



Health and Safety Commission

To all interested parties

HSC proposals for new safety regulations for railways and other guided transport systems: further consultation

Introduction

1 In September 2004 the Health and Safety Commission published a consultative document (CD) *Proposals for new safety regulations for railways and other guided transport systems*, on which comments were requested by 27 November. Since then, further consideration and discussion with stakeholders have resulted in a number of possible changes to the proposals in the CD, on which the Commission wishes to invite comments from interested parties. The changes are set out in this letter. They concern the application of the proposed Regulations to certain types of transport system, and the detailed provisions for safety case or exemption holders to migrate to the new requirements.

Transport systems with a cable haulage system

2 The draft Regulations set out in the CD exclude “any transport system where traction is provided by one or more cables” (see definition of transport system in regulation 2). The Commission wishes to consider the option of restricting this exclusion to non-rail cable systems, such as cablecar systems, ski lifts, drag lifts and similar non-rail systems which we consider could fall within the broad definition of “guided transport”. The effect would be to apply the Regulations to cable-hauled railways, such as the Cairngorms Mountain Railway and cliff railways, and to some other systems employing cables (such as airport “people movers”). Although cable-hauled rail systems are typically small, they can present significant potential safety risks. It may therefore be reasonable that these systems should comply with the proposed duties in Parts 2, 3 and 4 of the draft Regulations on safety management systems, risk assessment, cooperation, and safety critical work. However they would generally not be subject to the safety certification and authorisation provisions of Part 2 because of their low line speed (draft regulation 4(3)); and in most cases they would also be excluded from the safety verification provisions of Part 5 of the draft Regulations, as these do not apply to transport systems subject to the requirements of the Cableway Installations Regulations 2004 (draft regulation 28(1)(b)).

Transport systems in places of recreation or private land

3 The draft Regulations exclude “fairground equipment” (definition of transport system). The Commission wishes to consider widening this exclusion to cover transport systems -

(a) in premises used for the purpose of a museum, amusement park, funfair or other place of public recreation or entertainment; or

(b) in the grounds of a dwelling house or similar private land where the main use of the grounds or private land is not related to the operation of a transport system.

Exclusions on the above lines would be consistent with existing practice, which is generally to issue HSE exemptions for such systems from the requirements of the Safety Case Regulations, and with current proposals for regulations governing the Rail Accident Investigation Branch’s activities. Those operating transport systems in these categories would, of course, remain subject to the Health and Safety at Work Act including its enforcement provisions if any employment or self-employment is involved in their operation.

Transitional provisions for existing safety case holders

4 Paragraph 128 of the CD said that existing safety case holders will, until a specified date, be deemed to have met the new Regulations. To avoid any possible misunderstanding the Commission would like to make clear its intention that a safety case holder would be deemed (until a specified date) to have met the following requirements of Part 2 of the draft Regulations:

- the requirement in draft regulations 3(1)(a) and 4(1)(a) to establish and maintain a safety management system that meets requirements of the Regulations; and
- the requirement in draft regulations 3(1)(b) and 4(1)(b) to obtain a safety certificate or authorisation.

Under paragraphs 4-5 of Schedule 5 safety case holders will have to comply with the above requirements by a date between April 2006 and October 2007, unless the proposed Regulations exclude them from either or both requirements. The other requirements in Parts 2 and 3 of the draft Regulations, for example on risk assessment and cooperation, will apply to them as from October 2005.

Revisions to safety cases during the transitional period

5 Paragraph 128 of the CD also indicated that Schedule 5 may be modified to allow a safety case (whose holder will now be deemed to hold a safety certificate or authorisation) to be revised during the transitional period. The interests of safety would not be best served if safety case holders were

unable to make any changes during this period of up to two years. The Commission will therefore to consider adding requirements on operators to:

- (1) revise the safety case where appropriate (similar to regulation 7(1)(b) of the Safety Case Regulations);
- (2) notify HSE without delay of any material revision (in line with the draft regulation 13 of our proposals concerning major changes); and
- (3) apply for a new certificate or authorisation if the holder proposes a substantial alteration to the type or extent of the operation, or to the infrastructure or energy supply or the way these are operated or maintained (in line with draft regulations 8 and 11).

In consequence, paragraph 8 of Schedule 5 would be modified to require the holder to comply with the safety case “as revised”. The provisions in regulation 17 for “affected parties” to receive documentation would be adjusted as necessary so that they apply to the notifications and applications covered in paragraphs (2) and (3) above.

