained from an authorisation against the same standards.

Ongoing duty on operators to ensure essential requirements are met

2.6.8 Some consultees suggested it was not appropriate for draft regulation 20 to place an ongoing duty on operators of a subsystem to ensure that it was operated and maintained so that the essential requirements are still met. It was suggested that matters relating to operation and maintenance are more appropriate for the Railways and Other Guided Transport Systems Regulations. The Department has considered these views but still considers that there needs to be a provision in the interoperability regulations that addresses the requirement in article 5.2 of the Directive which says:

“subsystems shall comply with the TSIs in force at the time of their placing in service, upgrading or renewal, in accordance with this Directive; this compliance shall be permanently maintained while each subsystem is in use.”

2.6.9 However, the draft regulations no longer require the operator to ensure the subsystem is operated and maintained “*in accordance with the essential requirements relevant to that subsystem*” as this would result in too much uncertainty for the operator about what might be required in future in the event that there is a different interpretation or set of criteria established for meeting these requirements. It is more reasonable to limit the operator’s ongoing duty to the requirements that are relevant at the time of the authorisation, ie against which it was assessed. This will cover those TSIs dealing with the structural subsystems and any national rules. In the case of functional TSIs the operator will still need to take account of new requirements relating to operation and maintenance.

2.6.10 Consultees should note that the draft regulations include a new duty in draft regulation 20 (2) (d) for the operator to ensure that a subsystem is operated and maintained in accordance with any condition in the authorisation.

Authorisations with conditions and restrictions:

2.6.11 The proposal to enable a facility for vehicle and non-vehicle authorisations to include restrictions and limitations was widely supported. This could be used to exclude parts of the rail system according to their technical characteristics. After further consideration it does not seem possible that such a provision would enable the safety authority to give an authorisation if a subsystem is not in conformity with TSIs or NNTRs because it is still necessary that the safety authority is satisfied that the essential requirements are met when the subsystem is placed into service.

2.6.12 The draft regulations provide that an authorisation could include a requirement that must be met by a time specified in the authorisation, eg if a future technical change is anticipated on the rail system a vehicle may need modifications made to it after the change is made but it would be authorised up until the change takes place.

2.6.13 This provision might also allow greater flexibility in cases where not all the data for the technical file may be available until after placing into service. The requirement could set a deadline for the additional missing data to be provided but authorisation is given in the meantime. Another use of the provision may occur if an applicant has not found a complete technical solution but the NSA could be satisfied essential requirements are met in the meantime.

2.6.14 It is intended that a Helpnote will give more guidance on the possible application of this provision.

Voluntary reauthorisation:

2.6.15 Under the draft regulations it is still proposed that if a vehicle is first authorised in another Member State that it need not be authorised in order to be used in the UK. The Department considers this approach is consistent with the Directive and Recommendation 2011/217.

2.6.16 The facility for a voluntary process of reauthorisation was widely supported. One response thought it should be mandatory to ensure compliance with the PRM TSI. In the case of a non TSI (PRM) conforming vehicle that obtains its first

authorisation in another Member State and is then used in the UK, with or without an authorisation, the 2020 deadline for compliance with accessibility standards will still apply under regulation 45.

2.6.17 Recommendation 217 (paragraph 6.2) describes the processes that will still need to occur outside of the interoperability authorisation process. If a vehicle is introduced into the UK (TSI conform or non TSI conform) without going through the reauthorisation process there will still need to be a SMS process to ensure compatibility with the route. The Recommendation explains that the Infrastructure register will be used as a means of establishing route compatibility.

Type authorisation:

2.6.18 There was generally wide support for enabling a type authorisation process for *all* structural subsystems. The Directive only requires this process for vehicles but it was proposed to extend this to non-vehicles. Consultees should note that draft regulation 8 enables a non-vehicle type authorisation process if there is agreement between the safety authority and the person that applied for the authorisation. It is also proposed that the safety authority must publish an up to date list of non-vehicle types. It will be a matter for the safety authority to decide upon the level of detail.

2.6.19 It was suggested by consultees that it was unnecessary to require the safety assessment report to be included in an application for authorisation to type and this has been deleted from draft regulation 9. Similarly, the provision that the safety authority must be satisfied that the subsystem is compatible with the rail system is not needed under the type authorisation process and has been deleted. It is reasonable to assume that if the safety authority must be satisfied the essential requirements are met and that there have been no changes material to the application that this is sufficient. The model declaration of conformity to an authorised type of railway vehicle (Commission Regulation (EU) No. 201/2011) is now referenced in draft regulation 9.

Type authorisation of vehicles in another Member State

2.6.20 Under the draft regulations an applicant need not seek a reauthorisation to place a vehicle into service in the UK and is free to use a vehicle that has already been authorised in another Member State (but in the case of the Tunnel, the reauthorisation provisions in the bi-national regulations will need to be complied with). It is for the applicant to decide if they wish to seek a voluntary reauthorisation. Consultees should note that any UK authorisation for a vehicle (be it a first authorisation or a reauthorisation) will automatically trigger a determination of type for the vehicle by the national safety authority.

2.6.21 Under article 26 of the Directive if the first Member State has made a type determination in their territory for a vehicle a second Member State is not required to accept the use of an unauthorised vehicle purely on the basis that it meets a type determination in another Member State.

2.6.22 Recommendation 2011 217, paragraph 5.5 explains how the process of a determination of type and reauthorisation will work in practice, it says: *"If a vehicle*

obtains an additional authorisation for placing in service in a second MS, then the vehicle type must be authorised in the second MS and subsequent vehicle authorisations in this second MS shall be based upon a declaration of conformity to this type.”

2.6.23 In order to consider how type authorisation will apply in the UK under the draft regulations it may be helpful to consider the following two scenarios (these are illustrative and this is not intended as an exhaustive list of how the process might work in all circumstances):

Scenario 1 – vehicle A is authorised in another Member State and a type is determined in that State. Subsequent identical vehicles (B, C and D) are produced and authorised in the same State by using the type process. As all of these vehicles have a first authorisation that the UK recognises, it is not mandatory to go through a reauthorisation process in the UK for the vehicles to be used here.

