EXPLANATORY MEMORANDUM TO

THE RAILWAYS AND OTHER GUIDED TRANSPORT SYSTEMS (MISCELLANEOUS AMENDMENTS) REGULATIONS 2013

2013 No. 950

1. This explanatory memorandum has been prepared by the Department for Transport (the "Department") in liaison with the Office of Rail Regulation ("ORR") and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013 ("the Regulations") have been made to give effect to Commission Regulation (EU) 445/2011 in Great Britain ("the ECM Regulation"). The Commission Regulation sets out a system of certification of entities in charge of maintenance ("ECMs") of freight wagons in accordance with Directive 2008/110/EC on the safety of the Community's railways.

2.2 Directive 2008/110/EC ("the 2008 Directive") amended Directive 2004/49/EC ("the Railway Safety Directive"). The Railway Safety Directive was transposed for Great Britain through the Railways and Other Guided Transport Systems (Safety) Regulations 2006 ("ROGS") (S.I. 2006/599) and the Railways (Access to Training Services) Regulations 2006 ("the ATS Regulations") (S.I. 2006/598). It was also transposed for the United Kingdom through the Railways (Accident Investigation and Reporting) Regulations 2005 (the "RAIR Regulations") (S.I. 2005/1992). The 2008 Directive was transposed in Great Britain by the Railways and Other Guided Systems (Safety) (Amendment) Regulations 2011 ("the ROGS Amendment Regulations 2011") (S.I. 2011/1860). These Regulations make further changes to ROGS to take account of the ECM Regulation made under the 2008 Directive.

2.3 In the light of lessons learned from operation under the current regime and other changes in European provisions, ORR has also taken this opportunity to propose some further minor amendments to the safety regime including clarifying and extending (consistently with the Railway Safety Directive) the scope of existing derogations from the EU-based regime, for example for metro and light railways and heritage railways.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. The opportunity has been taken to address concerns raised by the Joint Committee in two recent reports. These are reports on the Train Driving Licences and Certificates Regulations 2010 (S.I. 2010/724) (Second Report of Session 2010 – 11) and on the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011 (Thirtieth Report of Session 2010-12).

3.2. With respect to the Train Driving Licences and Certificates Regulations 2010 ("the Train Driving Licences Regulations"), the Committee was concerned, in its report, with a reference to medical codes required to be included on a train driving licence by virtue of paragraph 2 of Schedule 2 to those Regulations. That paragraph noted that the codes to be included on a train driving licence were to be decided by the Commission in accordance with a procedure provided for under 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

3.3. The Regulations therefore amend the Train Driving Licences Regulations so as to remove the reference, in paragraph 2(g) of Schedule 2 of those Regulations, to the codes being decided by the Commission. A new definition of the words "in code form" (as used in relation to the medical codes referred to in Schedule 2) has instead been inserted, in regulation 2 of the Train Driving Licences Regulations. This new definition refers to relevant codes provided for in Annex I to Commission Regulation (EU) 2010/36 on Community models for train driving licences, as that annex is amended from time to time. Annex I is a technical annex and for the purposes of the reference to this annex as amended from time to time, the Regulations are made under section 2(2) of the European Communities Act 1972, as read with paragraph 1A of Schedule 2 to that Act.

3.4. The ROGS Amendment Regulations 2011 were reported for defective drafting in terms of certain definitions inserted by those Regulations in a Schedule to ROGS. The necessary improvements to the drafting of Schedule 3 of ROGS have now been made in accordance with the Department's memorandum as reproduced in the Thirtieth Report of Session 2010- 12.

4. Legislative Context

4.1 The 2008 Directive introduced a requirement for all rail vehicles using mainline railways to have an ECM assigned to them and requires the ECM to have responsibility for maintaining each vehicle assigned to it in accordance with the vehicle's maintenance file (i.e. the file containing all the technical management information necessary to carry out maintenance) and applicable national maintenance rules. The 2008 Directive also requires each ECM to be registered as such in the relevant National Vehicle Register. This is a database of rail vehicles that each EU Member State has to operate under Directive 2008/57/EC on the interoperability of the rail system within the Community (O.J. No L 191, 18.7.2008, p.1).

