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HEALTH AND SAFETY COMMISSION

Proposed Regulations on Railway Safety – Industry Concerns

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Issue

1. To:

- Bring to the Commission's attention the main concerns expressed by the railway industry during consultation on the its proposals for new railway safety regulations;
- Seek a steer on whether to proceed with proposals for specific requirements for railway safety critical work and an associated Approved Code of Practice (ACoP) on the management of risks from fatigue; and
- Seek HSC's agreement to a letter to stakeholders about possible minor adjustments to the scope of the proposals and to the detailed provisions for migrating to the new safety certification requirements.

Timing

2. Urgent. The final draft of the rail safety regulations and (if agreed) the fatigue ACoP will need to be developed in the coming weeks if final agreement for a new regulatory framework for the rail sector is to be sought from HSC before the end of the Rail Delivery Programme in March 2005.

Recommendation

3. The Commission is invited to:

- Decide if it wants to proceed with the proposals for a specific regulatory framework for safety critical workers in the rail industry (paragraphs 10 to 32);
- Decide if it wants to proceed with the proposed fatigue ACoP for railway safety critical workers (paragraphs 35 to 50); and
- Note the other concerns raised by the industry (paragraphs 51 to 57), and comments as appropriate.
- Agree the letter to stakeholders (paragraphs 58, 59 and Annex D).

Background

4. HSC agreed to the publication of the HSC Consultative Document '*Proposals for new safety regulations for railways and other guided transport systems*' at its meeting on 3 August 2004 (HSC/04/51). The CD was published on 6 September with comments requested by 27 November 2004 (www.hse.gov.uk/railways/liveissues/cd199.htm),
5. The CD contains proposals for new regulations covering safety management on the railways – the Railways and Other Guided Transport Systems (Safety) Regulations 2005 (ROGTS). The new regulations would replace three existing sets of railway safety regulations with a single, coherent set of regulations developed to implement new European requirements for railway safety, to reflect 'Better Regulation' considerations, and to take on board the recommendations on rail safety management still outstanding from public inquiries. The existing requirements that would be revoked are those on railway safety cases (the Railways (Safety Case) Regulations 2000), on approval of railway works, plant and equipment (the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994), and on railway safety critical work (the Railways (Safety Critical Work) Regulations 1994).
6. Part 4 of the proposed new regulations specifically relates to railway safety critical work (**Annex A**). The CD also contains proposals for an ACoP on the management of risks from fatigue in workers undertaking safety critical work (**Annex B**). Under the proposals, the existing ACoP on assessing risks from hours of work would be revoked.
7. Stakeholders have been actively engaged throughout the development of the proposals and this has continued during the consultation period. Well-attended, successful open meetings have been held in London, York and Edinburgh. In addition, the Rail Safety & Standards Board (RSSB) held an industry workshop to discuss the proposals and RIAC discussed the CD at its meeting on 2 November 2004.
8. Although the consultation period has not yet finished, a number of concerns are emerging from key stakeholders. The concerns have questioned some aspects of the regulatory framework that the Commission agreed at its meeting on 3 August 2004.
9. We will inform Commissioners as soon as possible after the close of consultation if our initial analysis of final responses to the CD significantly affects any of the points raised in this paper. We will do this by either a verbal update at the meeting on 7 December or an HSC MISC Paper (HSC 04/38).

Argument

Industry comments on safety critical work and fatigue

10. RSSB represents the mainline rail industry. In its draft response to the CD, it states that the safety critical work provisions should be moved to be part of the safety management system, and should be supported by guidance developed and owned by the industry. RSSB continue:

'No other 'high hazard' industry, or other transport mode, has a discrete set of regulations governing specific tasks in this way, therefore there is no case for railway specific Regulations. They duplicate other areas of health and safety law and, since the regulations were originally put in place, Railway Group Standards (and in due course TSIs) and company competence management systems have not only achieved an acceptable level of control, but have extended the scope beyond the 1994 regulations. The proposed regulations are a vestige of a more interventionist approach that the HSE no longer adopts.'

