



Unite response to the Department of Transport Consultation on the transposition of Directive 2008/57/EC on the interoperability of the rail system

1 Introduction

- 1.1. **This response is submitted by Unite the Union, the UK's largest trade union with 2 million members across the private and public sectors. The union's members work in a range of industries including manufacturing, financial services, print, media, construction, transport, local government, education, the health service and not for profit sectors.**
- 1.2. Unite is the dominant trade union within the transport sector with over 280,000 members, involved in the movement of passengers and freight. Within this sector Unite has a significant membership within rail engineering, maintenance, light rail, infrastructure, and rolling stock manufacture.
- 1.3. In this response Unite aims to not only focus on just the questions posed, but also areas where Unite believes there are areas which need highlighting and where possible amendment is necessary.

2 Question 1

The Government proposes to use Implementation Plans to clarify when (a) substitution and modification work is major and so is a renewal or upgrade, and (b) must be authorised according to the interoperability process. Do you agree with this approach?

- 2.1. Clearly any work to convert the UK's track configuration to comply with the Technical Specifications for Interoperability (TSI), would by definition require authorisation from several interested parties, due to the cost involved, both in terms of time and money. The disruption to the travelling public alone would be considerable unless conducted at a time when there is little or no track running. Such a limited time period then requires engineers to be working unsocial hours often in less than optimal weather conditions. By definition such work will be a major operation.
- 2.2. Implementation of repairs conducted to existing non TSI track which is due to be upgraded, should only fall outside this remit if such a repair will take more

than a week to be safely completed. In such circumstances Unite would suggest that this project should be viewed as a renewal of the equipment and hence require the affected area to be upgraded to comply with TSI. This time limitation should be married with the requirement that such repairs will last for a minimum period of a year without need of further attention.

3 Question 2

Who do you think should be involved in the creation, development, elaboration and monitoring of the Implementation Plans? (If you want to be involved, please outline which TSI subsystems you are interested in and the contribution you would expect to make to this work).

- 3.1. Given the size of Unite, we tend to be involved in some way with Implementation Plans, either by virtue of being the union for the companies' manufacturing components or by virtue of being the union for some of the workers conducting the upgrade. Unite has no interest in being directly involved in the Implementation Plans, however, but would recommend that network rail should be allowed to continue their role, given their extensive knowledge of the UK network.

4 Question 3

How should the UK Government deal with the extension of scope of the Directive to the whole network, with respect to the expected progressive extension of scope of the application of the TSIs? Do you have a preference for any of the three options as detailed in Section 4.2, or can you suggest an alternative approach?

- 4.1. Unite agrees that a staggered introduction for each subsystem, would create a significant risk that the scope of application of TSIs could be extended thus affecting the whole railway project. A mandatory implementation of TSI compliancy on all future projects would both ensure a far more standard approach and would in the longer term reduce delays to the system.
- 4.2. Such a rigid stance may, however, delay vital upgrades that are necessary on the network, due to the lack of available funding.

5 Question 4

Do you think that the Regulations should exclude all of the potentially exempt categories of rail system from scope, as described in option b) (as detailed in Section 4.3)?

- 5.1. As it is highly unlikely that the routes and infrastructure mentioned at 4.3 of the consultation would be utilised by the Trans European Network (TEN) Unite can see no reason why these services would not have to comply with this standard. Indeed the provision of this requirement to some tourist routes or preservation lines would cause the lines to close.

- 5.2. Such a position is likely to be echoed across Europe in terms of light rail and tram services.

6 Question 5

Should the Secretary of State designate a list of rail systems to be excluded from scope, in order to provide certainty on the application of the Regulations? If so, which rail systems should be excluded, and why?

- 6.1. Unite believes that the Secretary of State should designate a clear unambiguous list of rail systems which need not comply with TSI requirements. This list should include light rail, tram and heritage / preservation lines exclusively utilised as a tourist attraction. Therefore lines such as that between Fort William to Mallaig; York, Knaresborough, Harrogate, Leeds and Scarborough and the line from Machynlleth to Porthmadog and Pwllheli should be included as they are only used as a tourist attraction during the summer season.
- 6.2. The definition of a metro service would need to be clearly defined, however. Some underground networks such as the London underground would not normally form part of TEN. Other metro services run on standard gauges in parallel with existing main lines, only defined as “metro” by the short distances between stops. Such lines might have in the past been utilised in the event of a problem on the neighbouring main line and additionally could be utilised by freight services.
- 6.3. Unite believes that new wholly separate legislation is required to govern and where possible standardise the systems utilised on tram and light rail services, to reduce costs and increase safety.

7 Question 6

Do you think that it is appropriate to transfer some or all of the above Member State functions from the Department for Transport to a different Responsible Body? If you think this is the right way forward in the long term, which functions do you think should be transferred, and to which body?

- 7.1. Unite does not believe that any of the services should be transferred away from governmental control to any third party.

