

<p>Title: Second post implementation review of the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended)</p> <p>IA/PIR No: ORR1601/DfTPIR0042</p> <p>Lead department or agency: Department for Transport and the Office of Rail and Road (ORR)</p> <p>Other departments or agencies: NA</p> <p>Contact for enquiries: Mark Norton (DfT) Mark.norton@df.gov.uk 07881 845407</p> <p>Dawn Russell (ORR) dawn.russell@orr.gov.uk 020 7282 2067</p>	Post Implementation Review
	Source of intervention: EU
	Type of regulation: Secondary legislation
	Type of review: Statutory
	Date of implementation: 6 April 2006
	Date review due: 26 August 2021
	Recommendation: Keep
RPC Opinion: Green	

1a. What were the policy objectives and the intended effects?

The main objective of the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (S.I. 2006/599) (as amended) (“ROGS”) was to “*Maintain national standards of rail safety in line with EU requirements and strive for continuous improvement*”. Moreover, ROGS sought to consolidate the pre-existing national regulatory framework for railway safety in Great Britain into one set of regulations.

ROGS established, in Great Britain, the common European regulatory framework for railway safety as part of meeting the objective of Directive 2004/49/EC (“the Railway Safety Directive”) to develop a common approach to regulating railway safety across the EU and open up the market for rail transport.

Since coming into force in 2006, ROGS has been amended twice to implement revisions to the Railway Safety Directive and to improve the clarity of the regulations in a few places. This includes:

- The Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011 (S.I. 2011/1860); and
- The Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/950).

The changes introduced by the aforementioned regulations and their objectives, which were determined by the requirement to implement the provisions of the Railway Safety Directive, are set out below.

Summary of changes introduced by ROGS

The requirement to implement the provisions of the Railway Safety Directive provided an opportunity to consolidate the pre-existing national regulatory framework in Great Britain and make significant deregulatory changes in line with Government policy. In broad terms, the Government:

- replaced the requirement for persons in control of railway infrastructure to have prepared safety case as established in the Railways (Safety Case) Regulations 2000 (S.I. 2000/2688) with the requirement for operators and duty holders to develop a safety management system (“SMS”) covering their arrangements for managing a safe working environment. These SMSs would provide the basis for applications for safety certificates for train operators and safety authorisations for infrastructure managers on the mainline railway;
- applied similar principles for an SMS to non-mainline railways and transport systems adapted to reflect the nature and extent of those operations (but not requiring the full certification or authorisation process provided by the Railway Safety Directive for the purposes of European harmonisation, or any certification requirements for some operators such as heritage and tramways);
- dispensed with the statutory technical approvals regime under the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994 (S.I. 1994/157) to create a proportionate system of safety verification to control risks arising from the introduction of new/altered vehicles and infrastructure; and
- replaced the Railways (Safety Critical Work) Regulations 1994 (S.I. 1994/299) and introduced more goal-setting requirements for the management of safety-critical work.

Original objectives in 2006¹

In line with the changes outlined above, the objectives of ROGS in 2006 were as follows:

- **Objective 1:** (a) transfer the mainline² railway industry from a system of railway safety cases to a system of safety certification and authorisation; and (b) ensure the UK can respond to common safety targets in future;
- **Objective 2:** (a) reduce the number of railway operators that have to seek formal permission to work on the railway; (b) produce a minimum set of requirements for a SMS so that safety certification is more streamlined and better targeted, less bureaucratic and quicker for duty holders; and (c) redirect inspection towards checking on the ground that operators are controlling their operational risks;
- **Objective 3:** (a) transport operators and infrastructure managers working together to ensure system safety; and (b) operators identifying appropriate forms of cooperation that complement the measures they are taking to comply with their own safety duties;
- **Objective 4:** (a) remove the existing requirement on the non-mainline railway for formal approval by ORR before introducing new or altered works, plant or equipment;

¹ http://orr.gov.uk/__data/assets/pdf_file/0016/2554/rogs-evaluation-report-june10.pdf

² This requirement also applies to non-mainline duty holders where the operational speed limit is above 25km per hour.

and (b) replace this requirement so that duty holders obtain safety verification from an independent competent person; and

- **Objective 5:** (a) change the definition of ‘safety critical work’ from broad job titles to the actual tasks that are safety critical to the safety of the railway; (b) safety critical tasks must be carried out by a person assessed as being competent and fit for work; (c) remove the requirement for safety critical workers to carry a formal means of identification; and (d) require a change in approach from simply controlling the number of hours for preventing fatigue to one of requiring arrangements to be implemented that control risks such as the pattern of working hours and roster design.