11. Similarly, LUL state in its response that the requirements are 'unnecessary' and that there are many other sources of potential risk than just competence, fitness and fatigue. They suggest that the proposed level of prescription may well bias effort, resources and attention to these areas at the expense of other more serious risks. At the RIAC meeting on 2 November LUL also expressed concern that HSE had repeatedly failed to take their views into account.
12. In contrast, RMT particularly welcome the retention of specific regulations and state 'it is only the presence of the existing Safety Critical Work Regulations that has created the current depth of compliance on such issues, and without them the levels of control would be far weaker'. TSSA stressed their support for the retention of specific regulations and suggested that without such requirements the 'levels of worker death and injury on the railways would be much higher'.
13. A key finding of an independent evaluation study into the existing regulations was that the majority of respondents thought that the regulations should be retained. When commenting on a later HSC Discussion Document '*Safety on the Railway – Shaping the Future*', the majority of respondents thought that regulatory requirements for safety critical work should be subsumed into the Safety Case Regulations.

Factors to be considered

14. In coming to a view, HSC may wish to consider the following factors:

The importance of safety critical work for railway safety

15. The existing safety critical work regulations arose from a review of the implications of the privatisation of British Rail in 1994. HSC/E found that there were no specific statutory controls in place to ensure that the new duty holders would have robust systems in place to manage competence, fitness and fatigue. For example, the Management of Health and Safety at Work Regulations 1992 (now 1999) only deal with the capabilities and training of employees and alleviating monotonous work.
16. Although progress continues in using engineering solutions to reduce the level of risk in the rail industry, there is still heavy reliance on individuals to control risk. This is the case for both low frequency / high consequence events, such as collisions, and for higher frequency events, such as track workers being struck by moving vehicles.
17. Worksites can be spread over many hundreds of miles, and work can take place in adverse weather conditions, involve large numbers of contractors spread over a number of overlapping worksites, making direct supervision difficult. Work often occurs at night or over a weekend, and there is significant pressure to return the railway to full operational state early the next working day.
18. The consequences of wrong decisions or omissions can be significant for workers, passengers and the wider community. An independent evaluation of the existing safety critical work regulations looked at RSSB's well-respected Safety Risk Model and found 14 key hazardous events that involved a varying proportion of safety critical risk. Overall, the study found that 15.2 potential equivalent fatalities per year on the mainline network could be directly associated with competence, fitness and fatigue in safety critical workers - around 20% of the total non-trespass risk. The evaluation found that the Regulations had a positive impact by providing a good focus and framework for the industry to develop competence, fitness and fatigue management systems.

19. All who have voiced concerns about the proposals for a regulatory framework for safety critical work agree that competence, fitness and fatigue remain important factors that have to be adequately managed to ensure rail safety. The issue is whether the railway industry should be subject to specific regulatory requirements in this area.

Comparison with other industries

20. RSSB, Network Rail, LUL, and ATOC have suggested that other work sectors do not have specific regulations dealing with safety critical work. They have questioned why railways have been made an 'exception'. They have also commented on many occasions that there should be a level playing field with other transport modes and that railways should not be associated with 'high hazard' industries.

21. If railways are compared with other HSC/E regulated 'high hazard' industries, such as nuclear, chemicals and offshore, it is true that the specific requirements for safety critical rail workers are not mirrored elsewhere. HSE believes this is because there is more reliance in the rail industry on individuals carrying out tasks safely.

22. If, however, railways are compared with other transport modes a different picture emerges (further details are in **Annex C**):

a) Aviation

The Air Navigation Order 2000 governs safety. This requires:

- Aviation operators, and those in control of Air Traffic Control, to hold a certificate from the Civil Aviation Authority (CAA);
- The use of CAA licensed personnel for certain work activities, such as maintenance engineers, flight crews, pilots and air traffic controllers; and
- Avoidance of fatigue (there is a supporting Civil Aviation Publication on fatigue of aircrews and CAA consider this as secondary legislation).

b) Maritime

There are specific regulations requiring licensing of personnel, such as boat-masters, chief mates, chief engineers, officers in charge of navigation and radio operators. Competence and fitness requirements are laid down and there are hours of work regulations covering staff undertaking safety critical activities onboard ships. These require such staff to have sufficient rest. A Merchant Shipping Note (similar in status to an ACoP) expands on the regulatory requirements and specifically mentions fatigue.

c) Road Transport

Regulatory control of competence and fitness is through licensing of drivers of, for example, passenger service vehicles and large / heavy goods vehicles. Regulations place the onus on duty holders to ensure that a driver's schedule is such that they comply with specified limits on drivers' hours. There is also the Highways Code (considered similar to a HSE ACoP), which has several rules concerning fatigue. More detailed regulatory requirements will be needed for drivers of buses and lorries as a result of a recent EU Directive, which needs to be transposed by September 2006.

