

**EXPLANATORY MEMORANDUM TO
THE RAILWAYS (INTEROPERABILITY) REGULATIONS 2011**

2011 No. 3066

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The Railways (Interoperability) Regulations 2011 (“the Regulations”) implement in one instrument the EC Directive 2008/57/EC on the interoperability of the rail system in the Community and two further Directives which amend annexes of the 2008 Directive. The Directives provide for a common assessment and authorisation process for rail projects.

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

- 3.1 None.

4. **Legislative Context**

- 4.1 The Regulations are made under powers in section 247 of the Transport Act 2000, and section 2(2) of the European Communities Act 1972. Section 247 of the Transport Act 2000 was enacted for the purposes of transposing EU Directives on interoperability. For most of the provisions in the Regulations it provides a sufficient power to make the regulations. Where there is doubt as to whether section 247 is wide enough, section 2(2) is relied upon.
- 4.2 The Regulations implement Directive 2008/57/EC on the interoperability of the rail system which is a recast of two earlier rail interoperability Directives: the High-Speed Directive 1996 and the Conventional Directive 2001. These were implemented in the United Kingdom by the Railways (Interoperability) Regulations 2006 (SI 2006/397) as amended by SI 2007/3386 and SI 2008/1746. The 2006 regulations created a framework for the authorisation of major rail projects based on conformity with harmonised standards, supplemented by national rules. These two Directives were repealed with effect from 19 July 2010. The 2008 Directive was later amended by Directive 2009/131 (amending Annex VII) and 2011/18 (amending annexes II, V and VI). The 2006 Regulations are revoked by these regulations.
- 4.3 A Transposition Note is at Annex A. The general approach taken has not been to copy-out the relevant provisions of the Directive as this would have led to uncertainty about the scope of the regulations and the roles and responsibilities of those affected by the Directive. However, in some cases the technical provisions of EU instruments are implemented by cross referring to them in the regulations. In five cases the references are ambulatory, enabling for example the regulations to remain in line with detailed specification requirements for rail registers if those specifications are amended. In some cases provisions have been added to the regulations which are not directly required under the Directive. For example, to

enable authorisation by type to apply to rail infrastructure (eg signalling systems) as well as vehicles.

- 4.4 The proposal that resulted in Directive 2008/57/EC was the subject of Explanatory Memorandum (EM) 17038/06 submitted by the Department for Transport on 25 January 2007. The House of Commons European Scrutiny Committee cleared it from scrutiny (9th Report, Session 2006/2007). The House of Lords Select Committee on the European Union cleared the document from scrutiny on 26 November 2007.

5. Territorial Extent and Application

- 5.1 This instrument applies to all of the United Kingdom including the British half of the Channel Tunnel. Responsibility for railways in Northern Ireland is devolved to the Northern Ireland Assembly and administered by the Department for Regional Development Northern Ireland (“DRDNI”). However, transposition of EU Directives on interoperability has so far been done on a UK-wide basis and Northern Ireland Ministers have agreed to continue this practice, for the purposes of this instrument.

6. European Convention on Human Rights

The Minister of State for Transport has made the following statement regarding Human Rights:

“In my view the provisions of the Railways (Interoperability) Regulations 2011 are compatible with the Convention rights”.

7. Policy background

- 7.1 The objective of European railway interoperability is to create a harmonised European railway system that allows for the safe and uninterrupted movement of trains and it is intended to promote the single market in the rail sector. This is achieved through the harmonisation of the standards to which railway equipment is built and the harmonisation of the process by which equipment designs are verified and authorised to be placed into service.
- 7.2 The standardisation of railway equipment is intended to bring economic benefits through economies of scale. The harmonisation of authorisation processes is intended to open the European market for both the manufacture of railway equipment and the operation of railway services.
- 7.3 Some of the key changes from the 2006 regulations introduced by these regulations are as follows:
- Enabling a streamlined “type” authorisation process to make it easier to obtain an authorisation to place an identical vehicle or infrastructure into service;
 - Widening the scope of the authorisation regime. This means an authorisation is required for the first use of vehicles and infrastructure both on and off the Trans European Network (a strategic European network);
 - A new requirement for owners of infrastructure to publish data on their infrastructure and meet the requirements of an EU infrastructure register specification;

- Ensure owners of vehicles supply data for a vehicle register in line with a European specification;
- Enabling conditions and restrictions to apply to authorisations (this means if an authorisation for all of the UK network is technically impractical this can be taken into account);
- Enable a voluntary process of vehicle authorisation in the UK when a vehicle is already authorised in another Member State;
- Decriminalising minor offences;
- An appeal mechanism so an applicant can appeal about a safety authority decision to the Secretary of State. In Northern Ireland, where the safety authority is DRDNI, an appeal can be made to DRDNI. DRDNI intends that the person hearing any appeal will not have been involved in the original decision. The appeal decisions of the Secretary of State and DRDNI do not prejudice a person's rights to apply for a judicial review;
- A dispensation provision to enable the use after 31 December 2019 of older vehicles which have been made accessible but which do not fully comply with accessibility standards; the removal of two unnecessary provisions relating to accessibility requirements in Northern Ireland referring to exemptions from their accessibility regulations and deemed authorisations under the interoperability regime.