Summary of changes introduced by Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011

The Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011 amended ROGS to implement revisions to the Railway Safety Directive made by Directive 2008/110/EC and Commission Directive 2009/149/EC. These included establishing new requirements and mechanisms for maintaining rail vehicles, including a requirement that no person may place in service or use a vehicle on the mainline railway unless it has an entity in charge of maintenance (“ECM”) assigned to it, and that the ECM is registered on a national vehicle register. It also made minor changes to the common safety indicators used by national safety authorities in collecting data on safety incidents, and the methods used to calculate costs during accidents.

New objectives introduced in 2011³

The new objectives introduced to ROGS in 2011 were as follows:

- **Objective 6:** establish an entity in charge of maintenance (ECM) regime applicable to the UK, which complies with the Railway Safety Directive (as amended) and is consistent with ROGS;
- **Objective 7:** clarify in Part 4 of ROGS that “work” includes voluntary workers; and
- **Objective 8:** establish a method of collecting accident data which complies with the Railway Safety Directive (as amended) and is consistent with ROGS.

Summary of changes introduced by the Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013

The Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013 implemented new requirements established by Commission Regulation (EU) 445/2011 on the certification of ECMs. This included the requirement for ECMs for all freight wagons to be certified by an accredited certification body. They also introduced other changes to ROGS as follows:

- Amended the definition of mainline railway;

³Amended by the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011 [S.I. 2011/1860] (<http://www.legislation.gov.uk/uksi/2011/1860/contents/made>)

- Removed the requirement for mainline operators to carry out safety verification under ROGS (this requirement was superseded by the equivalent common safety method for risk evaluation and assessment (Commission Implementing Regulation (EU) 402/2013);
- Removed the requirement for non-mainline operators to send annual safety report to ORR
- Amended the 28-day affected party consultation period to align with the four-month assessment period for safety certificates and safety authorisations; and
- Required controllers of safety critical work to have suitable and sufficient monitoring arrangements in place.

New objectives introduced in 2013⁴

The new objectives introduced to ROGS in 2013 were as follows:

- **Objective 9:** establish an ECM certification regime applicable to the UK, which complies with the Railway Safety Directive (as amended) and is consistent with ROGS by giving effect to European Commission Regulation (EU) 445/2011 on a system of certification of ECMs for freight wagons;
- **Objective 10:** provide clarification that those rail systems listed in Article 2(2) of the Railway Safety Directive are properly excluded from the mainline railway;
- **Objective 11:** remove the requirement for safety verification for mainline railway transport operators;
- **Objective 12:** remove the requirement for non-mainline transport operators to send annual safety reports to ORR;
- **Objective 13:** clarify that the monitoring arrangements of the controller of safety-critical work have to be '*suitable and sufficient*'; and
- **Objective 14:** make the 28-day consultation with an 'affected party' run concurrently with the four-month application assessment period for safety certificates and safety authorisations.

Overall objectives of ROGS (as amended)

Following the amendments made to ROGS, the consolidated objectives and intended effects of ROGS were as follows:

1. Bring together and streamline the regulatory landscape (by replacing three sets of regulations with one);
2. Secure greater proportionality to risk and reduce costs;
3. Make safety regulation of the railway more effective, better focused, more coherent, and with less bureaucratic processes; and

⁴ Amended by Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013 [S.I. 2013/950] (<http://www.legislation.gov.uk/uksi/2013/950/contents/made>)

4. Apply the same principles of regulation to the mainline railway and other transport systems (e.g. metros, tramways and heritage railways) but only in proportion to risk and the character of the transport system.

1b. How far were these objectives and intended effects expected to have been delivered by the review date?

The objectives and intended effects were expected to have been fully delivered by the review date. See impact assessments to the 2006⁵, 2011⁶ and 2013⁷ regulations and the 2016 PIR report.⁸

In 2006 the then Office of Rail Regulation (now Office of Rail and Road) (ORR) commissioned GL Nobel Denton, to assess whether ROGS had met their original objectives and if the regulations resulted in value for money. A final report, published in 2010⁹, concluded that the majority of objectives of ROGS had either been met or were on their way to being met. The 2016 PIR assessed whether the findings in the 2010 report were still accurate and evaluated the impacts of the amendments made to ROGS in 2011 and 2013. The overall conclusion from the 2016 PIR was that ROGS were working well and the objectives had largely been met with no unintended effects. It did not identify any concerns regarding a disproportionate effect on businesses with fewer than 50 employees.

