

EXPLANATORY MEMORANDUM TO

THE RAILWAYS AND OTHER GUIDED TRANSPORT SYSTEMS (SAFETY) (AMENDMENT) REGULATIONS 2011

2011 No. 1860

1. This explanatory memorandum has been prepared by the Office of Rail Regulation (“ORR”) and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011 (“the Regulations”) have been made in order to transpose Directive 2008/110/EC on the safety of the Community’s railways and Directive 2009/149/EC on Common Safety Indicators (“CSIs”) and common methods to calculate costs of accidents. Both Directives amend the Railway Safety Directive (2004/49/EC). The Railway Safety Directive was transposed for Great Britain through the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (“ROGS”) (S.I. 2006/599) and the Railways (Access to Training Services) Regulations 2006 (“ATS”) (S.I. 2006/598). It was also transposed for the United Kingdom through the Railways (Accident Investigation and Reporting) Regulations 2005 (S.I. 2005/1992) (“RAIR”).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 The Regulations implement some parts of Directive 2008/110/EC of the European Parliament and of the Council (“the amending Directive”), which amends Directive 2004/49/EC (“the Railway Safety Directive”). The amendments are mainly concerned with:
 - assigning an entity in charge of maintenance (“ECM”) to a railway vehicle and ensuring that the ECM is registered on the National Vehicle Register (“NVR”), and
 - establishing a formal maintenance system by which an ECM must ensure that the rail vehicles for which it is responsible are safely maintained.
 - 4.2 ROGS (and also ATS and RAIR) have already implemented the requirements of the Railway Safety Directive.
 - 4.3 The Regulations also implement Directive 2009/149/EC (“the CSI Directive”) of the European Parliament and of the Council regarding CSIs and common methods to calculate costs of accidents. The CSI Directive also amends the Railway Safety Directive.
 - 4.4 A transposition note detailing how each provision of the Directives is implemented can be found at Annex A.
 - 4.5 A Parliamentary scrutiny history relating to the consideration of these Directives is attached at Annex B.

- 4.6 As well as implementing the requirements of the European Directives, the Regulations also make changes to:
- Part 4 of ROGS (safety critical work), to clarify that safety critical work carried out by volunteer workers is included in the meaning of “work”;
 - Regulation 27 of ROGS (appeals), to reflect the role of the Administrative Justice and Tribunals Council in supervising statutory inquiries.
- 4.7 The Regulations also pave the way for a future statutory instrument to implement the remaining elements of the amending Directive. These relate to the ECMs for freight wagons. The amending Directive requires that an ECM for freight wagons obtains a certificate to show that it has a satisfactory system of maintenance. However, details of the system of certification and its start date were not known until the European Commission (“the Commission”) adopted a measure establishing the system for ECM certification. The UK Government will implement the ECM certification requirements now that the Commission has adopted the measure. The Commission adopted Commission Regulation 445/2011 (“the ECM Regulation”), which was published in the Official Journal of the European Union on 11th May 2011.

5. Territorial Extent and Application

- 5.1 This instrument applies to Great Britain.
- 5.2 Responsibility for railways in Northern Ireland is devolved to the Northern Ireland Assembly and is administered by the Department for Regional Development (Northern Ireland) (“DRDNI”). DRDNI will implement the requirements of the amending Directive and the CSI Directive. A separate amendment to the bi-national regulation S.I. 2007/3531 that covers the Channel Tunnel is being prepared by the Intergovernmental Commission (“IGC”) using its powers under the Treaty of Canterbury (1986). The IGC is the safety authority¹ for the Channel Tunnel.

6. European Convention on Human Rights

- 6.1 ORR has made the following statement regarding Human Rights:

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

The Railway Safety Directive

- 7.1 The Railway Safety Directive is one of a number of Directives introduced under the Common Transport Policy of the European Union (“EU”). Through this policy, the EU wishes to revitalise the railways in Europe through the creation of a single market, and by improved access to the market for rail services.

¹ “Safety authority” is defined in the Railway Safety Directive as meaning the national body entrusted with the tasks regarding railway safety in accordance with that Directive or any bi-national body entrusted by Member States with these tasks to ensure a unified safety regime for specialised cross-border infrastructures.

