

**MEETING:** Industry Standards Co-ordination Committee  
**DATE:** 22 May 2018  
**SUBJECT:** Applicability of Railway Group Standards and when they become compulsory  
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## **1 Problem statement and the purpose of the paper**

- 1.1 A project entity representing an infrastructure manager (IM), a railway undertaking (RU) or a manufacturer, is required to comply with 'relevant' TSIs and notified national technical rules (NTRs) in Railway Group Standards (RGSs) for GB mainline railway, if required by the Rail (Interoperability) Regulations 2011 (as amended) – RIR 2011. The IMs or RUs licence conditions also require compliance with RGSs 'applicable' to their activities. This has caused confusion when a project is not in scope of RIR 2011 thereby making the RGS not compulsory as NTRs, but at the same time potentially compulsory via the licence condition, or vice versa.
- 1.2 This paper provides a clarification on the applicability of RGSs under the Interoperability and licence regimes and when compliance becomes compulsory which closes out an action on RSSB from the ISCC meeting held on 28 March 2018.

## **2 Legislative background**

### **2.1 RGS licence condition, ROGS 2006 and applicability**

- 2.1.1 Currently, licence holders (IMs and RUs) are required to comply with those RGSs that are applicable to their activities. It is the licence holder that decides if and when an RGS is 'applicable', not RSSB as the organisation publishing RGSs or the Office of Rail and Road (ORR) as the licence issuer.
- 2.1.2 The Railways and Other Guided Transport Systems (Safety) Regulations (ROGS) 2006 (as amended) – Schedule 1 Safety Management System (SMS) - (2) (c) - requires IMs and RUs to have procedures to meet 'relevant' technical and operational standards or other requirements set out in TSIs, national safety rules, other relevant safety requirements, and decisions of the ORR.
- 2.1.3 The SMS includes procedures for identification of relevant standards and assessing their 'applicability' to IM and RU's activities (including engineering or operational changes) based on suitable and sufficient risk assessments and consultations with other affected parties. Once these requirements (in relevant standards such as RGSs or Rail Industry Standards (RISs)) are identified and assessed to be 'relevant' or 'applicable' by the IM or RU, then they are/can be included in their SMS, thereby making them compulsory via the SMS.
- 2.1.4 The current licence condition (which predates ROGS 2006 and RIR 2011) reinforces the need for the licence holder to always consider the applicability of RGSs and comply with those deemed to be so. Please note the licence condition paper tabled at the March 2018 ISCC meeting put forward options to explicitly

extend this applicability assessment to other standards beyond RGSs such as RISs. Although it is ORR's view that ROGS 2006 already requires consideration of all relevant standards.

2.1.5 **Conclusion:** 'Applicability' in the licence condition does not equate to 'compulsory in all circumstances', and the imposition of the RGS is via the SMS once the duty holder decides the RGS includes a safety requirement that they wish to implement. If they do something different then that needs to be recorded as per their SMS based on a risk assessment and consultation. Simply put, the terms "relevant" in the legislation and "applicable" in the licence condition are broadly analogous.

## 2.2 Scope of RGSs as National Rules and Interoperability

2.2.1 The RGS Code (approved by the ORR) limits the scope of RGSs to only those requirements that the law allows Government or regulators to impose as mandatory rules, namely requirements meeting the criteria of:

- a) National Technical Rules (NTRs) as set out in the Railway Interoperability Directive (Directive 2008/57/EC), or
- b) National Safety Rules (NSRs) as set out in the Railway Safety Directive (Directive 2004/49/EC) – **there are no RGSs in this category anymore as obligations are already covered by existing domestic and EU legislation.**

2.2.2 The scope of NTRs has been extensively discussed in multiple previous papers to ISCC so is not elaborated on in this paper. As a summary, they are limited to open points and specific cases in TSIs; derogations from TSIs (currently there are no RGSs in this area) and those needed for technical compatibility with legacy non-TSI conform structural subsystems. NTRs in this context only apply to mainline subsystems (DfT and ORR publish list of exclusions relevant to interoperability and safety regulations respectively).

2.2.3 As RGSs are imposed by regulation (via the ORR-issued licence) on those operating the railway, they are considered 'national rules' and consequently can only be imposed if meeting scope conditions (in 2.2.2) for NTRs (or theoretically, the conditions for NSRs).

2.2.4 Furthermore, NTRs in RGSs only apply to the GB mainline railway network (a subset of the mainline) which excludes any railway in Northern Ireland; the dedicated high-speed railway between London St Pancras International Station and the Channel Tunnel; and the Channel Tunnel<sup>1</sup>.

2.2.5 Article 17(3) of Directive 2008/57/EC requires member states to draw up, for each subsystem, a list of the technical rules in use for implementing the essential requirements and notify this list to the European Commission.

2.2.6 RIR 2011 (as amended) defines Notified NTRs (NNTRs) as the standards, technical specifications and technical rules in use in the United Kingdom which have been

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<sup>1</sup> Although of course these networks can, and in some cases do, adopt the content of RGSs as part of their company standards

notified by the Secretary of State to the Commission to meet its obligations under the relevant Directives.