Scenario 2 - vehicle A is authorised in another Member State and a type is determined in that State. The same vehicle goes through a voluntary reauthorisation process in the UK which automatically triggers a type authorisation in the UK. Subsequent identical vehicles B , C and D are not authorised in the first Member State but they can be authorised through the streamlined type process in the UK.

Retrospective type authorisation

2.6.24 Consultees should note that draft regulation 8.1 says:

“if the safety authority issues an authorisation for the placing in service of a vehicle, the Safety Authority must issue a determination of type in relation to the vehicle”.

2.6.25 It is intended that type authorisation does not apply to authorisations for vehicles or non-vehicles that have already been issued only those authorisations that occur after these new regulations come into force. This is consistent with the proposals in the 2010 consultation. However, some consultees suggested that the regulation should enable retrospective type authorisation so that vehicles that are already authorised could have a type determination to help streamline any future authorisation process for identical vehicles. The Department does not consider this is a practical process to introduce and it is not required by the Directive. It is therefore not proposed that the draft regulations will enable retrospective type authorisation.

2.6.26 There cannot be an automatic assumption that a past authorisation is a sufficient basis for making another authorisation for an identical vehicle. There needs to be a check to determine if the standards that the vehicle was originally assessed against have changed in the meantime. Also there cannot be an automatic assumption that derogations from TSIs will be granted again in respect of new vehicles, where derogations were previously granted for vehicles of the same type. If an applicant is confident that an identical vehicle to one already authorised should be authorised again on the same basis they will need to go through a new authorisation process and have a type determined under the new regulation.

Derogations from TSIs

2.6.27 Under the 2006 regulations there is an existing facility for applicants to seek derogations from complying with the requirements of TSIs for new work and upgrades and renewals. There are specific circumstances in the 2006 regulations when this is possible and when an application may be made to the Member State to approve the derogation. For example, the ability to derogate projects at an advanced stage when the TSI is published.

2.6.28 Under the draft regulations it is proposed that this facility will continue (regulation 14). In all cases the project should compile a case to put to the Department to justify why they think the derogation is necessary.

2.6.29 It is expected that the starting position for all projects is to consider what work is necessary to comply with the TSI. We intend to produce a template for projects to complete to help ensure the project gathers evidence before making a case to the Department. Where reasonable, projects could undertake a gap analysis for achieving compliance. It is intended that this evidence forms the basis of any case that the Department forwards to the Commission if appropriate.

Dispensation from Notified National Technical Rules (NNTRs)

2.6.30 Recommendation 2011/217 – says that the rules for authorisation for placing subsystems into service should be either TSIs or notified national technical rules. Member States should not adopt rules for subsystems covered by a TSI (except for ‘open points’ ‘specific cases’ and where applicable, derogations).

2.6.31 In the 2010 draft regulations it was proposed that there should be a facility for a Member State to make a dispensation from a NNTR. The facility for a dispensation is not directly referred to in the Directive but we consider it is consistent with the principles of the Directive and it is included in the draft regulations.

2.6.32 In general the principle received support from consultees and it was recognised by several responses that there needed to be a degree of flexibility for projects when they encountered a national rule that might present problems. In some cases it is only when the project is being undertaken that problems with rules will come to light. However, consultees wanted more clarity about how the dispensation process would work in practice.

2.6.33 The Department recognises that although it has responsibility to notify national technical rules to the Commission the rule is not generated by the Competent Authority but by industry who make a recommendation to the Department for the rule to be notified, for example, Rail Group Standards are developed by RSSB and recommended for notification.

2.6.34 It is expected that a dispensation from a NNTR has two possible outcomes: either there is a variation of the existing rule which results in a new national rule which needs to be notified by DfT as the Member State; or a new local rule is made, which under article 17 of the Directive is required to be added to the infrastructure register but is not notified. In this way it should be possible to preserve the requirement that the essential requirements are still met. New rules are required under the Technical Standards Directive 98/34 to be first notified in draft form.

2.6.35 How is Department placed to make a decision about dispensation from a NNTR? The Department intends to produce a Helpline on this subject but in broad terms the process should work as follows: First, the project seeks the advice of the industry body where the rule originated about the possibility of a dispensation. It may only require a small adjustment to the existing rule in which case it becomes a variation of the rule to be notified. It may require a new rule which also needs notification. In other cases the industry body may decide that there needs to be a new local rule which does not need to be notified. As a second stage we would expect the project and the industry body to compile a short document outlining the case for the dispensation and the expected output which would be considered by the Department. The Department may wish to seek further advice from the project, the safety authority and the industry body before granting the dispensation.

Implementation Plans:

2.6.36 The purpose of an Implementation Plan for a TSI is to provide more clarity to the rail industry and stakeholders about how interoperability may be achieved as the legacy system becomes renewed or upgraded. There was a mixed response to whether such Plans should be developed on a subsystem or a TSI basis.

2.6.37 There was general support for the concept of a pre-screening list to help identify when a project is a major upgrade or renewal and potentially subject to an authorisation process.

2.6.38 The factors in draft regulation 12 to be taken into consideration by the Competent Authority when drawing up the pre-screening list were broadly supported. However, it was suggested that using the term “*accessibility*” was ambiguous as it is not clear if it refers to market access issues or to people with reduced mobility. Also including “*passengers*” as a factor but not referring directly to “*freight*” could be seen as unbalanced. The draft regulation has been shortened because the references to “*safety, reliability, availability, health, environmental protection and technical compatibility*” is sufficiently wide, and in any event the Competent Authority could take account of any other relevant factors not expressly referred to in regulation 12 (2).

2.6.39 Consultees should note that if there is a pre-screening list under regulation 12 then under the new draft regulation 13, the contracting entity or the manufacturer, is not required to apply to the Competent Authority for a decision about whether an authorisation is required. They may do so if they wish. The Department considers it is unnecessary to make it a mandatory requirement to ask for a decision. This is because the prohibition in draft regulation 4 on either using a structural subsystem without an authorisation, or using it without the Competent Authority deciding an authorisation is not required, is a sufficient enforcement process.

2.6.40 The development of Implementation Plans is dealt with in more detail in the section dealing with longer term strategic issues below.