8 Question 7

Given the timescale for transposition, should the new Regulations be used to formalise a transfer of statutory functions to a Responsible Body?

- 8.1. If there was a transfer of these statutory functions to a new body then this transfer should be conducted under a series of regulations to ensure that this new body is fully aware of its obligations and limitations.

- 9 **Question 8**
Should a Responsible Body request details of projects that are at an advanced stage as and when new TSIs are published, and should the Regulations require project sponsors to advise the Responsible Body of all railway projects at inception, so that all aspects of standards change can be addressed at an early stage?
- 9.1. Unite believes that given the required timescale, all projects which may fall under the scope of TEN should be required to comply with the new TSIs unless work has already commenced.
- 9.2. TEN is well advanced throughout the rest of Europe providing a safe and an environmentally friendly alternative to road and air travel. As long as no money has passed hands for the materials needed, the use of a firm cut off date reduces long term cost and reduces the timescales for full implementation.
- 10 **Question 9**
Do you agree with the proposed criteria (set out in Section 4.6) for the identification and notification of NNTRs?
- 10.1. Unite agrees that the UK's Notified National Technical Rules (NNTRs) that cover each TSI subsystem should be as comprehensive as possible, setting clear unambiguous minimum criteria that does not reduce the general standard to the lowest denominator. The technical specifications should ensure the latest rail safety technology is implemented as soon as it reasonably practicable to do so in order to prevent repeats of Hatfield, Ladbroke Grove or Potters Bar.
- 10.2. Given the plethora of systems in operation currently across the network, the use of a standard design to meet a stated goal would be a more preferable solution as it would create economies of scale cost savings. Where this standard design was not practical, a solution should be found that suits the specific problems to the same safety standard.
- 11 **Question 10**
Should the Government seek to create a single UK-wide process for identifying and notifying NNTRs?
- 11.1. A fully co-ordinated approach to establishing NNTR's is clearly required, to ensure that the best practice regime is in place across the whole rail network. This will require no doubt to highlight areas in need of improvement and consequently there should also be a very brief window within which operators should upgrade or update systems.
- 12 **Question 11**
Do you agree that industry should manage this work on behalf of Government, and if so, which stakeholder body or bodies would be best placed to deliver this activity?

- 12.1. Unite agrees that the vast majority of knowledge of the systems in place and the operation of the network is with the stakeholders. Network Rail has responsibility for the majority of the rail network in the UK and therefore would be the obvious choice as the body best suited to carrying out this role. The only caveat to this to ensure that a truly independent authority or panel is established to ensure that the choices made by whoever is appointed, are not determined by cost or convenience issues alone when deciding on these NNTR's.

13 Question 12

Do you agree that a National Interpretation Panel should be created in the UK to support the consistent interpretation of TSIs?

- 13.1. Unite agrees that in order to establish a consistent approach a National Interpretation Panel (NIP) should be created. This body could additionally carry out the role highlighted in 12.1 as party responsible for establishing the NNTR's.

14 Question 13

If you agree to the creation of a National Interpretation Panel, what arrangements would be required for its constitution and governance?

- 14.1. Unite would also support the creation of a totally independent NIP established with funds raised out of an additional rail access charge. This body's role needs to be similar to workings of the Law Society and General Medical Council in ensuring that the minimum standards are consistently and correctly applied. Such a body should also produce guidance and produce lists of products which meet the NNTR's if applied to specific situations. The NIP should also liaise closely with the Safety Authority to enforce NNTR's are met with an appropriate fine costing far in excess of the cost of problem rectification.
- 14.2. Unite firmly believes that the safety of the travelling public and staff should be utmost in the minds of this panel, especially if the aim is to encourage better and more reliable freight and passenger transport by rail across the UK and into Europe.

15 Question 14

Do you agree that the body designated in the new Regulations to deal with appeals against negative decisions by the Safety Authority should be an employment (or industrial) tribunal (option d)) (as described in Section 4.8.)? If not, which body should be designated for this role?

- 15.1. Unite does not believe the correct panel to pass judgement against negative decisions by the Safety Authority should be the employment (or industrial) tribunals as the scope of their work already on their shoulders is increasing. Additionally these panels would not have sufficient technical expertise to deal with the issues concerned. Decisions by the tribunal also are frequently

inconsistent and would result in numerous appeals actions via the CAT, Court of Appeal etc.

- 15.2. The format of the employment tribunal is, however, a different matter. An ad hoc panel consisting of members from the Office of Rail Regulation or Health and Safety Executive (dependent upon whose decision is being questioned), an operator representative and a third totally independent legally qualified individual to act as chair, may be beneficial. Such a panel would then have the technical expertise and rather than being ad hoc would also benefit from constituted as a semi-autonomous section of the independent panel of experts.

16 Question 15

Do you support our proposal to widen the provisions to include right of appeal against stipulations or restrictions attached (or not attached) to a vehicle authorisation, and against the revocation of a vehicle authorisation?