4.2 These requirements were transposed in Great Britain by the ROGS Amendment Regulations 2011.

4.3 The 2008 Directive also requires the ECM for a rail freight wagon to be certified by a national safety authority or by an accredited or recognised body. Under the Directive, the Commission was required to bring forward a measure to set out the system of certification for these purposes and to provide for the accreditation or recognition of certification bodies. The ECM Regulation has now established this certification system as well as the accreditation and recognition regime. The Regulations therefore amend ROGS further so as to give effect to the certification requirement and the system established by the ECM Regulation.

4.4 The Regulations also:

- make the requirement for freight wagon ECMs to possess ECM certificates an enforceable obligation under the Health and Safety at Work etc. Act 1974; and
- ensure that decisions made in respect of ECM certificates by certification bodies can be appealed (as required in the ECM Regulation).

4.5 The Regulations also make changes to the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 ("EARR") (S.I. 2006/557) to extend the powers of ORR inspectors so that they can inspect and enforce in railway premises where an ECM may have maintenance facilities.

4.6 The Regulations also make a number of additional amendments to ROGS including a power for ORR to determine that a railway forms part of a metro or light rail system, part of a local, urban or suburban network or is a heritage, museum or tourist railway. If ORR so determines, the railway will not then be deemed part of the mainline railway and so will not be subject to the mainline railway provisions under ROGS. ORR is also given power to determine that a heritage vehicle which operates on the mainline railway shall be deemed not to do so for the purposes of ROGS.

4.7 The Regulations also amend ROGS so as to:

- remove the requirement for mainline operators to carry out safety verification under ROGS as an equivalent requirement has since been introduced by Commission Regulation (EC) 352/2009 on the adoption of a common safety method on risk evaluation and risk assessment (OJ No. L 108. 29.4.2009) which is directly applicable as a matter of UK law;
- remove the requirement for non-mainline operators to send annual safety reports;
- clarify that controllers of 'safety-critical work' must have suitable and sufficient monitoring arrangements in place;
- ensure that the 28-day 'affected parties' consultation period runs concurrently with the ORR's four month processing time for applications for safety certificates and safety authorisations; and
- amend definitions of "national safety rules" and "placed in service" to clarify their meaning'.

4.8 As noted above (see paragraphs 3.2 and 3.3), the Regulations also amend the Train Driving Licences Regulations to:

- clarify the meaning of "in code form" in relation to medical restrictions in train driving licences; and
- reflect the changes made to the definition of "mainline railway" in ROGS.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

5.2 Responsibility for railways in Northern Ireland is devolved to the Northern Ireland Assembly and is administered by the Department for Regional Development (Northern Ireland) ("DRDNI"). DRDNI have implemented the 2008 Directive by separate legislation (the Railways (Safety Management) (Amendment) Regulations (Northern Ireland) 2011 (S.R. (NI) 2011/261). In relation to the Channel Tunnel, the Intergovernmental Commission has made a bi-national Regulation under the Treaty of Canterbury 1986[1] to amend an earlier 2007 Bi-national safety regulation which was given effect in UK law by the Channel Tunnel (Safety) (Amendment) Order 2013 (S.I. 2013/407).

6. European Convention on Human Rights

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

7. Policy background

[1] Available from www.channeltunneligc.co.uk/Essential-texts,24.html?lang=en.

What is being done and why

The Railway Safety Directive

7.1 The Railway Safety Directive is one of a number of Directives introduced under the Common Transport Policy of the EU. The aim of this policy is to revitalise the railways in Europe by creating a single market and by improved access to the market for rail services.

7.2 Representatives of the freight wagon community lobbied the EU institutions to change the Railway Safety Directive. They wanted a system that would help provide assurance of the safety of freight wagons across EU Member States. In December 2006, the Commission tabled a package of revisions to the Common Transport Policy. The driving force behind these revisions was to improve cross acceptance for freight wagons. Cross acceptance is the mutual recognition by Member States of each other's national rules, processes, and authorisations. This is to allow free movement of rail services in an integrated common railway area. The legislative package included amendments to the Railway Safety Directive.

7.3 The 2008 Directive establishes a common system for maintenance arrangements across EU Member States. Under its requirements, all vehicles need to be assigned an ECM. This should be before a vehicle is placed in service or used on the network. The ECM must be registered on the NVR of the Member State in which it is first placed in service. The ECM must establish a system of maintenance which ensures that any vehicles for which it is responsible are safe to run on the network.