The Common Safety Method (CSM) and interoperability:

2.6.41 It was proposed in the 2010 consultation that meeting the requirements of the CSM process should be a means for the applicant to prove they have also met

the requirements of the essential requirements under interoperability. However, a number of responses suggested that the CSM process and interoperability should be not be directly linked in this way. Consultees should note that draft regulation 15 has been amended to remove the CSM references to the risk management process and safety assessment reports. The Department considers this is consistent with the Commission's Recommendation 2011/217 and the requirements of article 15 of the Directive. The CSM process may occur in parallel to the interoperability authorisation process and after the placing into service of a subsystem.

Designated bodies to assess NNTRs:

2.6.42 The Directive makes a distinction between designated bodies to assess NNTRs and notified bodies to assess TSIs. The Department is required to make separate appointments for each function. The proposal in the draft regulations will still require separate appointments and it is still proposed that there will be a transition period of one year to enable existing notified bodies to carry on assessing NNTRs. Existing notified bodies will be able to apply to be appointed as designated bodies. New entrants to the market can seek an appointment as either a notified body or a designated body, or both.

Functions of notified bodies and designated bodies

2.6.43 The Department does not propose that the regulations should continue to place a requirement on bodies to carry out certain functions in relation to the verification assessment procedure and procedures for interoperability constituents. The provisions have been removed from the draft regulations (previously these were in regulations 33 & 34 of the draft regulations accompanying the 2010 consultation).

2.6.44 The Department considers that the manufacturer or contracting entity ("the project manager") will make necessary arrangements with these bodies to enable it to obtain an authorisation. It is sufficient that the applicant will need to comply with draft regulation 16 and the notified body will need to comply with regulation 17. There is already a prohibition on the project manager drawing up a verification declaration unless the notified body has carried out the prescribed verification assessment procedure.

2.6.45 The requirement for UK notified bodies to consult other European notified bodies has been removed as this is not a process that it is necessary to regulate. Article 28 of the Directive envisages the creation by the Commission of a notified bodies coordination group but it is not necessary to require through regulations that UK notified bodies consult with each as a means to facilitate any UK participation.

The Infrastructure register:

2.6.46 Draft regulation 35 requires the owner to keep a register of their infrastructure in accordance with the specifications in the Annex of the Commission Decision 2011/633/EU. Several responses suggested that referring to the expected ERA specification would be a better approach rather than placing requirements on infrastructure owners that are inconsistent with the specification. It would be possible

for an owner to contract with another owner to keep and make available a register on their behalf.

2.6.47 Draft regulations 35 and 46 transpose the requirement in article 17 of the Directive that rules and restrictions of a strictly local nature should be referred to in the infrastructure registers. There is a new requirement that in the event that a dispensation for a NNTR results in such a local rule or restriction that the Competent Authority must notify the relevant owner of the infrastructure that the local rule or restriction must be referred to in the infrastructure register.

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

The National Vehicle register:

2.6.48 Draft regulation 36 will cross refer to Commission Decision 2011/107/EU amending Decision 2007/756/EC adopting a common specification of the national vehicle register. The registration entity (Network Rail) will be required to ensure the UK register conforms to the specification. There is a saving provision under draft regulation 47 (6) to ensure that Network Rail continue as the registration entity.

Deemed Authorisations and the RVAR

2.6.49 These provisions are unchanged from the 2010 proposals. Note the RVAR 2010 SI number has been inserted into the draft regulation.

Transitional Arrangements

2.6.50 Apart from the arrangements for notified bodies to act as designated bodies for one year there are no transitional arrangements. Projects that are underway but unlikely to obtain an authorisation before these new regulations come into force (expected to be February.2012) should contact the ORR to discuss the process they intend to follow.

Appeals:

2.6.51 It is still proposed that appeals against a decision by a safety authority be aligned with ROGS and an appeal in Great Britain for a decision made by ORR or the IGC can be made to the Secretary of State; In Northern Ireland it is proposed in the draft regulations that an appeal against a safety authority decision would be made to DRDNI.

Enforcement:

2.6.52 A number of provisions relating to the process for obtaining an authorisation or Competent Authority decision have been redrafted so that failure to comply with a process does not amount to a criminal offence.

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

2.7 The Channel Tunnel

2.7.1 Consultees should note a minor change to move their Competent Authority status from the IGC to the Secretary of State. This is effected by the definition of “Competent Authority” under draft regulation 2 which will be the Secretary of State for all of Great Britain apart from in Northern Ireland where it will still be DRDNI.

2.7.2 These draft regulation make no changes to the Intergovernmental Commission’s (IGC) role as a safety authority. The 2010 consultation proposed that the provisions for voluntary reauthorisation for vehicles also be applied to the Tunnel and noted this would be a change to the current mandatory process. However, it is now proposed that the reauthorisation process for the Tunnel continues to be governed only by the bi-national regulations which currently requires mandatory reauthorisation. This is provided for in draft regulations 5(8) and 7 (12). The Government will continue to discuss this issue with the French Government and the IGC.

2.7.3 Any changes to the reauthorisation process will be made through an amendment to the bi-national regulation which is being developed by the IGC to transpose the vehicle reauthorisation provisions in the Interoperability Directive.

2.8 Miscellaneous drafting changes to the regulations

2.8.1 The following is not an exhaustive list but consultees may wish to note the following drafting changes:

- Project manager – new term added to the definition section (regulation 2 (1))
- “Technical” added to “compatibility” – to reflect the Directive’s requirements (regulation 6 (1) (b))
- Interoperability Constituents (ICs) – the order of the draft regulations for interoperability constituents have been restructured to be clearer about the requirements; (regulations 23 to 26)
- Definition of vehicle - we have deleted “rolling stock” as a definition as inconsistent with Directive, rolling stock is one of the subsystems in Annex II, but otherwise the Directive uses the term “vehicle” (regulation 2 (1))
- Time limits for NSA and Competent Authority to make decisions – some of these were missing and have been added, (regulations 6 (5) and 13 (10))

- Contents of the technical file for reauthorisation - we have delete reference to “configuration controls”
- Definition of TEN – the reference in the definition to sections 1 and 2 of Annex 1 to the Directive is now an ambulatory reference so that any amendments to those sections will be picked up without the need for a change to the regulations.”
- Technical file for authorisation – amended to reflect that the notified body is not responsible for adding documents that are related to the updating of the file after authorisation (regulation 17 (2)).
- A requirement in draft regulation 49 for a review of the regulations no later than 5 years after the regulations come into force (this is now a standard requirement)
- Deletion of the term “Implementation Plans” these plans can still be developed through an administrative process with industry involvement and there is still a provision for the regulation 12 list.