- 16.1. Unite believes that if the right to appeal is not widened it leaves the complainant with no other option, than to pursue a judicial review of the decision. Such an avenue as explained in the consultation is very expensive and time consuming. It is therefore in the interest of the parties to ensure the widest possible scope for appeal through the swiftest methodology possible.

17 Question 16

Do you agree that the review of a type authorisation should only be considered when a Contracting Entity is considering a new project that could rely on a type authorisation?

- 17.1. Unite is not in a position to comment on this point.

18 Question 17

Which body would be best placed to decide whether a type authorisation remains valid, in light of standards change? Would it be the relevant Safety Authority or a single UK body?

- 18.1. Unite would suggest that, in order to be consistent with the interpretation of the standards, the NIP, who suggested the standards change should be the relevant UK body.

19 Question 18

Do you support our proposal that the type approval mechanism should be available for upgrades and renewals and, if possible, that a type authorisation for an upgrade/renewal should include a decision on whether subsystem renewal or upgrade authorisation is necessary (under Regulation 5) (on the extent that TSIs apply to an upgrade/renewal)?

- 19.1. Unite believes that, there are considerable benefits from a standardisation of technical solutions, not just in terms of economies of scale. A scheme similar to the British standards kite mark on goods, may enable rival companies to compete for the provision of a solution, but this would create an array of non standard upgrades being used. If the aim of the legislation is to bring the network up to a minimum standard, cost will drive a race to the bottom in terms of meeting the minimum standards, leading to a situation where repair and maintenance engineers would have to be trained on all the various subsystems available.
- 19.2. Unite therefore believes that if the regulations set a minimum, that minimum should be adhered to, regardless of whether it is an upgrade, repair or new installation.

20 Question 19

Do you think that the current Regulations contain requirements that hinder the economic benefits that could be gained from the use of Interoperability Constituents? If so, what are they, and why do they cause difficulties?

Question 20

How can the use of Interoperability Constituents, across the entire European network, be improved in order to deliver effective economies of scale? (If possible, please provide examples of your experience with Interoperability Constituents and your views on how they can best be used in the future).

Question 21

Should the Government seek to influence the development, specification and use of Interoperability Constituents that have more common physical interfaces and are more 'interchangeable' - i.e. 'multiple use ICs that have specific characteristics' for railway use?

Question 22

Should the new Regulations place responsibility for maintaining and publishing the infrastructure register(s) directly on the infrastructure managers (option a) or should they provide for the appointment of a registration body, as is currently the case for the National Vehicle Register (option b)? (Options are described in Section 4.11)

Question 23

If you consider that the appointment of a registration body is the preferred approach to managing the infrastructure register, who do you think that the body should be, for example, the infrastructure manager, the Safety Authority, or another body, and if so, who?

- 20.1. Unite is not in a position to comment on these points.

21 **Question 24**
Do you agree that the UK should require reauthorisation of vehicles that have been authorised in another Member State, where either the vehicle or the UK infrastructure is not compliant to fully specified TSIs?

21.1. Unite believes that although the vehicles may have been compliant with another member states' standards it should be reassessed for use in the UK until such time as the whole network reaches the European standard. As stated previously the UK network faces some unique problems due to the history of its evolution and failure to develop in the same way as its neighbours. Once the network is TSI compliant this requirement could then be lifted.

22 **Question 25**
Do you agree that a Code of Practice published by the infrastructure manager would ensure that applicants for rolling stock reauthorisation would have their testing needs met?

22.1. Unite agrees that the publication of the Code of Practice would assist the applicant in preparing for rolling stock reauthorisation but that this would be no guarantee that this would ensure that their testing needs will be met.

23 **Question 26**
Do you think that different enforcement powers from those in the current Regulations would enable the obligations in the new Regulations to be enforced more effectively?

23.1. Unite believes that the penalties for non compliance under the current scheme with Health and Safety requirements are nowhere near severe enough.

24 **Question 27**
Have we missed any issues relating to the current interoperability framework or the transposition of the new Directive that need to be covered in the next round of consultation, and if so what are they?

Question 28
Are there any additional impacts (costs or benefits) arising from our proposals and that need to be addressed in the Impact Assessment that will accompany the detailed proposals in the next consultation? (Please explain your answer and, where possible, provide evidence of any costs or benefits).

24.1. Unite is not in a position to comment on these points.

25 **Conclusion**

25.1. Unite would like to see the rail network in the UK to once again lead the way in Europe and beyond as an example of what integrated transport is capable of.

Clearly there are significant advantages from the standardisation of equipment across the network. There are some unique problems that are faced in bringing the network up to European standards, however, and hence care should be taken to ensure that the best solution is applied which may not be the one size fits all option.

**Bob Rixham
National Officer
Docks, Rail, Ferries & Waterways
499 Etruria Road,
Basford
Stoke-on-Trent
ST4 6JR**

For further information please contact Colin Potter, Research Officer in the Unite the union Research Department on 020 7611 2591, colin.potter@unitetheunion.com