

Title: Post implementation review of the Train Driving Licences and Certificates Regulations 2010 PIR No: ORR1702 Lead department or agency: Office of Rail and Road Other departments or agencies: Department for Transport Contact for enquiries: Paul Carey, Office of Rail and Road, 020 7282 2067	Post Implementation Review
	Source of intervention: EU
	Type of regulation: Secondary legislation
	Type of review: Statutory - other
	Date of implementation: 06/04/2010
	Date review due (if applicable): 21/05/2018
Summary: Intervention and Review	RPC Opinion: Not Applicable

1a. What were the policy objectives and the intended effects? (If policy objectives have changed, please explain how).

The Train Driving Licences and Certificates Regulations 2010 ('TDLCR') is legislation that brings in to force the requirements of European Commission Directives 2007/59/EC (on the certification of train drivers) (the Directive) and 2014/82/EU (the amending Directive) in Great Britain. It introduces a licensing and certification system for many train drivers in Great Britain.

The Directives forms part of the European Commission's plan to make Europe's railways more efficient and competitive. The main objectives of both the Directives and by extension TDLCR are to:

- make it easier for cross-border rail services to operate;
- create a more flexible job market for train drivers;
- introduce consistent standards for drivers across Europe; and
- increase public confidence in the rail system through the requirement for certain groups of train drivers to hold a licence.

The TDLCR were intended to help achieve this by:

- making it easier for train drivers to change jobs between employers and Member States;
- ensuring every driver's fitness to drive and general driving competence is assessed against minimum requirements that apply in all Member States;
- ensuring driving licences and certificates are recognised by everyone in the railway industry;
- allowing employers in Great Britain to make sure that licences issued by other Member States are valid;
- creating a 'single certification' model for railway undertakings and infrastructure managers to use in the training and development of drivers; and
- reinforcing management of driver skills and knowledge as a key part of an operator's safety management system (SMS).

The TDLCR place duty holders under a number of obligations which are summarised below.

- Infrastructure managers (IM) and railway undertakings (RU) must not deploy a person to drive a train unless that person is authorised by ORR to do so by a train driving licence issued by ORR.
- An IM or RU must not deploy a person to drive a particular type of train on a particular type of infrastructure unless it authorises that person to do so through a certificate.

- The RU or IM must issue this certificate to a train driver where the train driver meets the conditions of being employed as train driver and publish the application procedures for obtaining, renewing or issuing a duplicate certificate.
- The train driver must undergo medical and competence assessments to meet the requirements for holding a licence and certificate and undergo these checks at minimum specified frequency in order to check that the conditions are still being met.
- Where these checks call a train driver's competence into question the RU or IM must immediately take any necessary action and the RU or IM may suspend or withdraw a train driver's certificate. The train driver must also report to the RU or IM any concerns about his own fitness to drive trains.
- ORR may suspend or withdraw a train driving licence or prohibit a driver from driving a train in the UK. The train driver may appeal the decision to withdraw a licence or certificate.
- ORR must keep a register of doctors, psychologists, trainers and examiners who it recognises are competent to carry out periodic checks on train drivers meeting the requirements of the TDLCR and maintain a register of train drivers.

On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

1b. How far were these objectives and intended effects expected to have been delivered by the review date? If not fully, please explain expected timescales.

These objectives and intended effects will not be fully delivered by the review date of May 2018 because the deadline for full implementation of TDLCR (and the requirement for all existing drivers to be licensed) does not arise until October 2018.

2. Describe the rationale for the evidence sought and the level of resources used to collect it, i.e. the assessment of proportionality.

The review clause in Regulation 40 of TDLCR was inserted by the Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013. It requires that by the end of each review period (in this case 21 May 2018), the Secretary of State:

- carries out a review of these Regulations;
- sets out the conclusions of the review in a report; and
- publishes the report.

ORR is carrying out this review on behalf of the Secretary Of State and the report must:

- set out the objectives intended to be achieved by the regulatory system established by the Regulations;
- assess the extent to which those objectives are achieved; and
- assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

The review, so far as is reasonable, must also have regard to how the Directive is implemented in other member States.