7.4 In respect of the maintenance of freight wagons only, the ECM needs to hold an ECM certificate. The ECM certificate will provide assurance that the maintenance requirements of the 2008 Directive are being met for any freight wagon for which the ECM has responsibility. This certificate will be valid throughout the EU.

7.5 The 2008 Directive requires that a certification body certifies each ECM for freight wagons. The certification body has to be either the national safety authority (for Great Britain this is the ORR) or an accredited or recognised body.

7.6 The ECM Regulation made by the European Commission under powers in the 2008 Directive sets out the system of certification of ECMs for freight wagons.

7.7 The Regulations require an ECM for freight wagons to obtain an ECM certificate in accordance with the ECM regulation.

Enforcement demarcation

7.8 EARR were made under the Health and Safety at Work etc. Act 1974. They provide the enforcement demarcation between the Health and Safety Executive ("HSE") and ORR for railway safety purposes. Under EARR, ORR is the enforcing authority for activities associated with the operation of a railway.

7.9 The current demarcation means that in certain premises (listed below), ORR inspectors can enter to undertake railway related inspections of rolling stock only by invitation from the occupier or by authorisation from HSE to accompany one of their inspectors. This potentially limits the effectiveness of ORR as a safety regulator as some ECMs will have maintenance facilities in premises where ORR currently has no enforcement responsibility, e.g. railway heavy maintenance workshops. ORR, as a safety regulator, could therefore have difficulty monitoring the ECM's maintenance systems.

7.10 The Regulations therefore amend EARR to allow ORR inspectors to enter and have enforcement powers in those premises that they are currently not able to enter without HSE authorisation. This is solely for the purposes of monitoring compliance by ECMs with the requirements in regulations 18A of ROGS. These premises are:

a) a harbour within premises referred to in any of sub-paragraphs (c) to (h);
b) any other harbours subject to certain exceptions;
c) an establishment to which the Control of Major Accident Hazards Regulations 1999 (S.I. 1999/743, as amended by S.I. 2005/1088) apply;
d) a factory;
e) a mine;
f) a nuclear licensed site;
g) a quarry; or
h) warehouse premises.

Appeals in relation to an application for an ECM certificate

7.11 The Regulations add to the existing appeals mechanism in regulation 27 of ROGS through the inclusion of appeals arising from decisions made by a certification body in relation to on an application for an ECM certificate. In Great Britain, a certification body can either be ORR or a body accredited by the United Kingdom Accreditation Service.

Definition of "mainline railway"

7.12 The Railway Safety Directive applies to mainline operators; i.e. those that operate on the mainline railway and those that manage the mainline infrastructure. The existing definition of "mainline railway" in regulation 2(1) of ROGS has caused some confusion and uncertainty regarding its scope. The Regulations therefore amend the definition to clarify that those operators that may be excluded from the Railway Safety Directive requirements are properly excluded from the mainline railway in Great Britain.

7.13 The Regulations insert new regulation 2A into ROGS, which gives ORR discretion to:

- determine if a railway, or part of a railway, is not part of the mainline railway;
- publish a list of those systems that are excluded (which is consistent with the approach in the Railways (Interoperability) Regulations 2011 (S.I. 2011/3066) and adds transparency across regulatory regimes); and
- determine that heritage vehicles which operate on the mainline railway and comply with national safety rules may be deemed not to be operating on the mainline railway.

Safety verification

7.14 ROGS require that, whenever there is a significant change that impacts on safety, operators have to decide if safety verification is needed. Safety verification is needed if:

- the risk arising from the project is new, or is new to the transport system (the 'difference test'); and
- there will be a new significant safety risk or a significant increase in risk (the 'risk test').

7.15 Commission Regulation 352/2009 setting out a common safety method ("CSM") for risk evaluation and assessment on the mainline railway has applied to all significant changes since 1 July 2012. The CSM covers the same requirements as safety verification (and more).

7.16 The Regulations remove any reference to safety verification on the mainline railway. This avoids potential additional burdens on mainline operators if they have a legal duty to carry out both the CSM and safety verification. Safety verification will continue to apply to non-mainline operators, who are excluded from the requirements of the CSM.

Annual safety reports

7.17 The Railway Safety Directive requires operators to send annual safety reports to the national safety authority. In Great Britain, regulation 20 of ROGS requires operators, both mainline and non-mainline, to send annual safety reports to ORR. The non-mainline operators are:

- Docklands Light Railway;
- London Underground;
- Nexus Tyne and Wear Metro;
- North Yorkshire Moors Railway;
- Island Line (Isle of Wight); and
- SPT (Glasgow) Subway.