2. Describe the rationale for the evidence sought and the level of resources used to collect it.

The Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011 inserted the review clause into ROGS (regulation 34A). This requires that by 26 August 2016 (and every five years thereafter) the Secretary of State:

- carries out a post implementation review (PIR) of the whole of ROGS;
- sets out the conclusions of the review in a report; and
- publishes the report.

The scope of this PIR is limited to the statutory requirement and concerns ROGS as originally made in 2006 and the subsequent amendments in 2011 and 2013. We did not consider the potential impact of changes made to ROGS as part of the UK's exit from the EU and which came into force after 31 December 2020 via the following legislation:

- The Rail Safety (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/837);
- The Railways (Safety, Access, Management and Interoperability) (Miscellaneous Amendments and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/1310);

⁵ http://www.legislation.gov.uk/uksi/2006/599/pdfs/uksiem_20060599_en.pdf

⁶ http://www.legislation.gov.uk/ukia/2011/2007/pdfs/ukia_20112007_en.pdf

⁷ http://www.legislation.gov.uk/ukia/2013/1171/pdfs/ukia_20131171_en.pdf

⁸ <https://www.gov.uk/government/publications/review-of-the-implementation-of-rogs-2006>

⁹ http://orr.gov.uk/_data/assets/pdf_file/0016/2554/rogs-evaluation-report-june10.pdf

- The Railways (Miscellaneous Amendments, Revocations and Transitional Provisions) (EU Exit) Regulations 2020 (S.I. 2020/786);
- The Railways (Interoperability) (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2020 (S.I. 2020/318); and
- The Railways (Interoperability) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/354).

These EU exit related changes can be summarised as follows:

- I. Correcting inoperabilities contained in ROGS related to EU exit, including references and obligations pursuant to the European Union Agency for Railways, the Court of Justice of the European Union and the European Commission;
- II. The introduction of a two-year limited recognition period for EU Part A safety certificates (issued in accordance with Directive 2004/49/EC) and Single Safety Certificates (issued in accordance with Directive (EU) 2016/798), commencing from 31 January 2020; and
- III. The reinstatement of Commission Regulation (EU) 445/2011 on a system of certification of entities in charge of maintenance for freight wagon, following the revocation of the Commission Regulation (EU) 2019/779 at the end of the EU exit transition period, save for cross-border services via the Channel Tunnel.

These amendments will only have been in force for eight months at the point of publication of this PIR, so their impact on industry could not be realistically assessed. However, stakeholders were made aware of these incoming changes and invited to comment on whether they foresee any impacts for their business.

A low level of evidence is considered to be proportionate for this PIR as the equivalent annual net cost to business (EANDCB) calculated for the 2006 Regulations¹⁰ was below £10m (£5.0m to £9.4m). This is currently below the threshold that would recommend a medium to high level of evidence as stated in official guidance¹¹. The 2016 PIR considered a medium to high level of evidence as the regulations had been amended in 2011 and 2013. The 2016 PIR concluded that ROGS (as amended) were meeting their original objectives and were fit for purpose, which also suggested that a low level of evidence was appropriate for this subsequent PIR. Moreover, no changes have been made to the requirements that apply to businesses in ROGS since 2013. This PIR, therefore, focuses on finding out whether ROGS are continuing to meet their objectives and whether stakeholders would like to see any specific changes to ROGS.

ROGS have been continuously monitored since the 2016 PIR via ORR's regulatory role in overseeing compliance with the requirements. This has largely been through ORR's assessment of applications for safety certificates from train operators and for safety authorisations from railway infrastructure managers for the mainline railway. ROGS provide the central plank of railway health and safety regulation and allow businesses to manage safety

¹⁰ https://www.legislation.gov.uk/ukSI/2006/599/pdfs/ukSIem_20060599_en.pdf

¹¹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879444/Magenta_Book_supplementary_guide_Guidance_for_Conducting_Regulatory_Post_Implementation_Reviews.pdf

risks appropriately for the size and complexity of their organisation. They have supported a steady improvement in standards of health and safety management.

3. Describe the principal data collection approaches that have been used to gather evidence for this PIR.

This PIR uses a qualitative evaluation approach using evidence collected by a stakeholder survey (the 2021 survey)¹² and a survey of ORR staff who enforce ROGS. Feedback from a workshop/webinar organised by the rail industry bodies (The Railway Safety and Standards Board, Rail Delivery Group and Railway Industry Association) was also considered as part of the evidence.

