

Second post implementation review of Railways and other guided transport systems (safety) regulations 2006 (as amended)

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| Lead department | Department for Transport (the Department) |
| Summary of measure | The Railways and Other Guided Transport Systems (Safety) Regulations (ROGS) replaced a detailed safety case regime with a requirement for railway operators to maintain a safety management system which provides the basis for applications for safety certificates. |
| Submission type | Post-implementation review (PIR) |
| Implementation date | By 26 August 2021 |
| Department recommendation | Retain |
| RPC reference | RPC-DfT-3363(2) |
| Opinion type | Formal |
| Date of issue | 3 September 2021 |

RPC opinion

| Rating ¹ | RPC opinion |
|------------------------|---|
| Fit for purpose | <p>The PIR is now fit for purpose after being revised in response to the RPC's initial review notice (IRN). As originally submitted the PIR was not fit for purpose because it did not sufficiently support the recommendation to retain ROGS unamended.</p> <p>The revised PIR describes stakeholders' concerns from the survey responses and provides further justification for the Department's view that negative responses can be addressed through improved guidance.</p> |

¹ The RPC opinion rating is based on whether the evidence in the PIR is sufficiently robust to support the departmental recommendation, as set out in the [better regulation framework](#). The RPC rating will be fit for purpose or not fit for purpose.

RPC summary

| Category | Quality | RPC comments |
|-------------------------------|---------------------|---|
| Recommendation | Green | The evidence and analysis in the PIR are proportionate to the measure and sufficient to support retaining ROGS unamended. The PIR uses survey responses to demonstrate where the regulations are working as intended and where concerns are raised. The revised PIR discusses the concerns raised from the surveys sufficiently and justifies the conclusion that the concerns can be remedied through improved guidance. |
| Monitoring and implementation | Satisfactory | The PIR provides a proportionate review of the impact of ROGS, addressing the requirements for a 'low impact' measure in the RPC proportionality guidance. The PIR would benefit from discussion on the compliance and enforcement of the regulations. |
| Evaluation | Satisfactory | The PIR discusses the extent to which the policy objectives have been achieved. The PIR could be improved through discussion on the affect, if any, factors such as COVID 19 have had on ROGS. |

Response to initial review

As originally submitted, the PIR was not fit for purpose because it did not adequately address concerns raised in the survey responses to support the recommendation to retain the regulations unamended. The IRN identified survey responses that should be considered further, including that 71 per cent of respondents said that ROGS should remain but with amendments. In the IRN, the RPC stated that the initial PIR should provide further evidence that these and other negative responses have been fully considered in reaching the recommendation to retain ROGS and that they can be remedied through improved guidance.

The revised PIR justifies the recommendation to retain ROGS unamended, by considering the issues raised by stakeholders in more detail and explaining further why improving guidance is the most appropriate way to address the more negative survey responses. For example, the revised PIR explains that after the 71 per cent of respondents suggested ROGS should be retained but with amendments, stakeholders were invited to follow up with comments but only one stakeholder responded who raised the need for greater clarity in respect of ROGS and other related regulations. The respondent also raised the need for a consolidated version of ROGS, enabling the changes made for EU exit to be seen in one document (page 10).

The revised PIR now provides sufficient consideration for these responses. In addition to the significant point on the need for further consideration of survey responses, the RPC identified other areas for improvement in the IRN. The revised PIR has addressed some of these points, but other areas still require improvement, as noted in this opinion.

Summary of proposal

ROGS was introduced in 2006 to “*maintain national standards of rail safety in line with EU requirements and strive for continuous improvement*” (page 1) and to implement the Railway Safety Directive (2004/49/EC), aimed at opening up the market for rail transport. They consolidated the pre-existing national regulatory framework for railway safety in Great Britain into one set of regulations. The PIR explains that the regulation was subsequently amended in 2011 and 2013, and in 2020 to account for the UK’s exit from the EU on 31 December 2020 (page 5). The PIR provides a thorough summary of the history of ROGS.

In 2016, the Department produced a PIR² (the 2016 PIR) for ROGS which quantified impacts and received a fit for purpose rating from the RPC. The PIR explains that at the end of the EU exit transition period on 31 December 2020, further amendments to ROGS took effect which removed terminology or references that are no longer relevant to ensure that ROGS continues to work effectively.

² <https://www.gov.uk/government/publications/review-of-the-implementation-of-rogs-2006>

Impacts of the proposal

The original IA estimated an annual cost to business of between £5 million and £9.4 million and assumed there would be health and safety benefits in moving to the new regime (page 12). The 2016 PIR provided a quantified assessment of ROGS' impacts.

The present PIR explains that it would not be proportionate to monetise the impacts of ROGS in this PIR because it would put a disproportionate burden on stakeholders and due to the relatively low impact of the regulations.

