

Call for Input on the Rail, Road and Inland Waterways Block Exemption Regulation

Response from Rail Freight Group (RFG).

April 2024

1. RFG is the representative body for rail freight in the UK, and we campaign for a greater use of rail freight, to deliver environmental and economic benefits for the UK. We have over 130 member companies including train operators, end customers, ports and terminal operators, suppliers including locomotive and wagon companies and support services. RFG is pleased to respond to this consultation.

Industries Affected, General Awareness and Future Developments

2. As outlined above, RFG represents organizations who are involved in some way in the movement of freight by rail. We do not ourselves take part in any transport activity or operate any services. We are a micro business with 3FTE employees and a turnover of around £350k pa. Our members however range from SMEs to large plcs, with the majority being medium or large businesses.
3. It is likely that for the purposes of this consultation the most affected businesses in our membership are those that operate rail freight services (freight train operators or FOCs). There around 7 FOCs, with the 3 largest companies operating around 95% of the market, but we have seen some new entrants in recent years and the market is highly competitive. The combined turnover of the FOCs is around £900m pa.
4. Industry awareness of the RRIWTBER was low until the initial discussions with CMA. However, it appears that there are many areas where the industry does appear to operate under the exemption, and where the removal of the exemption would lead to additional red tape and could lead to reduced efficiency.

Article 2: Technical Agreements

5. We have not been made aware by our members of examples where they have explicitly used the RRIWTBER in making a technical agreement. However, we

are aware of many places where an agreement or process would appear to be made under the exemption, or where removal of the exemption would potentially cause a challenge. We have not sought any legal advice in any of these areas at this stage, and as a trade body are generally not party to any agreements ourselves. However, some which have been suggested include;

- a. Agreements to facilitate the installation of digital signaling on freight locomotives which are developed and managed at an industry level with the FOCs, Network Rail and Government. These agreements allow for development of a common system to be installed on locomotives owned or leased by multiple companies in a consistent form. Without these contracts, each FOC would need to have its own agreement with Government, increasing complexity and risking multiple different approaches. This may be an example in category (a).
 - b. The timetabling process which frequently requires co-ordination between FOCs and with Network Rail in order to find the optimal timetable for all users. This can include major timetable changes, finding network paths for new trains and ad hoc services, and the systems which enable network paths to be switched between FOCs either on a temporary or permanent basis. Without the ability to work in this way, timetables would become much less flexible, risking a loss of capacity and productivity. This may be an example in category (e) or category (d).
 - c. Arrangements which allow a customers' goods to be conveyed on another FOCs train. Although this may not happen routinely, it can happen for example during disruption particularly for intermodal services. Without this ability, customers goods may not be able to be moved as efficiently. This may be an example in category (c) or category (f),
 - d. Situations where a FOC operates using a locomotive or wagons owned by another FOC in order to fulfill a customer requirement. This could arise where a customer uses several different FOCs across their supply chain, and where an additional service is required to meet peak demand. This might be an example under category (b).
6. As outlined above, we have not sought legal advice, and the examples are likely to be covered by commercial contracts and industry codes as well as under the exemption. However, in all cases, to the extent that the exemption applies, its loss would make the industry less productive and less flexible, increasing costs to customers and reducing the ability to respond flexibly to customer requests. In the example on timetabling, any move which reduced the ability to move paths between FOCs, or agree changes to paths to

accommodate new services would be a real concern, not only for freight but also passenger services.

7. We are not aware that any of these examples restrict competition. Indeed, they are likely to promote competition through increased flexibility of operations such as finding network paths for new operators, and enabling customers to move more of their goods including during disruption.

Technical Agreements: Benefits of Block Exemption over self-assessment

8. In our discussions with members there was a lack of awareness about the exemption and its role. However, it may be that members' legal departments, who we have not spoken to, have more awareness of the exemption and its role. It may also be the case that practices, such as those around timetabling, have been set up under the exemption in the past and are now 'custom and practice' in the way that these areas operate.
9. Where businesses are acting under the exemption to enter into very specific agreements, such as in our first example, it might be possible for companies to self-assess in place of the block exemption. However, this would add more complexity and cost, leading to a greater burden on business.
10. The majority of the examples however are taking place not in occasional contracts and agreements but in day to day operational and business decision making. For example, a request to change a timetable path to co-ordinate a timetable path for another FOC will happen routinely. It is unrealistic to expect that each such request would need to be sent for legal self-assessment and so, without the exemption, it is likely that businesses would have to take a conservative approach. This would reduce the flexibility of operators to accommodate new services and support passenger and freight growth.
11. We have no comments on the scope or clarity of Article 2, or Article 3.

Summary

12. In summary, our members have been unaware of the RRIWTBER, however there are a number of areas where it appears that contracts and operational arrangements particularly around timetable paths do operate under it. This is allowing flexibility in coordinating timetables to accommodate services and manage new and ad hoc services. The exemption may also be being used in certain places to support standardization, and in use of equipment.
13. As many of these situations are part of day-to-day operations, rather than specific agreements, it is unlikely that self-assessment would be a suitable alternative. If Government therefore chooses to revoke the exemption it is likely that businesses will need to be far more cautious in operational decision

making. Alternatively, a new exemption would need to be developed covering key areas. RFG therefore supports the continuation of the RRIWTBER in UK law.