- 7.2 Representatives of the freight wagon community lobbied the EU institutions to change the Railway Safety Directive. They wanted a system that would help provide assurance of the safety of freight wagons across EU Member States and in December 2006, the Commission tabled a package of revisions to the Common Transport Policy. The driving force behind these revisions was to improve cross acceptance for freight wagons. Cross acceptance is the mutual recognition by Member States of each other's national rules, processes, and authorisations. This is to allow free movement of rail services in an integrated common railway area. The legislative package included amendments to the Railway Safety Directive.
- 7.3 The amending Directive establishes a common system for maintenance arrangements across EU Member States. Under its requirements, all vehicles need to be assigned an ECM. This should be before a vehicle is placed in service or used on the network. The ECM must be registered on the NVR of the Member State in which it is first placed in service. The NVR is a database of rail vehicles operated in each Member State whose establishment is required under Directive 2008/57/EC on the interoperability of the rail system within the Community. The ECM must also establish a system of maintenance, which ensures that the vehicles for which it is responsible are safe to run on the network.
- 7.4 In respect of the maintenance of freight wagons only, the ECM will need to hold an ECM certificate. The ECM certificate will provide assurance that the maintenance requirements of the amending Directive are being met for any freight wagon for which the ECM has responsibility. This certificate will be valid throughout the EU.
- 7.5 The amending Directive requires that a certification body certifies each ECM for freight wagons. The certification body has to be either the national safety authority (for Great Britain this is ORR) or an accredited or recognised body.
- 7.6 The Commission has published the ECM Regulation, which will set out a system of certification of ECMs for freight wagons.
- 7.7 The Regulations implement the amending Directive except for that part which relates to the certification of ECMs for freight wagons. They therefore implement the requirement to assign an ECM to a vehicle and register the vehicle on the NVR before a vehicle is placed in service or used on the network. They also require that the ECM sets up a system of maintenance.

Common Safety Indicators (“CSIs”)

- 7.8 Article 5(2) of the Railway Safety Directive (as amended) allows the revision of Annex I to include common definitions of the CSIs and methods to calculate costs of accidents. CSIs are collected to help assess the achievement of common safety targets (“CSTs”). CSTs will define the minimum safety levels and safety performance that must at least be reached by the railway system as a whole in each Member State.
- 7.9 The European Railway Agency (“ERA”) has been working with national safety authorities to define the CSIs listed in Annex 1 and the CSI Directive reflects the outcome of these discussions. ERA has been established to provide EU Member States and the Commission with technical assistance in the fields of railway safety and interoperability.
- 7.10 The CSI Directive contains the amended Annex 1 to the Railway Safety Directive. The amended Annex 1 will replace the original version of Schedule 3 to ROGS. It aims to improve reporting and data quality and improve consistency in Eurostat data. (Eurostat is the

- 7.11 The old Schedule 3 to ROGS contained CSIs that related to the costs of accidents borne by the railway. The new Schedule 3 changes the emphasis of CSIs from the impact of accidents on the railway to the impact of accidents on society. The aim of this is to help measure safety performance and make the economic impact assessment of common safety targets more effective. The relevant data are already collected in Great Britain.

Safety critical work

- 7.12 Various people on the railway and other guided transport systems carry out “safety critical” tasks. Persons carrying out “safety critical” tasks include:
- employees of undertakings required to have a safety management system, safety certificate or authorisation under Part 2 of ROGS;
 - contractors and sub-contractors;
 - agency staff;
 - the self-employed; and
 - volunteers.
- 7.13 “Safety critical tasks” are tasks that could significantly affect the health or safety of persons on a transport system. ROGS (regulation 23) provides a list of these tasks.
- 7.14 In reviewing ROGS to transpose the two Directives, ORR has also taken the opportunity to consider the current railway safety framework in the light of lessons learned from operating under the current regime. It has concluded that it would be useful to clarify, in Part 4 of ROGS, that “safety critical” work applies to voluntary workers as well as to employees and contractors. “Safety critical work” is defined as those “safety critical” tasks that are carried out by various people on the railway and other guided transport systems. The provisions of Part 4 already apply to voluntary workers, for example, the majority of those who work on heritage railway systems. So this textual change in the Regulations will have no material impact, but it will meet concerns of representatives of the heritage industry by removing confusion on who the requirements apply to. ORR considers that anyone who carries out a “safety critical” task should have the necessary competence and fitness to perform that work. The Regulations are therefore based on the risk factors and not employment status.