The scope of the European safety management system

23. In its response RSSB asks that the safety critical work provisions are moved into the proposed requirements for a safety management system (SMS). Similarly, LUL thought the proposed provisions are unnecessary as the requirement for duty holders to demonstrate in their SMS how they identify, assess and control all sources of risk is comprehensive and sufficient.
24. However, we cannot move the requirements for safety critical work into those for the SMS because legally we are constrained by the terms of the Railway Safety Directive which sets out what the SMS should contain for rail operators to receive the Part A or 'European Part' of their safety certificate / authorisation (i.e. the 'new safety case'). This has been implemented faithfully in Parts 2 and 3 of the proposed regulations. In particular the SMS must include 'provision of programmes for training of employees of the operator and systems to ensure that the competence of such employees is maintained and that they carry out tasks accordingly'. There is no other specific mention of competence, fitness and fatigue in the SMS requirements. If, therefore, we were to move the proposed requirements for safety critical work and fatigue into those for the SMS we would be adding to, or 'gold plating', the requirements of the Directive to obtain a Part A certificate.
25. However, the RSD does envisage that Member States will also have their own regulatory requirements for railway safety, or 'national safety rules'. Railway operators would have to show that they are capable of meeting these rules when they apply for their Part B certificates or authorisations, which are specific to each Member State. HSE would be able to ask for relevant evidence before issuing a Part B certificate. Furthermore, the Directive is clear that such national rules can include "rules concerning requirements on staff executing safety critical tasks, including selection criteria, medical fitness and vocational training". This is one reason why the proposed requirements for competence, fitness and fatigue are in Part 4 of the proposed regulations rather than trying to incorporate them in the requirements for safety management in Part 2.
26. The Directive makes clear that Member States must notify their national safety rules to the European Commission. We know that EU requirements on competence and fitness are in the pipeline for drivers, train dispatchers, those authorising train movements and those checking vehicles before they are brought into use (in relation to cross border train operations). We are aware that we are likely to have to amend our national safety rules in future. A key development here is the proposed Directive on train driver licensing which will require licensing of new cross border drivers from 2007, and potentially all other drivers by 2015.

The duty holders in scope of the requirements for competence, fitness and fatigue

27. If, in line with the mainline industry's view, the safety critical work provisions were moved into the proposed requirements for a SMS, the requirements would only apply to those who were obliged to have a SMS, i.e. railway operators. The requirements would not apply to, e.g. contractors who prepare trains for service or who work on the track. However, such tasks are safety critical, as made clear by the Hatfield derailment (where the HSE investigation led to specific recommendation on competence of track workers), and by recent fatalities to track workers at Tebay and Hednesford. In contrast, the proposed requirements on safety critical work, like the present regulations apply not just to train operators, but to any duty holder who is in control of safety critical

work as defined. This is another reason why the proposed requirements for safety critical work are in Part 4 of the draft regulations rather than Part 2.

28. The rail unions consider that the proposed provisions on safety critical work are important, and have pointed out that they have significant concerns about maintenance activities in 'possessions' where poor practices can be found. Furthermore, under the proposed regulations those who work solely in possessions will no longer have to apply for a safety certificate (safety case), as this is directed at normal operation of infrastructure and trains rather than maintenance.
29. Finally, the proposed requirements on safety critical work, like the existing regulations, apply beyond the mainline network to sectors including metros, trams and heritage railways. Non-mainline railways don't have as well developed standards as the mainline. Arguably, therefore, specific legal requirements for non-mainline railways and other transport systems are even more important than for the mainline. HSE consider that there should be coherence between the requirements for all railways, and that they should be proportionate and risk based.

An interventionist approach?