7.18 ORR has reviewed the requirement for non-mainline operators and has concluded that it is no longer necessary for them to submit these reports. These operators are excluded from the requirements of the Railway Safety Directive and ORR does not see any value in them producing the reports. ORR inspectors can obtain the information by other means if and when required. The Regulations therefore remove any reference to non-mainline operators sending annual safety reports to ORR.

Affected parties

7.19 Regulation 17 of ROGS requires that whenever:

- an application is made for a safety certificate, safety authorisation, amended safety certificate or amended safety authorisation; or
- ORR issues a notice that it is considering revoking a safety certificate or safety authorisation,

the applicant and ORR must consult an 'affected party' on the application or notice of revocation, or on any further information requested by ORR. The 'affected party' has 28 days from the date of issue of the application or notice of revocation to make representations to ORR. For these purposes "affected parties" include:

- for all applications, any recognised trades unions in the applicant's organisation;
- for all applications, the appropriate rail user groups;
- for a safety certificate application, transport operators who manage the infrastructure of the transport system the applicant runs; and
- for a safety authorisation application, transport operators who run on the applicant's infrastructure or who manage infrastructure that 'interfaces' with the applicant's system.

7.20 Regulation 17(7) of ROGS requires that the four month period that ORR has to make its decision on an application for a safety certificate, safety authorisation, amended safety certificate or amended safety authorisation will not begin to run until the 28-day "affected party" consultation period has elapsed. ORR has reviewed this requirement and found that in many cases, it did not take as long as four months for ORR to process applications. Taking the four-month period as 122 days, adding 28 days gives 150 days. In a sample size of 64 safety certificate applications, the average time taken to process an application is 99 days. In

7.21 In the interest of better regulation, the Regulations amend ROGS so that the 28-day consultation with an 'affected party' will now run concurrently with the four-month application assessment period. This will in some cases shorten the time taken for an applicant to receive a decision from ORR.

Monitoring arrangements for controllers of safety-critical work

7.22 Regulation 24(1)(d) of ROGS requires that every controller of 'safety-critical work', so far as is reasonably practicable, ensure that anyone under his management, supervision or control only carries out 'safety-critical work' where there are in place arrangements for monitoring the competence and fitness of that person.

7.23 Operational experience suggests that the provisions of regulation 24(1)(d) are not clear to duty holders. It is also difficult for ORR to enforce against these arrangements if they are considered by the inspector to be unsuitable and insufficient. However, if regulation 24(1)(d) required that there were in place suitable and sufficient arrangements for monitoring, this would help to improve safety by clarifying the requirement for controllers of 'safety-critical work'. The inspector would then be able to require improvements if monitoring arrangements were considered to be unsuitable and insufficient.

7.24 Accordingly, the Regulations insert into regulation 24(1)(d) of ROGS the words "suitable and sufficient" between 'place' and 'arrangement'.

National safety rules

7.25 ROGS generally uses the term 'transport undertaking' rather than 'railway undertaking', which is the term used in the Railway Safety Directive. 'Transport undertaking' includes operators not on the mainline railway but who are also covered by ROGS (and who, consistently with the scope for derogation under the Rail Safety Directive are subject to different nationally-based safety rules).

7.26 "National Safety Rules" are already used in ROGS to refer to rules applying to both mainline and non-mainline railways. The definition is therefore being amended to make this clearer and a reference to a "transport undertaking" has been inserted in that definition in place of the existing reference to a "railway undertaking".

Placed in service

7.27 Regulation 3(2) substitutes for the old definition of "placed in service" a revised one to ensure that infrastructure is included as well as vehicles.

Deemed safety certification and deemed safety authorisation

7.28 The Regulations remove any references to 'deemed safety authorisation' or 'deemed safety certificate' in regulations 2(1) and 17 and schedule 5 of ROGS. This is because they relate to transitional provisions for safety certificates and safety authorisations between 2006 and 2008, which are contained in Schedule of 5 of ROGS. As these dates have passed and the certificates and authorisations to which they relate have expired, the transitional provisions are no longer necessary and Schedule 5 has been deleted.