The Administrative Justice and Tribunals Council

- 7.15 Regulation 27(4) of ROGS states that if the Secretary of State appoints someone to determine an appeal on his behalf, that hearing shall be a statutory inquiry for the purposes of the Tribunals and Inquiries Act 1992. The Tribunals and Inquiries Act 1992 allows regulations to be made by the Lord Chancellor, following consultation with the Administrative Justice and Tribunals Council, which govern the procedure followed in statutory inquiries or classes of such inquiries.
- 7.16 The Regulations insert a new regulation 27(4A) in ROGS, which incorporates the duty of the Administrative Justice and Tribunals Council to review and report on statutory inquiries. This duty was introduced in Schedule 7 of the Tribunals Courts and Enforcement Act 2007,

Consolidation

- 7.2 The Regulations amend ROGS. There are currently no plans to consolidate the original or amending regulations..

8. Consultation outcome

- 8.1 A ten-week public consultation period ran from 29th March 2010 to 7th June 2010. Whilst the Government Code of Practice on Consultations states that “under normal circumstances, consultations should last for a minimum of 12 weeks”, it recognises that this may not always be possible, particularly where deadlines are driven by Treaty commitments with the EU. On this occasion, the consultation period was therefore regrettably reduced to 10 weeks to allow for the required Parliamentary process before the Regulations can come into force. This was to enable the transposition of the amending Directive to be aligned with the transposition of Directive 2008/57/EC, which had a deadline of 19th July 2010. However, transposition of Directive 2008/57/EC had to be delayed as the European Commission was publishing an Implementing Recommendation on this Directive, which had implications for the UK’s transposition.
- 8.2 Those consulted included organisations in the rail industry, private wagon owners, consumer groups (including passenger and disabled persons interest groups), trade associations, the Heritage Railway Association, other government departments, trade unions and the devolved administrations.
- 8.3 A total of 27 responses were received. The consultation document² asked 10 specific questions and a full analysis of the consultation responses is available from ORR’s website.³ However, a summary of the key outcomes is explained below.

Exclusion of heritage vehicles from ROGS

- 8.4 The amending Directive allows Member States to exclude heritage vehicles that run on national networks and heritage and tourist railways that run on their own networks.
- 8.5 Just over half of respondents agreed that we should not change the current position on the exclusions in ROGS. Of the rest, the main objections were that the few heritage lines that run at speeds greater than 40 km/h should be excluded from requiring a safety certificate or safety management system.
- 8.6 ORR’s policy is that the current position should remain. Those operating on the mainline network and those operating on non-mainline infrastructure at speeds greater than 40 km/h are required to have a safety certificate. Those operating on non-mainline infrastructure at speeds below 40 km/h are required to have a safety management system, but no certificate. The current national provisions are based on risk and are consistent with other provisions and regulatory mechanisms in place. Since operators are already subject to these requirements, no additional regulatory burden is created.

Alternative measures

² <http://www.rail-reg.gov.uk/upload/pdf/regulations-2010-consultation-mar10.pdf>
³ <http://www.rail-reg.gov.uk/server/show/nav.62>

- 8.7 The amending Directive gives Member States the discretion, in certain circumstances, to identify the entity in charge of maintenance and to certify it using alternative measures to the ones prescribed. This could apply to:
- a) vehicles registered in a non-EU Member State and maintained according to the law of that country;
 - b) vehicles which:
 - i. are used on networks or lines with a track gauge different from the track gauge on the main rail network within the European Union; and
 - ii. meet the requirements to have a satisfactory system of maintenance by international agreements with non-EU Member State countries;
 - c) vehicles excluded from the mainline railway, as defined in ROGS, and special transportation or military equipment requiring a permit issued by the national safety authority (ORR) on an ad hoc basis prior to being placed in service. In this case derogations can be granted for periods no longer than five years.
- 8.8 Just under half of respondents were aware of circumstances in which vehicles registered and maintained according to the laws of a non-EU country enter Great Britain. These are for heritage and museum stock or vehicles from USA/Japan/China on rare visits for test runs. Also, wagons under the former International Wagon Regulations (Regolamento Internazionale Veicoli, or RIV) that have been accepted as complying with international standard UIC503 will still be operating under their country's maintenance rules when they enter Great Britain.
- 8.9 Just over half of respondents said that they were aware of circumstances in which vehicles with track gauges other than standard gauge enter Great Britain. These are for narrow gauge railways, museum, or heritage railways, and do not run on the mainline. These railways are excluded from the mainline provisions of ROGS.
- 8.10 None of the respondents said that they were aware of circumstances in which military equipment or special transport may require an ad hoc permit to be delivered prior to being placed in service in Great Britain.
- 8.11 Based on the responses received, the UK Government does not intend introducing any alternative measures for identifying, or subsequently certifying, the ECM. Most of the vehicles identified by consultees would normally be excluded from the scope of ECM certification. However, any that may be caught would be subject to the usual ECM certification requirements under ROGS.