2.9 Impact Assessment

2.9.1 An Impact Assessment is at Annex F identifying the potential costs and benefits of the proposed regulations for transposing the Directive. The Assessment compares the proposed approach which has some additional flexibility built into the regulations against a less optimal approach. Where we propose going beyond the minimum requirements to transpose the Directive this is because there is a greater benefit to be gained compared with a less optimal approach. For example, extending the facility for type authorisation to all subsystems is not required by the Directive but is widely supported. In some cases the Impact Assessment identifies potential benefits in monetised terms.

2.9.2 The Department is seeking further data where possible from consultees about the potential costs and benefits of the proposed regulations. If you are only able to provide a range of possible monetised costs and benefits this would be helpful.

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

2.10 Railways and Other Guided Transport Systems (Safety) Amendment) Regulations 2011 (SI 2011/1860)

2.10.1 Following a consultation by the Office of Rail Regulation in 2010, new Regulations came into force to transpose European Directives 2008/110/EC and 2009/149/EC which make amendments to the Railway Safety Directive (2004/49/EC). In summary the Railways and Other Guided Transport Systems (Safety) Amendment) Regulations 2011 (SI 2011/1860) introduce new provisions for the following:

- establish a common maintenance system for rail vehicles;
- require the assignment of an Entity in Charge of Maintenance (“ECM”);
- require ECMs to ensure vehicles are maintained in safe condition; and
- amend methodology for calculation of Common Safety Indicators.

2.10.2 The Regulations also include two other issues, unrelated to transposition, in light of lessons learned from the current regime to:

- clarify that voluntary workers undertaking safety critical work should have the necessary competence and fitness; and
- make consequential amendments to the existing appeals mechanism to the Secretary of State following amendments in the Tribunals Courts and Enforcement Act 2007.

2.10.3 For freight wagons only, an ECM certification regime will also be established. The details were recently adopted in European Regulation 445/2011 and the Office of Rail Regulation is developing further draft regulations on which consultation is anticipated in early 2012.

2.10.4 In Northern Ireland the Safety Directive has been transposed through the Railways (Safety Management) (Amendment) Regulations (Northern Ireland) 2011 (SI 2011/261 NI). A separate bi-national Regulation on railway safety to cover the Channel Tunnel will be prepared by the Intergovernmental Commission (IGC) using its powers under the Treaty of Canterbury.

3. Longer Term Strategic Issues

3.1 Value for Money Study

3.1.1 In May 2011 the McNulty Value for Money study was published. One of its recommendations was that a Rail Systems Agency could be created to do the following tasks:

- Lead the industry in achieving technical excellence in standards
- Manage the development of common standards, building on RSSB work in the management of Rail Group Standards
- Lead on systems-wide issues
- Identify standards that are no longer required

3.1.2 There was also a reference to a designated body (Page 185):

“A team or task force, drawn from the organisations that will pass responsibilities to the RSA, should be created immediately, tasked with designing and implementing the new organisation. One option for early implementation would be through the building of competencies around the setting-up of a technical Designated Body that will be created as part of the transposition of the Interoperability Directive.”

3.1.3 The Department held an interoperability workshop on 7 July and discussed the subject of limiting the appointment to a single designated body. The general view was that this would decrease competition, risk delay to projects and potentially drive up cost. Consequently, the regulations proposed will not limit the number of designated bodies that can carry out third party checking of conformity of projects against national technical rules.

The Government expects to respond to the McNulty study later this year as part of a wider set of proposals on delivering a sustainable railway. Industry has already, in response to another of the McNulty recommendations, set up a Rail Delivery Group (RDG) which may also wish to consider further the role of designated bodies in the development of rail standards, and the potential role of a Rail Systems Agency.

3.2 Implementation Plans and the role of industry and the Department

3.2.1 The Department still proposes that a key element of Implementation Plans will be an identification of renewal and upgrade projects that are potentially caught by the interoperability process. This is referred to as the regulation 12 list. The 2010 consultation considered how to best prioritise moving towards the longer term benefits of a TSI compliant railway. It suggested that the benefits to be gained from vehicles conforming with interoperability standards would increase as infrastructure is either built, renewed or upgraded to TSI compliant standards. It was suggested that Implementation Plans for each TSI should be developed by the Department in conjunction with industry.

3.2.2 There was not any clear preference among the responses to the consultation about whether Implementation Plans are best developed on a subsystem basis or a TSI one. To support the managed roll out in the UK of a TSI compliant railway the 2010 consultation suggested that TSI compliant infrastructure should be the priority.

3.2.3 The Department would like to seek views about how best to develop Implementation Plans in the future as well as views about who is best placed to lead this process. In the event that a Rail Systems Agency is created to carry out the tasks referred to above it is possible that the development of Implementation Plans eventually falls within their remit. In the interim there will still be a need to develop these plans and prioritise how interoperability is applied.

3.2.4 It may be possible to build on existing industry forums such as the Technical Strategy Leadership Group, Network Rail's Route Utilisation Strategy or other forums within the Industry Standards Coordination Committee.

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

3.4 Notified National Technical Rules

3.4.1 Recommendation 2011/217 refers to the importance of a Member State's notified national technical rules for granting authorisations for placing in service of structural subsystems or vehicles. It says:

“These should be stable, transparent, non-discriminatory and as far as possible harmonised; the rules should be either TSIs, or, when permitted by Directive 2008/57/EC, national rules notified to the Commission and made available through a database set up by the Commission. From the moment a TSI is adopted, Member States should not adopt any national rule related to products or subsystem parts covered by that TSI (except for those declared as ‘open points’ and ‘specific cases’ where the TSI so provides, and where applicable, derogations);

3.4.2 The ultimate responsibility for notifying rules rests with the Department based on recommendations from industry about the appropriate rules for the rail system. The Department is aware that the greater the variation in national technical rules that apply to different networks within the rail system then the more unlikely it is that applicants will seek “go anywhere” authorisations.

3.4.3 There may be valid technical reasons for some networks within the UK rail system to have different technical rules compared with other UK networks. In most cases the appropriate national technical rules are developed as part of the Rail Group Standards regime, but this is not always the case.