Spread of applications for safety certificates and authorisations from safety case holders

6 The purpose of Schedule 5 of the draft Regulations is to provide for a two-year programme of migration from safety cases to safety certificates and authorisations. However if large numbers of safety case holders were to apply for a certificate or authorisation much earlier than necessary to meet the Schedule 5 deadlines, it could make it difficult for HSE to meet its obligations under draft regulations 7(3), 10(2) and 17(9) to decide applications within a specified period. The Commission will therefore consider including a provision to the effect that the period allowed for HSE to determine an application will not start to run until nine months before the date by which the holder of a deemed safety certificate or authorisation must obtain a certificate or authorisation. For example, if under Schedule 5 a duty holder’s “deemed” certificate expires on 31 December 2006 the period allowed will not start to run until 31 March 2006 even if the applicant applies earlier than that.

Transitional provision for operators currently subject to HSE exemptions

7 Many heritage railways and some other small railways hold an HSE exemption from the existing requirement to have an accepted safety case. These operators would therefore be required to comply fully with the new Regulations by October 2005 under the proposals as they stand. Although most exemption holders will be excluded by regulation 4(3) from the requirement to have a safety certificate or authorisation, they will have to establish a safety management system that meets all the requirements of the proposed Regulations. This may be a substantial exercise for some exemption holders. The Commission will therefore consider an additional transitional provision that will give exemption holders additional time to comply

with Part 2 of the new Regulations. A date in April 2006 would be consistent with the date by which the first wave of existing safety case holders will have to comply.

Safety cases in the pipeline

8 There may be a number of safety cases and revisions that are “in the pipeline” - sent to HSE but not yet accepted – when the Safety Case Regulations are revoked (in October 2005 on present plans). The Commission wishes to consider adding a provision that will allow HSE to complete its assessment and to reach a decision in these cases under the provisions of the existing safety case Regulations. A new safety case that is accepted under this provision would be a “deemed” certificate or authorisation and would expire in October 2007; some new operators may therefore prefer to re-apply under the new Regulations. In the case of a material revision that involves a substantial alteration to the operation (as envisaged in regulation 8 or 11), the HSE will go on to accept (or reject) the revision. However in the case of material revisions that do not involve a substantial alteration of that kind, the operator could proceed under regulation 13 of the new Regulations and notify it to HSE without having to obtain HSE’s acceptance.

9 In relation to the safety verification proposals in Part 5 of the draft Regulations, a “pipeline” provision is already included in draft regulation 37(2)-(4) which would enable an application under ROTS to be determined up to April 2007.

Coming into force dates

10 As stated in the CD, the Commission’s aim is for the Safety Case Regulations to be revoked and the new Regulations to come into force in October 2005. HSE is continuing to work with the Department for Transport to ensure a common coming into force date for the proposed safety Regulations and DfT’s proposed regulations to implement European interoperability directives. In order to allow a safety certificate or authorisation to be issued in October 2005, certain provisions will need to come into force several months earlier (perhaps in April or May) to allow an application to be made. Similarly, in relation to the safety verification proposals in Part 5 of the draft Regulations, certain provisions are expected to come into force early to allow the appointment of a competent person who could, in principle, issue a verification certificate in October 2005.

Invitation to comment

11 This letter covers a number of detailed areas of the Commission’s proposals. It is not intended to forestall discussion or pre-empt decisions on any aspect of the proposals in the CD. In the next few weeks HSE staff will be giving careful consideration to all comments that have been received on the CD and this further letter. The Commission will then consider the responses received before it finalises its proposals to Ministers.

12 If you would like to comment on any of the points in this letter, you are invited to do so by **Monday 17 January 2005**. HSE will handle your responses in a similar way to responses to the main CD; details are appended. Please e-mail or send your comments to:

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Health and Safety Commission

13 December 2004

HSC statement on openness and confidentiality

1. The Health and Safety Commission has a statutory duty to consult interested parties when proposing new Regulations. The Commission tries to make its consultation procedures as thorough and open as possible. Responses to this consultation paper will be lodged in the Health and Safety Executive's Information Centres after the close of the consultation period, where they can be inspected by members of the public or may be copied to them on payment of the appropriate fee to cover costs.
2. Responses to this consultation paper are invited on the basis that anyone submitting them agrees to their being dealt with in the way described above. Responses, or part of them, will be withheld from HSE's Information Centres only at the express request of the person making them (under the Code of Practice on Access to Government Information; Environmental Information Regulations 1992 and the Data Protection Act 1998). If such a request is made, a note will be put in the index to the responses identifying those who have commented and have asked that their views, or part of them, be treated as confidential.
3. Many business e-mail systems now automatically append a paragraph stating the message is confidential. If you are responding to this consultation paper by e-mail and are content for your responses to be made publicly available, would you please make this clear.
4. If you reply to this consultation paper in a personal capacity, rather than as a post holder in an organisation, you should be aware that information you provide may constitute "personal data" in terms of the Data Protection Act 1998. For the purposes of this Act, HSE is the "data controller" and will disclose this data to any person or organisation for the purposes for which it was collected, or where the Act allows disclosure. You have a right to ask for a copy of the data to ask for inaccurate data to be corrected.