

Title: Post implementation review of the Train Driving Licences and Certificates Regulations 2010 [S.I. 2010/724]	Post Implementation Review
PIR No: DfTPIR0064	Date: 19/05/2023
Original IA/RPC No: N/A	Type of regulation: Domestic
Lead department or agency: Department for Transport	Type of review: Statutory
Other departments or agencies: Office of Rail and Road	Date measure came into force: 06/04/2010
	Recommendation: Amend
Contact for enquiries: bertie.bricusse@dft.gov.uk	RPC Opinion: N/A

1. What were the policy objectives of the measure?

1. The Train Driving Licences and Certificates Regulations 2010 (S.I. 2010/724) (TDLCR) transposed, for Great Britain (GB), the Directive on the certification of train drivers operating locomotives and trains (2007/59/EC). The 2007 Directive established a common regime for licensing and certifying train drivers in the European Union (EU) with the aim of harmonising regulatory regimes and enabling drivers to move freely between Member States and employers. There is also a body of directly applicable EU tertiary legislation made under the 2007 Directive, which deals with detailed aspects of the train driving licences and certificates regime (see Annex A for list of instruments that constitute the regime).
2. The 2007 Directive reflected many of the existing arrangements in GB for managing train driver competence and fitness. Therefore, some of the TDLCR requirements that were introduced from 2010 onwards (over a transition period of eight and a half years) were already being followed by train operators. This point is reflected in the comments received from stakeholders as part of the evidence provided for this Post Implementation Review (PIR).
3. In GB, the Office of Rail and Road (ORR) is the authority responsible for issuing train driving licences if it is satisfied that the conditions for a licence are met. Railway undertakings and infrastructure managers (usually passenger and freight train operators) are under a legal requirement to ensure their train drivers have valid licences. The conditions that need to be met before ORR can issue a licence include a requirement to pass medical, psychological fitness, and general professional competence examinations and be at least 20 years old. The licence remains valid for 10 years subject to the driver meeting ongoing medical and psychological fitness examinations. ORR is also responsible for establishing, and keeping up to date, a register of train driving licences and registers of persons who are recognised to carry out medical and psychological fitness examinations, and training and examination functions.
4. TDLCR also created a train driving certificate regime which places responsibilities on railway undertakings and infrastructure managers to issue drivers with certificates if satisfied that the conditions for a certificate are met. Certificates cover the rolling stock and infrastructure that a driver is trained to drive, and authorised to drive on, which includes route knowledge and operating rules and procedures. The licence on its own is not evidence that a driver is fit to drive a train; the driver must have both a valid licence and a certificate to drive a train.

5. The Secretary of State has a limited range of responsibilities under TDLCR, specifically to consider appeals in respect of certain decisions made by ORR in relation to a licence. ORR is responsible for appeals in respect of certain decisions made by an operator in relation to a certificate.
6. In Northern Ireland, where train driving licensing policy is devolved, there are equivalent regulations in place; The Train Driving Licences and Certificates (Northern Ireland) Regulations 2010 (S.I. 2010/132). These regulations are outside the scope of this PIR.
7. The overall objective of the 2007 Directive, which was implemented in GB by TDLCR, was to make it easier for train drivers to move from one Member State to another. This would make it easier for train drivers to move from one operator to another, and generally promote mutual recognition of driver qualifications throughout railway sector stakeholders. This was to be achieved by creating an EU wide system of licensing and certification based on common requirements. In summary, the original objectives of TDLCR were as follows:
 - I. make it easier for cross-border rail services to operate;
 - II. create a more flexible job market for train drivers;
 - III. introduce consistent standards for train drivers across Europe; and
 - IV. increase public confidence in the rail system through the requirement for certain groups of train drivers to hold a licence.
8. The objectives of TDLCR do not have a target date for completion, as the scale against which they are assessed is continuous in nature and may change over time. This can be measured using qualitative and quantitative evidence.

2. Scope of the PIR

9. The scope of this PIR was to assess whether the original objectives of TDLCR (see paragraph 7) are being achieved and to what extent. The PIR also assesses the impact of TDLCR on businesses in terms of the costs and benefits. All provisions of TDLCR (as amended) were therefore under review as part of the PIR.

3. What evidence has informed the PIR?

10. The original impact assessment for the measure estimated net costs to the industry (largely falling on the train operators) of £17.4m over 20 years (2009 prices). This is below the threshold of £5m per annum, above which a more resource intensive review would be required. These costs were estimated to arise from administering the new regime and the increased frequency of medicals¹. This PIR asked businesses to estimate the costs of complying with TDLCR, including the estimated total annual cost to the organisation (see section 4 of the further information sheets). Responses confirmed that TDLCR have increased costs for freight and train operating companies (F/TOCs), although due to respondents providing limited estimates of actual costs, it is difficult to establish whether costs are in line with the original impact assessment.
11. The first PIR of TDLCR was undertaken in 2017, which was a year before the regulations were fully implemented and before the full impact of the requirements could be assessed. This meant that it was difficult for stakeholders to provide views on the full impact of the regulations as they had not

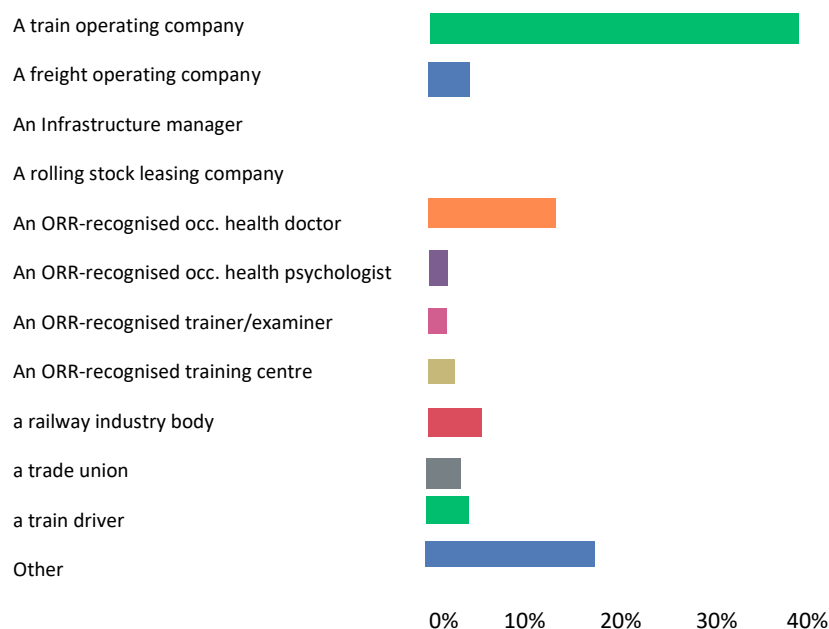
¹ Please see the original impact assessment for TDLCR 2010 contained in the explanatory memorandum for more information on the basis for this assessment: <https://www.legislation.gov.uk/uksi/2010/724>

had sufficient time to assess this. The response rate to the survey in 2017 was, therefore, relatively low and many respondents were unable to comment on the full impact of TDLCR. The combination of it being too early to assess impacts and limited evidence from the survey made it difficult to draw robust conclusions about whether the regime was meeting its objectives.