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

3.5 Advice to the Department when acting as the Competent Authority under the Regulations

3.5.1 There are a number of provisions under the draft regulations for projects to apply to the Department for decisions on issues concerning interoperability authorisations, including the following:

- Development of UK NNTRs and dispensation from these rules
- Derogations from TSIs – projects make the case to DfT and justify going to the Commission
- Extent of the application of TSIs to projects for the renewal or upgrade of a subsystem

3.5.2 If the Department receives advice it would still have discretion to consider advice from other sources.

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

4. Consultation Questions

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

Question 2. Do consultees have any comments on how the draft regulations take account of the Commission's Recommendation 2011/217 concerning the authorisation for the placing in service of structural subsystems?

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

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

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

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

Organisations consulted

This section lists the organisations who have been directly invited to respond to this consultation:

Administrative Justice and Tribunals Service
Advanced Transport Systems
AEA Technology Plc
Aggregate Industries
Alcan Primary Metal Europe
Alcan Smelting & Power UK
Alstom Transport Ltd
Amey Plc
Angel Trains
Arriva Trains Wales
ASLEF
Association of Chief Police Officers in Scotland
Association of Community Rail Partnerships
Association of London Government
Association of Railway Industry Occupational Physicians
Association of Train Operating Companies
Atkins Rail
Avon Valley Rail
Axiom Rail
BAA Rail
Babcock Rail
Bala Lake Railways
Balfour Beatty plc
Bluebell Railway PLC
Bombardier Transportation
BP Oil UK Ltd
Brett Aggregates Ltd
British Chambers of Commerce
British Gypsum
British International Freight Association
British Nuclear Fuels Ltd
British Nuclear Group Sellafield Ltd

British Ports Association
British Transport Police
BUPA
Buxton Lime Industries Ltd
c2c Rail Ltd
Cabinet Office
Campaign for Better Transport
Carillion Rail
Cawoods of Northern Ireland
Cemex UK Cement Ltd
Channel Tunnel Safety Authority
Chartered Institute of Logistics & Transport
Chiltern Railways Company Ltd
City of Edinburgh Council
Civil Aviation Authority
Colas Rail Ltd
Commission for Integrated Transport
Confederation of British Industry
Confederation of Passenger Transport UK
Consumer Focus
Convention of Scottish Local Authorities
Correl Rail Ltd
Corus Construction & Industrial
CrossCountry
Crossrail
Croydon Tramlink
Dartmoor railway Ltd
D B Schenker (formerly EWS)
DeltaRail
Department for Business Innovation and Skills
Department for Children, Schools and Families
Department for Communities and Local Government
Department for Regional Development Northern Ireland
Department for Work and Pensions
Department of Health
Department of the Environment, Food & Rural Affairs
Derby City Council

Direct Rail Services Ltd
Disability Rights Commission
Disabled Persons Transport Advisory Committee
East Coast Main Line Ltd (DOR)
East Lancashire Railway
East Midlands Trains Ltd
Esso Petroleum Company Ltd
Eurostar UK Ltd
Eurotunnel plc
Eversholt Rail (HSBC)
Faiveley
Fastline
Federation of Small Businesses
First Capital Connect
First Engineering
First GB Railfreight
First Great Western
First Group PLC
First Hull Trains
First ScotRail Ltd
First Transpennine Express
Freight Transport Association
Freightliner Ltd
FS Life
G E Capital Rail Services
Gatwick Express Ltd
GB Railfreight Ltd
GE Transportation Systems Ltd
Go-Ahead Group /Govia
Government Office East England
Government Office East Midlands
Government Office North East
Government Office North West
Government Office South East
Government Office South West
Government Office West Midlands
Government Office Yorkshire & Humber

Grand Central Railway Company Ltd
Greater Manchester PTE
Greater Manchester Waste Ltd
Halcrow Group Limited
Harsco
Health and Safety Executive
Health and Safety Executive (NI)
Health and Safety Inspectorate (Guernsey)
Heathrow Express Ltd
Heritage Railway Association
Hitachi Europe Ltd
HM Treasury
Home Office
HS1
Hunslett-Barclay
ICENI Enterprises Ltd
Inclusive Mobility and Transport Advisory Committee
Institution of Civil Engineers
Institution of Engineering and Technology
Institution of Mechanical Engineers
Institution of Occupational Safety & Health
Institution of Railway Signal Engineers
Interfleet Certification Ltd
Intergovernmental Commission for the Channel Tunnel
Jackson Eve Infrastructure Services
Jafco Tools
Jarvis Rail
Keolis UK Ltd
Lafarge Cement
Lafarge Redlands Aggregates Ltd
Light Rail Transit Association
Light Rapid Transit Forum
Lloyd's Register Rail Ltd
Local Government Association
London and Continental Railways Ltd
London Development Agency
London Midland

London Overground Rail Operations Ltd
London Travel Watch
London Underground Ltd
LuxControl
Manchester Metrolink
Marcroft Engineering Ltd
Marsh UK Ltd
Mendip Rail Ltd
Merseyrail
Merseyside PTE (Merseytravel)
Middleton Railway Trust Ltd
Ministry of Defence
Ministry of Justice
Mobility and Access Committee for Scotland
Modern Railway Magazine
Mott MacDonald Railway Approvals
Mowlem Plc
NACCO (UK) Ltd
National Express East Anglia
National Specialist Contractors Council
National Union of Rail, Maritime and Transport Workers (RMT)
Network Rail
Network Rail NoBo
N Green Consultant
Northern Ireland Railways
Northern Ireland Transport Advisory Committee
Northern Rail Ltd
North Yorkshire Moors Railway
Nottingham Express Transit
Office of Rail Regulation
Parliamentary Advisory Council for Transport Safety
Parry Associates
Passenger Focus
Passenger Transport Executive Group
Plasmor Ltd
Plasser
Porterbrook Leasing Company Ltd