7.4 The level of general public interest in the matters addressed by this instrument is low. Primarily those affected by the instrument are railway operators and manufacturers and suppliers of railway equipment; media interest is therefore usually limited to the specialist trade press for the railway industry. The instrument is primarily an economic measure and is not of any particular legal or political importance, except via implicit links to the safety regime for railways.

8. Consultation outcome

- 8.1 A consultation on initial proposals to implement the Directive was published in 2009 and a second consultation in 2010 included draft regulations. A third, and final, consultation was held between 25 October and 22 November 2011. The consultation period was reduced to four weeks given there had already been two previous consultations and that there was an urgent need to transpose the Directive as the deadline of 19 July 2010 had passed. Many of the proposed changes are to take account of a Recommendation published in April 2011 by the Commission about the correct implementation of the Directive (Recommendation 2011/217). It was anticipated that most stakeholders were familiar with the subject matter of this Recommendation. Workshops were held during the consultation period to assist stakeholders in their consideration of the Regulations.
- 8.2 Twenty responses were received and all of these broadly supported the proposals. A number suggested some of the provisions needed more clarity in certain areas and some minor drafting changes were made to address these. A revision was made to a provision concerning lists of projects to clarify that in the event of being included on the list projects will require an authorisation, unless the project seeks a decision from the Department which says authorisation is not required. Also a change was made to clarify that rail projects have to gain authorisation for vehicles and infrastructure by either meeting technical standards in full, or where those standards cannot be met in every respect, by demonstrating that safety and technical compatibility requirements are met.

8.3 A summary of responses is available at:

<http://assets.dft.gov.uk/consultations/dft-2011-30/response.pdf>

9. Guidance

9.1 Guidance will be made available on the DfT website as a series of “Help Notes” to explain the changes introduced by these Regulations.

10. Impact

10.1 The regulations will not impact upon charities or voluntary bodies. The impact on the public sector is minor. The total costs of implementation, spread over both business and the public sector, are estimated to be £35.9million with total benefits of £111.0 million (all figures are present values, calculated over ten years). The main costs on business is for the infrastructure register (£35.8 million). The main benefits for business are from the infrastructure register (£65.4 million); type authorisation (£19.3 million) and the facility for conditions and restrictions (£23.7 million).

10.2 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk

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 The regulations include provision (regulation 49) for a review by the Secretary of State within five years of the regulations coming into force. There is a requirement under article 39 of the 2008 Directive for the Commission to report every three years on the progress made towards achieving interoperability. Such reports may be relevant to the review process.

13. Contact

13.1 Ian Jones, at the Department for Transport, can answer any queries regarding the instrument.

Tel: 020 7944 5595

email: ian.jones@dft.gsi.gov.uk

Transposition Note for Council Directive 2008/57/EC, as amended by Directives 2009/131 and 2011/18, on the interoperability of the rail system within the Community (recast) (the “Interoperability Directive”)

This Transposition Note outlines how the Interoperability Directive is transposed by the Railways (Interoperability) Regulations 2011 (“the Regulations”), which revoke and replace the Railways (Interoperability) Regulations 2006 (as amended). The Secretary of State is responsible for measures to implement the Interoperability Directive in Great Britain. The Regulations also implement the Interoperability Directive for Northern Ireland, by agreement with Northern Ireland Ministers.

The Interoperability Directive consolidates previous Directives regarding interoperability of the high-speed and conventional rail systems (Directives 96/48/EC and 2001/16/EC), revokes them and recasts them with amendments, including extending the scope of application beyond the scope of the high speed and conventional networks covered by the original Directives. The Interoperability Directive, like 96/48/EC and 2001/16/EC, sets requirements for technical harmonisation and standardisation, common processes for the checking and authorisation of parts of the rail system (subsystems) placed into service on the rail system and for constituent components (interoperability constituents) placed on the market for use on the rail system. The Interoperability Directive includes new additional requirements, e.g. on “Type Authorisation” for vehicles to remove duplication and improve the efficiency of the legal framework for European interoperability. Also, the Interoperability Directive (at Article 40) revokes Article 14 of Council Directive 2004/49/EC on safety on the Community’s railways reproducing, with amendments, the Member State option for additional authorisation (“reauthorisation”) of vehicles already authorised in another Member State, to facilitate the “cross-acceptance” of such vehicles by multiple Member States.

These Regulations implement the new requirements in the Interoperability Directive; re-implement the requirements of previous Directives that have not substantively changed; maintain continuing national provisions, e.g. on accessibility for Persons with Reduced Mobility following the “carve-out” of heavy rail vehicles from the UK Regulations on Rail Vehicle Accessibility; and, include new national provisions relating to national technical rules that are within the Member State’s competence as expressly provided for by the Interoperability Directive or consistent with the Directive.

Generally the approach taken in the Regulations has not been to copy-out the relevant provisions of the Directive, although provisions in the technical annexes to the Directive are transposed by cross referring to the Directive’s annexes. Copying out articles from the Directive would have made it unclear as to the precise scope of provisions and the precise roles and responsibilities of those to whom the Directive needs to apply. So for example the provisions of the Regulations aim to make it clearer as to when an authorisation is required and what the framework is for applying for an authorisation. In addition the Regulations provide (i) in cases where the Directive does not require an authorisation, for an authorisation to be applied for on a voluntary basis – see regulation 5(1)(b) and (c) and (ii) for two provisions that are only expressly referred to in the Directive in relation to vehicles to apply in addition to other subsystems – see regulation 7(3) (authorisation conditions) and regulation 8(2) (type authorisations).