12. In contrast, this PIR (2022) has been undertaken 4 years after the full implementation of the regulations, which has enabled stakeholders to provide clearer evidence from their experience of the licensing regime. It has also involved a more in-depth survey of stakeholders impacted by TDLCR, including targeted engagement with key stakeholder groups to explore themes that emerged from the survey and clarify some of the points raised.
13. For this PIR, an online publicly available survey containing 47 questions on TDLCR (referred to as “the survey” throughout this report) was used to engage both industry and the wider public, including individual train drivers, for views. The survey was open between 10 May 2022 to 6 July 2022. The launch of the consultation was promoted via an online webinar, ORR’s social media platforms, ORR’s website and through direct e-mails.
14. A stakeholder list of 318 organisations who have been directly engaged in the administration of TDLCR were invited to complete the consultation survey. This included:
 - the train and freight operating companies;
 - ORR recognised occupational health doctors and psychologists;
 - ORR recognised training and examination centres;
 - trade unions;
 - industry organisations such as RSSB and Rail Delivery Group; and
 - members of ORR’s Railway Industry Health and Safety Advisory Committee.
15. The survey initially received 68 responses. 13 out of the 68 responses were either completely blank (‘nil responses’) or had only answered the ‘about you’ section and none of the substantive parts of the survey. These responses were not included in the analysis phase. Nevertheless, there was a higher response rate to this PIR with just over 50% of train and freight operators who employ train drivers responding in 2022 compared to 25% in the 2017 survey. This PIR also included additional external research of public opinion to assess the extent to which objective d) at paragraph 7 has been met.
16. There were responses from 15 of the 24 train operating companies and 3 of the 8 freight operating companies. There were 9 responses from ORR-recognised occupational health doctors, which is a relatively small number of the total number of 78 doctors who are currently on ORR’s register. Registration with ORR does not require a doctor to conduct a minimum number of examinations and it is therefore likely that some doctors on the register will have very limited experience of the TDLCR requirements. However, those who responded indicated that they had direct experience of carrying out medical examinations under TDLCR and their responses were therefore considered to be a good representative sample of doctors. The number of training and examination centres who responded was low at only 3 but this is likely to be because most of the recognised training and examination centres are also train operating companies, most of which only selected ‘TOC’ when describing their type of organisation. What this means is that comments on the TDLCR requirements for training and examination centres were included within the responses from many of the TOCs who are also recognised as training and examination centres. Overall, this indicated that the evidence on which analysis was made in this PIR was moderately representative of the industry, as it included a significant number of the train operators on whom the requirements of the regime fall, albeit with respect to occupational professionals it was probably less representative of the industry.

17. 55 responses from the survey were included in the analysis phase. Within this report we have rounded responses to the nearest full percentage point to assist readability. An effect of that is the report indicates a total response rate exceeding 100% in some places. The distribution of respondents to the survey is shown in Figure 1 below.

Figure 1



18. This PIR was also informed by some research of 1,000 members of the general public to gather evidence specifically to consider whether TDLCR is succeeding in its aim to increase the public’s confidence in the rail system. This research was conducted by Sapio Research from May to June 2022 using an e-mail invitation to a representative sample of the general public followed by an on-line questionnaire.

3. To what extent have the policy objectives been achieved?

19. The PIR is specifically required to address whether the regulations continue to meet their original objectives. The survey, therefore, asked four questions on whether TDLCR is achieving its objectives. To a large extent the original objectives are no longer relevant in that they were primarily related to facilitating the movement of train drivers between EU member states and establishing a common framework for train driver competence and fitness across the EU. This provides a context for the responses to the four questions summarised below.

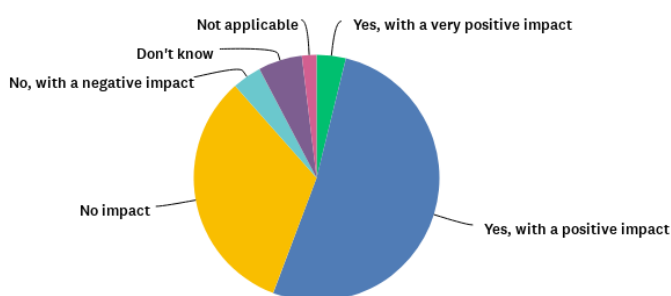
20. As the original objectives were drafted when the UK was a Member State of the EU, the Department for Transport (DfT) will be seeking to review the original objectives with the involvement of industry in due course.

Is TDLCR achieving its aim of introducing common standards for train drivers?

21. 56% of respondents answered yes with positive or very positive impacts. 33% thought there had been no impact and 4% answered no with a negative impact. 8% did not know, or answered not applicable. These responses are illustrated in Figure 2 below.

Figure 2

Q8 Overall, do you think that TDLCR is achieving its aim of introducing common standards for train drivers?



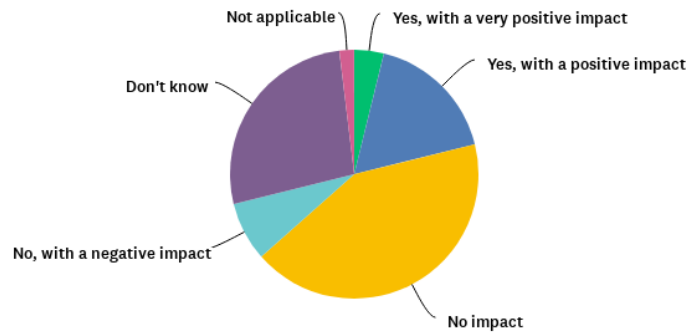
22. The train driving certificate, which drivers are required to have along with a licence in order to drive a train, was highlighted as a positive step in introducing common standards and providing evidence of a driver's knowledge of route and traction during the recruitment process. The certificate has helped to introduce a common standard for competence training, although some train operators felt that that prior to TDLCR there were already adequate arrangements in place for managing driver competence. This is likely to reflect the fact that the development of TDLCR requirements was based to some extent on existing GB practices. The industry bodies suggested that moving to digital rather than paper certificates would enable the industry to maximise the benefits of certificates. Some of the comments related to the standard for medical fitness, which is set as part of the licence process and there were mixed views on how consistently these standards are applied during medical examinations. Criticism of the medical examination requirements in TDLCR is a common theme in many of the survey responses. Overall, the evidence suggests that this objective is being achieved to a greater degree than it is not, as it has successfully codified common standards in the form of a licensing and certification scheme for train drivers.

Is TDLCR achieving its aim of creating a more flexible labour market for train drivers?

23. 21% of respondents answered yes with positive or very positive impacts. 42% thought there had been no impact and 8% answered no with a negative impact. 29% did not know or answered not applicable. These responses are illustrated in Figure 3 below.

Figure 3

Q9 Overall, do you think that TDLCR is achieving its aim of creating a more flexible labour market for train drivers?



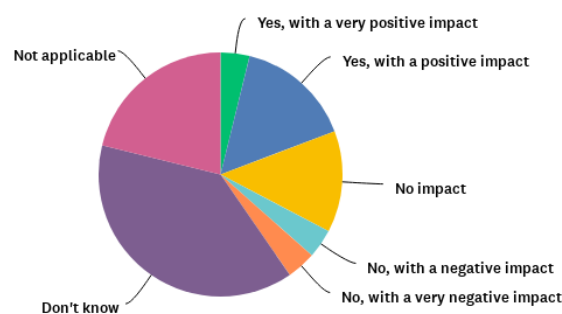
24. One of the industry bodies felt that the current legal minimum age of 20 for a train driving licence has a negative impact on flexibility in the market for train drivers and should be lowered to 18. Others noted that there was the potential for greater flexibility when the EU licence was recognised in the UK, which enabled drivers to move between jobs in EU member states more easily. Overall, this aim does not appear to be being achieved, as only a minority believe the regulations have had a positive impact on job flexibility. It has been noted that this objective is less relevant now that the UK has left the EU, as automatic recognition of train driving licences has ceased to apply since the UK left the EU.