A low evidence, low resource PIR is appropriate for the following reasons:

- The review is occurring before the regulations are fully implemented on 29 October 2018 which means it is not possible to fully assess whether the intended effects have been delivered.
- The costs in the original impact assessment¹ were £17m over 20 years (2009 prices) and this is below the estimated impact of £5m p.a. above which a more intensive review is required.

ORR conducted a survey in 2017 (the 2017 survey) of stakeholders who had legal duties under the regulations and other interested stakeholders. In total, ORR consulted 44 organisations and received 11 responses. Of the businesses most directly affected by the regulations i.e. the RUs, around a quarter responded to the survey. ORR raised awareness of the survey via a railway industry forum at which the majority of RUs are represented before the survey was opened.

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

This PIR uses an impact evaluation approach, which looks at data collected from the 2017 survey on whether the TDLCR is achieving its intended objectives, the ORR's own experience of the TDLCR processes and comparison with other Member States. The Commission has started its evaluation of the Directives but requested that we did not use the data it had collected so far in this PIR.

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

Achieving policy objectives

While good progress is being made to implement TDLCR and the ORR's expectation is that implementation will be completed by the deadline of October 2018, it is difficult at this stage of implementation to draw robust conclusions about whether a relatively novel regime which has not been fully rolled out is meeting its original objectives. There are 3 factors behind this:

- the small number of survey responses (approximately 25% of total number of operators with duties under the TDLCR) and uncertainties around the data set from the survey which is explained in section 6';
- a significant proportion of respondents who gave 'could not say' responses to questions on whether the objectives for the regulations had been delivered; and
- the limited extent within Great Britain to which the objectives for cross-border services can be delivered through the licensing and certification of British train drivers.

Some comments did identify scope for improving the benefits delivered by the TDLCR.

Creation of flexible labour market

The results suggest that the impact on the flexibility of train driver labour market by the TDLCR has been mixed. 36% of respondents said that the TDLCR were not achieving their aim of creating a flexible labour

¹ http://www.legislation.gov.uk/uksi/2010/724/pdfs/uksiem_20100724_en.pdf.

market. 27% agreed it was creating a flexible labour market and 9% said only to a limited extent. 27% said they could not say. 63% of respondents felt that the TDLCR was not having a significant effect on the ease of employing train drivers from other domestic railway undertakings. 72% of respondents said that the question of the ease of employing train drivers from other EU states did not apply.

Data from the Rail Delivery Group on train drivers employed in Great Britain suggests that generally job mobility of domestic train drivers remains limited as approximately 70 train drivers moved to another train operator between September 2016 and September 2017. There is also no data on how many train drivers currently carry out driving for more than one railway undertaking.

Making it easier to operate cross-border services

There are only two railway undertakings operating cross-border services in Great Britain due to its geographic position and the resulting limited number of opportunities for international services.

Therefore this question is only directly relevant to a small number of operators and is likely to be the reason for 72% of respondents (including one respondent who operates cross-border services) answering that they could not say whether the TDLCR were making it easier to operate cross-border services. 27% of respondents (including one respondent who operates cross border services) agreed it was making it easier to operate cross-border trains.

Introducing common standards for train drivers across member states

The responses were mixed to the questions on this issue. 36% of respondents said that the TDLCR were not achieving their aim of introducing common standards for train driver across member states. 27% agreed it was introducing common standards and 9% said only to a limited extent. 27% said they could not say.

Respondents were generally neutral on the questions of time needed to recruit train drivers. 54% of respondents said that requirements of the licence and the certificate had no significant effects on the time needed to recruit train drivers. The majority of respondents (72%) said the medical requirements of the licence have had no effect on the time needed to recruit train drivers. Comments indicated that, when recruiting existing drivers from other companies, they were continuing to use industry template competence and fitness record documents that were already in use before the TDLCR took effect.