Apart from the elaborations and national provisions explained above, the Regulations do no more than what is necessary to implement the Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

The Regulations are designed to be consistent with Commission Recommendation of 29 March 2011 (2011/217/EU), which aims to achieve a consistent approach across Member States as to how the Directive is implemented.

Articles **in bold** in the table refer to Articles specifically called up by Article 38 of 2008/57/EC for national measures to comply with, but articles which are to be implemented at the EU level are not listed in the table, notwithstanding that some of them are referred to in article 38 - see for example Article 6, which places obligations on the European Commission and the European Railway Agency in relation to the adoption, review and publication of technical specifications for interoperability.

In Great Britain the Secretary of State (“SoS”) (Department for Transport) is the Competent Authority. In Northern Ireland the Competent Authority is the Department for Regional Development in Northern Ireland (“DRDNI”). The Safety Authority has responsibility for the authorisation of structural subsystems to be placed into service - in Great Britain it is the Office of Rail Regulation (“ORR”), except for the Channel Tunnel system where it is the Intergovernmental Commission (“IGC”). The Safety Authority with responsibility for Northern Ireland is the DRDNI. The Office of Rail Regulation in Great Britain, and in Northern Ireland the Health and Safety Executive for Northern Ireland (“HSE NI”), are responsible for the measures taken to enforce the Regulations (as “Enforcing Authorities”).

Articles	Objective	Implementation	Responsibility
<i>Article 1: Purpose and scope</i>			
Article 1(3)	Allows Member States to exclude certain systems, networks, infrastructure and vehicles from the scope of the Interoperability Directive	Regulation 3(2)-(4) provides a mechanism for excluded rail systems to be determined and expressly cited in a list to be published and maintained by the Secretary of State and DRDNI, and Regulation 3(5) provides for certain types of rail system to be subject to blanket exemption (where the certainty provided by inclusion on the exclusions list is not needed).	Secretary of State in Great Britain Department for Regional Development in Northern Ireland (DRDNI) in Northern Ireland
<i>Article 2: Definitions</i>			
Article 2	Provides definitions of key terms used in the Interoperability Directive.	Regulation 2(1) contains defined terms used throughout the Regulations	
<i>Article 4: Essential requirements</i>			
Article 4(1)	Requires that the rail system, its subsystems and interoperability constituents, must meet the relevant Essential Requirements.	Regulation 7(2) requires that structural subsystems may not be authorised to be placed into service unless the Safety Authority is satisfied that Essential Requirements are met. Regulation 9(3) achieves the same objective, but for subsystems that have previously been determined to be of a “type”. Regulation 5(4) allows the Safety Authority to request further checks of the subsystem when it is not satisfied that Essential Requirements have been met by a project subsystem. Regulation 16(3) requires the applicant to assure itself that the Essential Requirements are met for a project subsystem that is to be placed into service. Regulation 18(1) allows for a project subsystem	Safety Authorities: Office of Rail Regulation (ORR) in Great Britain, Department for Regional Development Northern Ireland (DRDNI) in Northern Ireland and the Intergovernmental Commission (IGC) for the British half of the Channel Tunnel.

		<p>subject to a verification declaration to be presumed to meet the Essential Requirements. Regulation 20(2) requires operators that have placed authorised subsystems into service to ensure that technical standards continue to be met when they are used on the rail system.</p> <p>Regulation 26 provides for presumption of conformity to Essential Requirements for Interoperability Constituents, where such Constituents are subject to an EC declaration of conformity or suitability for use; and Regulation 23 prohibits such Constituents from being placed on the market unless they meet Essential Requirements that are relevant to it.</p>	
Article 4(2)		Transposed through Regulation 12(5) of SI/2006/6 and Regulation 12(5) of SSI/2006/2.	
Article 5: Content of TSIs			
Article 5(2)	Requires railway subsystems to comply with TSIs when they are placed into service and for that compliance to continue as long as those subsystems are in use.	See Regulations 4(1),15 and 20(2)	<p>Safety Authorities: ORR, DRDNI and IGC</p> <p>Enforcing Authorities: ORR and HSE NI</p>
Article 8: Extension of the scope of TSIs			
Article 8(3)	Until the scope of TSIs is extended to the whole of the rail system (geographically and technically), Article 8(3) sets out the framework for authorisations to take place when a subsystem is caught between being	See Regulation 7(2) and Regulation 15	Safety Authorities: ORR, DRDNI, IGC