We did not ask stakeholders to quantify the financial impact of ROGS because the burden of doing so would be disproportionate for a low evidence PIR where the EANDCB value is below £10m. This is in accordance with official guidance. The 2016 PIR was unable to draw clear conclusions on the actual costs of ROGS compared to the original estimates because of limitations with both the 2006 impact assessment and the actual costs gathered in 2016. This is explained further in the 2016 PIR report and is summarised at 5b of this report. The lack of readily available quantitative data combined with the fact that ROGS have been amended twice as explained above would make a quantitative analysis extremely complex and burdensome for stakeholders.

The 2021 survey

Around 400 individuals were notified about the survey hosted on SurveyMonkey. Those notified represented a wide range of organisations, who were given 8 weeks to respond. The survey asked for general feedback from stakeholders on their views and experience of ROGS. There were 32 responses, distributed as shown in Table 1. The different sizes of the organisations that responded are shown in Table 2.

Table 1: Types of respondents to the 2021 survey

Type of respondent	Number of responses
Assessment body	0
Consultancy	8
Entity in charge of maintenance (ECM)	3
Freight operating company	2
Heritage railway	0
Independent safety assessor	1
Light railway	1
Local government body	1
Maintainer of vehicles or infrastructure	3
Metro system	0
Other	3

¹² http://orr.gov.uk/_data/assets/pdf_file/0018/20970/conclusions-from-rogs-pir-2015-survey.pdf

On track machine operator	1
Passenger group	0
Possession-only operator	0
Railway or operator under 40 km/h	0
Rolling stock manufacturer or company (including leasing companies)	2
Train operating company	5
Trade union	0
Tramway	2
Total number of respondents	32

Table 2: Size of organisation

Size	Number
Fewer than 10 employees	5
Between 11 and 50 employees	3
Between 51 and 250 employees	8
More than 250 employees	16

The survey was sent to everyone on DfT's ROGS consultation list which included all holders of mainline and non-mainline safety certificates and authorisations, entities in charge of maintenance, tramways, the heritage sector through the Heritage Railway Association and railway safety consultancies. It was also sent to members of the Rail Industry Health and Safety Advisory Committee.

Some groups did not respond to the survey (assessment bodies, heritage railways, metro systems, passenger groups and possession-only operators or trades unions). While there was a good spread of responses from those who have duties under ROGS the number of responses from duty holders represented around 9% of the total number of duty holders under ROGS.

There were a number of responses to the survey which commented on perceived weaknesses in the way that ROGS were applied in practice. 13% of respondents did not agree that ROGS provided an effective framework for safety regulation, but they did not provide detail or evidence to explain the basis of the comments made. All respondents were given a further opportunity to expand on their comments and provide further detail and explanation. Only one respondent submitted more information to support their initial comments.

4. To what extent has the regulation achieved its policy objectives? Have there been any unintended effects?

In the 2016 PIR the overall conclusion was that ROGS were working well and the objectives had largely been met with no unintended effects.

The 2021 survey responses indicate that ROGS continue to work well and the objectives continue to be met with no significant unintended effects. Respondents' comments on how well the 4 overall intended effects of ROGS are being met are set out below but, as mentioned previously some of the criticisms of ROGS were not sufficiently explained and are difficult to interpret without further detail. In many cases they indicate wider issues with the interface between safety and interoperability legislation and with industry standards. The Railways (Interoperability) Regulations 2011 (S.I. 2011/3066) (RIR) create the framework for the application of technical railway standards for rolling stock and infrastructure and are interrelated with ROGS. The Department is conducting a separate PIR of RIR, which is due to report in January 2022, and this will provide a further opportunity for us to consider the case for amending ROGS alongside any proposed changes to RIR in a holistic way.

Objective 1: bring together and streamline the regulatory landscape (by replacing three sets of regulations with one);

74% of respondents said the impact of ROGS had not changed since the 2016 PIR indicating that the benefits of streamlining regulations for health and safety on the railway were ongoing. 16% said that the impact of ROGS had changed since the 2016 PIR but not all respondents provided comments in support of their answer. 10% of respondents were unable to say whether there had been any change. The small number of comments provided on what had changed were difficult to interpret due to a lack of supporting information, but they indicated that guidance on the relationship between ROGS and industry standards would be helpful.