Recommendation

The PIR recommends that ROGS should not be amended at this time, despite some comments from stakeholders.

Survey responses

The PIR uses survey responses to determine whether ROGS have met their objectives and is transparent about the limitations of the surveys. It explains that some groups did not respond to the stakeholder survey but that *“there was a good spread of responses from those who have duties under ROGS”* (page 8), with responses from 9% of these duty holders.

The PIR identifies in its analysis *‘key findings’* that include ways in which ROGS can be made clearer for its stakeholders. The PIR explains that improving guidance does not require legislative change and therefore recommends that ROGS should *“remain in place unamended”* (page 15).

ORR recommendations

The PIR explains that the ORR have suggested that the Department consider two areas further (page 13). The first area is that the *“human factors requirements developed as part of the amendments to the Railway Safety Directive, but which were not implemented in the UK, might be incorporated via a future amendment to ROGS”* (page 17). The second area is a recommendation to review the requirement to *“produce an annual safety report and whether the benefits of producing annual reports may be achieved by other non-legislative means”* (page 15).

The revised PIR explains that these suggestions are *“minor elements of streamlining to be taken forward when the opportunity arises and are not fundamental to the efficient and effective operation of the regulations”* (Page 15).

We are happy that the Department's recommendation to retain ROGS unamended is sufficiently supported by the evidence set out in the PIR. However, as human factors are usually a primary source of risk, the PIR should explain whether or not any additional information is required before the decision can be made to implement these recommendations. It should also be specific on when the most appropriate time to make these amendments is, should they be necessary, and justify why it is not appropriate to do so now.

Monitoring and implementation

Proportionality

The PIR draws on a stakeholder survey conducted in 2021, a survey of ORR staff who enforce ROGS and feedback from a workshop/webinar organised by the rail industry bodies (the Railway Safety and Standards Board, Rail Delivery Group and Railway Industry Association) (page 6).

The revised PIR explains that the lack of readily available quantitative data combined with the fact that *“ROGS have been amended twice, would make a quantitative analysis extremely complex and burdensome for stakeholders”* (Page 6). It also explains that the Department’s approach is consistent with RPC guidance for a “low impact PIR” which applies to regulations with an Equivalent Annual Net Direct Cost to Business (EANDCB) of below £10 million.

The RPC considers this justification sufficient and in line with RPC guidance³ which explains that for a low impact PIR *“if quantitative data are not readily available a qualitative discussion will be sufficient.”*

Evaluation

Small and micro businesses (SMBs)

In the IRN the RPC stated that the PIR should explain whether any of the respondents to the survey question about ROGS’ possible disproportionate impact on businesses with fewer than fifty employees were SMBs. The revised PIR explains that of the 13% of respondents that said that ROGS had a disproportionate impact on these businesses, 3 had fewer than 50 employees.

The revised PIR also explains that not all the respondents provided comments, but those that did *“expressed views on what they envisage the impact to be rather than direct experience or evidence of a disproportionate impact”* (Page 9). The PIR could be improved through further discussion on the concerns, if any, raised by SMBs, especially as table 2 shows only 8 businesses with less than 50 employees responded to the survey, 3 of which identified disproportionate impacts.

Improvements or alternatives

The revised PIR explains that *“in light of the UK leaving the EU, there is scope to look afresh at retained EU legislation”* (page 16). It also states that the Department intend to explore any changes that could be made in conjunction with the Railways (Interoperability) Regulations (RIR), for which a PIR currently being undertaken and is due to be published in 2022.

The revised PIR also explains that due to the overlap between ROGS and RIR, discussions will take place when producing the RIR PIR on whether changes could be made to both ROGS and RIR *“in the knowledge that it is possible for the safety regime in Great Britain to diverge from EU rules”* (page 16). The PIR would be improved through adding an explanation of why the Department believes that the

³ <https://www.gov.uk/government/publications/proportionality-in-regulatory-submissions-guidance>

overlap between ROGS and RIR makes it optimal and appropriate to consider this issue in the RIR PIR.

Future impacts considered

The Department could improve the PIR by further considering potential future impacts of ROGs, for example factors such as whether COVID-19 impacts could alter the impact of ROGS or its success in achieving its objectives.

Other comments

The RPC commends the Department for improving the PIR by providing a more comprehensive summary of the changes introduced by ROGS in 2006 and subsequent amendments.

Regulatory Policy Committee

For further information, please contact regulatoryenquiries@rpc.gov.uk. Follow us on Twitter [@RPC_Gov_UK](https://twitter.com/RPC_Gov_UK), [LinkedIn](#) or consult our website www.gov.uk/rpc.

Two Committee members did not participate in the scrutiny of this case to avoid a conflict of interest.