	in scope and not being in scope of TSIs.		
Article 8(4)	Provides that Member States do not have to apply TSIs that are made under Article 8(2) (i.e. under the mandate to develop TSIs with extended scope) to projects that are at an advanced stage of development or subject to a contract in the course of performance when the TSIs are published.	Direct implementation of this specific provision in the Regulations is not required, as implementation of Article 9 provides for a mechanism for the Member State to provide derogation from new and revised TSIs, including for projects that are at an advanced stage of development or subject to a contract in the course of performance when a TSI is published.	
Article 9: Derogations			
Article 9(1)	Provides for derogations from the application of TSIs.	Regulation 14(2) sets out the circumstances in which the Competent Authority may grant derogation from the application of the whole or part of a TSI (or TSIs) to a project subsystem.	Competent Authorities: DfT, DRDNI
Article 9(2)	Requires Member States to send a file (compliant with Annex IX of the Directive) to the European Commission concerning projects that may or will not apply one or more TSIs (i.e. where derogation is sought).	Regulation 14(3) prohibits the Competent Authority from granting derogation unless the Secretary of State has submitted a file relating to the project that is compliant with Annex IX of the Directive.	Competent Authorities: DfT, DRDNI Secretary of State
Article 9(3)	Requires Member States to notify the European Commission of projects that are at an advanced stage of development when (new or revised) TSIs come into force.	Direct implementation of this provision in Regulations is not required. The obligation falls directly to the Member State and can be discharged administratively.	Department for Transport
Article 9(4)	Sets out the categories of derogation that can only be granted by the Member State after permission has been given by the European Commission, and those categories that only require notification to the	Regulation 14(4)-(6) specifies the categories of derogation that require permission from the European Commission before the Competent Authority can grant the derogation.	Competent Authorities: DfT, DRDNI Secretary of State

	European Commission before being granted.		
Article 10: Placing on the market of interoperability constituents			
Article 10(1) (cf. Articles 13 & 14)	Requires Member States to take all necessary steps to ensure Interoperability Constituents are not placed on the market unless they: enable interoperability to be achieved within the rail system; meet the Essential Requirements; are used as intended; and suitably installed and maintained.	Regulation 23 prohibits the placing on the market of Interoperability Constituents unless they meet the Essential Requirements. Regulation 27 requires operators of Interoperability Constituents to ensure that they are correctly installed, used as intended and maintained in effective working order.	
Article 10(2)	Precludes Member States from prohibiting, restricting, or hindering the placing on the market of an Interoperability Constituent for use on the rail system, if it complies with the Directive. Member States are precluded from repeating checks already undertaken pursuant to an EC declaration of conformity or suitability for use.	Regulation 28 recognises Interoperability Constituents that have met the requirements of another Member State's implementation of the Directive.	Safety Authorities: ORR, DRDNI, IGC
Article 11: Conformity or suitability for use			
Article 11(1)&(3)	Article 11(1) requires Member States to give presumption of conformity to Essential Requirements to Interoperability Constituents that bear an EC declaration of conformity or suitability for use. Article 11(3) requires Member States to give presumption of conformity to Essential Requirements to Interoperability	See Regulation 26.	

	Constituents that are compliant with TSIs and corresponding European specifications.		
Article 11(2)	Requires the assessment of Interoperability Constituents according to the procedure indicated in the respective TSI, and for Interoperability Constituents to be accompanied by the corresponding certificate.	Regulation 24 sets out the assessment procedure for Interoperability Constituents; Regulation 23(c) prohibits an Interoperability Constituent from being placed on the market unless it bears the EC declaration; and Regulation 25 sets out the conditions for the drawing up of an EC declaration of conformity or suitability for use.	
Article 11(4)	Provides that spare parts for subsystems already in service when a TSI comes into force may be installed in these subsystems without being subject to the assessment procedure in Article 11(2).	Regulation 24(3) disapplies the requirements of Regulation 24(2) to spare parts that are to be used in subsystems that have been placed into service before a TSI comes into force.	
Article 12: non compliance with European specification with essential requirements			
Article 12 (cf. Article 7)	Requires Member States to inform the European Commission of any European specifications (implicitly including TSIs) that do not meet the Essential Requirements, when those specifications are used in pursuit of the Directive's objectives.	Engagement with Europe is handled on an administrative basis, and this could include informing the European Commission of deficiencies in TSIs and any other European specifications. Regulation 29 requires the Safety Authority to (directly) notify the European Commission when it discovers that an Interoperability Constituent that has been placed on the (European) market does not meet the Essential Requirements, when this is because of a deficiency in a TSI. The Safety Authority notifies the European Commission directly, to hasten an alert to other Member States within the market.	Safety Authorities: ORR, DRDNI, IGC
Article 13: Procedure for 'EC' declaration of conformity or suitability for use			

<p>Article 13(1)-(4) (cf. Article 28)</p>	<p>Sets out the procedure for creating an EC declaration of conformity or suitability for use for Interoperability Constituents.</p> <p>Where Interoperability Constituents are subject to the requirements of other Directives, the EC declaration of conformity or suitability for use should state compliance with these other requirements.</p>	<p>See Regulation 25.</p>	
<p>Article 13(5) (cf. Article 14)</p>	<p>Requires the Member State to intervene when it discovers that an EC declaration has been improperly drawn up. If necessary, the intervention should terminate any infringement and ensure that the Interoperability Constituent is brought into conformity. If non-conformity persists, the Member State is required to take action to restrict or prohibit the Interoperability Constituent from being placed on the market, or to ensure it is withdrawn.</p> <p>See also Article 20(1) (recall or withdraw in cases of serious risk) of EU Regulation 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products.</p>	<p>See Regulations 41 and 42.</p>	<p>Enforcing Authorities: ORR and HSE NI</p>
<p><i>Article 14: Non-compliance of interoperability constituents with essential requirements</i></p>			
<p>Article 14(1)</p>	<p>Requires Member States to take all necessary steps to restrict the application, prohibit use or withdraw from the market any interoperability constituents that,</p>	<p>Regulation 41 provides for the ORR or HSE NI, as the enforcing authorities, to take action by notice that restricts or prohibits the use of an Interoperability Constituent when they are of the opinion that it does</p>	<p>Enforcing Authorities: ORR and HSE NI</p> <p>Safety Authorities: ORR,</p>