58% of respondents said that their organisation has experienced no issues in relation to the interaction between ROGS and other legislation. 42% disagreed although not all of these identified problems. No suggested changes to ROGS were identified but many cited differences between ROGS and other legislation, which is always an issue where legal requirements meet or overlap e.g. generic health and safety legislation and fire safety legislation. This highlighted that there are a variety of interfaces which are perceived to create confusion for duty holders. These included a lack of clarity as to how Commission Implementing Regulation (EU) No 402/2013 on the common safety method for risk evaluation and assessment; (often referred to as CSM REA) interacted with ROGS.

Other respondents said there was a lack of clarity or insufficient understanding about the interaction of ROGS with interoperability legislation and the National Technical Specification Notices (previously called Technical Specifications for Interoperability) which set legal standards to be met for interoperability. There were also comments about the lack of clarity on the relationship between ROGS and the Construction (Design and Management) Regulations 2015 and fire safety legislation. Improving ORR's guidance on ROGS and the relationship with other legislation and standards would help to address

these issues. We conclude that clearer guidance would assist businesses in understanding these interfaces.

Objective 2: secure greater proportionality to risk and reduce costs

74% of respondents either agreed or strongly agreed that costs of continuing to comply with ROGS were proportionate to the benefits indicating that this objective continues to be met. 10% indicated that the costs were not proportionate to the benefits. One respondent expressed the view that the costs of complying with ROGS had never been declared accurately and one thought the costs were low compared to other safety legislation. 16% neither agreed nor disagreed.

77% said that ROGS had not had a disproportionate impact on businesses with fewer than 50 employees. Of the 13% of respondents who thought that ROGS had a disproportionate impact, three of those had fewer than 50 employees. They did not all provide 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. 10% were unable to say whether there had been a disproportionate impact on businesses with fewer than 50 employees.

Objective 3: make safety regulation of the railway more effective, better focused, more coherent, and with less bureaucratic processes

74% of respondents either agreed or strongly agreed that ROGS provided an effective framework for railway safety in the UK. Comments indicated that the ROGS framework has encouraged the industry to develop effective risk management systems. 13% either disagreed or strongly disagreed and 13% neither agreed nor disagreed. Among those who disagreed the comments included calls for a consolidated version of ROGS incorporating all of the amendments in one document for ease of reference. Other negative comments pointed to a lack of clarity regarding the relationship between ROGS and standards and this chimes with views on the interaction between ROGS and other legislation which could be addressed by clearer guidance. 68% of respondents said that ROGS had had a positive or very positive impact on their organisation. 29% said the impact was neutral and 3% said the impact was negative or very negative.

Objective 4: apply the same principles of regulation to the mainline railway and other transport systems (e.g. metros, tramways and heritage railways) but only in proportion to risk and the character of the transport system

One respondent commented that ROGS broke down the responsibilities neatly for mainline and non-mainline railway, but a couple of respondents were critical and felt that there should be greater regulation of tramways to bring them into line with mainline railways. There was insufficient detail to understand the reasoning behind these comments and no further information was provided so it is not possible to draw firm conclusions from them for this PIR. It should also be noted that no metro or heritage railways responded to the survey. Further comments on tramway and metro regulation are contained in section 6.

Have there been any unintended effects from ROGS?

77% of respondents said that there had been no unintended effects from ROGS. Of the 23% who disagreed with this one respondent pointed to the difference in regulation between light rail /metro systems and the mainline railway as an unintended effect. It should be noted that ROGS deliberately provided for different but proportionate regulation for metro /tramway compared to the mainline railway, therefore, this is not considered to be an unintended effect. One respondent said that there had been additional costs caused by the Commission Regulation (EU) 445/2011 but these had been offset by the benefits. Another commented that there was a lack of clarity as to what “good” looked like but noted that ORR’s RM3 programme had gone some way to provide clarity. One respondent questioned whether some organisations were fully aware of their duty holder responsibilities under ROGS. These comments point to a need for greater clarity on the interfaces between different parties rather than unintended effects and this could be addressed through clearer guidance.

Should ROGS be amended?

