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HEALTH AND SAFETY COMMISSION

Railway Safety Regulations 1999 – exemptions, including HSE decision on Network Rail’s application for exemption from TPWS fitment requirements at permanent speed restrictions at diverging junctions with approach controlled signalling

A Paper by HSE Rail

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Cleared by Alan Osborne and Nick Starling on 8 October 2003

Issue

1. HSE has granted Network Rail’s application for exemption from TPWS fitment at permanent speed restrictions (PSRs) at diverging junctions with approach controlled signalling. Network Rail has accepted conditions, which will involve submission to HSE within 6 months of a risk based fitment programme for the enhanced Train Protection and Warning System - TPWS+. Following consultation, HSE decided against other TPWS-related conditions, but these issues will be taken forward separately with Network Rail. Other exemption processes for both infrastructure and rolling stock are pending.

Timing

2. The decision was taken on 26 September and notified to Network Rail for any comments on the draft exemption certificate. Following their response the certificate will be signed off during the week commencing 20 October 2003.

Recommendation

3. For information. This was a decision for HSE on which the Commission was consulted.

Background

Network Rail’s application for exemption from TPWS fitment

4. The Commission considered HSE's consultation (Paper HSC/03/49) on 15 July and made a response (Annex 1). The consultation sought views about the exemption HSE was minded to grant and the conditions it was minded to attach. As the Commission is aware the consultation process was informed by advice from Counsel, to ensure that HSE's process and decision making on this application was legally robust.
5. The consultation ran from 26 June to 7 August. HSE reviewed its preliminary 'minded to grant' view in the light of the 39 responses received (summary at Annex 2). These included the Ladbroke Grove bereaved and rail passenger groups, the Commission, DfT, SRA, train operating and other rail industry companies and Network Rail itself. The clear majority supported the case for exemption. Many, including the Rail Passengers Council, DfT and SRA, also supported HSE's approach of securing a TPWS+ programme through conditions. A minority of responses (mostly the bereaved) viewed the exemption request as Network Rail reneging on its regulatory commitment, but offered no compelling technical arguments against exemption. The two main rail unions were not supportive of exemption but did appear to see merit in progressing TPWS+. Network Rail's own response was positive on their ability to deliver a TPWS+ programme, but identified practical problems on the other condition proposed for 'plain line' TPWS fitment.
6. In making its decision HSE concluded that no new compelling technical issues or evidence emerged during the consultation process to substantially alter the original assessment. HSE therefore decided that the exemption should be granted, but that :
 - Network Rail need to recognise that these locations should still be subject to risk assessment and ALARP principles which could result in a case for TPWS fitment to mitigate overspeeding risk in a small proportion of the 1800-1900 locations involved;
 - within 6 months a programme should be delivered for fitment of TPWS+ according to ALARP principles, to mitigate the risk from SPADs at speeds above 70mph;
 - the possible condition on a similar programme of TPWS at 'plain line' signals should not be included, because of the genuine difficulty in developing a suitable risk assessment tool. HSE accepted Network Rail's alternative proposal of determining suitable risk criteria for selecting these signals and producing a report within 6 months. This will be pursued outside the exemption process by HMRI's Network Rail corporate and safety case team in operations division and if necessary can be enforced using HSWA powers.
7. Thus with this PSRs exemption being granted, Network Rail now have in operation 92% of permanent TPWS fitments required by the Regulations. This contrasts with 81.5% of the programme scope being in operation before the exemption was granted, without additional fitments. The percentage fitment figure is being closely monitored by DfT and No.10 as a key rail delivery indicator.

