**Response from Private Wagon Federation to DfT Request for comments on draft guidance:**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. PWF welcomes the opportunity to comment on this important guidance.

**The Nature of ECMs Operating in the UK**

PWF members include ECMs which are based in the UK and certified by UK certification bodies; and ECMs based in the EU with both UK domestic and international operations, all certified by an EU certification body. The distinction is important, and the guidance needs to be clearer on the regime affecting both types.

**UK Domestic ECMs**

The guidance provides a useful, clear statement that Schedule 10 of ROGS will be the ECM regime applicable to ECM’s responsible for a fleet of domestic vehicles and that ECM Regulation 2019/779 will not apply.

It glosses over the issue of how to implement ECM Regulation 2019/779 for the period of June to December 2020, although states that it applies (Table page 3 and middle page 6). A statement that DfT recognises that implementing the provisions for a few months is not expected, would be useful.

**EU ECMs operating in the UK**

Under section 3 of the guidance, which relates to ECM Regulation 2019/779, and therefore to international freight operations, there is a strong inference that separate certificates will be required for an ECM operating both domestic and international operations.

This contradicts previous DfT assurances and the DfT Technical Notice which states that ‘*Proposed changes to regulations will allow ECMs to rely on certificates issued in the EU in accordance with the new Commission Implementing Regulation (EU) 2019/779 to maintain freight wagons for use in domestic operations.’*

A requirement for separate ECM certificates is wholly unacceptable as it implies a need for separate maintenance procedures and certification regimes. The additional and significant cost to these businesses will be disproportionate, for no benefit in terms of added safety value. Indeed, the confusion of operating differing procedures within an ECM could have a detrimental impact on safety. Moreover, such a requirement will have a profound effect on the attractiveness for EU companies to invest and operate in the UK rail market.

PWF contends that this confusion is unnecessary and can be rectified by adding to that section of the guidance headed ‘Do I need to apply for separate ECM certificates for domestic and international operations?’, a third case which states:

*ECMs maintaining a fleet which includes vehicles for international traffic and domestic freight operations will need to obtain an ECM certificate issued in accordance with ECM Regulation 2019/779 which will cover all vehicles.*

**EU Certification of ECMs**

The guidance states that the UK will recognise ECM certificates issued in EU member states after the end of the Transition Period (page 7). However, an additional statement is needed that makes it clear that this applies not only to existing certificates up to expiry *but also* to new ECM certificates issued in EU member states in future.

Page 7 states that ECMs that maintain vehicles used in international traffic and require a certificate can apply to a certification body accredited by the United Kingdom Accreditation Service (UKAS) and in accordance with accreditation requirements of Regulation (EU) 2019/779. It should also state that ECMs can apply to an EU certification body and that certificate will be recognised in the UK, so as to be consistent with the statement on Page 5 of the guidance.

**Further observations**

PWF members have raised several areas of concern regarding interpretation of the guidance. Accordingly, we believe it would be helpful if the next version of the guidance could also clarify whether:

* under COTIF, an existing UK ECM certification should be recognised in Europe for international vehicles;
* given that Regulation (EU) 445/2011 has actually been revoked, how it can still be in force as per the table;
* the accreditation requirements of Certification Bodies will be against the requirements of both Regulation (EU) 2019/779 and Regulation (EU) 445/2011;
* how an uncorrected text of Commission Regulation (EU) 2019/779 could have consistent and correct interpretation within the industry and be enforceable.

**Conclusion**

In summary, PWF welcomes the provision of a document which provides guidance to ECMs as to the requirements that apply during and after the transition period but believes that the present draft needs more clarity.

In particular the guidance specifies the ECM regime that applies based on whether the wagon is domestic or international, but ignores the case where an ECM is responsible for both. It also leaves room for doubt about EU certification bodies.

Accordingly, PWF requests the DFT to:

* 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.