- 2.2.7 For the GB mainline railway network, as RGSs change or as new RGSs are created or withdrawn, RSSB sends a list of RGSs (identifying the relevant sections pertinent to the category of national rules or technical parameters) to the DfT for notifying the NTRs to the Commission. The list of NNTRs for the GB mainline railway system can be accessed on the DfT website.
- 2.2.8 In conjunction with demonstrating conformity with relevant TSI requirements, the RGS requirements in the DfT list as NTRs can be used (by showing conformity with) by the project entity (who may be representing the IM or RU) to demonstrate that a new, renewed or upgraded subsystem<sup>2</sup> (or a vehicle as a set of integrated subsystems) is capable of meeting the essential requirements, and apply to gain authorisation from the ORR as the National Safety Authority (NSA).
- 2.2.9 If a project wishes to do something different to the NTR then instead of seeking dispensation from the DfT, the project can use the RSSB deviation process to demonstrate that alternative means still meet the essential requirements and include the evidence with the technical file<sup>3</sup>.
- 2.2.10 **Conclusion:** If authorisation under RIR 2011 (as amended) is not required, then the need to demonstrate conformity with TSIs and NNTRs in RGSs to the ORR as the NSA under interoperability legislation is not compulsory. However, this does not obviate the RU or IM's duties under ROGS 2006 (in particular the above-mentioned SMS requirements, the use of the CSM risk assessment and/or the risk assessment requirements of Regulation 19) and other regulations.

### **3 'What is changing' and 'by how much' triggers whether an RGS is compulsory**

#### **3.1 What happens when the change being made is deemed to be new, upgrade or renewal?**

- 3.1.1 'Applicability' or 'relevance' is based on the subject of the RGS and how it relates to the subsystem being changed. Also, the change has to be part of the GB mainline railway for RGS requirements to apply either as NNTRs or under the licence requirement. There should be no confusion in these matters.
- 3.1.2 Changes to RGSs do not become compulsory retrospectively to existing railway subsystems. Therefore, assessment of applicability of an RGS is triggered only when a change is made to the subsystem as opposed to when a change is made to the RGS requirement<sup>4</sup>.
- 3.1.3 RIR 2011 (as amended) already sets out that demonstrating compliance with NNTRs is only required where a changed subsystem is new, upgrade or renewal, and requires authorisation from the ORR. In all other cases, it is a matter for the

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<sup>2</sup> New, upgraded and renewed as defined in RIR 2011 (as amended)

<sup>3</sup> See DfT's RIR 2011 helpnote on dispensations for more details:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/270602/dispensations.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270602/dispensations.pdf)

<sup>4</sup> Please note that the National Operations Publications such as the Rule Book (which is not an RGS or a national rule) are different as they are direct instructions to staff.

licence holder to determine whether or not the change presents them with a reasonable opportunity to bring the subsystem into conformity with the latest RGS requirement. As ROGS 2006 makes clear, the basis of this determination should be the application of SMS procedures and a suitable and sufficient risk assessment.

3.1.4 **Conclusion:** As RGS requirements are drafted to serve the purpose of NNTRs, it would be reasonable for a licence holder to assume that unless the change to the subsystem is deemed to be 'new, upgrade or renewal' then compliance with the latest RGSs is not compulsory under the licence. However, where risk assessment demonstrates that it is reasonably practicable to reduce risks and improve safety by bringing the subsystem into compliance with the latest standards then this should be pursued. Where the change is 'new, upgrade or renewal' and requires an authorisation, RGSs as NNTRs become compulsory.

### 3.2 **What happens when the change being made is deemed to be minor (including a like-for like substitution)?**

3.2.1 For a minor change scenario (sometimes referred to as "below the bar" in terms of interoperability authorisation), ongoing compliance with TSIs, RGSs, etc to which a subsystem was designed is already required by ROGS 2006 (Schedule 1 – SMS –(2)(c)) that an IM and RU's SMS *must have procedures to ensure compliance with the requirements throughout the life-cycle of any relevant equipment or operation which is subject to the requirement in question.*

3.2.2 If a change is 'significant' under the Common Safety Method on Risk Evaluation and Assessment (CSM RA), then RGSs can still be used as 'Codes of Practice'. Equally, if the change is not significant, a risk assessment under Regulation 19 of ROGS 2006 may identify an RGS as relevant good practice. When considering 'like-for-like' substitution of equipment, risk assessment should always be proportionate to the scale and complexity of the activity being undertaken and the hazards involved (e.g. replacing seat covers on a passenger train compared to replacing a section of DC conductor rail).

3.2.3 **Conclusion:** For minor and/or non-significant changes (including like-for-like substitution), the licence holder must still manage the change and meet their legal obligations (such as those under ROGS 2006) through their SMS and must carry out suitable and sufficient risk assessments; consult affected parties; cooperate with other transport operator; and implement measures (which may be defined in RGSs, TSIs or Rail Industry Standards) to control any identified risk from hazards to an acceptable level.

## **4 How will the interpretation in this paper be reflected in formal guidance?**

4.1 The interpretation in this paper is consistent with the flowchart produced as part of the ISCC workshop on standards in 2017 which can be used to communicate how RGSs apply. A simplified version addressing RGS applicability is provided in Annex A.

4.2 Additionally, RSSB will review and update the application section of RGSs to reflect clarification in this paper. ORR as part of the wider review of the licence conditions will review and, where necessary, update any relevant guidance.

## 5 Recommendations

### 5.1 ISCC is asked to:

- **NOTE** the interpretation and advice set out in the paper
- **NOTE** RSSB's commitment to review and update the application section of RGSs to be aligned with the interpretation and advice
- **NOTE** ORR's commitment to, if necessary, review and update relevant guidance as part of the licence condition review
- **COMMUNICATE** the advice in the paper to their constituents
- **DISCUSS and IDENTIFY** how RSSB can aid ISCC members in any communication with constituents

## **Annex A: Assessing how to use RGSs depending on the change being made**

