



Before you complete this form, please read the Justice Impact Guidance. It is available at: <http://www.justice.gov.uk/guidance/justice-impact-test.htm>.

Please answer as many questions as possible on this form before you contact Ministry of Justice (MoJ). If exact figures are not yet known, please provide your best estimates.

Forward the completed questionnaire, with any Impact Assessment, to MoJ's Financial Planning, Resources and Analysis Team at: justiceimpact@justice.gsi.gov.uk.

1. Your contact details

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By when would you like a response?	6 April 2011

2. General information

In brief, what is your proposal?

ORR proposes the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011 ("the proposed Regulations"). The proposed Regulations transpose the requirements of Directive 2008/110/EC (to establish a maintenance system for rail vehicles and improve safety on the European Union's railways) and Directive 2009/149/EC (to include common definitions of Common Safety Indicators (CSIs) and methods to calculate accident costs). These Directives make amendments to an existing regime in place under Directive 2004/49/EC ("the Railway Safety Directive") which was transposed through the Railways and Other Guided Transport Systems (Safety) Regulations 2006 ("ROGS"). They also propose other amendments to ROGS in light of lessons learned as a result of operating under the existing regime: (a) to clarify that, in relation to safety critical work in part 4 of ROGS, "work" includes voluntary work and (b) make some clarifications to the appeal provisions in ROGS to reflect subsequent changes in the Tribunals Courts and Enforcement Act 2007.

What is your proposal intended to achieve, over what geographical area (e.g. England, England and Wales) and in what timescale?

For the purposes of this justice impact test, the only relevant provision is that relating to the establishment of a formal maintenance regime for rail vehicles; no other impacts on the justice system are envisaged. The proposed Regulations aim to provide assurance that the entity in charge of maintenance ("ECM") of a rail vehicle is able to safely maintain it. The proposed Regulations cover Great Britain and are due to enter into force in summer 2011.

What public commitments have been given and to whom?

No public commitments have been made.

What are the options under consideration?

Option 1: Whether to create civil sanctions.

Option 2: Whether to create criminal sanctions.

Option 2 is preferred as the offences relate to health and safety issues where the existing regime is criminal in nature (under the Health and Safety at Work, etc. Act 1974). It would not be appropriate to establish an independent civil regime solely for this aspect of railway safety as this would be confusing and potentially burdensome for duty holders. There are serious safety risks associated with vehicle maintenance and ORR believes that criminal offences are a necessary and proportionate response to the potential harm caused by defective vehicle maintenance. Parliament recently reaffirmed its approval of this type of regime in the Health and Safety (Offences) Act 2008.

How does the proposal change what happens now? Who will be affected and in what numbers?

Directive 2008/110/EC amends the Railway Safety Directive which was originally transposed by ROGS and seeks to further develop and improve rail safety through the establishment of a formal maintenance regime for rail vehicles.

Anyone placing a vehicle in service or using it on the mainline rail network will be affected by the proposed Regulations. This will apply to all rail vehicles - both existing and those to be introduced to the network.

The requirement to assign an ECM to a rail vehicle and register it as such in the National Vehicle Register ("NVR"), a database of information about all rail vehicles operated in a Member States' territory, complements statutory provisions already in force under European Commission Decision 2007/756/EC. Decision 2007/756/EC (recently updated by Decision 2011/107/EU) adopts a common specification and format for NVRs in which basic information about the ECM, including its name, registered business number postal and e-mail addresses, is recorded. This information has already been recorded for all existing rail vehicles; there is already a statutory obligation for this information to be provided and updated and it is envisaged that the regulatory burden created by the proposed Regulations in this respect will therefore be negligible.

The requirement in Directive 2008/110/EC for an ECM to ensure that, by means of a system of maintenance, any vehicle for which it has responsibility is in a safe state of running, formalises measures already in place either through legislation or administratively as follows:

(i) Sections 2 and 3 of the Health and Safety Act Work etc. Act 1974 require duty holders to do all that is reasonably practicable to conduct their undertaking safely. Implicit in this is the requirement to maintain railway vehicles in a safe state.

(ii) Regulation 5(1)(d)(i) of ROGS requires that a duty holder has a safety management system ("SMS") that ensures the control of risks relating to the supply of maintenance and material. The SMS is established to ensure that it conforms to relevant national safety rules and relevant safety requirements laid down in Technical Specifications for Interoperability.

(iii) Railway Group Standard GM/RT2004 has been used by the railway industry to demonstrate that they comply with the requirement to keep vehicles for which they are responsible safely maintained.

(iv) It is a condition of an operator's licence issued under section 8 of the Railways Act 1993 (as amended) to comply with Railway Group Standards that are applicable to its licensed activities.

ORR envisages that the impact of the maintenance requirements in the proposed Regulations on ORR and duty holders will be negligible. The benefit of introducing these regulations is that it will help to achieve consistency of approach to rail vehicle maintenance across the European Union.