The 2021 survey also asked if ROGS should be amended. 26% of respondents said ROGS should remain unchanged with one respondent noting that ROGS had worked successfully over previous years. 71% said that ROGS should remain but with some changes made and one respondent said they should be replaced but did not suggest what should replace them. 23% of respondents who answered that some changes should be made gave no supporting comments. Those who provided comments did not identify any specific areas of ROGS which should be changed other than a request for some flexibility over the validity of the safety certificate to align it with franchise renewal, but this was not considered to be a significant problem in practice. Because we were unable to identify any deficiencies in the regulations themselves based on these comments, we invited stakeholders to provide further explanation to support their answers. Only one stakeholder responded to this and raised the need for greater clarity in respect of ROGS and related regulations. They also asked for a consolidated version of ROGS so that the changes made for EU exit could be seen in one document. The lack of specific proposals for change or evidence to support changes to ROGS meant that we were unable to identify where the regulations could be improved but the comments indicated that the following issues could be made clearer:

- the relationship between ROGS and industry standards;
- the need to ensure that low probability, high consequence events are considered;
- how the CSM risk assessment process links with ROGS;
- the links between ROGS and the requirements of the Railways (Interoperability) Regulations 2011 (RIR);
- how the ROGS requirements apply to freight end users who operate freight facilities; and
- how the duty of cooperation should be achieved.

This PIR therefore concludes that the issues raised above could be addressed through improved guidance and there is no evidence to support changes to ROGS at this point in time. Improved guidance would also address the issues raised at the industry body webinar which discussed the need for greater awareness of roles under ROGS, and for clarity over the interface between ROGS and RIR. It also recommends producing a consolidated version of ROGS as guidance for businesses.

Survey of ORR staff

ORR also carried out an internal survey of its staff who work with ROGS. This survey did not generate a large response, but the following points can be drawn from it. The majority of respondents felt that ROGS provide an effective framework for railway safety in the UK and are well established. There were a few suggestions for improving ROGS and these focussed on adjusting ORR's assessment process. One commented that the process was too repetitive and another suggested that at renewal stage there should be an increased focus on assessing continuing improvement in safety management. There is scope for these points to be considered when ORR next reviews its internal guidance on the assessment process. There was a criticism of the fact that ROGS treat all railways as mainline by default. ORR has discretion to exclude transport systems from the mainline railway requirements in ROGS, and publishes a list of transport systems that have been excluded. On balance, ORR considers that a proportionate approach has been established whereby ORR considers applications to be added to the approved list. This enables an appropriate degree of scrutiny to ensure that the railway concerned is appropriately excluded from mainline railway requirements.

There were mixed views about whether the relationship between ROGS and other legislation is clearly set out in guidance and about whether the relationship is sufficiently integrated. The recommendations in this PIR for improved ROGS guidance should address these issues.

ORR has drawn on its experience of overseeing compliance with ROGS and has suggested two areas for further consideration by DfT. ORR supported the proposals on human factors that were included in the EU's Fourth Railway Package¹³, specifically Commission Delegated Regulation (EU) 2018/762 which established common safety methods on safety management system requirements, however these have not been implemented in the UK. The ORR considers that these human factors elements merit consideration for inclusion in ROGS when there is an opportunity to amend them. The second point is a suggestion that there should be a review of the requirement in ROGS for duty holders to submit annual safety reports to ORR to establish whether the value provided by these reports could be achieved by non-legislative means.

5a. Please provide a brief recap of the original assumptions about the costs and benefits of the regulation and its effects on business.

The 2006 impact assessment assumed that there would be costs in moving from the safety case regime to the safety management system/safety certification/safety authorisation regime but over time there would be cost/time savings as less information would be required. It predicted total costs to business of between £5.0m to £9.4m per year. It assumed that standards of safety would be maintained and there would be health and safety benefits in moving to the new regime. The 2011 and 2013 impact assessments assumed that the amendments to ROGS

¹³ https://ec.europa.eu/transport/modes/rail/packages/2013_en

would: provide better clarity; reduce time and costs in some areas; and maintain or improve standards of safety.

The 2006 impact assessment made the assumption that there would be health and safety benefits from the following, but it was not possible to quantify these benefits:

- the refocusing of ORR inspectors' priorities away from a paper based assessment to proactive inspection of duty holders' delivery of safety on the ground;
- bringing tramways into scope of ROGS;
- changing from a regulated "approvals" regime to safety verification and refocusing of ORR inspectors' priorities away from approvals and towards inspecting;
- extension of scope of the safety critical work requirements (additional tasks to be considered safety critical and more workers to be covered under the new regime); and
- bringing people movers, metros, and heritage and minor railways into the scope of safety management systems.

5b. What have been the actual costs and benefits of the regulation and its effects on business?