Is TDLCR achieving its aim of making it easier for cross border rail services to operate?

25. 19% of respondents answered yes with positive or very positive impacts. 13% thought there had been no impact and 8% answered no with a negative impact. 60% did not know or answered not applicable. These responses are illustrated in Figure 4 below:

Figure 4

Q10 Overall, do you think that TDLCR is achieving its aim of making it easier for cross border rail services to operate (including the changes in place after 31 January 2022)?



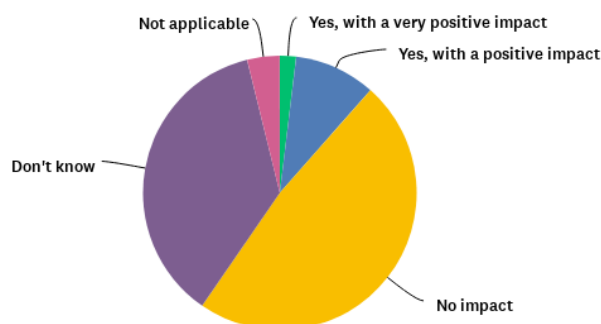
26. This aim is only directly relevant to the Channel Tunnel and a small number of train and freight operators who operate services on the Channel Tunnel infrastructure. There are also a small number of recognised persons who carry out medical and psychological fitness examinations on behalf of the F/TOCs who are affected. Cross-border operations involve approximately 500 licensed train drivers out of a total of approximately 23,000 drivers who hold a valid GB train driving licence (as of November 2022). Most of those directly involved who responded to the survey felt positive about the ongoing arrangements. This may be attributed to the existence of a cross-border bilateral agreement between the UK and France on the recognition of GB and EU train driving licences in the cross-border area covering passenger and freight services between Ashford International Station and Dollands Moor freight yard in the UK and Calais-Frethun stations in France. This was implemented in the UK by the Train Driving Licences and Certificates (Amendment) Regulations 2022 (S.I. 2022/85) and came into force on 31 March 2022.
27. A small number of cross-border drivers are nonetheless now required to hold both GB and EU licences, as their operations extend beyond the immediate cross-border zone covered under the bilateral agreement. In respect of recognised persons who carry out medical and psychological fitness examinations, one of the recognised doctors providing services to cross-border train drivers felt there could be difficulties in respect of mutual recognition of train driving licences if medical standards were to diverge in future between GB and the EU licence requirements. However, this is not currently the case, nor is divergence planned.
28. Overall, this aim appears to be being met as the regulations have continued to facilitate cross-border rail services between the UK and France. This has been secured through the implementation of a bilateral agreement on the mutual recognition of licences and certificates.

Is TDLCR achieving its aim of increasing public confidence in the rail system through the statutory licensing of train drivers?

29. In the survey 12% of respondents answered yes with positive or very positive impacts. 48% thought there had been no impact and 40% did not know or answered not applicable. Survey respondents typically stated that this aim was not being achieved or that they did not know enough to comment. Many respondents felt that the public would expect train drivers to be competent but would not be aware of the licensing requirements or the supporting arrangements for managing driver competence. This is likely to reflect the fact that train driving licences and certificates are managed within the industry and there is no direct impact on the public from the day-to-day operation of the regime. These survey responses are illustrated in Figure 5 below:

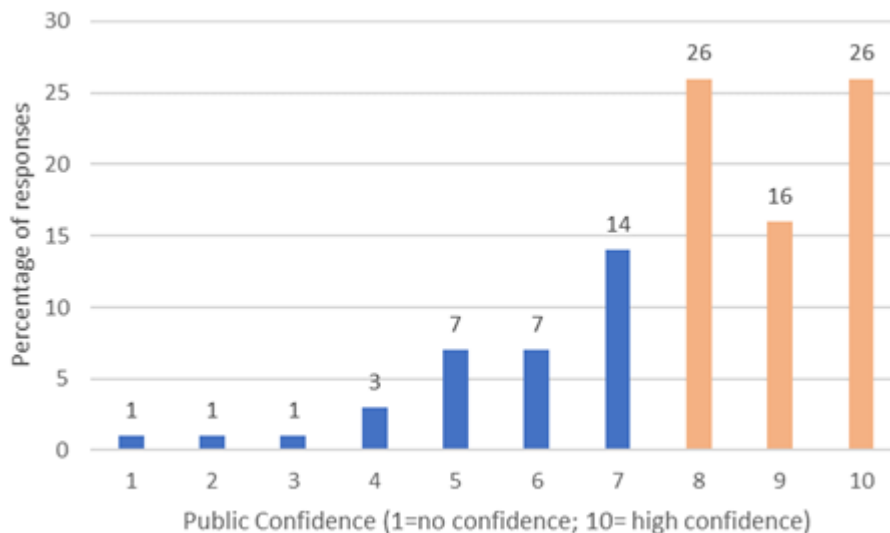
Figure 5

Q11 Overall, do you think that TDLCR is achieving its aim of increasing public confidence in the rail system through the statutory licensing of train drivers?



30. The separate public research found that 51% of the people asked said they were aware that mainline drivers needed a licence. Once everyone was made aware of the licensing arrangements, they were asked whether knowing this gave them confidence in the safety of the rail system. Two thirds responded at the high confidence end of the response scale, with only 3% of respondents indicating little or no confidence (see Figure 6). Finally, the research asked a similar question about whether continuing the licensing regime into the future was important to maintaining confidence in the rail system. 78% of respondents indicated it was important or very important to them, and only 3% said little or no importance.

Figure 6: *The general public’s confidence level in the safety of the railway system upon being informed that mainline train drivers must hold a train driving licence*



31. The public research allowed us to directly understand the general public’s views and to unpack the issue in more detail. Whilst there are limits to a short, quantitative, piece of research of this type, it clarified that whilst awareness of the regime is low, once people were made aware, the majority saw its value for the safety of the rail system and would like it to continue into the future. These conclusions are in line with ORR’s expectations of public awareness and attitudes. Overall, the evidence suggest that it is unclear whether the regulations are improving public confidence in the rail system; however, when made aware about the existence of the regime there was more enthusiasm about preservation of the requirements.

Conclusions

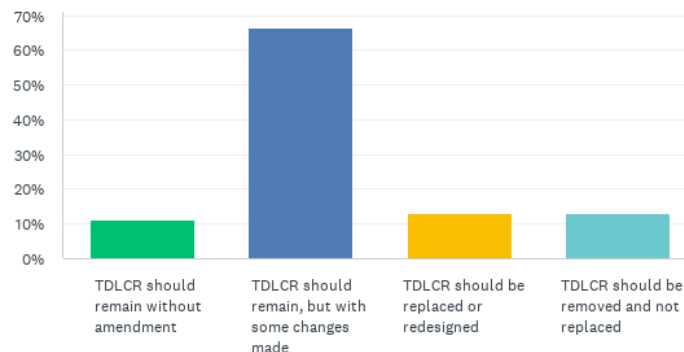
32. In summary, the policy objectives of TDLCR are indicated to be met to varying degrees. The regulations have been found to have successfully introduced consistent standards for train drivers and they continue to support cross-border rail services following a bilateral agreement with France. However, there is no definitive evidence to suggest that the regime is increasing public confidence in the rail system or supporting a more flexible job market for train drivers, given that the latter objective is less relevant now the UK has left the EU.