Praxis HIS Ltd
Praxis Rail
Pre Metro Operations Ltd (Stourbridge)
Private Wagon Federation
Quintec Assoc Ltd
Rail Accident Investigation Branch
Rail Charter Services Ltd
Rail Freight Group
Rail Safety and Standards Board
Railfuture
Railway Approvals Ltd
Railway Forum
Railway Gazette International
Railway Industry Association
Railway Magazine
Railway Safety Commission (Eire)
Rheilfford Ffestiniog Railway
Rio Tinto
Riviera Trains Ltd
RoSPA
Safety Cases Ltd
Scientifics Ltd
ScotRail Railways Ltd
Scottish Consumer Council
Scottish Executive
Scottish Trade Union Congress
Serco Docklands Ltd
Serco Rail Group
Siemens Transportation Systems Ltd
Signalling Solutions Ltd
South Tynesdale Railway Preservation Society
South Western Trains
South Yorkshire PTE
Southeastern
Southern Railway
Stagecoach (Sheffield) Supertram
Standard Car & Truck

Strathclyde Partnership for Transport (Glasgow Metro)
STVA UK Ltd
Tarmac National Contracting
Trade Union Congress
Transport Advisory Committee Northern Ireland
Transport for London
Transport Research Laboratory
Transport Salaried Staffs Association
Transport Scotland
Travel Midland Metro
Tribunals Service
Trinity Rail
Tubelines
Tyne & Wear PTE (Nexus)
UK Accreditation Service
UK Major Ports Group Ltd
UK Tram
Union Railways
Unite the Union (inc. TGWU)
University College London
Venice-Simplon Orient Express Ltd
Virgin Trains
Volker Rail Group
VTG Rail UK Ltd
W & M Thompson (Quarries) Ltd
W H Davis Ltd
Wabtec Rail Ltd
WBB Minerals
Welsh Assembly Government
West Coast railwayway Co Ltd
West Midlands PTE (Centro)
West Yorkshire PTE (Metro)
Westinghouse Rail Systems Ltd
Wrexham and Shropshire Railway Co Ltd

- Consultation criteria

Code of Practice on Consultations

The Government has adopted a Code of Practice on consultations. The Code sets out the approach Government will take to running a formal, written public consultation exercise. While most UK Departments and Agencies have adopted the Code, it does not have legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law).

The Code contains seven criteria. Deviation from the code will at times be unavoidable, but the Government aims to explain the reasons for deviations and what measures will be used to make the exercise as effective as possible in the circumstances.

The seven consultation criteria are:

- **When to consult:** Formal consultation should take place at a stage when there is scope to influence the policy outcome.
- **Duration of consultation exercises:** Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
- **Clarity of scope and impact:** Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
- **Accessibility of consultation exercises:** Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- **The burden of consultation:** Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- **Responsiveness of consultation exercises:** Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- **Capacity to consult:** Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

A full version of the code of practice is available on the Better Regulation Executive web-site at: <http://www.bis.gov.uk/files/file47158.pdf>

The Department considers that a shortened consultation period of four weeks is reasonable in these circumstances given the need to transpose the Directive as the deadline has now passed (July 2010). Also there have been two previous consultations held by the Department about the UK's transposition of the Directive. Many of the proposed changes in this consultation are to take account of a Recommendation published in April by the Commission about the correct implementation of the Directive. It is expected that most stakeholders will be familiar with the subject matter of this Recommendation. A workshop was held in July 2011 to explain some of these proposals and a further workshop will be held during the consultation period to help deal with any queries or points of clarification.

Draft (UK) Approved List of Exclusions from the scope of application of EC Directive 2008/57/EC, pursuant to Article 1(3) of the Directive

This list was last updated: **February 2010**

Article 1(3)(a): metro (metropolitan railways and their vehicles)

Glasgow Underground (Subway)

London Underground (including infrastructure, vehicles running over Network Rail infrastructure and heritage vehicles)

Tyne & Wear Metro (including vehicles running over Network Rail infrastructure)

Article 1(3)(a): tram (trams and tramways)

Blackpool and Fleetwood Tramway

Greater Manchester Metrolink

London Tramlink (formerly Croydon Tramlink)

Midland Metro

Nottingham Express Transit

Southport Pier Tramway

South Yorkshire (Sheffield) Supertram

Cross River Tram (London) *(proposed)*

Edinburgh Tram *(under construction)*

Greater Manchester Metrolink: *(proposed extensions to Oldham/Rochdale; Droylsden; St. Werburgh's Road Chorlton; MediaCity; Ashton-under-Lyne; East Didsbury; and, Manchester Airport)*

Midland Metro: *(proposed extensions to Birmingham New Street Station and Wolverhampton City Centre)*

Nottingham Express Transit: *(proposed extensions to Chilwell (via QMC) and Beeston and Clifton (via Wilford))*

Tram-Train (vehicles only, including vehicles running over Network Rail infrastructure) *(proposed)*

Article 1(3)(a): (other) light rail system

Docklands Light Railway

Article 1(3)(b): networks (infrastructure) that are functionally separate from the rest of the rail system and intended only for the operation of local, urban or suburban passenger services and railway undertakings (and their vehicles) operating on such networks

Island Line: Isle of Wight (Ryde to Shanklin)

Article 1(3)(d): infrastructure and vehicles reserved for a strictly local use

Vehicles only

Parry People Mover (vehicles only)

Class 08 (0-6-0) shunters (built by BR)

Class 09 (0-6-0) shunters (built by BR)

Infrastructure only

St Ives – St Erth

Looe Valley: Liskeard - Looe

Tamar Valley: St Budeaux - Gunnislake

St Albans Abbey: Watford Junction – St Albans Abbey

Penistone Line: Barnsley – Penistone – Huddersfield

Esk Valley: Middlesbrough - Whitby

Tarka Line: Barnstaple to Cowley Bridge Jnc

Maritime Line: Falmouth to Truro September

Derwent Valley: Whatstandwell - Matlock

East Lancashire Line: Colne to Gannow Jnc Burnley

Gainsborough Line: Marks Tey to Sudbury November

Barton Line: Barton-on-Humber to Ulceby N. Junction

Bittern Line: North Walsham to Sheringham

Lakes Line: Oxenholme - Windermere

South Fylde Line: Blackpool South – Kirkham and Wesham

Lymington Line: Brockenhurst - Lymington

Article 1(3)(d): infrastructure and vehicles reserved for a historical (heritage) or touristic use (including vehicles of all types, e.g. trams)

Note 1: Reference to rail systems in this category includes vehicles that are used (mainly) on any of the listed infrastructure - if such vehicles under this category are occasionally used for operation on the mainline railway (for example, a steam tour), then they continue to be excluded from scope, with respect to that operation.

