

Renewals & Upgrading

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Related Helpline notes	About Helpline notes Scope Derogations
Audience	This Helpline note is applicable to projects for the renewal or upgrading of existing subsystems and contains information for Project Entities and Notified Bodies and Designated Bodies .
Background	If a new structural subsystem, or one that has been renewed or upgraded, is to be first used on or as a part of the rail system, the person using it must seek an interoperability authorisation to place in service (note: this does not apply if it is out of scope under regulation 3) unless an application is made to the Competent Authority under regulation 13 of RIR 2011 and a decision that authorisation is not required is made.
Reg 13	
Reg 2	The definition of renewal and upgrading in RIR 2011 is: “renewal” means any major substitution work on a subsystem or part of a subsystem which does not change the overall performance of the subsystem; and cognate words shall be construed accordingly; “upgrading” means any major modification work on a subsystem or part of a subsystem which improves the overall performance of the subsystem; and cognate words shall be construed accordingly;
Reg 12	<p>Under regulation 12 the Competent Authority may develop a list in order to give more clarity about whether a project is a renewal or upgrade. This list could name or describe projects, or types of projects, that the Competent Authority considers are renewal or upgrade. The effect of being included on such a list is that the project is deemed to be an upgrade and renewal and authorisation is required - unless a decision is made by the Competent Authority that no authorisation is required.</p> <p>The Department intends to produce a regulation 12 list. There are a number of factors which the Competent Authority must take into account when drawing up such a list, including the following: (it is possible for other factors not listed below to also be taken into account).</p> <ul style="list-style-type: none">• the scale of the project in terms of its economic costs and benefits;• the impact of the project on the rail system having regard to its effect on safety, reliability and availability, health, environmental protection and technical compatibility;• the impact of the application of any relevant TSI to the subsystem

and any interfacing subsystems.

The application

What happens if a renewal and upgrade project is not included on a regulation 12 list?

If a project considers itself to fall into the category of an upgrade or a renewal it may seek a decision from the Department about the need for an authorisation, even if a regulation 12 list does not exist, or one exists but the project is not included.

In broad terms the provision for upgrades and renewals will work as follows:

If a project is on a regulation 12 list it needs an authorisation unless they get a decision from the **Competent Authority** that one is not needed.

In the event a project is not listed, the project might take a view that they are not a renewal or upgrade (by reference to the definitions above) and proceed on that basis and not seek authorisation. However, the safety authority may take a view that they are an upgrade or renewal and that it must be authorised, so the project may wish to consider making the safety authority aware of their intentions in advance.

Note: it is not possible for the **Competent Authority** to deem under regulation 12 that a project is **not** an upgrade or renewal, it can only make a decision about the need for an authorisation in relation to projects that it considers are upgrade or renewal.

Reg 13(2)

The information that the **Project Entity** must provide with its application for a decision under regulation 13 is:

- a file setting out details of the project;
- an assessment of whether there are any new or changed safety risks and how these will be managed;
- identification of any TSI for which a derogation under regulation 14 may be necessary;
- an indication of any TSI which it is proposed should not apply if authorisation is required.

Reg 13(3)

If the information provided is insufficient to enable a decision to be made, the **Competent Authority** may request further information in writing. Applicants should be aware that if a decision is made that authorisation is required and that the TSIs should not be fully applied, the following information must be submitted by the UK as a Member State to the Commission under article 20 of Directive 2008/57:

- the reason why the TSI is not fully applied;
- the technical characteristics applicable in place of the TSI; and
- the bodies responsible for the verification procedure for those characteristics.

Therefore the project should include information about the NNTRs that it intends to apply to the project instead of TSIs. Note: under regulation 13 (8) if the **Competent Authority** determines that the subsystem requires an authorisation it must decide (subject to the provisions for making derogations under regulation 14) to what extent the TSIs apply.

In making a decision about whether an authorisation is required the **Competent Authority** must take account of the implementation strategy provided in relation to any applicable TSI and the extent of the proposed works. Other factors may also be considered.

The **Competent Authority** must make a decision within four months of the application and a letter will be sent to the **Project Entity**. When making a decision it may only decide authorisation is not required if it has consulted the safety authority (except for Northern Ireland where the same body performs both safety authority and competent authority functions).

Even if the **Competent Authority** decides that authorisation is not required, the **Project Entity** should still consider if the application of the CSM on risk assessment and evaluation under Commission Regulation (EC) 352/2009 is required.

Note: Projects should be aware that any decision letters under regulation 5 of RIR 2006 only have validity in relation to authorisations to place into service that were granted before RIR 2011 came into force.

Document Control

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