3. Criminal Offences and Civil Penalties and Sanctions

Are you creating new civil sanctions, fixed penalties or civil orders with criminal sanctions or creating or amending criminal offences?

The proposed Regulations create two new offences. (See below).

Please provide details of the relevant legislation (where appropriate) and confirm whether the creation or amendment of criminal offences and penalties has been agreed with MoJ.

New regulation 18A of ROGS creates:

(i) an offence committed by a person who places in service or uses a vehicle without an ECM being assigned to it and registered in the NVR; and

(ii) an offence committed by an ECM that does not ensure that a vehicle it is responsible for has been maintained in a safe condition and is safe to run on the network.

These penalties have not yet been agreed with the MoJ.

4. Courts and/or Tribunals

Increasing Business for the Courts and Tribunals

Do you expect there to be an impact on HM Courts Service or on Tribunals Service (or both) through the creation of or an increase in applications/cases? Please provide an estimate.

Although the new offences could potentially increase caseload in HM Courts Service or the Tribunals Service, ORR does not envisage this to be very likely in practice.

Giving information and advice is the most common approach used by HM Inspectors of Railways to secure compliance with the law. The Health and Safety at Work, etc. Act 1974 already provides for the issue of improvement or prohibition notices to deal with serious risks, prevent harm to individuals, or deal with persistent non-compliance. A prohibition notice stops work in order to prevent risk of serious personal injury. An improvement notice is issued where, in the opinion of an inspector, a duty holder is contravening the law.

Improvement notices require identified breaches to be rectified within a set timescale. In the case of prohibition notices, breaches need to be rectified before any further work can continue. These notices, and written advice, may be used in court proceedings.

Formal cautions and prosecution are important ways to bring duty holders to account for alleged breaches of the law. Where it is appropriate to do so in accordance with ORR enforcement policy, ORR inspectors may use one of these measures in addition to, or instead of, issuing an improvement or prohibition notice.

An appeal to an Employment Tribunal may arise if a person has been served an improvement or prohibition notice and wishes to dispute the notice. There have been around five applications to an Employment Tribunal in the last five years in relation to notices from ORR. We do not expect there to be an increase in the frequency of applications in the coming years. There have been 26 successful prosecutions by ORR over the last five years. Factors that will increase the public interest in bringing a prosecution in respect of the second offence include a failure to comply with an improvement notice or a prohibition notice or if an ECM was found to have been negligent in its responsibility for ensuring that a rail vehicle is safely maintained. However, we do not envisage that the new offence will increase the number of prosecutions by ORR.

Would you expect fewer cases to come to HM Courts Service or Tribunals Service as a result of the proposal? Please provide an estimate of the number of cases.

No.

Appeal Rights

Does your proposal create a new right of appeal or route to judicial review? If so, how will these be handled (i.e. by the courts/tribunals)?

No new right of appeal is created and the route to judicial review will be the same as it is currently under the existing ROGS provisions.

Do you expect to establish a new tribunal jurisdiction? If so, has this been discussed with Tribunal Service?

No.

Alternative Dispute Resolution

Has the use of alternative dispute resolution (ADR) procedures (including mediation) been considered? If not, why not?

N/A.

HMCS Enforcement

Will the proposal require enforcement mechanisms for civil debts, civil sanctions or criminal penalties?

Only existing mechanisms for enforcement of financial penalties.

Court and Tribunal Procedural Rules, Sentencing and Penalty Guidelines

Do you anticipate that Court and/or Tribunal procedural rules will have to be amended? If so, when is the likely date for the changes?

No.

Will the proposals require sentencing and/or penalty guidelines to be amended?

No.

Section Four – Legal Aid

Is your proposal likely to have an impact on the Legal Aid fund?

No.

If legal aid may be affected, will (i) criminal, or (ii) civil and family, or (iii) asylum legal aid be affected?

N/A

If legal aid may be affected, would legal aid costs increase or be reduced (and by what margin)?

N/A

Section Five – Prisons and Offender Management Services

Will the proposals result in an increase in the number of offenders being committed to custody (including on remand) or probation? If so, please provide an estimate.

This is unlikely, but any likely numbers will be very low.

Will the proposals result in an increase in the length of custodial sentences? If so, please provide details.

No.

Will the proposals create a new custodial sentence? If so, please provide details.

No.

What do you expect the impact of the proposals on probation services to be?

None.

Your completed questionnaire will be considered by MoJ to establish whether the proposals will have an impact on the aspects of the justice system for which MoJ has responsibility. If there are considered to be no impacts arising from your proposals, MoJ will agree this with you and you must record this in the Impact Assessment accompanying your proposals. However, if MoJ identifies a potential impact, MoJ will contact you to discuss and agree an estimate of costs including funding arrangements for the additional costs.

If you have any queries about this form, please e-mail justiceimpact@justice.gsi.gov.uk or telephone Peter Bake on 020 3334 4343.