Note 2: All infrastructure and vehicles with a track gauge of 350mm or under are considered as automatically excluded from scope through blanket exemption in the Railways (Interoperability) Regulations 2010 (they are considered to be either historical or touristic rail systems), even though some such rail systems might be included in the list below.

Abbey Light Railway

Abbey Pumping Station Museum (i.e. rail vehicle tracks within its grounds)

Aberystwyth Electric Cliff Railway

Alford Valley Railway

Almond Valley Railway

Aln Valley Railway

Amberley Working Museum (i.e. rail vehicle tracks within its grounds)

American Adventure Theme Park (i.e. rail vehicle tracks within its grounds)

Amerton Railway

Angelsey Central Railway

Apedale Valley Light Railway

Appleby Frodingham Railway

(Astley Green Colliery Museum Railway)

Avon Valley Railway

Babbacombe Cliff Railway

Bala Lake Railway

Barrow Hill Roundhouse Railway Centre (i.e. rail vehicle tracks within its grounds)

Battlefield Line Railway

Beamish North of England Open Air Museum (i.e. rail vehicle tracks within its grounds)

Bicton Woodland Railway

Bideford Railway Museum (i.e. rail vehicle tracks within its grounds)

Billing Miniature Railway

Blackpool Zoo Miniature Railway

Blenheim Park Railway
Black Country Living Museum (i.e. rail vehicle tracks within its grounds)
Bluebell Railway
Bodmin and Wenford Railway
Bo'ness and Kinneil Railway
Bournemouth Fishermans Walk Cliff Railway
Bowes Railway
Bradford Industrial Museum (i.e. rail vehicle tracks within its grounds)
Brecon Mountain Railway
Bredgar and Wormshill Light Railway
Bressingham Steam Museum (i.e. rail vehicle tracks within its grounds)
Bridgend Valleys Railway
Bridgnorth Castle Hill Railway
Bristol Harbour Railway
Buckinghamshire Railway Centre (i.e. rail vehicle tracks within its grounds)
Bure Valley Railway
Burseldon Brickworks (i.e. rail vehicle tracks within its grounds)
Burry Port and Gwendraeth Valley Railway
Cairngorm Mountain Railway
Caledonian Railway
Cambrian Heritage Railway
Central Tramway Scarborough
Centre for Alternative Technology (i.e. rail vehicle tracks within its grounds)
Chasewater Railway
Chinnor and Princes Risborough Railway
Cholsey and Wallingford Railway
Churnet Valley Railway
Cleethorpes Coast Light Railway
Colne Valley Railway
Combe Martin Wildlife and Dinosaur Park (i.e. rail vehicle tracks within its grounds)
Conkers Express
Conwy Valley Railway Museum (i.e. rail vehicle tracks within its grounds)
Corris Railway
Cotswold Wildlife Park (i.e. rail vehicle tracks within its grounds)

Coventry Railway Centre (i.e. rail vehicle tracks within its grounds)
Craigtoun Miniature Railway
Crich Tramway Museum
Cricket St Thomas Wildlife Park (i.e. rail vehicle tracks within its grounds)
Darlington Railway Centre and Museum (i.e. rail vehicle tracks within its grounds)
Dartmoor Railway
Dart Valley Railway
Dean Forest Railway
Derbyshire Dales Narrow Gauge Railway
Derwent Valley Light Railway
Devon Railway Centre (i.e. rail vehicle tracks within its grounds)
Didcot Railway Centre (i.e. rail vehicle tracks within its grounds)
Dolgarrog Railway
Drayton Manor Park (i.e. rail vehicle tracks within its grounds)
Drusillas Zoo Park (i.e. rail vehicle tracks within its grounds)
Dunaskin Heritage Centre (i.e. rail vehicle tracks within its grounds)
East Anglia Transport Museum (i.e. rail vehicle tracks within its grounds)
East Anglian Railway Museum (i.e. rail vehicle tracks within its grounds)
East Cliff Railway (Bournemouth)
East Hayling Light Railway
East Hill Cliff Railway (Hastings)
East Kent Railway
East Lancashire Railway
East Links Family Park (i.e. rail vehicle tracks within its grounds)
East Somerset Railway
East Suffolk Light Railway
Eaton Hall (i.e. rail vehicle tracks within its grounds)
Ecclesborne Valley Railway
Eden Valley Railway
Elsecar Steam Railway
Embsay and Bolton Abbey Steam Railway
Epping Ongar Railway
Evesham Vale Light Railway
Ffestiniog & Welsh Highland Railways

Flamingo Land Theme Park and Zoo (i.e. rail vehicle tracks within its grounds)
Foxfield Light Railway
Gartell Light Railway
Gloucestershire Warwickshire Railway
Golden Valley Light Railway
Great Bush Railway
Great Central Railway (Loughborough)
Great Central Railway (Nottingham)
Great Orme Tramway
Guillivers Theme Park, Warrington (i.e. rail vehicle tracks within its grounds)
Guillivers World, Milton Keynes (i.e. rail vehicle tracks within its grounds)
Gwili Steam Railway
Haigh Country Park (i.e. rail vehicle tracks within its grounds)
Heatherslaw Light Railway
Heaton Park Tramway
Hollycombe Steam Collection (i.e. rail vehicle tracks within its grounds)
Hopewell Colliery Museum (i.e. rail vehicle tracks within its grounds)
Hythe Pier Railway
Imperial War Museum (i.e. rail vehicle tracks within its grounds)
Irchester Country Park (i.e. rail vehicle tracks within its grounds)
Isle of Wight Steam Railway
Keighley and Worth Valley Railway
Keith and Dufftown Railway
Kent and East Sussex Railway
Kew Bridge Steam Museum (i.e. rail vehicle tracks within its grounds)
Kirkland Sidings Heritage Centre (i.e. rail vehicle tracks within its grounds)
Kirklees Light Railway
Knowsley Safari Park (i.e. rail vehicle tracks within its grounds)
Lakeside and Haverthwaite Railway
Lakeside Miniature Railway
Lappa Valley Steam Railway
Launceston Steam Railway
Lavender Line
Leadhills and Wanlockhead Railway
Leas Cliff Railway (Folkestone)