30. Since privatisation the Commission's approach to the regulation of the railways has been interventionist, perhaps reflecting the fragmented nature of the industry, its track record and accident history, and the level of confidence in the industry as a whole that it is able to manage its risks. The Commission may wish to consider whether it wishes to continue this approach at this time, or alternatively whether it wishes to signal that the existing requirements can be relaxed.

HSE's view

31. HSE considers that, in the medium term at least, the regulatory framework for rail safety should include specific requirements on safety critical work. This would not make the rail sector an 'exception', but would broadly align with the approach in other transport modes, perhaps reflecting the expectation that, where the public put themselves directly in the hands of a commercial undertaking, as in the case of public transport, those with day-to-day responsibility for safety will be competent, fit and not fatigued. In the European model this has to be done by national safety rules. HSE also considers that these requirements should extend to the infrastructure maintenance sector. We believe the proposals in the CD would be effective, transparent and risk-based and provide a modern, flexible regulatory framework for the management of competence, fitness and fatigue in the rail industry.

32. HSC is invited to decide if it wants to proceed with the proposals for a specific regulatory framework for safety critical workers in the rail industry.

33. If yes, HSE will continue the dialogue with stakeholders and refine the detail of the proposed new requirements. However, the industry has also questioned the nature of the proposed controls on fatigue, and in particular whether there should be an ACoP.

Fatigue ACoP

Managing the risks associated with fatigue

34. Regulation 4 of the existing Safety Critical Work Regulations places a general duty on employers to ensure that employees who carry out safety critical work do not do so for

such number of hours as would be liable to cause the employee fatigue which could endanger safety. The regulation is supported by an ACoP on hours of work which provides duty holders with information on how to assess risks from fatigue associated with hours of work, on exceptional circumstances when limits on hours of work can be exceeded, provision of breaks, monitoring systems, and on how employees who experience fatigue arising from working time patterns should be managed.

35. The evaluation study and responses to the HSC Discussion Document indicated that external stakeholders considered fatigue to be an area of concern, that it was not just related to hours of work and was a complex area to manage. HMRI have indicated that risks arising when safety critical workers are fatigued is an area of concern.
36. Duty holders in the rail sector now have to comply with the Working Time Regulations 1998 (as amended). Although they place maximum working time limits for employees (some other limits do not apply to many categories of railway workers), they do not prevent workers working when they are fatigued. More specific limits may be set for the rail industry if the European Commission adopt a recently agreed Social Partners' Agreement on working time for cross-border train drivers (which account for only 2% of UK train drivers). However, no mention is made of fatigue.
37. The proposed new regulation on fatigue (regulation 25) has been updated to address all factors associated with fatigue, not just hours of work. It states:

'Every controller of safety critical work shall have in place arrangements to ensure, so far as is reasonably practicable, that a safety critical worker under his management, supervision or control does not carry out safety critical work in circumstances where he is so fatigued or where he would be liable to be so fatigued that his health and safety, or the health and safety of other persons on a transport system could be significantly affected'.

38. To support this general duty HSE has also developed an updated ACoP, together with an early draft of the associated guidance (**Annex B**). In developing an ACoP, the intention was to avoid prescriptive requirements in a complex area that is still evolving.

Industry concerns

39. Consultation with stakeholders, in particular RSSB, has indicated that there is agreement that fatigue should be managed. However, the present industry position is that there is no evidence to suggest that fatigue is a greater problem for the rail industry than for other industries, and that any new legal requirements (including any ACoP) should apply to all industries, not just rail.
40. Stakeholders have also pointed out that fatigue is a complex issue because it is affected by lifestyle factors and human performance is also variable. They have concerns that an ACoP will not give sufficient flexibility in approaching the issue of fatigue. They consider developing their own guidance would be more appropriate.
41. Several stakeholders have also stated that they feel the information contained in the guidance to the ACoP on designing work patterns is seeking to achieve best practice in the industry and that implementation would require significant resources. They also disagree with the inclusion of guidance on lifestyle issues, which they feel are personal matters for safety critical workers that dutyholders have no real power to influence.

42. In contrast, the Trade Unions (RMT and TSSA) have indicated their strong support for Regulations 25 and the ACoP. In some areas, in particular travel time, they consider that more onerous requirements should be developed.