The 2016 PIR found that overall ROGS were continuing to meet their objectives and were continuing to deliver benefits. The 2016 PIR examined the original 2006 impact assessment estimated costs as well as the 2011 and 2013 impact assessments estimates arising from the amendments to ROGS and compared these with a combination of qualitative and quantified cost data.

It found that in some cases the 'actual' quantified costs and benefits were greater than the estimates and in some cases they were less. There were limitations on the 'actual' quantified values provided in 2016 because: most figures were estimates and, therefore, only indicative; the response rate was low; there was uncertainty as to whether some operators had understood what they were being asked to quantify; and it was not possible to calculate savings in relation to certain requirements on non-mainline operators because of changes to ROGS in 2013 which meant they no longer applied to them.

Because of these limitations it was not possible for the 2016 PIR to draw any firm conclusions or provide any definitive explanation of the variances between the actual costs and the 2006 estimates. It concluded that the variances may have been caused by; organisations entering or leaving the rail market and their costs differing from the estimates provided in 2006; the variations in how different businesses counted the costs i.e. what they included; the lack of clarity in the 2006 impact assessment as to what was included or excluded in the estimated costs, which affected what costs respondents were asked to provide for the 2016 review; and difficulty in separating costs that relate specifically to ROGS from the cost of complying with other health and safety legislation.

This PIR is a light touch review which is considered proportionate given that the 2016 PIR concluded that overall ROGS were meeting their objectives, were fit for purpose, and no changes had been made to ROGS since then. Therefore, it has not included an impact assessment.

As mentioned previously in part 4, the 2021 survey asked respondents to indicate how strongly they agreed or disagreed with the statement "From experience, I believe that costs associated with continuing to comply with ROGS have been proportionate to the benefits", 74% of respondents either agreed or agreed strongly with this statement and 10% disagreed or strongly disagreed. One respondent commented that the cost of ROGS had never been declared accurately and one thought the costs were low compared to other safety legislation. 16% of respondents neither agreed nor disagreed.

6. Assessment of risks or uncertainties in evidence base / Other issues to note

Assessment of risks or uncertainties in evidence base

In line with a light touch review, a qualitative assessment has been carried out. However, there is uncertainty about whether the response sample was sufficiently representative. Of approximately 350 organisations who must comply with the requirements of ROGS only 32 sent responses to the survey and this is approximately a 9% response rate. The response rate limits the ability to draw firm conclusions.

Although the 2021 survey generated engagement from stakeholders the information provided was not sufficiently detailed for specific conclusions. Respondents were asked for further information but only one respondent provided further comments. However, the comments do indicate where improvements to guidance could be made.

Other issues to note

A separate PIR of RIR is underway. Given that many of the comments made in the 2021 survey refer to the relationship between RIR and ROGS we think it is appropriate for conclusions about whether ROGS should be amended to also take into account the conclusions from the RIR PIR allowing them to be considered in a holistic way. The RIR PIR has specifically asked for views on the relationship between ROGS and RIR so we will revisit the case for amending ROGS as part of the RIR PIR analysis. The emerging findings from the RIR PIR will also be considered when ORR updates its ROGS guidance.

Two issues have been identified by ORR as meriting further consideration during any future consideration of changes to ROGS.

ORR supported and was instrumental in the inclusion of human factors in the European Commission Delegated Regulation (EU) 2018/762 establishing common safety methods on safety management systems. It requires railway undertakings and infrastructure managers to take a systematic approach to the management of human and organisational factors within the safety management system to optimise human performance and reduce risks. This Regulation was not transposed in the UK and ORR is strongly of the view that these human factors elements should be incorporated into UK legislation at the earliest opportunity.

ORR also suggests that there should be a review of the ROGS requirement for duty holders to produce an annual safety report and submit it to ORR. This issue was raised at the rail industry webinar and ORR would support a proper review of the costs and benefits of this

specific legal requirement in its current form. The review should consider options for securing the value of annual safety reports via non-legislative means, with a view to possible changes when there is an opportunity to amend ROGS.