Great Britain's geographic position and very limited employment of other EU nationals in train driving are likely to have influenced the responses to this question as the opportunities to benefit from the effects of common standards are likely to be limited. The fact that Great Britain has long established cross-industry standards on driver competence and fitness may also explain the reported limited impact here and why some RUs said that they continue to refer to previous domestic industry arrangements when employing existing train drivers.

Increased public confidence in the rail system through the statutory licensing of train drivers

The responses were mixed to the questions on this issue. 45% of respondents could not say if the TDLCR were achieving their aim of increased public confidence in the rail system through the statutory licensing of train drivers. 36% of respondents said it had not increased public confidence while 18% it had achieved this aim to a limited extent. Positive comments noted that more robust medical requirements could only benefit safety, there was scope for improvements to deliver greater benefits and the TDLCR provided a level of assurance about drivers from other operators. One respondent noted that it was more professional and easier to audit but had not improved anything. On the negative side, other operators noted that their own standards were equivalent to or higher than those under the TDLCR so it had not

delivered additional benefits; and another operator noted that it could not see any safety benefits from the regulations.

The responses and comments indicate at this stage uncertainty about whether the TDLCR were achieving their aim but there are some positive comments about the safety benefits being realised now and also opportunities to deliver this aim in the future.

Overall costs and benefits of the TDLCR

The responses on this issue were mixed. 36% of respondents reported that the overall costs of the TDLCR were not proportionate to the benefits of the TDLCR. 27% said that the costs were proportionate. 36% could not say or did not give an answer. Respondents reported varying levels of incurred or ongoing costs likely to be due to the differing numbers of train drivers employed by operators. The costs are attributed to the increased frequency of medical examinations and to an increase in administrative costs (which we believe to be associated with managing the application process and adapting existing competence and fitness management systems to generate the documentation prescribed in the legislation). One respondent said that there might be value in the industry considering how existing competence management systems could be better integrated into the TDLCR to improve overall benefits to the industry. Further evaluation on the costs is set in section 6.

ORR's TDLCR application processes and guidance

Comments and responses were generally favourable about the ORR processes for applying for train driver licences and for ORR's "recognition"² for those carrying out train driver assessments. However many respondents had comments about specific aspects of the application system in particular about the effectiveness and user-friendliness of the on-line portal. Other comments noted the importance of transparency of guidance around appeals to either ORR or DfT in cases where licences or certificates are suspended or withdrawn.

Implementation in other EU states

A review of implementation in other member states shows that the TDD have been implemented in broadly similar ways in other member states. Differences have been identified in the scope of application of the TDD between member states but most have limited the scope to just train drivers.

The Commission is currently evaluating the impact of the TDD and has already conducted a preliminary survey across member states. A comparison with the results of the ORR survey and that completed by the Commission show broadly similar conclusions at this stage of only partial implementation of uncertain benefits delivered by the Directive.

Unintended effects

The results of the survey did not show any unintended effects from the TDLCR.

² Regulation 23 requires ORR to keep and maintain registers of those carrying out medical or competence assessments under the TDLCR.

5a. Please provide a brief recap of the original assumptions about the costs and benefits of the regulation and its effects on business (e.g. as set out in the IA)

The costs in the original impact assessment³ assessed costs for 3 different implementation options. The option that aligns closest with the provisions of the TDLCR estimates net costs to the industry of £17,113,000 over 20 years (2009 prices). These costs would arise from administering the new regime, license production and increased frequency of medical assessments. Only one railway undertaking (an international operator) was anticipated to make savings. The IA for the domestic regulations also found that while the market liberalisation benefits were not to be ignored, there was little evidence to suggest that these would produce a marked difference. Furthermore, it would be difficult to weigh such benefits in monetary terms. It should be noted that the directive was not necessarily designed to create benefits in every single member state but rather across the EU single market.

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

Respondents gave a range of costs for both implementation and recurring costs. As the survey asked respondents to give a range, the mid-point of the ranges has been used to provide an estimate of total costs of the TDLCR and the estimation of costs has been included in the evidence base.