Ways forward

43. If HSC takes the view that a specific regulatory requirement on fatigue needs to be maintained (paragraph 34), and the proposed regulation 25 is appropriate (paragraph 37), the main options in relation to the proposed ACoP are:

Option 1 – Introduce Regulation 25 and amend the proposed ACoP on fatigue

44. The proposed ACoP would be streamlined into a set of over-arching principles and the industry would be able to develop sector specific guidance in accordance with the principles. This 'new ACoP' would be prepared within the existing timescale to complete the project. Dialogue would take place with industry experts and further formal consultation is not planned, as we would not see this as a significant change to the proposals as a whole.

Advantages of Option 1

- An ACoP which supports Regulation 25 and presents the key requirements to manage fatigue would be available for the rail industry and the safety regulator;
- It would be clear that the new requirements maintain standards because the controls on fatigue would remain as now – a regulation with a supporting ACoP;
- The amended ACoP would take into account stakeholders concerns; and
- Industry would be able to prepare their own guidance in line with the ACoP.

Disadvantages of Option 1

- It may not be possible to reach agreement between interested parties on the amendments that are needed. In this case, there would be no ACoP in place when the new regulations are introduced. It would then fall to the industry to find ways of meeting the requirements of regulations 25, and to produce its own guidance.

Option 2 – Introduce Regulation 25 and HSE supporting guidance

45. Under this option there would be no ACoP, either existing or proposed. The information contained in the proposed ACoP would be given guidance status. Changes would be required to focus on the key requirements for managing fatigue and to remove areas such as lifestyle factors.

Advantages of Option 2

- Reducing the status of the recommended ways of meeting the requirements in regulation 25 from an ACoP to guidance may make it easier to secure agreement with duty holders.

Disadvantages of Option 2

- Standards may appear to have been reduced by changing the ACoP to guidance;

- The unions have previously expressed concern about any option involving removal of the ACoP; and
- It may still be difficult to secure consensus on the guidance, in particular on issues such as travel time and on-call duties.

Option 3 – Introduce Regulation 25 and industry supporting guidance

46. This option is similar to Option 2, but the industry would be expected to develop the supporting guidance to Regulation 25.

Advantages of Option 3

- It would align with the approach in which the regulator sets the framework (regulation 25) and industry takes responsibility for addressing the detail.

Disadvantages of Option 3

- Similar to Option 2; and
- Non-mainline rail sectors have less resource and expertise to develop sector specific guidance, and there may be inconsistencies or gaps.

Option 4 – Introduce Regulation 25 and retain the existing ACoP under the Safety Critical Work Regulations

47. This option would involve ‘mixing and matching’ the new regulation 25 on fatigue with the existing ACoP on hours of work. The existing ACoP would need to be amended to take into account the differing scope and definitions.

Advantages of Option 4

- The status quo is preserved; and
- Industry may not be as dissatisfied with retaining the existing ACoP than introducing a new ACoP.

Disadvantage of Option 4

- ‘Mixing and matching’ will be awkward because the old ACoP is focused on hours of work, the duties are placed on employers and not on those in ‘control’, and the ‘old’ definition of safety critical work is based on job titles whereas the ‘new’ definition is based on tasks. Some rewriting would be necessary.
- The ACoP would not cover the parts of reg 25 that extend beyond hours of work.

HSE’s view

48. We accept that the present draft ACoP is too long and that lifestyle issues can be removed. However, we believe that the key parts relating to fatigue management represent good practice, not best practice. HMRI has carried out detailed inspections of fatigue management in 9 significant duty holders, and concluded that, for the most part, duty holders reach the standards set out in the draft proposed ACoP. The industry could give itself credit for better standards than it might feel already exist.

49. On balance our preference is to retain an amended ACoP (option 1). However, we recognise that industry may still not consider that ACoPs provide sufficient flexibility and that it may not be possible to reach agreement on the text. If so, the same material could be issued as HSE indicative guidance (option 2), or made available informally to industry to develop their own guidance (option 3).

50. HSC is invited to decide what action should be taken on the current proposals for a fatigue ACoP for railway safety critical workers.