Other Railway Safety Regulations exemptions or possible exemptions

8. HSE has now granted five exemptions in respect of TPWS fitment to different types of permanent speed restrictions (PSRs). In each case HSE has accepted the technical case that the risk of derailment from over-speeding is low. There does seem to be a growing body of evidence that TPWS is less effective at mitigating overspeed/derailment risk. But TPWS has been fitted at these PSR locations as a SPAD mitigation measure, where prescribed by the Regulations.
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Presentation

12. The Commission will understand the rail industry and Government's desire to present delivery of the vast bulk of the TPWS programme as a success story (eg. BBC 10 O'Clock News package, 3 October). In his Rail speech in July the Chair referred to the PSRs exemption consultation as an example of HSE rail change and a 'listening more' regulatory approach, alongside delivery of TPWS to the timetable set by HSC/E's Regulations.
13. The PSRs exemption consultation did not attract media attention. The decision is being announced by a low-key press notice and on the HSE website. This will be copied to Commissioners when it issues, probably week commencing 20 October. Responses to the consultation are publicly available at HSE offices and have been copied to Network Rail. In addition HSE has written to the respondents (including separate responses to the bereaved), to inform them of its decision. HSE has also kept key stakeholders including SRA, ORR, DfT and Network Rail themselves fully informed on progress.
14. Southern Region New Trains programme issues were reported in a Sunday Times article on 5 October and summarised in the Times Public Policy supplement on 7 October ("500 new train carriages delayed because there is not enough power to run them"). DfT Minister Kim Howells launched some of the new trains at London Waterloo on 13 October and took part in an SRA media event on power upgrades in Hampshire.

Costs and Benefits

15. The industry has been progressing TPWS+. A risk assessment tool has identified between 400-500 locations where fitment is justified using ALARP criteria. → ←

Financial/Resource Implications for HSE

16. The PSRs exemption process has taken approximately 1 year since Network Rail first raised the issue with HSE senior management. Considerable resources from Policy Group, HMRI (both operational and technical) and solicitors were utilised in managing it,

though no-one has been committed full time. Work on other TPWS related exemption processes which must be completed by the end of this year is both time and resource critical. HSE Rail delivery work including on Cullen recommendations has not been adversely affected so far, but we cannot rule out the possibility that other work may get delayed as a result, meaning HSE would need to make up for lost time next year while it still has Cullen funding available. Some of the costs eg. HMRI specialist inspector and HSE Solicitor time will be recoverable through charging, but not policy resource - about 1 staff year so far. → ←

Annex 1

HSC's consultation response to HSE



Health & Safety Commission
From the Chair
Bill Callaghan

Alan Osborne Esq.
HSE Director of Rail Safety
Rose Court, 2S/W
2 Southwark Bridge
London SE1 9HS

12 August 2003

Dear Alan,

**RAILWAY SAFETY REGULATIONS 1999 – NETWORK RAIL
APPLICATION FOR EXEMPTION**

As you know, the Commission considered the consultation package at its meeting on 15 July (paper number HSC/03/49 refers). The Commission noted that the decision was for HSE, but that it was being formally consulted. This is to provide the Commission's views following that discussion.

The Commission welcomed the falling trend in SPADs and TPWS effectiveness at mitigating their consequences when they occur. We took the view that the application for the exemption might be interpreted as a backing away from commitments made by Network Rail and its predecessor, and that conditions needed to be agreed to ensure commitment from the industry to further fit TPWS and TPWS+ where justified by risk assessment. We also asked about the timing of the application for the exemption given that the industry programme had been agreed with HMRI and approved in 2000. We are disappointed that it is only recently that HSE has received an application adequately framed in terms of evidence of likely risk.

On balance the Commission was minded to accept HSE's expert advice on the granting of the exemption, but wanted this to be conditional upon the mandating of TPWS + fitment. This should be based on an analysis of risks and provide a clear timetable for delivery.

The Commission would like to see a programme to be in place within six months and wanted HSE to have the enforcement powers, through conditions, to ensure this.

Yours ever
Bill Callaghan

BILL CALLAGHAN

Chair, Health & Safety Commission

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Reducing risks - protecting people

Annex 2

Consultation responses summary table