	<p>despite having an EC declaration of conformity or suitability for use, is found by the Member State to be unlikely to meet the essential requirements, when used <i>as intended</i>.</p> <p>The Member State is required to inform the European Commission of any measures taken.</p> <p>See also Article 20(1) (recall or withdraw in cases of serious risk) of EU regulation 765/2008.</p>	<p>not, or would not, meet the Essential Requirements when used as intended. The notices can also require the withdrawal or recall (from the market) of the Interoperability Constituent.</p> <p>Regulation 29 requires the Safety Authority to notify the European Commission and other Member States of any measures taken.</p>	DRDNI, IGC
Article 14(3)	<p>Requires Member State to take appropriate measures against those that make an EC declaration of conformity for an interoperability constituent, where that interoperability constituent does not comply (with the Directive); and, to inform the European Commission and other Member States of the measures taken.</p>	<p>Regulation 42 gives powers to enforcing authorities to issue notices when they have reason to suspect that an EC declaration has been improperly drawn up.</p> <p>Regulation 29 requires the Safety Authority to notify the European Commission and other Member States of any measures taken.</p>	<p>Enforcing Authorities: ORR and HSE NI</p> <p>Safety Authorities: ORR, DRDNI, IGC</p>
Article 15: Procedure for placing in service			
Article 15(1)	<p>Requires Member States to authorise the placing into service of structural subsystems and to ensure that such subsystems meet the essential requirements relevant to them, and that technical compatibility is achieved, upon integration into the rail system.</p>	<p>Regulation 4(1) prohibits a subsystem being put into use unless it is subject to an authorisation from the Safety Authority. Regulation 5 sets out the process for application for authorisation. Regulation 7 requires the Safety Authority to be satisfied that the subsystem is technically compatible with the rail system into which it is being placed into service.</p>	<p>Safety Authorities: ORR, DRDNI, IGC</p>

Article 15(2)-(3)	Requires Member States to check that subsystems comply with TSI provisions on operation and maintenance, where applicable; and, that compliance is supervised in the context of the granting of safety certificates and safety authorisations under the Railway Safety Directive (2004/49/EC).	The provisions with respect to safety are transposed (in Great Britain, except for the British part of the Channel Tunnel) through Regulation 5(1)(a) and (7)(c) of the Railways and Other Guided Transport Systems (Safety) Regulations (“ROGS”), which requires safety management systems for the “mainline railway” to conform with TSIs, as a condition for the granting of safety certificates and safety authorisations, which, in turn are pre-requisite for operation on the network. There are separate safety regulations for Northern Ireland and bi-national regulations for the Channel Tunnel.	Safety Authorities: ORR, DRDNI, IGC
Article 16: Free movement of subsystems			
Article 16	Provides that Member States must not hinder the construction, placing in service or operation of structural subsystems that meet the Essential Requirements; including the requirement of checks that have already been carried out as part of an EC verification procedure.	Regulation 7 sets out when the Safety Authority issues an authorisation for placing in service of structural subsystems that have been subject to the EC verification procedure and Regulation 5(3) restricts the Safety Authority from requiring a repeat of those checks. Regulation 30(c)-(d) recognises Notified Bodies appointed by other Member States that carry out the verification. Regulation 4(1)(c) recognises (for vehicles) the general validity of authorisations given in other Member States. In addition, Regulation 6 provides for a voluntary process of statutory re-authorisation for vehicles and Regulations 8-10 provide for a system of “type” approval.	Safety Authorities: ORR, DRDNI, IGC
Article 17: Conformity with TSIs and national rules			

Article 17(1)-(2)	Requires Member States to consider structural subsystems covered by an EC declaration of verification to meet the Essential Requirements; and that such verification is done by reference to TSIs.	Regulation 18 gives presumption of conformity to Essential Requirements when a verification declaration is made. Regulation 15 sets out how the Essential Requirements can be demonstrated, including through conformity with TSIs.	
Article 17(3)	<p>Requires Member States to notify to the European Commission “national rules” for implementing the Essential Requirements where no TSI exists, where a derogation has been notified, or when a (national) specific case applies.</p> <p>Member States are required to designate the bodies responsible for carrying out the EC verification procedure under Article 18.</p> <p>Rules of a “strictly local” nature that are not notified should be included in the infrastructure register (as required by (Article 35).</p>	<p>Notification of national rules is handled administratively by the Department for Transport.</p> <p>Bodies responsible for carrying out the EC verification procedure under Article 18 (Notified Bodies) are notified to the European Commission by the Department for Transport administratively using the European Commission’s NANDO electronic portal.</p> <p>See Regulation 35 for requirement to refer to local rules in the infrastructure register.</p>	Department for Transport
Article 18: Procedure for establishing the ‘EC’ declaration of verification			
Article 18(1)&(2)	Requires the use of Notified Bodies for the EC verification assessment procedure for subsystems, as a pre-condition for making an EC declaration of verification. The Notified Body is required to verify the interfaces of the subsystem, based on information in the TSIs and the infrastructure and vehicle registers.	See Regulations 16 and 17.	