Other key issues raised by the industry

51. Industry has also raised a number of other general issues that HSE would like to draw to the Commission's attention.

Timing of the consultation

52. Industry note that Government is implementing the 2nd Rail Package in three parts with Consultative Documents from:

- HSC with new railway safety regulations implementing most of the Railway Safety Directive;
- The Rail Accident Investigation Branch implementing the remainder of the Directive (HSC/04/67, also on the agenda for HSC's meeting on 7 December); and
- DfT on interoperability of the mainline railway implementing various rail Directives not primarily about safety. However, DfT's plans have slipped – their CD is now due in February 2005, with three months consultation until May.

53. Industry rightly point out that HSE plans to bring back to HSC the responses to its consultation and final regulatory proposals in March 2005 and that, on present plans, the Commission will have decided the final shape and detail of the requirements for safety management shortly after DfT have opened their consultation on interoperability and before this consultation closes in May. The mainline industry would like to see all three parts together to check that the linkages are correct and workable, and are asking HSC/E to delay its plans until the DfT interoperability consultation is complete.

54. HSE's response so far has been that we understand the industry's concern, but we cannot slow down because rail safety legislative reform is a key element of the Rail Delivery Programme, all of which has to complete by the end of March 2005. However, we have explained that:

- We are working very closely with DfT to ensure a joined up approach.
- The main linkage between HSC's proposed rail safety regulations and DfT's proposed provisions on interoperability is the definition of the 'interoperable' or mainline railway, on which DfT lead. The draft regulations in the CD point to the definition in the relevant Directives and, in agreement with DfT, the CD makes clear the policy intention. The final version of the proposed regulations will include DfT's definition, which will be developed in an open process.
- Notwithstanding these arrangements, there is a fallback if DfT's definition has to change following their consultation, because secondary legislation will be needed with the Bill to effect transfer of responsibility for rail safety from HSC to ORR.

These regulations will be made in the summer and will have to amend the proposed rail safety (and other) regulations to change references HSE to ORR with effect from the date of transfer (end 2005/early 2006). If necessary the definition of the 'interoperable' or mainline railway can be amended at the same time.

- There is pressure to press ahead in implementing the Rail Safety Directive as, even on present plans, implementation will not be complete until October 2007 when the transitional arrangements to move existing safety case holders from the present to the new arrangements are complete. There are no transitional provisions in the Directive so UK implementation will not be complete until 18 months after the implementation deadline of April 2006. The European Commission has already launched infraction proceedings against the UK for failure to implement interoperability and other (DfT led) rail directives.

Roles of the infrastructure manager and railway undertakings

55. There are different views in the industry about how the Railway Safety Directive sees the relationship between the infrastructure manager (Network Rail for the main network) and railway undertakings (train operators). Network Rail takes the view that the Directive entitles it to proactively supervise the activities of railway undertakings, as it does now under the Safety Case Regulations. The Association of Train Operating Companies, on the other hand, believes the Directive sees the infrastructure manager and railway undertakings as equal partners. Both ATOC and Network Rail have legal advice supporting their own view. Despite these differences, there is common ground on how the relationship between the parties should work in practice, and discussions are continuing. We are hopeful that it will be possible to find an agreed way forward. In doing so we will need to take account of a number of wider factors, including the requirement in the Directive to distinguish clearly the infrastructure manager's role from that of the safety regulator; the implications of the recent Rail Review White Paper which gives overall responsibility for performance to Network Rail; and where responsibility for standards covering system risk should lie (it currently rests with the industry body RSSB whose future is under review).

Safety verification

56. The proposals will introduce new requirements for safety verification, under which those commissioning or operating new infrastructure or vehicles that introduce significant new risks will have to appoint an independent competent person to, in effect, peer review the proposals and verify that appropriate design and construction standards and good engineering practice have been met. These new provisions will apply only to non-interoperable transport systems such as metros, tramways and heritage railways; separate European requirements will apply to the interoperable railway. They will replace current requirements in the ROTS Regulations to gain HSE approval for new and altered works and plant.
57. The light rail and heritage sectors continue to express concerns about these new provisions. They have said that a move away from HSE approval will result in increased costs because liability insurance for competent persons may be expensive; it may be difficult to find someone suitable and available to act as a competent person when required; and as yet there is no complete set of standards in these sectors against which compliance can be judged. In response to these points we have suggested that a competent person could be employed by another company within the sector (or even by the same company if independence can be guaranteed), and that

representative bodies such as the Confederation of Passenger Transport and the Heritage Railway Association may be able to play a useful facilitation role. In addition, HSE Rail is working to develop a set of principles or requirements that will provide a framework for subsequent standards development; and HMRI's Railway Principles and Guidance series of publications provide guidance and will be made freely available on the internet. We think the debate is now be changing from "why change?" to how change will be managed. However, concerns about cost and timing remain.