33. When asked what should happen to TDLCR, 11% of respondents to the survey said that TDLCR should remain as they are and 67% said TDLCR should remain but with some changes made. The

remaining 22% said they should be replaced or redesigned or removed and not replaced. These responses are illustrated in Figure 7 below:

Figure 7

Q5 Which of the following do you think should apply to TDLCR?



34. All of the mainline train operators who responded said that changes were needed or that TDLCR should be replaced, redesigned or removed. Four of the individual F/TOCs who responded said TDLCR should be removed and not replaced. Three industry bodies also said that TDLCR should remain but with some changes made. The respondents who said TDLCR should remain unchanged were either individuals, freight operators or non-mainline operators. This suggests that a more thorough review should be carried out to identify how TDLCR could be changed to improve the licensing and certification regime.
35. While the value of a licensing and certification framework seems to be broadly accepted as a means of ensuring consistent standards of competence and fitness, many respondents to the survey commented that TDLCR carried forward arrangements that already existed before the legal framework was introduced and has therefore increased the administrative burden and cost for train and freight operators with limited added value (see paragraph 54 to 64 in section 6 in the further information sheet for additional detail on burdens and costs). There is a clear message in the survey responses that TDLCR requires a review, and potentially amendment.
36. In its current form, the prescriptive nature of TDLCR requirements is arguably restricting potential innovation and not keeping pace with current practices. There is evidence that a significant administrative burden has been created by TDLCR requirements and by the current system for processing licence applications and updates to the register of licences, which ORR is required to maintain under TDLCR. Examples of the administrative burden are mentioned later in this report.

Reducing the level of prescription in legislation and improving clarity

37. Much of the criticism of TDLCR is focused on the medical examination requirements in Schedule 1, which are very prescriptive but also unclear in places (see paragraphs 45 to 49 in section 4 in the further information sheets for more information on the costs associated with these requirements). Several respondents, including recognised doctors, pointed to the lack of clarity within the detailed medical examination requirements in Schedule 1 of TDLCR, with the vision requirements highlighted as being open to different interpretations. Many train operators and the industry bodies questioned the clinical basis for the TDLCR requirement for all drivers over the age of 55 years to have an

annual medical. There is a significant cost associated with the medical examination and the time off work required to attend a medical with a recognised doctor. They suggested that the requirement should be reviewed, and perhaps greater flexibility introduced to allow the frequency of medicals to be determined for each individual driver on the basis of professional clinical judgement. One of the trade union respondents also felt that the frequency of medicals over 55 years should be reviewed.

38. The prescriptive training content and requirements for the recognition of trainers and examiners were also highlighted as problematic by industry bodies and operators. The training content does not always reflect the modern context for train driving; for example, the need for route knowledge may be reduced in a situation where automatic systems provide this information. As currently drafted, TDLCR provides no flexibility for training content to be tailored to suit the circumstances. It was also argued by many operators and by industry bodies that the rigid requirement for an examiner to have acquired 4 years' experience to qualify for ORR recognition did not allow for competent individuals with less experience to be recognised. This was restricting the pool of examiners based on time served rather than evidence of competence for the role.
39. Several respondents suggested that the detailed prescriptive requirements in TDLCR could be set out in industry standards, which would make it easier to update them and keep pace with advances in technology, clinical practice or medicine.

Proposal to reducing the minimum age for obtaining a licence

40. TDLCR currently sets a minimum age of 20 years to obtain a train driving licence. A proposal to reduce the minimum age from 20 years to 18 years was formally submitted to the PIR by the Train Driver Academy and supported by Rail Partners. This issue has been under discussion for several years with an ambition to increase the diversity and available pool of train drivers, and has the broad support of the train operators. ORR understands that at least one trade union is in favour of this proposal. The case for change setting out this proposal concludes that it is safe to reduce the minimum age for a licence from 20 years to 18 years and this would benefit the industry by creating a more diverse and younger workforce over time. It would enable the industry to attract younger people into the train driving profession at school leaving age and would increase the take up of the existing level 3 train driving apprenticeship by 16 year old school leavers.
41. The case for change references a study undertaken in 2019 by the Rail Safety and Standards Board which concluded that age is not a reliable predictor of road or train driving performance. The study argued that the development of experience is the key factor in how drivers perform. The study also concluded that risk control measures currently used to select, train and manage train drivers can continue to be used to select, train and manage drivers at age 18. It further concluded that there are opportunities to enhance the way driver competence is managed in GB for all drivers, focused on how drivers gain the appropriate experience over time in a controlled way to develop the technical skills, knowledge and non-technical skills required for safe driving. The study also pointed to other improvements which could support a reduction in the minimum age for a licence.
42. In principle, ORR and DfT could support this proposal subject to further consideration of how the improvements mentioned above could be delivered in preparation for any amendments to TDLCR. Further work could potentially be done as part of a wider review of TDLCR and proposals for legislative amendments would be subject to further consultation.

Conclusion on what should happen to TDLCR

43. The PIR recommends that TDLCR should remain, but that, working with stakeholders, the Department should develop proposals to amend TDLCR building on this PIR. This is because the PIR has revealed notable areas of the regime that are adding burdens and costs to industry without clearly defined benefits. Moreover, the strength of opinion and evidence cited during this PIR indicates that there could be more effective and less burdensome ways of meeting the original objectives, including in relation to medical, training and examination of train drivers. Therefore, the future work should look at potentially removing or amending some of the prescriptive requirements where they impede clarity or add burdens without justification, such as the medical examination requirements, training requirements and recognition of trainers and examiners requirements. The proposals should set out clearly how standards for train drivers would be maintained. That future work should also consider the argument for changing the minimum age requirements to become a train driver, recognising that significant time has elapsed since the original regulations were laid and more information is available now than was available at the time when the original assumptions on age were developed. As part of this area of work, more research may be required to consider the consequences of the change and any adjustments which might be necessary to train driver recruitment and training processes.

Next Steps

44. The Department for Transport plans to engage industry later this year to explore the findings of this PIR further, with a view to developing plans to amend TDLCR at the earliest opportunity. Subject to the Retained EU Law (Revocation and Reform) Bill receiving royal assent, the Department intends to use powers afforded by the Bill to make any potential legislative amendments in Great Britain as soon as practicable. The Government will ensure that any proposed legislative amendments are consistent with existing international treaties and agreements that have been signed, including those relating to the Channel Tunnel cross-border area.