Article 18(3)	Requires that Notified Bodies complete a technical file that includes documents relevant to the EC verification procedure, including certificates of conformity for Interoperability Constituents.	Regulation 17(2) requires the Notified Body to compile the technical file.	
Article 18(4)-(5)	Provides for the use of “Intermediate Statements of Verification” to cover verification of parts of a subsystem or for stages in the verification procedure; and, provides for certificates of conformity to cover a series of subsystems or parts of subsystems, when a TSI allows it.	Regulations 16(1) and 17(1) provide that the notified body follows the applicable procedures of Annex VI to the Directive. Annex VI provides for the use of Intermediate Statements of Verification.	
Article 19: Non-compliance of subsystems with essential requirements			
Article 19(1)	Provides that a Member State can require additional checks to be carried out on a structural subsystem that does not meet the Essential Requirements, even if it is covered by a declaration of verification.	Regulation 5(4) allows the Safety Authority to require additional checks.	Safety Authorities: ORR, DRDNI, IGC
Article 19(2) and Article 19(3)	Requires Member States to inform the European Commission when any additional checks have been required, and to state whether failure of the structural subsystem to meet Essential Requirements is due to failure to comply with TSIs, or inadequacy of TSIs (i.e. errors in the specification).	Regulation 5(5) requires Safety Authorities (except for DRDNI) to notify the Secretary of State when further checks have been required for a structural subsystem. Notification to the European Commission is carried out administratively.	Secretary of State DRDNI
Article 20: Placing in service of existing subsystems after renewal or upgrading			

<p>Article 20(1) & 20 (2)</p>	<p>Enables contracting entities or the manufacturers to send the Member State details of projects for the renewal or upgrading (of subsystems), and for Member States to decide whether such projects should be authorised, and if so, the extent to which the TSIs should be applied.</p>	<p>Regulation 12 provides a process for the Competent Authority to decide whether a project is a project for the renewal or upgrading of a subsystem.</p> <p>Regulation 13 provides for a process for submitting project files to Competent Authorities and powers for them to decide whether a project is to be authorised, following consultation with the Safety Authority.</p> <p>Article 20 (2) is done administratively</p>	<p>Competent Authorities: DfT, DRDNI,</p>
<p><i>Article 21: Authorisation for placing in service of vehicles</i></p>			
<p>Article 21(1)-(4)</p>	<p>Requires vehicles to be authorised by the Safety Authority before being used on the network and points to the applicable provisions in Articles 22-26, depending on the circumstances associated with placing into service.</p>	<p>Regulation 4(1) prohibits any subsystem (including vehicles) being placed into service unless it is subject to an authorisation from the Safety Authority.</p> <p>Regulation 5 sets out the process for application for authorisation.</p>	<p>Safety Authorities: ORR, DRDNI, IGC</p>
<p>Article 21(5)</p>	<p>Establishes the principle that an authorisation (for a vehicle) is valid in all Member States, subject to permissible additional authorisation.</p>	<p>Regulation 4(1)(c) recognises (for vehicles) the general validity of authorisations given in other Member States.</p> <p>In addition, Regulation 6 provides for a voluntary process of statutory re-authorisation, except for the Channel Tunnel. Re-authorisation provisions for the Channel Tunnel are governed by the bi-national safety regulations.</p>	<p>Safety Authorities: ORR, DRDNI, IGC</p>

<p>Article 21(6) & Article 21(8)</p>	<p>Requires that applications for authorisation to place in service vehicles shall be decided by the Safety Authority and that such authorisations may contain conditions of use and other restrictions.</p> <p>Provides that in the absence of a decision (within time limits) by the Safety Authority to authorise placing into service of a vehicle already authorised for another Member State, the authorisation is deemed to have been given.</p>	<p>Regulation 7 requires the Safety Authority to issue an authorisation for placing in service of structural subsystems, and Regulation 7(4) permits the stipulation of restrictions or limitations on use.</p> <p>Article 21(8) is implemented by Regulation 7(6).</p>	<p>Safety Authorities: ORR, DRDNI, IGC</p>
<p>Article 21(7) & Article 21(10)</p>	<p>Requires refusal of applications for authorisation to be substantiated, for the decision to be reviewed and subject to an appeals process.</p>	<p>Regulation 7(1) provides for the Safety Authority to determine an application by refusing to authorise the placing into service.</p> <p>Appeals are handled administratively by the Safety Authority in the first instance, however, a formal appeals process (for appeals against <i>any</i> Safety Authority decision under Regulations 5 to 11 is provided in Regulation 37 (in Great Britain) and Regulation 38 (in Northern Ireland). As a last resort, the Judicial Review process can be applied.</p>	<p>Safety Authorities: ORR, DRDNI, IGC</p> <p>Appeals Bodies: Secretary of State, DRDNI</p>
<p>Article 21(9)</p>	<p>Sets out the procedure for revoking authorisations to place vehicles into service.</p>	<p>Regulation 11 provides powers for the Safety Authority to revoke an authorisation.</p>	<p>Safety Authorities: ORR, DRDNI, IGC</p>
<p>Article 21(12)</p>	<p>Allows specific international agreements (RIC and RIV) to take precedence over the requirements of Articles 22-25, where vehicles subject to those agreements have been approved for placing in service before 19 July 2008.</p>	<p>See Regulation 4(1)(c).</p>	