Train driving licences and certificates

7.29 The Regulations insert a definition of "in code form" into regulation 2 of Train Driving Licences Regulations.

7.30 Schedule 2 of the Train Driving Licences Regulations refers to a model train driving licence and harmonised complementary train driving certificate across the EU. It sets out a model of what information licences and certificates must contain, how it must look and what restrictions there are.

7.31 In order to clarify the meaning of "in code form" in paragraph 2(g) of Schedule 2 of the Train Driving Licences Regulations, a definition is being inserted into those Regulations and the final paragraph of paragraph 2(g) is being deleted. This makes it clear that "in code form" is to be interpreted by reference to the medical codes referred to in Annex A to Commission Regulation 36/2010 as that annex is amended from time to time.

7.32 The Regulations also insert new regulation 1A into the Train Driving Licences Regulations, which excludes from those Regulations heritage vehicles that ORR determines do not operate on the mainline railway, as provided by new regulation 2A(2) of ROGS.

Common safety indicators

7.33 The ROGS Amendment Regulations 2011made amendments to the Common Safety Indicators ("CSIs") set out in Schedule 3 of ROGS by replacing that Schedule with a new one. Part 2 of the replacement Schedule 3 contained definitions copied from Directive 2009/149/EC on CSIs. The drafting of those definitions was capable of improvement which has now been effected by further amendments to Schedule 3 of ROGS, contained in regulation 3(14) of the present Regulations.

7.34 The Regulations amend ROGS, EARR and the Train Driving Licences Regulations. There are currently no plans to consolidate these revisions within the parent regulations. An informal consolidated version of ROGS is available to download from ORR's website[2].

8. Consultation outcome

8.1 ORR undertook a public consultation from 30 July 2012 to 23 October 2012. Those consulted included organisations in the rail industry, private wagon owners, consumer groups (including passenger and disabled persons interest groups), trade associations, the Heritage Railway Association, other government departments, trade unions and the devolved administrations.

8.2 A total of 17 responses were received. The consultation document[3] asked 11 specific questions and a full analysis of the consultation responses is available on ORR's website[4]. A summary of the key outcomes is explained below.

Amending EARR

8.3 None of the respondents objected to the proposal to amend EARR to give ORR inspectors jurisdiction to enter and have enforcement powers in certain premises, although some

[2] http://www.rail-reg.gov.uk/server/show/nav.2628
[3] http://www.rail-reg.gov.uk/upload/pdf/regulations-2010-consultation-mar10.pdf
[4] http://www.rail-reg.gov.uk/server/show/nav.62

requested clarification of the extent of ORR's enforcement powers. ORR will include the latter in its guidance.

Maintenance of freight wagons

8.4 ORR consulted on an amended regulation 18A of ROGS, which requires an ECM for freight wagons to hold an ECM certificate.

8.5 Two respondents pointed out that the draft did not take account of the transitional provisions in the ECM Regulation. The drafting of the definition of an ECM Certificate (being inserted into regulation 2(1) of ROGS) has therefore been amended to make it clear that the term also includes reference to certificates or self-declarations deemed equivalent to such a certificate under the transitional provisions at articles 12(3) to (7) of the ECM Regulation. The effect is that an ECM in possession of one of those certificates or having made a relevant self-declaration will be taken to have met the requirement to hold an ECM certificate for the relevant transitional period. The effect of this is minimal in that it simply delays the requirement to hold a full ECM Certificate issued in accordance with the ECM Regulation for some parties where other provisions of recognised equivalence are already in place.

Definition of "mainline railway"

8.6 Twelve respondents (71 per cent) agreed with the proposed approach to carve out specific railway systems from the mainline railway requirements in ROGS through the use of a list published by ORR. One respondent disagreed but gave no reasons.

8.7 There were some reservations about the use of a list of rail systems that ORR has determined is not the mainline railway. Some respondents thought that:

- it might be unnecessarily administratively complex to maintain a list;
- as most of the excluded systems are free-standing, it might be better to exclude them by a suitably-worded class exemption and reserve the list to those that are not caught by it; and
- ORR could use the approach in the Rail Vehicle Accessibility (Networks) Exemption Order 2010 (S.I. 2010/904) ("RVANEO"), which lists exempted heritage and tourist lines in a Schedule.

8.8 ORR considers that once the list has been established, it would not be administratively complex to maintain. However, it might be more complex to find suitable wording for a class exemption (the previous definition of "mainline railway" tried to do this). The disadvantage of using the approach in the RVANEO is that it would be less flexible when making any amendments to the list which are likely to be required in due course as separate amendment orders would be needed on each such occasion.