Investigating accidents involving tramways in Scotland

- 8.12 Around three quarters of respondents agreed that RAIB should be the investigating body for accidents on tramways in Scotland. The others did not express an opinion. Whilst it remains the Government's intention to extend RAIB's powers to include tramways in Scotland, the delays to the introduction of the Edinburgh Tram service mean that it would not be possible in practice for this power to be used immediately. For better regulation reasons, the Government has therefore decided to remove the extension from these Regulations and will consider their future implementation at a point closer to the intended date of operation.

Definitions

- 8.13 Around three quarters of respondents commented on the new definitions.

“Vehicle”

- 8.14 Some respondents suggested that the definition should be aligned with that in the draft Railways (Interoperability) Regulations consulted on at the same time as the Regulations.
- 8.15 Part (a) of the revised definition is already included in ROGS as the definition of “vehicle”. It includes vehicles that do not operate on the mainline, such as trams. Part (b) of the definition has been added to align it with the definition of “vehicle” in the Regulations transposing Directive 2008/57/EC. This is so that there is consistency between the two sets of Regulations.

“Entity in charge of maintenance” and “keeper”

- 8.16 Many respondents asked for clarification on who can become an ECM. The Regulations provide that anybody who fulfils the criteria can be an ECM. Some asked whether “exploiting the vehicle as a means of transport” includes an operating lease. The ORR guidance, “A Guide to ROGS” will be revised to include guidance on the revisions to ROGS. Clarification on these issues will be given in the guidance.

“Maintenance rules”

- 8.17 A small minority of respondents thought that the term “maintenance rules” should be deleted and replaced by “national safety rules”. The term “maintenance rules” has been retained in the Regulations because it is used in the amending Directive. “National safety rules” has a wider meaning and is not restricted to the context of maintenance.

“Maintenance file”

- 8.18 Some respondents said that “technical and management information” can be intangible and embedded in organisational structures and the skills of staff. They suggested that the word “all” should therefore be deleted.
- 8.19 The definition has been changed to include the word “written”. This limits the information to items that have been recorded.

The date for registering vehicles on the NVR

- 8.20 Since the Regulations will enter into force after 9th November 2010, a date for registering vehicles used domestically on the NVR has not been included.

Safety critical work

- 8.21 Two-thirds of respondents agreed with the proposal to clarify the meaning of “work” as including “voluntary work”. ORR has taken forward this proposal.

Other comments

- 8.22 Some respondents took the opportunity to comment on other aspects of ROGS, which were not consulted on. ORR will consider whether further changes to ROGS may be necessary as it develops the second instrument transposing the amending Directive.
- 8.23 ORR has made some further changes to the Regulations as a result of responses to the consultation. These are:

- The definition of “placed in service” (and cognate expressions) in regulations 5(6) and 6(5) of ROGS has been deleted. A new definition of “placed in service”, harmonised with the definition in the Regulations transposing Directive 2008/57/EC, has been inserted in regulation 2(1) of ROGS. This is to make clear the meaning of “place in service” in new regulation 18A of ROGS.
- Regulation 31 of ROGS, which deals with the defence of due diligence, has been extended to include new regulation 18A(2). This is to help mitigate any concerns that a duty to **ensure** vehicles are safe to run on the network is
 - a. too onerous; and
 - b. does not take into account the possibility that the duty holder has taken all reasonable steps or due diligence to avoid committing the offence under regulation 18A(2).
- Paragraph 2 of schedule 3 of ROGS now specifies that ORR will report on significant accidents only in its annual safety report. This is instead of including an option for ORR to report on all accidents.

9. Guidance

9.1 A Guide to ROGS⁴ already exists and will be revised as soon as possible to include the ECM requirements.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business. There are no disproportionate impacts on costs as the Regulations build on existing arrangements. The costs envisaged to these parties are the costs involved with familiarisation with the Regulations. These costs are negligible.