Article 21(13)	Allows for (single) authorisations to place into service to cover a series of vehicles.	Implemented administratively.	Safety Authorities: ORR, DRDNI, IGC
Article 21(14)	Requires that authorisations for vehicles granted under Article 21 are without prejudice to safety conditions relating to the operation of vehicles under the Railway Safety Directive 2004/49/EC.	Implemented through the relevant safety regulations – see above against Article 15(2)-(3).	
Article 22: First authorisation of placing in service of TSI conform vehicles			
Article 22(1)-(2)	<p>Provides for the authorisation of vehicles that are compliant with TSIs (where those TSIs are largely complete) and only if the relevant rolling stock TSI has entered into force.</p> <p>If the verification of the vehicle is fully covered by the EC verification process, no further checks are required.</p> <p>If the verification of the vehicle is not fully covered by the EC verification process, the Safety Authority can check: technical compatibility (between the vehicle’s subsystems and between the vehicle and the network); the application of national rules that relate to “open points” (gaps) in TSIs; and, the application of national “specific cases” (alternative national requirements built into TSIs).</p>	Regulation 4(1) prohibits a subsystem being placed into service unless it is subject to an authorisation from the Safety Authority. Regulation 5 sets out the process for application for authorisation. Regulation 7 sets out how the Safety Authority makes its decision.	Safety Authorities: ORR, DRDNI, IGC
Article 23: Additional authorisations for placing in service of TSI conform vehicles			

Article 23(1)	Provides that for vehicles that have been authorised (in any Member State) and are in complete conformity to TSIs, that they shall not be subject to additional authorisation in any other Member States, as long as they run on networks that conform to TSIs or under conditions specified in the TSIs.	Regulation 4(1)(c) recognises (for vehicles) the general validity of authorisations given in other Member States.	
Article 23(2)	When a vehicle authorised in another Member State (under Article 22) does not meet the criteria of Article 23(1), other Member States may decide if additional authorisations will be required for the vehicle to run on their territories.	Regulation 5(1)(c) provides for an application for (further) authorisation to be made if the applicant wants one (as it is not required on a mandatory basis under Regulation 4(1)(c)).	
Article 23(3)-(5)	<p>Provides a process for application for further authorisation of vehicles already authorised in another Member State under Article 22.</p> <p>The application must include evidence of first authorisation, maintenance history, modification and operational characteristics for the vehicle.</p> <p>If an application is made, the Safety Authority is limited to checking technical compatibility and the application of national rules relating to compatibility and specific cases identified in TSIs. The checks can be supplemented with requests by the Safety Authority for other checks and tests, but such checks must be limited to those that relate to Group B or Group C rules in the Reference Document as provided for in</p>	If an applicant wants a (further) authorisation, Regulation 6 provides a process to enable an application to be made, subject to the limited requirements on documentation and checks made by the Safety Authority.	Safety Authorities: ORR, DRDNI,

	Article 27.		
Article 23(6)	Provides that the Safety Authority ensures that the scope of additional checks/tests is established and that the infrastructure manager enables the tests to take place within three months of request.	See Regulation 6(6).	Safety Authorities: ORR, DRDNI,
Article 23(7)	Provides that in the absence of a decision (within time limits) by the Safety Authority to authorise placing into service of a vehicle, the authorisation is deemed to have been given.	See regulation 7(6)	Safety Authorities: ORR, DRDNI,
Article 24: First authorisation for placing in service of non-TSI conform vehicles			
Article 24(1)-(2)	Provides for the authorisation of vehicles that are not compliant with TSIs, either because they do not yet exist, or because the vehicles have been subject to a derogation from the TSI requirements. The EC verification process applies to aspects of the subsystem covered by TSIs, and other aspects are covered by national rules, including national safety rules.	Regulation 4(1) prohibits a subsystem being placed into service unless it is subject to an authorisation from the Safety Authority. Regulation 5 sets out the process for application for authorisation. Regulation 7 sets out how the Safety Authority makes its decision.	Safety Authorities: ORR, DRDNI, IGC
Article 25: Additional authorisations for placing in service of non TSI conform vehicles			