Stakeholder Letter

58. Since the consultative document was issued, internal discussion has shown that a number of small changes may need to be made to the proposals and that one point in the CD would benefit from clarification. We have consulted the Solicitor's Office on these and believe that it is necessary to send a letter to stakeholders setting out these points and giving them opportunity to comment on these possible changes. Two of them concern the application of the draft Regulations to transport systems hauled by cables (such as some mountain and cliff railways), in places of entertainment or recreation, or on the grounds of private dwellings. Others concern the detail of the transitional provisions that provide for existing safety case holders to migrate to the new safety certification and authorisation regime over a period.
59. A draft letter is at Annex D, inviting comment by 17 January. It is possible that the letter may require modification in the light of ongoing discussions or of stakeholders' own comments. If so, we will report this orally at the Commission meeting.

Consultation

60. HSE has ensured that there has been an open and iterative engagement with stakeholders during the development of the proposals for the new railway safety regulations and ACOP. Stakeholders have generally welcomed the open process of engagement and dialogue, with several applauding the approach taken.
61. HMRI, HSE Solicitors and economists have been involved in developing the proposals and this paper.

Presentation

62. Railway safety continues to be high profile and accidents, particularly those involving the public, inevitably attract media and public interest.

Costs and Benefits

63. In line with Cabinet Office guidance, a partial regulatory impact assessment (RIA) was prepared for the new regulations and this included the effects of the proposals on safety critical work. This was cleared by the Cabinet Office Regulatory Impact Unit, and the proposals do not have to be considered by the new Panel for Regulatory Accountability – the proposals are essentially about changes in process not a step change in safety. The RIA will be adjusted in the light of further information from stakeholders received in response to HSC's CD.
64. The total cost to society of the proposals on safety critical work is estimated to be £30.6 million to £52.5 million over the appraisal period, equal to £3.6 to £6.1 million per annum. Given that the total cost of fatalities and injuries in the railways is estimated as £1.3 billion over the next ten years, or £141 million per annum, and assuming 100%

compliance, a reduction of ca. 2.3% to 4.0% in fatalities and injuries would be sufficient for benefits to balance costs. If compliance of 80% is assumed, the total cost to society is estimated to be £24.5 to £42.0 million over the appraisal period, equal to £2.8 to £4.9 million per annum. A reduction of ca. 1.9% to 3.2% in fatalities and injuries would be sufficient for benefits to balance costs.

Financial/Resource Implications for HSE

65. The cost of taking this work forward can be met from the existing funding agreed by Ministers for the Rail Delivery Programme (to be completed by March 2005). The future impact of the legislative change for HMRI's costs is currently being considered as part of the organisational changes being delivered within this financial year. The proposals on safety critical work on their own should be broadly neutral in relation to the charging returns for HMRI. In the future, resources for Rail Policy and HMRI, as for HSE, will be subject to the constraints of the SR2004 settlement for all public sector activities. As planned, the Cullen Division in Policy Group will close on 31 March 2005.

Environmental Implications

66. No specific implications identified.

Other Implications

67. The majority of heritage railways, some tramways and operators of specialised transport systems such as people movers and monorails are likely to be small businesses. The new regulations will now bring into scope of the safety critical work provisions approximately 6000 volunteers in the heritage sector. The Heritage Railway Association already recommends that its members follow the principles of the current safety critical work regulations and is broadly content with the new proposals.

Action

68. HSE will take forward the proposals for new rail safety legislation in accordance with the steer provided by the Commission. We will also, of course, take due note of all the comments received in response to consultation. The timetable is challenging - we plan to present the results of consultation and our final proposals for new regulatory requirements to RIAC at their meeting on 10 February and to HSC on 8 March.