8.9 There were extensive comments on new regulation 2A. Many of them concerned the wording that was copied out of the Railway Safety Directive. For example, the phrase "metros and other light rail systems" should be replaced by "metros or light rail systems" because London Underground is not a light rail system.

8.10 The Regulations have retained the wording used in the Railway Safety Directive because the Government's approach to the transposition of EU Directives is, as far as possible, to "copy out". Listing rail systems under each description avoids any confusion of how a particular system is exempt if the wording from the Directive is not clear. The Department does not consider that the Railway Safety Directive requires a railway system to be both a metro system and a light rail system to be eligible for exemption under its derogation provisions

8.11 Based on comments received, the Regulations:

- take on board some suggestions on the language in regulation 2A where this does not conflict with "copy out";
- include a clause in regulation 2A which gives ORR discretion to decide that a determination no longer applies; and
- provide a mechanism in regulation 27 for an appeal to the Secretary of State in relation to a determination under regulation 2A.

Removal of safety verification for mainline transport operators

8.12 None of the respondents objected to the proposal to remove from ROGS any reference to safety verification on the mainline railway in the light of the CSM for risk evaluation and assessment. Safety verification under ROGS will continue to apply for non-mainline operators.

Affected parties

8.13 None of the respondents objected to the proposal to make the 28-day 'affected parties' consultation period run concurrently with the ORR's four month processing time.

Annual safety reports

8.14 Ten respondents either did not comment or did not have any interest in the proposal to remove from ROGS the requirement for non-mainline operators to send annual safety reports to ORR. Five agreed with the proposal, although three had reservations. Two did not agree.

8.15 The dissension was mainly because:

- the metro and light rail operators are major public transport undertakings carrying as many passengers as many mainline operators; and
- safety performance data will not be readily available to members of the public if the operator is not required by law to produce a report.

8.16 Those with reservations were concerned that non-mainline operators running on part of the mainline would no longer be included with the statistics used for safety risk modelling.

8.17 The Regulations remove the requirement for non-mainline operators to send annual safety reports to ORR because:

- the administrative burden and costs are removed from the duty holder;
- the administrative burden is removed from ORR, which sees little value in receiving the reports and does not use them in a regulatory way;
- it satisfies the Government's agenda to:
    - reduce regulation and costs on businesses;
    - seek alternatives to regulation; and
    - end gold-plating; and
- ORR inspectors can obtain any relevant information by other means if and when they require it.

8.18 Non-mainline operators that run on the mainline still need to co-operate with transport operators on the mainline railway (Regulation 22 of ROGS).

8.19 ORR will continue to encourage non-mainline operators to make safety performance data available publicly.

9. Guidance

9.1 A Guide to ROGS[5] already exists and has been revised to reflect the changes made by these Regulations.

10. Impact

10.1 The Regulations will not impact upon charities or voluntary bodies. The impact on the public sector is minimal. The total costs of implementation, spread over both business and the public sector, are estimated to be £2.1million with total benefits of £3.1million (all figures are present values, calculated over ten years). The main costs on businesses are £0.4million for familiarisation with the ECM certification requirements and preparing for certification. The main benefits for business are from the Professional Head engineering role in the Private Wagon Registration Agreement (£0.2million).

10.2 More detail on these costs and benefits is set out in the Impact Assessment published, at www.legislation.gov, with this Explanatory Memorandum.

11. Regulating small business

11.1 The legislation applies to small business but it should not adversely impact upon them as the regulatory burden should not increase for any size of firm.

12. Monitoring & review

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

12.2 The Regulations insert new regulation 8 into EARR and new regulation 40 into the Train Driving Licences Regulations to require the Secretary of State to review them within five years of these Regulations coming into force and to publish the review's conclusions. The ROGS Amendment Regulations 2011 inserted regulation 34A into ROGS, which requires that within five years from 26 August 2011 (the date the ROGS Amendment Regulations 2011 came into force), the Secretary of State must review the whole of ROGS and publish the review's conclusions.

13. Contact

Chris Angell at the Department for Transport (Tel: 020 7944 0082 or email: christopher.angell@dft.gsi.gov.uk) can answer any queries regarding the instrument.

[5] http://www.rail-reg.gov.uk/server/show/nav.1511