Article 25(1)	Provides that for vehicles that have been authorised (in any Member State) under Article 21(12) (i.e. subject to an international agreement) or Article 24 (not in complete conformity to TSIs), that other Member States may decide if additional authorisations will be required for the vehicle to run on their territories.	Regulation 5(1)(c) provides for an application for (further) authorisation to be made if the applicant wants one (as it is not required on a mandatory basis under Regulation 4(1)(c)).	
Article 25(2)-(4)	<p>Provides a process for application for further authorisation of vehicles already authorised in another Member State under Article 21(12) or Article 24.</p> <p>The application must include evidence of first authorisation, maintenance history, modification, and operational characteristics for the vehicle, however, under this Article this evidence cannot be called into question unless the Safety Authority can demonstrate substantial safety risk.</p> <p>If an application is made, the Safety Authority is allowed to check the application of national safety rules and national technical rules, but such checks must be limited to those that relate to Group B or Group C rules in the Reference Documentas provided for in Article 27.</p>	If an applicant wants a (further) authorisation, Regulation 6 provides a process to enable an application to be made, subject to the limited requirements on documentation and checks made by the Safety Authority.	Safety Authorities: ORR, DRDNI,

Article 25(5)	Provides that in the absence of a decision (within time limits) by the Safety Authority to authorise placing into service of a vehicle, the authorisation is deemed to have been given.	See Regulation 7(6).	Safety Authorities: ORR, DRDNI,
Article 26: Authorisation for types of vehicles			
Article 26(1)-(2)	Requires that when Member States authorise vehicles to be placed into service, that they also authorise the type of vehicle.	Regulation 8(1) requires the Safety Authority to create a “determination of type” (for use in subsequent authorisations) every time it authorises a vehicle.	Safety Authorities: ORR, DRDNI, IGC
Article 26(3)-(5)	Requires, within Member States, that vehicles that conform to an authorised type, be authorised to be placed into service without further checks, upon the applicant’s production of declaration of conformity to type. The process applies as long as the TSIs and national rules applied to the authorised type have not changed. If the TSIs (or national rules) change, Member States can decide whether or not the type authorisation can continue to be used. If the type authorisation is not to be used, the Safety Authority can only require checks with respect to the changes in the rules.	Regulation 9 provides a fast-track process for application for authorisation that rely on the applicant making a declaration of conformity to type. Regulation 10 provides a limited additional process to an application for authorisation that rely on a determination of type, where the TSIs or national rules have changed since the determination of type was created.	Safety Authorities: ORR, DRDNI, IGC
Article 26(6)	Provides for administrative co-operation between Safety Authorities when an applicant requests a type authorisation in	Implemented administratively. Note: The combination of the recognition of authorisations granted in other Member States in	Safety Authorities: ORR, DRDNI, IGC

	several Member States at the same time.	Regulation 4(1)(c), the voluntary (re)authorisation process in Regulation 6 and the type determination process in Regulation 8 and the type authorisation process in Regulations 9 & 10 fully facilitates administrative implementation in the UK.	
Article 26(7)	Requires authorisation of types of vehicle to be registered in a European register of authorised types, to be maintained by the European Railway Agency.	Regulation 8(6) requires the Safety Authority to notify the European Railway Agency of any determinations of vehicle types made under the Regulations.	Safety Authorities: ORR, DRDNI, IGC
Article 27: Classification of national rules – Implemented administratively			
Article 28: Notified bodies			
Article 28(1)	Requires Member States to notify to the European Commission the bodies responsible for carrying out the procedure for assessing conformity and suitability for use of Interoperability Constituents (pursuant to Article 13) and the EC verification procedure (pursuant to Article 18).	Bodies responsible for carrying out the EC verification procedure under Article 18 (Notified Bodies) are notified to the European Commission administratively by the Department for Transport using the European Commission’s NANDO electronic portal.	Department for Transport
Article 28(2)-(3)	Requires Member States to apply the criteria in Annex VIII to the assessment of Notified Bodies, to withdraw approval of Notified Bodies that no longer meet the requirements, and to notify the withdrawal to the European Commission.	Regulation 31 sets out the conditions for the appointment and termination of appointment of Notified Bodies in the UK including satisfaction of the criteria in Annex VIII to the Directive.	Secretary of State
Article 32: Vehicle numbering system			

Article 32(1)-(5)	Requires that any vehicle placed into service must have a European Vehicle Number (EVN) assigned to it on first authorisation, and that the applicant must mark the EVN on the vehicle. This does not apply to vehicles coming from or going to third countries with a different track gauge that are identified under a different coding system.	See Regulation 36.	
Article 33: National vehicle registers			
Article 33(1)-(5)	Requires Member State to keep a national register of vehicles authorised in its territory, that meets the criteria detailed in Article 33(1) and contains the set of information detailed in Article 33(2) according to a common specification to be developed by the European Railway Agency. Member States are required to ensure that the holder of the register communicates changes to the register to Member States affected, until such time that Member States' registers are linked up.	See Regulation 36.	
Article 34: European register of authorised types of vehicles			
Article 34(3)	Requires Safety Authorities to advise the European Railway Agency when authorisations of type are granted, modified, suspended or withdrawn.	Regulation 8(6) requires the Safety Authority to notify the European Railway Agency whenever it grants, modifies, suspends or withdraws determinations of type.	Safety Authorities: ORR, DRDNI, IGC
Article 35: Register of infrastructure			

Article 35	Requires Member States to ensure that a register of infrastructure, indicating the main features of the subsystems and their correlation with TSI requirements, is published and updated.	See Regulation 35.	
-------------------	---	--------------------	--