12. Monitoring & review

12.1 The UK Government’s policy objective in transposing the amending Directive ensures that an ECM is identified for all vehicles registered in the NVR.

12.2 ORR’s approach to maintaining health and safety on Britain’s railways is to ensure that the industry manages risks satisfactorily, and continuously improves its health and safety performance as far as is reasonably practicable. ORR monitors the safety performance of duty holders and investigates incidents and complaints to find out why failures have occurred and if the law has been broken.

⁴ <http://www.rail-reg.gov.uk/server/show/nav.1511>

12.3 This statutory instrument paves the way for a second statutory instrument, which transposes the rest of the amending Directive. The Regulations will be reviewed and monitored within five year of coming into force along with those in the second instrument.

13. Contact

Stefano Valentino at the Office of Rail Regulation (Tel: 020 7282 2003 or email: stefano.valentino@orr.gsi.gov.uk) can answer any queries regarding the instrument.

Transposition Note

Transposition Note for: (i) Directive 2008/110/EC of the European Parliament and of the Council (“the amending Directive”) amending Directive 2004/49/EC on safety on the Community’s railways (“the Railway Safety Directive”) ; and (ii) Commission Directive 2009/149/EC amending the Railway Safety Directive as regards Common Safety Indicators and common methods to calculate accident costs (“the CSI Directive”).

This Transposition Note outlines which elements of the amending Directive are implemented in Great Britain by the Railways and Guided Transport (Safety) (Amendment) Regulations 2011 (“the Regulations”), which amend the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (“ROGS”). The Regulations only implement those parts of the amending Directive that do not rely on the adoption of a measure on the certification of entities in charge of maintenance of freight wagons, required to be adopted by the Commission by 24th December 2010. Those parts of the amending Directive that will be transposed following adoption of the Commission measure have also been indicated.

The Transposition Note also sets out how the CSI Directive, amending the Railway Safety Directive as regards Common Safety Indicators and common methods to calculate accident costs, is implemented in Great Britain by the Regulations.

Article	Objective	Implementation	Responsibility
The amending Directive			
Article 1(1) to (7)			
1(1)	The exclusion of: (i) heritage vehicles that run on the national network (subject to compliance with national safety rules), and (ii) separate heritage, museum and tourist railways, are added to the exclusions from scope in Article 2(2) of the Railway Safety Directive. Both exclusions are discretionary.	As for the first exclusion, this has not been adopted. All vehicles which operate on the national network remain within scope of the definition of Railway Safety Directive by falling within the definition of “mainline railway” in Regulation 2(1) of ROGS. The second exclusion is already implemented in respect of heritage and tourist railways in Regulation 2(1) of ROGS. In the definition of “mainline railway”, part (a) excludes the operation of separate local use, heritage and tourist railways, which removes them from scope of the implementation of the amending Directive.	Secretary of State
1(2)	Incorporation of new definitions of “keeper”, “entity in charge of maintenance” and “vehicle” into the Railway Safety Directive.	Regulation 4(2) inserts these definitions into Regulation 2(1) of ROGS in substantially the same form as they appear in the amending Directive. ROGS already includes a definition of “vehicle”. The definition in the amending Directive has been included as part (b) of this definition, and applies to the mainline railway only, since the term “mainline railway” is used where only the Railway Safety Directive’s requirements apply.	Secretary of State

