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## HEALTH AND SAFETY COMMISSION

### UPDATE ON RAILWAY SAFETY LEVY

A Paper by Richard Clifton  
Director, Directorate of Railway Policy

Advisor(s): Shirley Williams, Leo McDaid, Bill Tomkins, David Brewer, Alan Norris

Cleared by Richard Clifton on 9 January 2003

#### Issue

1. Update the Commission on recent HSE consultation with stakeholders on the principle of a railway safety levy.

#### Timing

2. URGENT. There is a tight timescale since the Bill is to be introduced into Parliament on 14 January and development work will have to continue quickly from there.

#### Recommendation

3. That the Commission note the results of consultation so far.

#### Background

4. Full background to a railway levy is described in paper HSC/02/149, which the Commission considered on 13 December 2002. In that discussion, Commissioners notes support the principle of the levy but some Commissioners expressed concern that if the intention was to recover all HSE's costs related to railway safety this went beyond the Commission's cost recovery policy in relation to other permissioning regimes. The Commission asked for opportunity to discuss this issue further.
5. This paper focuses on the results of HSE consultation on the principle of a railway levy, requested by HSC on 13 December. It also updates commissioners on recent developments in the work to secure an enabling clause.

## Argument

### Consultation

6. HSE sent consultation letters out to 250 railway industry stakeholders on 29 November, requesting their views on the principle of introducing a levy recoverable from members of the railway industry to pay for HSE's railway safety regulatory activity. At the time of writing, HSE has received 44 responses, some coming in after the deadline of 20 December. This represents a response rate of about 18%. A table showing details of those who have responded and a brief summary of the issues raised can be seen in Annex A.
7. At present, there is a 50:50 split between those stakeholders who support the principle of a rail levy and those who do not (approximately 16 returns have been in favour of the levy, 15 returns have been against and 13 had no comments of note). It appears to be the freight and light rail operators who are raising most objections to the idea of a rail levy. They point out that the majority of the franchised passenger operators are now effectively supported financially by the Strategic Rail Authority (SRA), who will use taxpayer's funds to meet any extra charges that they incur and will not therefore feel the effects of a levy as much as freight and other operators unable to reclaim money from the SRA. Underlying this is a concern that a levy will be less fairly apportioned between different duty-holders than the current hourly charges, for example, if it were based on annual turnover.
8. Lord Berkeley (Chair of the Rail Freight Group) has requested more time to reply to the consultation letter, as has Phillip O'Donnell of the SRA. The Association of Train Operating Companies (ATOC) gives the levy qualified support on the grounds that it is less bureaucratic than the current charging system. All replies from the heritage sector of the rail industry have requested exemption from any levy scheme, since they do not pay under the current charging regime. The stakeholders who do give qualified support to a levy have requested to see more details about scope and finer details. We will consult the Commission on the scope of the levy when proposals are more developed. We will carry out a full public consultation on the draft regulations which will enable stakeholders to comment on the scope and detail of the proposals.

### Recent developments

9. During initial Whitehall consultation, Alastair Darling, Lord MacDonald (Cabinet Office) and Matthew Elson (Number 10 policy unit) expressed reservations about how the possible impact on business and how the cost of the levy would be met. They welcomed HSC/E commitment to consultation and asked for further information about the proposed HSE railway programme. Matthew Elson subsequently advised that the Prime Minister was satisfied with the advice he had received on the railway change programme and was content for the clause to be included in the Bill, provided that the concerns raised by Alastair Darling and Lord Macdonald were met, and subject to approval by the Legislative Programme (LP) Committee. As LP Committee Chair, Robin Cook wrote to Nick Brown on 31 December, agreeing the addition of the clause, subject to resolution of any outstanding issues and to the necessary work being completed in line with the Bill timetable.

10. To address concerns of Alastair Darling about possible funding implications, were the scope of a levy to go beyond the costs currently recovered through charging, Andrew Smith has written to assure him that no increases to the amounts we seek to raise under the levy will be made without his agreement. As a result, the LP Committee has now agreed that the enabling clause be included in the Bill, subject to clearance by the Domestic Affairs (DA) Committee by 10 January. Indications from the Bill team are that this should be a formality. We will provide an oral update for the Commission.

11. The Railways & Transport Safety Bill will be both introduced and published next Tuesday, 14 January. There is no debate on introduction. The first debate will be "Second Reading", which will be about two weeks after introduction. We will update the Commission at the meeting on 14 January.

### **Consultation**

12. PEFD, Solicitors, Economists, HMRI have been consulted on the preparation of this paper.

### **Presentation**

13. It is important to separate the issue of a change in the charging mechanism from an hourly rate to a levy, from the question of any increase in the costs recovered by HSE. The issue of whether there should be an extension of the scope of charging would be a matter for consultation and debate as part of the development of any subsequent regulations. Given opposition already expressed by freight and light rail sectors, it is likely that there would be considerable opposition to any extension of charging.

14. Ministers may be pressed during passage of the Bill on intentions concerning recovery of costs. Briefing will need to be prepared. This can be prepared on the basis of existing charging policy saying that extension of the scope of charge is a matter for future consultation and decision, but Ministers may wish to give more concrete details (or re-assurance) about the Commission's intentions.

### **Costs and Benefits**

15. Work continues on developing further the partial Regulatory Impact Assessment (RIA). A revised version is attached as Annex B.

### **Financial/Resource Implications for HSE**

16. A change from an hourly charging regime to a levy would have small administrative savings for HSE and provide greater predictability of income. It will provide these same benefits for industry.

17. There is a rising trend in the costs of administering the current system in the face of payments withheld by dutyholders who seek to reduce their costs. We anticipate that this trend will continue as the hourly charge increases and that the current system will become more difficult and costly to operate. A levy based system would circumvent this problem and show even greater savings in the future.

## **Environmental Implications**

18. None associated with this paper.

## **Other Implications**

19. The LP Committee has decided to allow the clause into the Bill. It is likely that amendments to the clause will be tabled as the Bill passes through Parliament, especially the House of Lords.

## **Action**

20. The Commission is asked to:

- i) note the results of the consultation exercise on the principle of a rail levy.
- ii) note the continuing developments in relation to securing an enabling clause for a levy in the Railways and Transport Safety Bill.

ANNEX A = LEVY CONSULTATION RESPONSES

ANNEX B = PARTIAL RIA

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