Sign-off for Post Implementation Review: Head of Analysis

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

Signed: ***Kourosh Amini (Head of Strategic Analysis)***

Date: ***06/03/2023***



Date: ***18 May 2023***

Huw Merriman MP

Minister of State for Transport

Further information sheets

4. What were the original assumptions?

45. The impact of implementing the 2007 Directive on train driver licensing was estimated at £17.4m over a 20-year period. This was expected to fall on the operators (F/TOCs) due to the additional administration costs and more frequent medical assessments of their drivers. ORR was expected to meet the cost of issuing licences, establishing and maintaining the licence register, and recognising and registering persons or bodies who carry out driver training and assessment, as part of its regulatory functions.
46. It was not possible to assess definitively whether the original assumptions on costs were realised with the implementation of the regime, partially because respondents did not provide comprehensive figures or a breakdown of costs on their operations, so there was no significant data to accurately compare. Stakeholders did, however, cite an increase in observed costs, which also extends to ORR administering the regime. One of the difficulties in isolating administrative costs is that administrative costs are embedded within human resource budgets within organisations with duties under TDLCR. To incentivise organisations to provide more information on costs in the future, stakeholders should be asked about the costs and benefits of amending TDLCR in the context of planned reform, so that any potential savings that could be achieved are worth identifying as it is in their interests.

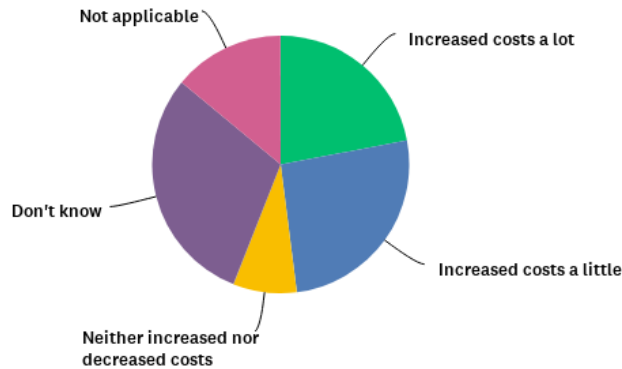
The costs of complying with TDLCR

47. The survey asked several questions on the cost of the licensing regime. Four questions asked what impact TDLCR has had on the cost of recruiting and training drivers as new entrants to the profession or as experienced drivers already licensed. 24% of respondents said that costs had increased whether recruiting new entrants or existing drivers. Not all respondents were able to estimate the actual costs but of those that did the majority estimated an increased cost of under £500 per driver (but one freight operator estimated the increase to be over £500 per driver). Not everyone provided responses but those who did typically identified the administrative burden created by TDLCR processes for their additional costs. There is merit to these comments as the current process, although managed via an online portal, is not fully digital at the moment e.g. a driver has to physically sign a form rather than being able to complete an online application.
48. One TOC indicated that some licenced drivers are being required to have fresh medical examinations on appointment at a new employer, despite having passed a TDLCR medical at the required frequency with their previous employer. There is currently a railway industry standard on train driver selection which includes guidance on the transfer of information between operators when drivers move between employers. The survey responses suggest that not all F/TOCs are consistently following this industry guidance during recruitment of experienced drivers and this merits further investigation. In particular, to understand whether information which may be relevant to the validity of a licence, or a certificate is not being passed between F/TOCs.
49. The survey asked about the ongoing cost of maintaining compliance with TDLCR, as shown in Figure 8 below. 48% of respondents answered that compliance with TDLCR had increased costs although few were able to estimate the cost, which is likely to be due to the difficulty of isolating the costs of TDLCR from other HR costs. Two TOCs gave estimates for the annual cost of complying with TDLCR as £150k and £175k. The costs were attributed to two main things. First, the administrative burden associated with a licence application and the ongoing requirement for F/TOCs to provide ORR with information to keep the register of licences up to date, which – given the

limitations of the current portal - is currently done via email updates and spreadsheets compiled by the TOCs.

Figure 8

Q24 Has maintaining compliance with TDLCR...



50. In relation to the second cost factor, this has primarily been driven by the requirement for an increased frequency of medicals for drivers over the age of 55yrs. Prior to TDLCR drivers were required to have medicals every five years up to the age of 55yrs then every two years between the ages of 56yrs to 62yrs and every year after the age of 63yrs. The TDLCR requirement is for a medical every 3yrs up to the age of 55yrs and every year thereafter. According to ORR's register of licenced drivers around 30% of drivers are aged 55yrs or older and are, therefore, currently required to have an annual medical. Until October 2018 existing train drivers were subject to the old medical frequencies up until the point that they obtained a licence so the full impact of the increase in medical frequencies has only been felt since October 2018. Two TOCs estimated the cost of a medical examination to be £110 and £300 while a trade union estimated a much higher cost of between £1200 and £1500 per medical.

51. When asked whether the total annual cost of complying with TDLCR was proportionate to the benefits of TDLCR 13% of respondents considered the costs of TDLCR to be proportionate to the benefits while 17% did not think they were proportionate. The remainder answered either "don't know" or "not applicable" and 21 respondents skipped this question.

5. Were there any unintended consequences?

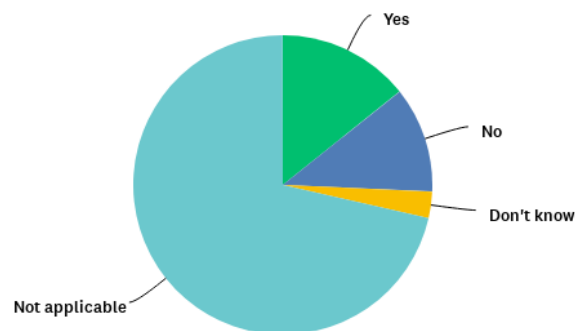
52. Responses to the survey do not suggest that there have been unintended consequences from the introduction of TDLCR. The additional administrative costs were anticipated in the original impact assessment and are, therefore, not necessarily unintended consequences. However, because the administrative costs were not broken down or calculated at the time of the original impact assessment it is not possible to say whether the actual costs are in line with what was anticipated. It is clear from the comments provided that many operators feel the administrative burden of TDLCR is too great compared with the benefits.

6. Has the evidence identified any opportunities for reducing the burden on business?

Impact of TDLCR on medium, small or micro businesses

53. The survey asked organisations who employ under 50 people if they think that TDLCR has had a disproportionate impact on their business. 20 respondents skipped this question, and within the remaining 35 respondents, 26 stated either “not applicable” or “don’t know”. Figure 13 shows these responses.

Q13 [only complete this question if you are an organisation with under 50 employees] Do you think that TDLCR has had a disproportionate impact on your business?



54. So, in total only nine responses gave a substantive answer. Within those nine responses, there was a broadly equal split with nine responding “yes” there was a disproportionate impact on their business and four stating “no”. Very few gave supporting comments but one freight operator who answered “yes” felt that the cost of training drivers had increased as a result of TDLCR with no benefits. One TOC and one FOC said “yes”, but another TOC and FOC said “no”. Two responses were from individuals and not from organisations.

55. Of the five respondents who felt there was a disproportionate impact, two were individuals and not organisations - perhaps reflecting a perception rather than evidence. Only three F/TOCs in the survey indicated they employed less than 50 licenced train drivers. The average number of drivers employed was 579, indicating a much large cohort of employees in the vast majority of F/TOCs and hence why the majority of respondents skipped this question. Together, this suggests only a very small number of small or micro businesses are affected by these regulations and there is no consistent evidence they have a disproportionate impact on small or micro businesses.

Medical and Psychological Fitness

56. Many respondents were critical of the detailed medical requirements in TDLCR, including Schedule 1 which sets out the content of the medical examination. The survey asked four specific questions about the medical and psychological fitness requirements in TDLCR.

What effects have the medical or psychological fitness requirements of TDLCR had on your organisation?