Article	Objective	Implementation	Responsibility
		A definition of “National Vehicle Register” is also included since the requirement that an entity in charge of maintenance is registered on such a register is implemented in Regulation 4(4) (introducing new Regulation 18A(1) to ROGS).	
1(3)	The term “wagon keeper” is replaced with “keeper” in the Railway Safety Directive.	ROGS does not include the term “wagon keeper”, so introduction of the term “keeper” (as per Regulation 4(2)) achieves this.	Secretary of State
1(4)	Amendments are made to Article 5(2) of the Rail Safety Directive, concerning the adoption of a measure that revises the Annex on the Common Safety Indicators.	The revised Annex was adopted in the CSI Directive, transposition of which is described below.	European Commission
1(5)	Development of Common Safety Methods (“CSMs”): The amending Directive expands on the original text on CSMs in Article 6 of the Railway Safety Directive.	The national safety authority is involved in the European Railway Agency’s working groups to develop CSMs.	European Railway Agency
1(6)	Development of Common Safety Targets (“CSTs”): The amending Directive expands on the original text on CSTs in Article 7 of the Railway Safety Directive.	The national safety authority is involved in the European Railway Agency’s working groups to develop CSTs.	European Railway Agency
1(7)	Wording concerning safety certificates in the Railway Safety Directive has been amended to change the emphasis on the role of a railway undertaking as a provider of transport services rather than as an operator.	The wording in ROGS on safety certificates reflects the revised language already. The revised language does not create new obligations. No transposition required.	Secretary of State
1(8) – Incorporation of new Article 14a (Maintenance of Vehicles) into the Railway Safety Directive			
14a(1)	Requirement that, prior to being placed in service or used on the network a vehicle must have an entity in charge of maintenance (“ECM”) assigned to it which is registered on the National Vehicle Register in accordance with Article 33 of Directive 2008/57/EC (“the Interoperability Directive”).	Regulation 4(5) introduces new Regulation 18A(1) which prohibits a person from placing in service or using a vehicle unless these requirements are met.	Secretary of State
14a(2)	A railway undertaking, infrastructure manager or keeper may be an ECM.	Regulation 4(2)(b): the definition of “entity in charge of maintenance” includes a transport undertaking, an infrastructure manager and a keeper.	Secretary of State
14a(3)	Requirement for the ECM to establish a system of maintenance for the vehicles for which it is in charge.	Regulation 4(5) introduces new Regulation 18A(2) and (3) which incorporates the requirement for an ECM to establish a system of maintenance.	Secretary of State
14a(3)	A requirement for the ECM to carry out maintenance itself or through contractors.	This provision does not require specific transposition in the Regulations because, as a matter of law, an ECM is free to carry out	Secretary of State

Article	Objective	Implementation	Responsibility
		maintenance through its own efforts or by using third party contractors.	
14a(4)	ECMs to be certified by an accredited or recognised body or by the national safety authority to perform maintenance on freight wagons.	Transposition to be addressed in a separate instrument, now the Commission measure has been adopted.	Secretary of State
14a(4)	Sets out the accreditation or recognition process if the certifying body appointed by the Member State is not the national safety authority	Transposition to be addressed in a separate instrument, now the Commission measure has been adopted.	Secretary of State
14a(4)	Provision for ECMs that are railway undertakings or infrastructure managers to have confirmation of compliance with the ECM certification requirements (in Article 14a(5)) noted on the certificates specified in Articles 10 or 11, as applicable, of the Railway Safety Directive.	Transposition to be addressed in a separate instrument, now the Commission measure has been adopted.	Secretary of State
14a(5)	Measure to be adopted by the Commission by 24 th December 2010 setting out the details and scope of the ECM certification system. This will include the date of application of the certification system and transition period, as well as details of the maintenance system and the format and validity of the certificate.		European Railway Agency (recommendation) Commission (measure) Office of Rail Regulation (implementation)
14a(5)	Commission to review the measure, based on a recommendation by the European Railway Agency, by 24 th December 2018.		European Railway Agency (recommendation) Commission (review)
14a(6)	ECM certificates to be valid throughout the Community.	Transposition to be addressed in a separate instrument, now the Commission measure has been adopted.	Secretary of State
14a(7)	European Railway Agency to evaluate certification process and submit a report to the Commission within three years of the entry into force of the Commission's measure on ECM certification.		European Railway Agency
14a(8)	Permitted derogations from the obligations to: (a) identify the entity in charge of maintenance; and (b) certify it through alternative measures. The derogations are discretionary.	Following consultation, it was determined that the derogations from the obligation to identify, and subsequently certify, the entity in charge of maintenance would not be transposed.	Secretary of State
Article 1(9) to (13)			
1(9)	Amendments to Article 16(2)(a), and (g) and deletion of Article 16(2)(b) of the Railway Safety Directive, requiring the safety authority to	The Railways (Interoperability) Regulations 2006 assigned these tasks to the national safety authority and defined the national safety	Secretary of State (Regulations) Office of Rail Regulation

