**Response from Private Wagon Federation**

**to DfT Request for comments on the Second Draft Guidance: Brexit and the application of Commission (EU) Regulations 445/2011 and 2019/779**

PWF represents the interests of owners, keepers, users, designers, manufacturers, hirers, ECMs, consultants, maintainers and operators involved in rail freight wagons based in the UK. Please note for information that PWF is in the process of transferring its activities to a new company called the Rail Wagon Association (RWA).

In our response to DfT’s first draft guidance we particularly requested that DFT:

* NOTE the specific case of ECMs based in the EU with both UK domestic and international operations, all certified by an EU certification body.
* PROVIDE CLARITY on the implementation of Regulation (EU) 2019/779 for domestic vehicles during the transition period.
* ADD a definitive statement that ECMs maintaining a fleet which includes international and domestic vehicles will need only one ECM certificate.
* CLARIFY that the UK will recognise ECM certificates issued in EU member states whether issued before or after 1 January 2021.
* CLARIFY that ECMs can and will be continue to be able to apply to an EU certification body and that certificate will be recognised in the UK.

We note that many of the comments raised by PWF and others have been incorporated in the second version of the Guidance. We do however have remaining concerns and observations which are outlined below:

**ECMs based in the EU with both UK domestic and international operations**

We welcome clarification in Point 1 of your covering email (and page 10 of the guidance) which states that after the 31st of December 2020, an ECM certificate issued in the EU will cover both UK domestic only freight wagons and international wagons.

This clarification is however somewhat confused by the answer given in Point 3 of your email which states that ECM's assigned to vehicles used in cross border traffic will be subject to the retained version of Commission Implementing Regulation (EU) 2019/779.

**Recognition of EU Certification** (Guidance page 10; Do I need to apply for…)

Whilst welcoming the recognition of EU certification, it seems perverse that an EU certificate will be recognised in the UK for the purpose of operating domestic only and international freight wagons, but a UK issued certificate will not. The guidance states that an ECM opting for UK issued certification will be required to have two separate certificates for its domestic only traffic and it's cross border traffic. There is no obvious reason for this situation.

As mentioned in our previous response we believe that an ECM will not operate two maintenance regimes for its fleet, to meet two different certification requirements. Indeed, to do so could diminish safety.

The implications for the viability of UK based Certification Bodies are potentially serious, as the above situation will inevitably disadvantage them against EU certification bodies.

**Other Comments**

Page 3 Table It is unclear why a retained version of the ECM Regulation 2019/779 is needed given the option to be certified by an EU certification body against the EU version. Who will use the retained version? Why would a UK ECM with cross border traffic opt for certification against the UK retained version of ECM Regulation 2019/779?

Notwithstanding the above, the Table appears to be inconsistent with the text. For freight wagons – after transition period, neither box includes the option to be certificated under the ECM Regulation 2019/779 regime, which is allowed for in the document.

Page 7 In Section 3 (which concerns ECM requirements for domestic only services) the guidance states that ECMs for other than freight wagons may obtain voluntary certification under ECM Regulation 2019/779. Surely this should be voluntary certification under the domestic regime, ie ROGS? The option of certification under ECM Regulation 2019/779 for UK domestic services is not shown in the table on Page 3.

Page 11 The third bullet point text states that the UK will have reverted to the retained and corrected version of ECM regulation EU 445/2011, yet there has been no previous reference to this document. Indeed EU 445/2011 has been revoked and will only exist as text in Schedules 9 and 10 of ROGS. Surely this reference should be to the retained and corrected version of ECM Regulation 2019/779?

**Conclusion**

In conclusion, PWF:-

* welcomes the statement that an EU ECM certificate can cover both domestic only and cross-border traffic;
* believes however that this clarity is diffused by adjoining statements which imply a need for separate certifications by a UK certification body;
* remains concerned that the regime will disadvantage UK Certification Bodies in the long run; and
* would welcome the opportunity to discuss these comments with DfT and other interested parties to help resolve the outstanding issues.