Leeds Industrial Museum, Armley Mills (i.e. rail vehicle tracks within its grounds)

Legoland, Windsor (i.e. rail vehicle tracks within its grounds)

Leighton Buzzard Railway

Lightwater Valley theme park (i.e. rail vehicle tracks within its grounds)

Lincolnshire Coast Light Railway

Lincolnshire Wolds Railway

Llanberis Lake Railway

Llangollen Railway

Llechwedd Slate Caverns (i.e. rail vehicle tracks within its grounds)

Locomotion, the National Railway Museum at Shildon (i.e. rail vehicle tracks within its grounds)

Longleat (i.e. rail vehicle tracks within its grounds)

Lynton and Barnstaple Railway

Lynton and Lynmouth Cliff Railway

Mangapps Farm Railway Museum (i.e. rail vehicle tracks within its grounds)

Margam Country Park (i.e. rail vehicle tracks within its grounds)

Markeaton Park (i.e. rail vehicle tracks within its grounds)

Marwells Zoological Park (i.e. rail vehicle tracks within its grounds)

Mid-Hants Watercress Railway

Mid-Norfolk Railway

Mid-Suffolk Light Railway Museum (i.e. rail vehicle tracks within its grounds)

Middleton Railway

Midland Railway, Butterley

Milkyway Adventure Park (i.e. rail vehicle tracks within its grounds)

Morwellham Quay Historic Port and Copper Mine (i.e. rail vehicle tracks within its grounds)

Museum of Science and Industry, Manchester (i.e. rail vehicle tracks within its grounds)

National Coal Mining Museum for England (i.e. rail vehicle tracks within its grounds)

National Railway Museum, York (i.e. rail vehicle tracks within its grounds)

National Slate Museum, Llanberis (i.e. rail vehicle tracks within its grounds)

National Tramway Museum (i.e. rail vehicle tracks within its grounds)

Nene Valley Railway

North Bay Railway

North Gloucestershire Railway

North Ings Farm Museum (i.e. rail vehicle tracks within its grounds)
North Norfolk Railway
North Tyneside Steam Railway
North Yorkshire Moors Railway
Northampton and Lamport Steam Railway
Oakwood Theme Park (i.e. rail vehicle tracks within its grounds)
Old Kiln Light Railway
Oswestry Railway Museum (i.e. rail vehicle tracks within its grounds)
Queen Elizabeth II Country Park (i.e. rail vehicle tracks within its grounds)
Paignton and Dartmouth Railway
Paignton Zoo Environmental Park (i.e. rail vehicle tracks within its grounds)
Paradise Park (i.e. rail vehicle tracks within its grounds)
Paultons Park (i.e. rail vehicle tracks within its grounds)
Peak Rail
Pembrey County Park (i.e. rail vehicle tracks within its grounds)
Perrygrove Railway
Pleasure Beach Express
Pleasure Island Family Theme Park (i.e. rail vehicle tracks within its grounds)
Pleasurewood Hills Leisure Park (i.e. rail vehicle tracks within its grounds)
Plym Valley Railway
Pontypool and Blaenavon Railway
Prestongrange Industrial Heritage Museum (i.e. rail vehicle tracks within its grounds)
Ravenglass and Eskdale Railway
Rheilfford Ffestiniog Railway
Rhyl Miniature Railway
Ribble Steam Railway
Ripon and District Light Railway
Riviera Trains
Romney, Hythe and Dymchurch Railway
Rother Valley Railway
Royal Deeside Railway
Royal Gunpowder Mills (i.e. rail vehicle tracks within its grounds)
Rushden, Higham and Wellingborough Railway
Rutland Railway Museum to Ashwell Station (i.e. rail vehicle tracks within its grounds)

Saltburn Cliff Lift
Saltburn Miniature Railway
Scottish Industrial Railway Centre (i.e. rail vehicle tracks within its grounds)
Seaton and District Electric Tramway
Severn Valley Railway
Sherwood Forest Theme Park (i.e. rail vehicle tracks within its grounds)
Shipley Glen Tramway
Sittingbourne and Kemsley Light Railway
Snibston Colliery Railway
Snowdon Mountain Railway
Somerset and Dorset Railway (Midsomer Norton)
South Cliff Railway (Scarborough)
South Devon Railway
South Tynedale Railway
Southend Cliff Railway
Southend Pier Railway
Spa Cliff Lift
Spa Valley Railway
St Nicholas Cliff Lift
Stainmore Railway
Steam, the Museum of the Great Western Railway (i.e. rail vehicle tracks within its grounds)
Steeple Grange Light Railway
Strathspey Railway
Stephenson Railway Museum (i.e. rail vehicle tracks within its grounds)
Stevington and Turvey Light Railway
Strumpshaw Steam Railway Museum (i.e. rail vehicle tracks within its grounds)
the Stone Line
Summerlee Heritage Park (i.e. rail vehicle tracks within its grounds)
Swanage Railway (Purbeck Line)
Swansea Vale Railway
Swindon and Cricklade Railway
Talylyn Railway Co
Tanfield Railway
Teifi Valley Railway

Telford Steam Railway
Thorpe Park (i.e. rail vehicle tracks within its grounds)
Threlkeld Quarry Railway
Tyseley Locomotive Works (i.e. rail vehicle tracks within its grounds)
Vale of Glamorgan Railway
Vale of Rheidol Railway
Valley International Park (i.e. rail vehicle tracks within its grounds)
Volks Electric Railway
Weardale Railway
Welsh Highland Heritage Railway
Welshpool and Llanfair Light Railway
Wensleydale Railway
West Cliff Railway (Bournemouth)
West Hill Cliff Railway (Hastings)
West Lancashire Light Railway
West Midlands Safari Leisure Park (i.e. rail vehicle tracks within its grounds)
West Somerset Railway
Whipsnade Wild Animal Park (i.e. rail vehicle tracks within its grounds)
Wicksteed Park (i.e. rail vehicle tracks within its grounds)
Windmill Animal Farm Railway (i.e. rail vehicle tracks within its grounds)
Wirral Tramway / Birkenhead Heritage Tramway
Woburn Safari Park (i.e. rail vehicle tracks within its grounds)
Yaxham Light Railway
Yeovil Railway Centre (i.e. rail vehicle tracks within its grounds)