Article	Objective	Implementation	Responsibility
	authorise the placing in service of structural subsystems within the scope of the Interoperability Directive, and that vehicles are duly registered on the National Vehicle register and that safety information therein is kept up-to-date. These amendments and deletion update references to earlier interoperability directives that were consolidated by the Interoperability Directive.	authority as the Office of Rail Regulation in Great Britain (excluding the Channel Tunnel). The requirements will continue by being included in the Regulations which transpose the Interoperability Directive.	(authorisations and supervision)
1(10)	Obligation on national safety authority for any derogations adopted under article 14a(8) to be reported in its annual safety report.	No derogations have been implemented. See Article 14a(8) above.	Secretary of State (Regulations) Office of Rail Regulation (to include derogations in annual safety report)
1(11) and (12)	Amends Article 26 which allows the Railway Safety Directive's annexes to be adapted to technical and scientific progress, with reference to EU Committee rules and procedures	No action required	European Commission
1(13)	Deletion of paragraph 3 from the requirements in Annex II to notify the Commission of national safety rules relating to the authorisation of placing in service and maintenance of new and substantially altered rolling stock that is not yet covered by a Technical Specification for Interoperability. (The requirement is now included in Article 17(3) of the Interoperability Directive).	No action required to implement the deletion of paragraph 3.	Secretary of State
Article 2 – Implementation and Transposition			
2	Requires Member States to introduce provisions to implement the requirements contained in the amending Directive and notify the Commission of transposition by 24 th December 2010.	Save in respect of those provisions of the amending Directive that rely on the Commission measure to be adopted by 24 th December 2010, this transposition note sets out those provisions of the amending Directive that are implemented in Great Britain by the Regulations. As described above, the regulations implementing the Interoperability Directive will implement Article 1(9) of the amending Directive.	Secretary of State (Regulations) Department for Transport (notification)
Article 3 – Entry into force			
3	States the entry into force date of the Directive (original publication date in the Official Journal of the European Union: 23 rd December 2008).	No action required.	
Article 4 – Addressees			
4	Addresses the Directive to Member States (for implementation).	No action required.	
The CSI Directive			
Article 1			

Article	Objective	Implementation	Responsibility
1	Annex I of the Railway Safety Directive is replaced by the Annex in the CSI Directive.	No action required.	
Article 2			
2(1) and (2)	Requires Member States to introduce provisions to implement the CSI Directive and notify the Commission of transposition by 24 th December 2010.	Regulation 4(11) replaces Schedule 3 of ROGS with a new Schedule 3 that substantially reproduces, with minor modifications, the provisions of the Annex in the CSI Directive.	Secretary of State (Regulations) Department for Transport (notification)
Article 3			
3	States the entry into force date of the Directive as 20 days after publication date in the Official Journal of the European Union (27 th November 2009).	No action required.	
Article 4			
4	Addresses the Directive to Member States (for implementation).	No action required.	
Annex			
	This is the text of the new Annex of Common Safety Indicators and common methods to calculate accident costs.	As mentioned, regulation 4(11) replaces Schedule 3 of ROGS with a new Schedule 3 that substantially reproduces, with minor modifications, the provisions of the Annex.	Secretary of State (Regulations)

Parliamentary Scrutiny History

Directive 2009/149/EC

There is no Parliamentary scrutiny history for Commission Directive 2009/149/EC as European Commission Directives adopted under implementing powers delegated to the Commission by the Council are not subject to Parliamentary scrutiny except in exceptional cases.

Directive 2008/110/EC

The proposal which resulted in Directive 2008/110/EC of the European Parliament and of the Council was the subject of combined Explanatory Memorandum (“EM”) 17038/06, 17039/06 and 17040/06 submitted to the UK Parliament by the Department for Transport on 25th January 2007.

House of Commons Scrutiny

The House of Commons European Scrutiny Committee considered the EM on 7th February 2007. The Committee recommended that the document was not legally or politically important and cleared it from scrutiny (9th Report to the House, Session 2006/2007, reference 28193).

House of Lords Scrutiny

The House of Lords Select Committee on the European Union referred the EM to its Sub-Committee B following its 1275th sift of 30th January 2007. Sub-Committee B considered the EM on 5th February 2007 and a letter was sent to the Minister requesting further information on the outcome of negotiations. A Ministerial letter was sent to the Lords Committee Chairman on 7th June 2007 to provide an update on the progress made in negotiations. Sub-Committee B considered this letter on 18th June 2007 and a further letter was sent to the Minister on 19th June requesting a further update on negotiations. A Ministerial letter was sent to the Lords and Commons Committee Chairmen on 19th November 2007 to bring both Committees up to date with the outcome of negotiations ahead of a planned political agreement between EU Transport Ministers at the 29th & 30th November Transport Council. Sub-Committee B considered the letter on 26th November 2007 and cleared it from scrutiny without further correspondence.