The costs of implementation are assumed to be the total cost incurred by the RU to achieve compliance with the TDLCR by the deadline of 29 October 2018. Only 2 respondents had fully implemented the requirements of the TDLCR and they reported costs of under £5,000. Of those who had partly implemented the TDLCR, 2 respondents reported estimated implementation costs of under £5,000. 2 respondents had expected implementation costs of £5,001 – £25,000; 2 respondents estimated costs of between £25,001-£50,000 and 1 respondent estimated full implementation costs of £50,001 - £100,000.

Respondents gave a range of estimated recurring annual costs of compliance. 2 respondents reported annual costs of under £5,000, 3 respondents reported annual costs of between £5,001 – £25,000; 2 respondents reported annual costs of between £25,001 – £50,000 and 1 respondent estimated annual costs of over £100,000.

Total costs for implementation and ongoing costs based on the survey responses are estimated at £21,176,026 over 20 years. Some of the comments noted that there had been an increase in costs due to administrative costs and more frequent medical assessments.

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

A meaningful comparison of costs at industry-level with those in the regulatory impact assessment carried out in 2008⁴ has not been possible for the reasons set out below.

Firstly as mentioned above when the survey was carried out, implementation was only partly complete and therefore the figures may not be sufficiently representative. Only 2 respondents to the survey said that they had completed implementation but these responses were at the low end and should not be taken to be representative.

³ http://www.legislation.gov.uk/ukxi/2010/724/pdfs/ukxiem_20100724_en.pdf.

⁴ The impact assessment in the explanatory memorandum to the TDLCR estimates the costs to the industry to be £17,113,000 over 20 years (2009 prices) <http://www.legislation.gov.uk/ukxi/2010/724/memorandum/contents> .

Secondly, respondents were asked to give a range and it is not clear where the costs actually fall within each range and recurring costs may of course change each year. ORR also considers that there is a possibility that initial set-up and ongoing costs have been aggregated because most organisations affected by the TDLCR have not yet completed implementation and will be incurring implementation and on-going costs at the same time.

Thirdly, uncertainty about whether response sample was sufficiently representative. Of approximately 44 organisations who must comply with the requirements of the TDLCR, Only 9 organisations provided data on the costs above (although one respondent did not provide an answer to one of the questions on costs) and this is approximately 20% response rate. The response rate limits the ability to draw firm conclusions from this data for the whole industry because the figures are not normalised for numbers of train drivers or the size of the organisation. Furthermore, although the majority of responses were from a cross-section of franchised operators, no responses were received from either freight operators or open access operators and not all cross-border operators responded to the survey.

Although the estimated costs are higher than those in the impact assessment, the reasons for this are likely to be broadly consistent with the conclusions of that initial impact assessment relating to increased frequency of medical assessments and administrative costs. Some respondents commented on the increase in costs.

7. Lessons for future Impact Assessments

Any future PIR's should not take place until after full implementation of the regulations to enable more detailed review of the costs incurred to see whether they are in line with the original assumptions in the IA.

In order to more fully assess the achievement of the objective around public confidence in the rail system, a study of passenger perceptions could be undertaken following full implementation.

8. What next steps are proposed for the regulation (e.g. remain/renewal, amendment, removal or replacement)?

These are regulations which transpose a Directive into law in Great Britain and as they have not yet been fully implemented, and while we remain under the obligation to implement said Directive, it is proposed that the TDLCR should remain in their current form.

ORR has identified that some improvements to its systems, processes and guidance can be made which will help improve implementation and could help reduce some administration costs. These internal improvements are not considered to be urgent and can be facilitated without changing the regulations. There will be an opportunity to review the regulations again in 5 years' time, as specified in the review clause of this regulation. Any proposed recommendations from the review will be consulted on with industry stakeholders before deciding the next appropriate steps, including whether any changes to the regulations should be made.

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: Michael Humphries (Environmental Analysis)

Date: 31/01/2018

Evidence Base

Please provide additional evidence in subsequent sheets, as required.