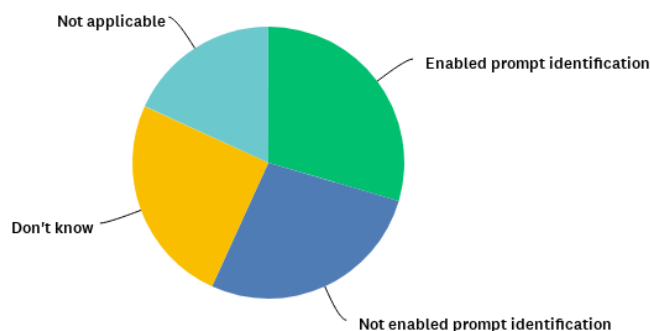
57. Respondents to this question were mainly TOCs and the industry bodies who commented on the fact that the TDLCR medical requirements were not significantly different to the medical requirements in place prior to TDLCR coming into force, but noted that the increased frequency of medicals for drivers aged over 55yrs had driven costs up. A number of respondents also recognised the value of a standardised approach to ensure a minimum level of medical fitness across the train driver population and the value of a medical to identify health issues before they become a problem. One operator felt that the requirement to use a recognised doctor had increased the cost of medicals and reduced the availability of clinicians. It was noted that the psychological fitness examination was conducted prior to a medical during the driver recruitment process which meant that unsuitable candidates did not progress through the selection process.

Have the medical or psychological fitness requirements of TDLCR enabled the prompt identification of driver medical or psychological issues?

58. 30% of respondents answered yes to this and 27% answered no. The remainder answered don't know or not applicable or skipped the question. Responses are illustrated in Figure 9 below:

Figure 9

Q29 Have the medical or psychological fitness requirements of TDLCR enabled the prompt identification of driver medical or psychological issues? (if so, can you explain how this has improved safety?)



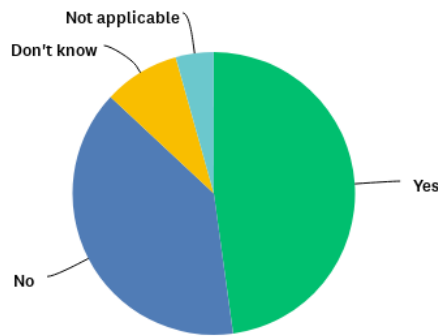
59. There were few supporting comments for these answers and several train operators commented that the current arrangements were no different to what was in place before TDLCR. One recognised doctor commented that medical issues can only be identified at the time of the examination and flagged the importance of ongoing monitoring of fitness by employers and individuals. Several operators confirmed that medical conditions had been identified in the course of TDLCR examinations, which supports the case for regular medical fitness monitoring.

Do you think the current regime of recognised doctors and recognised psychologists is satisfactory?

60. 48% of respondents answered yes to this and 39% answered no. The remainder answered don't know or not applicable or did not answer the question. Responses are illustrated in Figure 10 below

Figure 10

Q30 Do you think the current regime of recognised doctors and recognised psychologists is satisfactory?



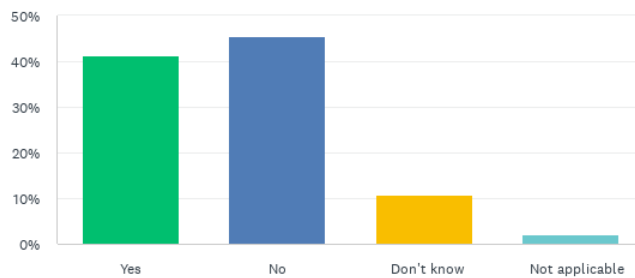
61. Those who provided comments were mainly people who did not think the current regime was satisfactory. Several train operators said the requirement for doctors to be recognised by ORR had created a limited market of providers with higher costs than the wider occupational health market. Some had also experienced a shortage of available doctors. Two respondents pointed out that the occupational psychologists on ORR’s register were psychometric assessors not psychologists and they suggested that name should be changed. Two occupational physicians felt that recognised doctors should be required to demonstrate and maintain knowledge of the railway environment in which drivers work and one suggested that doctors should be required to attend a rail specific training course. One of the recognised doctors felt that ORR should be equipped to give specific medical advice to doctors and one of the train operators felt that ORR should give more definitive interpretation of the medical examination requirements. These highlight the view of a small number of respondents who felt that ORR should be better equipped to provide medical advice and support for the recognised doctors.

Are the medical requirements under Schedule 1 of TDLCR satisfactory?

62. 41% of respondents answered yes to this and 46% answered no. The remainder answered don’t know or not applicable or skipped the question. Responses are illustrated in Figure 11 below.

Figure 11

Q31 Are the medical requirements under Schedule 1 of TDLCR satisfactory?



63. There were some common themes in the criticisms of the content of Schedule 1 from TOCs and the industry bodies. These focused on Schedule 1 being too prescriptive and the frequency of medicals

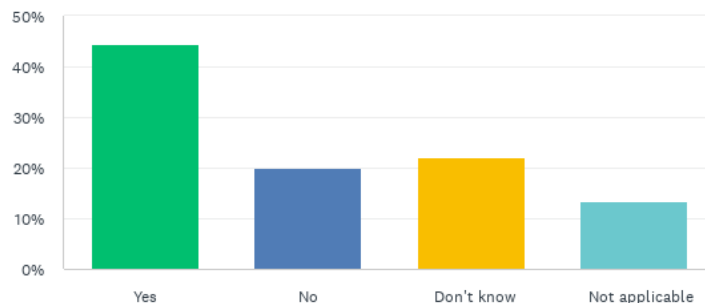
being too great after a driver reaches the age of 55. They also flagged problems with vision requirements, in particular, a lack of clarity as to what the requirement for “normal colour vision” means and suggestions that there should be another colour vision test named in the regulations (currently, Schedule 1 only names the Ishihara test as a recognised test). Several occupational doctors who responded were critical of Schedule 1 arguing that there should be scope for doctors to exercise professional judgement. Some commented that there was a lack of consistency in how the general medical examination is carried out and recorded. The vision requirements were also criticised for being too rigid in setting a maximum for the degree of correction allowed for drivers who wear glasses. Other requirements were criticised for being undefined e.g. the requirement for the driver to be able to withstand dazzle which is difficult to measure. Some doctors also questioned the value of carrying out an ECG test at rest, called for guidance on how to assess the implications of epilepsy and diabetes, and suggested there should be a clear guidance on which alternative “recognised test” could be used for colour vision. Overall, this suggests that the content of Schedule 1 needs to be reviewed and clarified and the frequency of medicals for older drivers also needs to be reviewed against clinical evidence.

Driver training and examination

64. The survey asked four questions on the training and examination requirements of TDLCR. 44% of respondents thought they were satisfactory while 20% thought they were not. 46% answered don't know or not applicable and 22% did not give an answer. These responses are illustrated in Figure 12 below:

Figure 12

Q32 Are the driver training and examination provisions in TDLCR satisfactory?



65. Two of the industry bodies commented that the training and examination requirements were too prescriptive. This relates to both the content of the training and the requirements which apply to who can provide training and examination as recognised persons. They felt that the requirement (found in directly effective EU legislation; Commission Decision 2011/765/EU) for trainers and examiners to hold a train driving licence and have a specified number of years' experience of train driving was too rigid and that the competence of the individual should be the primary consideration. The requirement to hold a valid train driving licence would rule out trainers and examiners who might be medically unfit but were otherwise competent to perform training and examination functions. It was suggested that instead of being prescribed within TDLCR, the operator's safety management system should contain arrangements for suitable training and examination of drivers which would be subject to scrutiny by ORR via the safety certification process.