Two respondents expressed concerns that there was 'less effective' regulation of the light rail/tramway sector. They did not cite specific concerns and no supporting evidence was provided despite a further invitation to provide more detail. It is, therefore, not possible to address these concerns in the PIR report. However, ORR conducted a review of the regulatory framework for tramways and its long-term strategy for supervision of the sector in line with recommendation 9 of the RAIB report into the overturning of a tram at Sandilands Junction¹⁴. ORR has also published a strategy for regulation of health and safety risks for tramways and worked with the tramway sector to establish a Light Rail Safety and Standards Board (LRSSB). The LRSSB is looking at developing a list of approved independent competent persons to improve consistency and increase confidence in the sector. ORR has been supporting the LRSSB as it seeks to improve light rail safety standards in the UK, including producing new guidance for the sector. ORR will carry out a review of the LRSSB later in 2021 with a view to publishing findings in 2021/22.

7. Lessons for future Impact Assessments

An impact assessment was not carried out as part of this PIR but we would reiterate the comments made in the 2016 PIR as follows. The 2016 PIR identified that future impact assessments should clearly set out the factors that determine the estimated costs and should clearly state what is and what is not included. This would enable a consistent approach to be taken when businesses are asked to provide actual cost data and enable better comparisons to be made between estimated and actual costs.

8. What next steps are proposed for the regulation?

On the whole, the 2021 survey responses indicate that ROGS continue to work well, are meeting their original objectives and have not led to any significant unintended consequences. Although 71% of respondents said that ROGs should remain but with amendments there were no specific suggestions as to what those changes should be and how they would address the issues identified.

Other key findings are:

- The relationship between interoperability requirements and National Technical Specification Notices (previously called TSIs) and ROGS could be made clearer;
- The legal requirements in ROGS are no longer as clear after significant changes to legislation at the end of the EU exit transition period (this is about clarity of the legal documentation not the content);

¹⁴ Available at:
https://assets.publishing.service.gov.uk/media/5de79643e5274a06dee23a10/R182017_201022_Sandilands_v2.2.pdf

- ORR's ROGS guidance could cross-refer to other hazard specific legislation to support duty holders developing a more holistic approach to their safety management system;
- The relationship between ROGS and the CSM risk assessment could be explained more clearly; and
- There is a lack of clarity on duties arising from ROGS for freight end users.

These findings do not in themselves require legislative change and can be dealt with through publishing clearer guidance for duty holders. Therefore, this PIR report recommends that ROGS remain in place unamended as the objectives still remain valid.

The following recommendations are made in respect of improving guidance for stakeholders.

- ORR should update its ROGS guidance to explain clearly the legal framework and requirements following the legislative amendments made at the end of the EU Exit transition period (this is in hand and updated version of ORR's guide to ROGS is expected to be published in late Summer 2021);
- A consolidated version of ROGs should be made available to duty holders. This should include the changes that took effect from the end of the EU Exit transition period;
- ORR should review its ROGS guidance to provide greater clarity:
 - on the relationship between interoperability, National Technical Specification notices and ROGS;
 - for freight end users where ROGS affect their activities;
 - on the relationship between the CSM risk assessment process and ROGS; and
 - on the relationship between ROGS and other legislation (e.g. HSWA) and the relationship with industry standards.

This report also recommends that:

- DfT and ORR should consider how the human factors requirements which were developed as part of the amendments to the Railway Safety Directive under the EU's Fourth Railway Package, but have not been implemented in the UK, might be incorporated via a future amendment to ROGs; and
- DfT and ORR should 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.

These 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.

Future Impacts

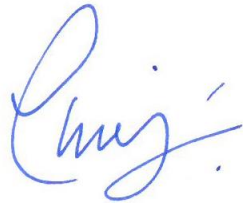
The PIR recognises that, generally, the regulations are working well and there is no need for any immediate action to remedy any perceived defects because these can be addressed by guidance. However, in light of the UK leaving the EU, there is scope to look afresh at retained EU legislation. As such, DfT is planning on exploring in more detail any changes that could be made in conjunction with the Railways (Interoperability) Regulations 2011 (S.I. 2011/3066) if there is a case to do so. A PIR is currently being undertaken on these Regulations and is due to be published in 2022. The findings from that questionnaire will inform whether any reforms are required and, due to the overlap of the regimes where safety is affected by standards, will also consider any changes that might also be made to ROGS. These discussions will take place in the knowledge that it is possible for the safety regime in Great Britain to diverge from EU rules following the UK's departure from the EU, which to date has been consistent with the EU. This means stakeholders have seen no difference in the regime since 31 January 2020 as the status quo has been preserved. Discussions on any potential changes will take place in due course.

Sign-off For Post Implementation Review:

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the policy.

Signed:

Date: 30.09.2021

A handwritten signature in blue ink, appearing to read 'Chris', is written over the 'Signed:' label.