

		<b>RSD Internal Guidance</b>		RIG-2014-03	
<b>Process for determination of exclusions from the mainline railway in the Railways and Other Guided Transport Systems (Safety) Regulations 2006, as amended (ROGS)</b>					
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<b>Keywords</b>		Approved List; ROGS; Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended); mainline railway; exclusion; determination			
<b>Summary</b>		This guidance document explains the process involved in handling applications for amendments to the Approved List of rail systems that are excluded from the mainline railway in ROGS. Systems can be added or removed, or existing entries varied.			
<b>Original consultation</b>		John Gillespie, Alan Bell, David Keay, Paul Appleton, Chris Simms, Stefano Valentino			
<b>Subsequent consultation</b> (reviews only)		John Gillespie, Martin Jones, David Keay, Paul Appleton, Stefano Valentino, Legal Services			

## Detail

### **Introduction**

1. This Railway Guidance Document sets out ORR's process for determination of exclusions from the mainline railway under regulation 2A of the Railways and Other Guided Transport Systems (Safety) Regulations 2006, as amended ("ROGS").

### **Background**

2. Regulation 2A of ROGS gives ORR discretion to determine that a railway or part of a railway does not form part of the mainline railway if it falls within one or more of the following categories:

(a) metros and other light rail systems;

(b) networks that are functionally separate from the rest of the mainline railway and intended only for the operation of local, urban or suburban passenger services as well as transport undertakings operating solely on these networks; and

(c) heritage, museum or tourist railways that operate vehicles that comply with national safety rules on both their own networks and the mainline railway.

3. Regulation 2A also gives ORR discretion to determine that a heritage vehicle which operates on the mainline railway and complies with national safety rules is deemed not to operate on the mainline railway. We may also revoke or vary any determination we make.

4. We will publish on our website an [Approved List](#) of those transport systems and heritage vehicles (in paragraphs 2 and 3 above) that we determine are not mainline railways or operating on the mainline railway. Anyone can apply to us for a transport system or heritage vehicle to be added or removed from the Approved List or for an existing entry on the list to be varied by sending an email to us at [rogsguidance@orr.gsi.gov.uk](mailto:rogsguidance@orr.gsi.gov.uk).

### **Benefits**

5. The rationale behind this system of determination is to make it clear which railways or vehicles are **not** caught by European requirements [i.e. the Railway Safety Directive (2004/49/EC) and the Train Driving Licensing Directive (2007/59/EC)]. The Directives apply to the mainline railway, so the railways or vehicles listed in paragraphs 2 and 3 above are considered to be non-mainline. The system of determination offers the following benefits:

- railways, such as metros and heritage, with vehicles operating on the mainline railway will require just a non-mainline safety certificate (previously they needed to have both);
- mainline railway operators, whose vehicles operate on non-mainline infrastructure, will not require a separate non-mainline safety certificate

(their mainline safety certificate will be deemed to cover non-mainline operation);

- non-mainline operators will not require their drivers to have a train driving licence or certificate if their vehicles operate on the mainline railway;
- each case can be considered on its own merit; and
- there is clarity and transparency.

### **Information required from the applicant**

6. The applicant should provide enough information to allow us to make a determination. At least the following should be provided by them:

- a letter stating whether a determination is sought for addition to, removal from, or a variation of an existing entry on, the Approved List;
- an indication of what part of regulation 2A (paragraphs 2 and 3 above) will apply if addition (or variation) is sought;
- an overview of the rail system or vehicles and a copy of the safety management system;
- information about any consultation that may have taken place to inform the application; and
- if the rail system or vehicles will be added to the list temporarily (for example for testing trains),
  - the date planned to start the work;
  - the scope of the work, describing work activities involved;
  - the expected date for the finish of the work;
  - the responsibilities of different parties involved;
  - risk assessment covering the principal additional risks which are likely to result.

7. This list is not exhaustive and ORR may request further information/clarification.

8. ORR will aim to make a decision on the application within four months from

- the date of receipt of the application; or

- the last date of receipt of any further information requested, whichever is later.

### **When an application is received at ORR**

9. Applications should be sent to the Railway Safety Policy (RSP) Team.

10. RSP will complete Sections 1 to 4 of [Form MLX](#) to included details of whether the application is to

- add a system or vehicles to the Approved List;
- remove a system or vehicles from the Approved List;
- vary an existing entry on the Approved List; or
- revoke a determination,

and send the form to the appropriate Principal Inspector (PI) (Grade B) in RSD. It may be necessary for the PI to consult the Rail Vehicles team in RPP. RSP and the PI will discuss next steps and RSP will request further information from the applicant if this is necessary.

### **Consultation**

11. Once all the necessary information has been provided, RSP will consult the relevant stakeholders (for example train operators, infrastructure manager) for a period of four weeks to allow them to make representations.

12. When the consultation period has ended RSP may confer with the PI on any issues raised during consultation. RSP will record a list of those consulted and the results of the consultation in Section 5 of [Form MLX](#) and send it to the PI.

### **The PI's assessment and recommendation**

13. The PI must consider all responses to the consultation and make an assessment of the application in Section 6 of [Form MLX](#). In addition to safe operation, the factors that will be considered include:

- a general overview of the rail operation including
  - the type of operation;
  - the maximum line speed;
  - the traction system;

- timetable/frequency of operation;
- details of multiple train/vehicle movements;
- interfaces/interworking frequency;
- number of employees including safety-critical workers;
- principle structures; and
- level crossings;
- an outline of the risk assessment process;
- identification of significant risks and an outline of control measures; and
- how control measures are implemented and monitored

### **Making the decision**

14. It is for the PI to provide a recommendation for granting or refusing the application and the reasoning behind that recommendation in Section 6 of [Form MLX](#) and send this to RSP.

15. RSP will then send [Form MLX](#) to Legal Services and the Head of Network Rail Routes and Planning to record, in Section 7 and 8 respectively, their comments on the PI's recommendation and return the form to RSP.

16. RSP will send [Form MLX](#) to the Head of Inspection – Rail Operators (IRO) to record in Section 9 their agreement or disagreement with the PI's recommendation and return the form to RSP. If the Head of IRO disagrees with the PI's recommendation this must be recorded on the form.

17. RSP will then notify the applicant of ORR's decision, publish an updated Approved List if necessary and record the relevant dates in Section 10 of [Form MLX](#).

### **Revocation or variation of a determination**

18. Under regulation 2A(3) of ROGS, ORR may revoke or vary a determination for any reason. Before doing so we will give notice to the affected party of our intention to revoke or vary the determination and the reasons why.

19. Within a period specified in the notice, the affected party may make representations to us and we will consider these before making a decision.

## Appeals

20. An applicant that wants to appeal an ORR decision to:

- refuse its application;
- determine that a transport system should be added to the Approved List;
- determine that a transport system should be removed from the Approved List;
- vary an existing entry on the Approved List; or
- revoke a determination.

should write to the Secretary of State at:

Department for Transport  
Great Minster House  
33 Horseferry Road  
London SW1P 4DR

21. As a guide the applicant should aim to send its appeal within 42 days of receipt of the decision. This is not a statutory requirement.

22. Before the determination of an appeal, the Secretary of State will ask the appellant whether he or she wants to appear and be heard on the appeal. The appeal may be determined without a hearing if both parties (ORR and the appellant) do not wish to appear and be heard. However, if either party wishes to appear and be heard, they will have the opportunity to do so.