66. It was suggested by an industry body that prescribing training content within the regulations did not allow for modern approaches e.g., drivers were not likely to deal with faults on sophisticated modern

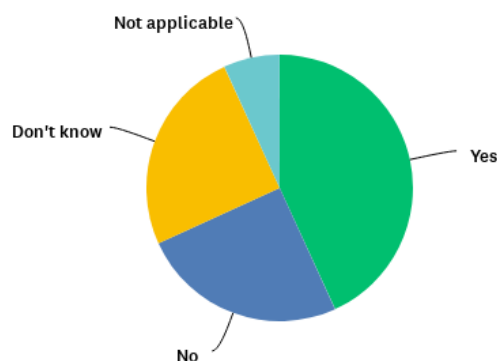
rolling stock which required specialist technical support in the event of a failure. It was also suggested that there were gaps in the existing training content which did not adequately cover non-technical skills. An alternative approach might be to set out the training content in an industry standard which could be more easily updated.

Arrangements supporting TDLCR

67. The survey asked 10 individual questions on the effectiveness of each aspect of ORR's duties under TDLCR, including ORR's guidance and other support for the register of licences; the process for ORR recognition of doctors, psychologists and training and examination centres; the process for issuing, re-issuing and re-instating licences; and guidance on suspending or withdrawing licences.
68. In relation to ORR's process and guidance for the suspension or withdrawal of licences several TOCs said that the current system of emailing supporting information to ORR was inefficient and created a risk of timely and confidential information not reaching ORR. There were also complaints from TOCs and a FOC that ORR did not always respond promptly to queries or keep operators updated. One TOC felt that operators should be able to suspend licences themselves and another thought it was complex and confusing that different actions could be taken in respect of a licence and a certificate (this is because the TOC is responsible for decisions on the certificate and ORR is responsible for licence decisions).
69. There were very few comments on the guidance supporting ORR's recognition of training and examination centres which probably reflects the fact that most of the training and examination centres were established and recognised in the early years of the TDLCR regime and there are few new entrants to the ORR register.
70. The survey asked whether people think ORR's arrangements for the recognition of medical examiners are effective. 43% of respondents answered yes but 25% answered no to this. 32% answered don't know or not applicable. Responses are illustrated in Figure 13 below:

Figure 13

Q38 Do you think ORR's arrangements (i.e guidance and other support) for the recognition of medical examiners are effective ?



71. Several recognised doctors provided comments noting that ORR does not have any medical expertise and the criteria for recognition are very basic and potentially not robust enough. There were also comments that ORR does not provide ongoing support or guidance for recognised doctors which echoed points made earlier about the adequacy of the regime of recognised doctors.

72. As highlighted above, a significant number of respondents commented on the administrative burden of the current licensing system. Initial licence applications are made by F/TOCs using a SharePoint system, but there is a great reliance on emails between F/TOCs and ORR to provide information to maintain the register of around 23,000 licences (e.g. medical examination updates), which is inefficient and potentially an insecure method of sending information. Many respondents commented that it would be a major improvement if F/TOCs could enter and view data directly to a more efficient and comprehensive digital system. The burden of this is mainly felt by the larger operators with more drivers. Some operators reported delays in receiving replacement licences and some complained about the lack of feedback when they submit updates of information, such as medical examination dates. A couple of respondents called for clearer advice on how to deal with the renewal of licences when they expire. ORR has published information on this process, but there is clearly a need to raise awareness of what is required in preparation for handling the large volumes of renewals that will be required between 2026 and 2028 (large numbers of initial licences were processed and issued between 2016 and 2018).
73. ORR regularly reviews its processes to look for ways of reducing the administrative burden where possible. This PIR has highlighted some specific aspects of ORR's processes which ORR is reviewing to identify possible improvements. ORR is already pursuing a replacement for the current TDLCR portal for handling licence applications and maintaining a register of licences. The aspiration is that a new system would address many of the concerns highlighted by F/TOCs.

Appeals against licence decisions

74. TDLCR contains an appeal route against certain decisions made by ORR in respect of licences. These appeals are made to the Secretary of State for Transport. The survey invited views on the system of appeals and we received eight responses. To date there have been relatively few appeals (given the total number of licences) so this low response rate is in line with the level of direct experience of the process. Of those who provided comments two respondents suggested that a senior panel from the industry could hear appeals rather than the Secretary of State, a driver felt that they should be heard by a judge and one operator felt they should be heard by the train operator. One of the industry bodies commented that it would be helpful if the process for appeals was more transparent. DfT is currently developing guidance on this appeal process which will be published in due course. The purpose of this is to make it clear what appellants should expect from the authorities involved when they appeal to the Secretary of State and what will be required of them during the appeals procedure.

Improving the system of train driving certificates

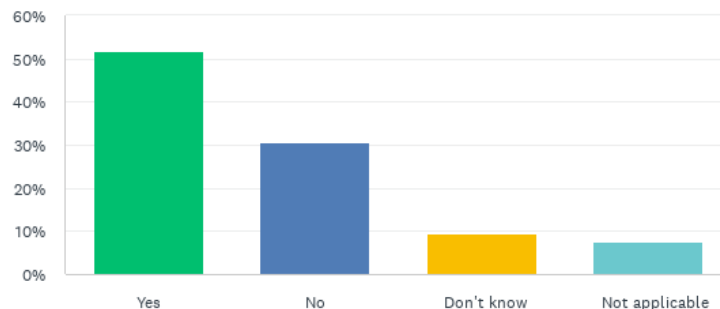
75. The trade body for train operators felt that the current paper-based system of train driving certificates issued by the train operators was too burdensome and required excessive paper chasing, especially when drivers transfer between operators. There were calls for the system to be made digital rather than paper-based which could facilitate the employment checks carried out by operators when recruiting experienced drivers. ORR is aware of anecdotal evidence that the requirements for issuing certified copies of the certificate when a driver leaves employment and the follow up of safety related information by recruiting TOCs are not consistently followed by all TOCs. Further enquiries with the TOCs and their HR teams would enable us to understand the extent of this issue and the reasons why there are varying approaches across the industry, given that there is also a railway industry standard on this topic.

Extending TDLCR to non-mainline railways

76. The survey asked whether non-mainline operations should be covered by TDLCR and gave the example of London Underground as a non-mainline railway. 52% of respondents answered yes to this question. 31% answered no and the remainder answered don't know or not applicable. Figure 14 below illustrates these responses:

Figure 14

Q14 TDLCR does not cover non-mainline operations, such as London Underground. Do you think that non-mainline operations should be covered by the regulations?



77. However, there were a limited number of supporting comments for these answers and only a few respondents clarified which non-mainline operations they thought TDLCR should be extended to. Also, it is unclear in many responses whether those who answered yes were answering with a particular non-mainline operation in mind. ORR followed up during the survey by inviting respondents who answered yes to provide further comments, but this did not provide a significant amount of further evidence. Of those who gave further comments, a train operator felt that the principles of licensing would be equally valuable to other non-mainline operators i.e. providing the public with confidence in the system, facilitating the movement of drivers between operators, setting minimum standards for fitness and competence and professionalising train driving. Another operator felt that drivers on non-mainline operations should have the option of voluntarily obtaining a licence but this would be difficult to achieve on an ad-hoc basis and would be complex for operators to manage. A freight operator felt that extending licensing would be beneficial for the mainline railway because it would increase the pool of licenced drivers available for recruitment.

78. It is difficult to draw general conclusions from the survey about the value of extending TDLCR beyond the mainline railway because of the range of non-mainline operations, which could include light rail systems and metros, heritage railways and depot operations associated with the mainline. There are likely to be different arguments for the different types of non-mainline operation.

79. One theme that emerged is that there is a potential value in extending TDLCR to operations which are physically integrated with the mainline railway. This was mainly seen from the point of view of levelling the playing field and making it easier to recruit from non-mainline to mainline companies rather than the value added for the non-mainline railway per se. But there may be some value in considering a voluntary arrangement for licensing non-mainline drivers who operate on shared infrastructure. There were a few occupational health respondents who felt that medical standards should be the same for non-mainline drivers. However, extending the whole licensing regime to the non-mainline would arguably be a heavy-handed way of achieving that objective. Two of the trade union responses commented that the same standards for drivers should apply to non-mainline.

ORR's experience of operating the TDLCR regime

80. ORR has a range of responsibilities under TDLCR including issuing licences if it is satisfied that certain conditions have been met; keeping an up to date register of licences; and suspending or withdrawing licences if it considers that the conditions for holding a licence are no longer met. Other responsibilities include recognising doctors, psychologists, trainers and examiners, and maintaining registers of these recognised persons.
81. ORR's experience of delivering these functions has highlighted several areas where the regulations are unclear and would benefit from review and potentially amendment. Specific examples of where greater clarity is needed include the following:
- The circumstances in which a licence may be suspended or withdrawn and the action to be taken in the case of a suspended licence. ORR has sought to clarify its guidance on these aspects based on experience but a degree of uncertainty remains. For instance the regulations are silent on how long a suspension should last and these decisions are taken by ORR on a case-by-case basis at present;
 - The relationship between the industry's policy on drugs and alcohol and the medical fitness requirements in TDLCR. This could be considered as part of a review of the medical requirements;
 - The vision requirements in TDLCR Schedule 1; in some cases the basis for them is unclear;
 - The requirement for ORR to maintain a register of licences. The regulations require clarification because the extent to which maintaining a register requires regular updates from the train operators on medical fitness examinations has had a significant impact on the administrative burden for F/TOCs. It would be helpful to have clear rationale for what information is required;
 - The criteria for renewing licences in cases where the medical fitness requirements have not been maintained; currently TDLCR is silent on whether this situation would require a fresh licence application.
82. Overall, the overarching business impact of TDLCR suggests that the regime has added costs to industry since it was introduced. These appear to be concentrated amongst operators and around a few specific areas, namely reaching compliance with the medical, training and examination requirements. The benefits from these requirements relative to the costs are relatively unclear, but there could be opportunities to reduce the burdens associated with meeting these requirements through reducing prescription in the regulations, or providing additional flexibility on how specific outcomes can be achieved via different methods. The PIR also revealed additional costs associated with a reliance on inefficient and insecure methods of administering the regime and updating registers. There is an opportunity for costs in this area to be reduced relatively quickly by transitioning to a digitised system, with cost savings to both operators and the ORR.

7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements?

83. This question was not in scope of this PIR as set out in the PIR terms of reference, which were agreed by DfT and ORR. The reason for this is because the UK is no longer a member state of the European Union and was considered in the previous PIR, therefore comparison of how the UK implemented the legislation against other EU member states is considered unnecessary.

Annex A

Table 1: List of legislation constituting the regime for train driving licensing and certification in Great Britain

Title of instrument	Description
The Train Driving Licences and Certificates Regulations 2010 (TDLCR)	Implemented Directive 2007/59/EC for GB.
Commission Regulation (EU) No 36/2010 of 3 December 2009 on Community models for train driving licences, complementary certificates, certified copies of complementary certificates and application forms for train driving licences, under Directive 2007/59/EC	Set out the format for train driving licences, train driving certificates, certified copies of train driving certificates and application forms for train driving licences.
Commission Decision 2010/17/EC on the adoption of basic parameters for registers of train driving licences and complementary certificates provided for under Directive 2007/59/EC	Set out the information to be included in the train driving licences register required to be maintained by ORR. Also sets out the information to be included in the train driving certificates register required to be maintained by railway undertakings and infrastructure managers.
Commission Decision 2011/765/EU on criteria for the recognition of training centres involved in the training of train drivers, on criteria for the recognition of examiners of train drivers and on criteria for the organisation of examinations in accordance with Directive 2007/59/EC	Introduced criteria for training centres and examiners involved in the training and examination of train drivers.
Commission Regulation (EU) 2019/554 of 5 April 2019 amending Annex VI to Directive 2007/59/EC of the European Parliament and of the Council on the certification of train drivers operating locomotives and trains on the railway system in the Community	Introduced the ability for railway undertakings to seek exemptions from the language requirements established for train drivers, provided they are operating between borders and meet certain conditions. The exemption can only be granted by a derogation received from the infrastructure manager into the country the service is operating into.

Table 2: List of legislation that amended TDLCR while the UK was an EU member state

Title of instrument	Description
The Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/950).	Changed the medical codes included within train driving licences to give effect to certain provisions of Commission Regulation (EU) 36/2010.

	This also added a new review clause to TDLCR requiring a review of the legislation every 5 years and a report to be published by The Secretary of State following each review.
The Train Driving Licences and Certificates (Amendment) Regulations 2015 (S.I. 2015/1798)	Updated the general professional knowledge and medical and licence requirements for train drivers operating in the EU, implementing amendments to the 2007 Directive by Commission Directive 2014/82/EU.

Table 3: List of legislation that amended TDLCR when the UK left the EU

Title of Instrument	Description
The Train Driving Licences and Certificates (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/677) (“the 2019 Regulations”)	Corrected inoperabilities in the legislation following EU exit and introduced provisions for the continued recognition of European TDLs in Great Britain issued prior to exit day for two years from exit day, where exit day means 31 January 2020. These regulations also retained and corrected three pieces of directly applicable EU legislation into UK law, Commission Decisions 2010/17/EC and 2011/765/EU and Commission Regulation 36/2010/EU.
The Railways (Interoperability) (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2020 (S.I. 2020/318)	Reflected changes made to the Railways Interoperability Regulations 2011 (S.I. 2011/3066).
The Railways (Miscellaneous Amendments, Revocations and Transitional Provisions) (EU Exit) Regulations 2020 (S.I. 2020/786) (“the 2020 Regulations”)	Extended recognition provisions so that European TDLs issued up until 31 January 2022 would be valid until that date. This was a contingency measure while the UK finalised a bilateral agreement with France on the recognition of train driving licences and complementary certificates in the Channel Tunnel cross-border area.
The Train Driving Licences and Certificates (Amendment) Regulations 2022 (S.I. 2022/85)	Provide for the continued recognition of EEA issued train driving licences for the Channel Tunnel and cross-border area as part of implementing a bilateral agreement for the recognition of European and British train driving licences for the Channel Tunnel made under Article 8 of Directive 2007/59/EC

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