

PAYING FOR THE SAFETY REGULATION OF THE RAILWAYS

REGULATORY IMPACT ASSESSMENT (PARTIAL)

ISSUE

1. Introducing a railway safety levy that would allow the Health and Safety Executive (HSE) to recover all the costs associated with modernising and maintaining the railway safety regime in a fit for purpose state.
2. Following the report of Lord Cullen's Public inquiry into the Ladbroke Grove rail accident, there is a need to overhaul and update the HSC/E rail safety regime to ensure its effective operation. This will require a substantial increase in the amount of resource devoted by HSC\E to railway safety work both in the next two to three years and in the longer term.
3. The total cost is expected to rise over the next three years from about £9m in 2001\02 to £20m¹ in 2004\05; costs are expected to decline thereafter as the new regime becomes fully operational and policy development costs reduce.
4. HSC\E have proposed that the industry meet all these costs from 2004/05 by means of a levy. To do this it would be necessary to amend the Health and Safety at Work etc. Act 1974 (HSWA) to give Ministers the power to make regulations providing for a levy. At present, HSE can introduce charging for some functions under HSWA, and does so in the rail industry, however, the scope of such charging does not include policy-making or all operational activities.

OBJECTIVES

5. Ensuring that the railways operate safely is an integral and important part of the Government's overall strategy for the railways industry. Delivering on this effectively means that HSE will have to increase substantially the amount of resources devoted to this work over the next 2 years. The formidable agenda for overhauling and updating the regime and for taking a more interventionist stance has been agreed by HSC\E in response to the recommendations set out by Lord Cullen in his Part 2 report following the Ladbroke Grove train crash. The only recommendation which Lord Cullen directed at Government was that it should adequately fund HSE for this purpose. Along with all the other recommendations, this was accepted by Ministers.
6. The objective of the proposal for an enabling provision in the Transport and Rail Safety Bill is to recover all the costs incurred by HSC/E in modernising the rail safety regime

¹ Based on actual staff in post (Rail Inspectors = 187; Directorate of Railway Policy staff = 45), pay inflated at 4%, on costs include accommodation, office, IT & central services, capital charges. Sources: per capita overheads (FAA); staff in post (BU)

and implementing it. This requires amendment of the Health and Safety at Work etc Act 1974 to give the Secretary of State the power to regulate for a levy.

7. HSE has already initiated a programme of change and conducted a rigorous assessment of its resource needs for railway safety. More resource is needed to:
 - build up the Railways Inspectorate so it can provide the level and quality of interaction needed to improve health and safety performance;
 - overhaul and update the railways regulatory regime.
8. More specifically, key elements of change are:
 - more staff to assess an increased number of railway safety cases;
 - significantly increased numbers of targeted inspections, in depth audits, and investigations based on identified key risks and the outcome of safety case assessments;
 - an enhanced capability to respond to new investment plans (for rolling stock and lines);
 - in consultation with stakeholders, a fundamental review of the existing railway law to see if it meets current and future railway needs - this will include work on the relationship between the industry's own standards and HSE legislation;
 - an enhanced capacity to engage with stakeholders in pursuit of more productive relationships and to ensure 'joined up' work with the ORR and SRA.
9. HSE also needs extra resource to enable it to respond effectively to the developing European Union influence on the UK railways. The European Commission has brought forward directives designed to ensure harmonised rail operations; these include a Railway Safety Directive. The Directives require a broad range of supporting standards agreed at European level. It is clearly in our interest to ensure these developments do not conflict with the needs of the UK industry.

RISK ASSESSMENT

10. This proposal does not address health and safety risks directly. It considers how HSE's costs in rail safety regulation and enforcement are going to be recovered.

OPTIONS CONSIDERED

Option 1

Leave costs and method of funding unchanged

11. The only method for achieving this option would involve not implementing the reform programme flowing from the Cullen recommendations and assuming that the industry would improve its approach and performance on safety on its own accord.
12. One of the main issues identified in the Cullen review was a lack of confidence in the ability of railway operators to self regulate. As a consequence Ministerial commitment was given to HSC/E developing railway safety policy in line with Lord Cullen's recommendations. Failing to undertake this would backtrack on this commitment and signifi-

cantly damage the reputation of Ministers and Government. It would also further undermine public confidence in the rail industry, cutting across broader Government policy.

Option 2

Implement the regulatory reform programme with full cost recovery by a levy

13. Through the levy, the cost of regulating rail safety will be fully placed on the companies that give rise to the risk.
14. Under this option the levy raising power would take the form of an enabling provision in the Transport and Railways (Safety) Bill. Once the ability to introduce a levy has been secured a full consultation on the options for the basis of the levy would be undertaken. This would allow much of the method for setting the scope and basis for the levy to be agreed at a later stage.
15. Issues to be considered are whether the levy should be placed on the same duty holders as the current charging regime or whether some operators (e.g. light rail operators) may be excluded? Whether the levy should be based on turnover or some other aspect of railway work?
16. The Cullen review highlighted the failings of the railway industry to manage health and safety effectively, the need for a more interventionist approach by HSE, and the need to overhaul the regulatory framework and institutions. There is ample justification for the industry to bear the cost of future rail safety work undertaken by HSE to a greater extent than is possible under the existing charging regime. This option is considered in more detail below.

Option 3:

Implement the regulatory reform programme with current methods of funding

17. Under this option the status quo would be maintained for the industry, however, Government would continue to fund 55% of rail safety inspections and would also be required to meet the additional cost of safety policy development.
18. This option would significantly increase HSE resource requirements for rail safety and demand an equivalent increase in Grant in Aid from Government. As a result, the financial burden of strengthening health and safety regulation of the rail industry would fall on the taxpayer, rather than on the industry which creates the risk and is legally responsible for managing it.
19. In the costs and benefits sections we have identified potential costs and benefits of option 2 only (levy for full cost recovery), since this is the option that would have the largest cost to industry. We will look at the other options in more detail at the stage of consulting on the Regulations.

BENEFITS

20. The introduction of a levy system would be simpler to administer centrally and less bureaucratic than the current charging arrangements for all parties involved. If designed well it would virtually eliminate the administrative burden of the existing process, including an appeals infrastructure and production of operating manual and process publications. Direct savings for HSE have been estimated as at least £150k per annum (possibly more once opportunity costs are taken into account). Industry is also likely to make significant savings by the removal of invoice checking.
21. The levy would enable all companies to budget with certainty for such costs, whereas under the current regime only broad estimates are possible with unplanned incidents sometimes causing costs to exceed budgets.
22. The introduction of a rail safety levy could lead to efficiency savings through reduced administrative requirements (e.g. form filling records and IT systems for the industry).
23. The railway industry is expected to expand rapidly over the next few years (Department for Transport have estimated passenger growth of about 40% by 2010 and 97% by 2043). A levy system would provide a useful mechanism for ensuring safety measures are properly funded and maintained within the context of an expanding sector.
24. The industry is already used to funding regulatory functions via a levy - both the Office of the Rail Regulator and the British Transport Police are funded by levy. In addition, there is some evidence that the industry would prefer a levy to the current 'actuals' regime. When Ministers decided that charging was to be introduced in 1999 they agreed with HSC/E that its impact would be evaluated after two years. HSE engaged Deloitte and Touche to undertake this evaluation by surveying duty holders, inspectors and others with an interest. In their report on the impact of charging on railways, Deloitte and Touche said "The most unanimous improvement suggested by both dutyholders, inspectors and unions is a shift from the current "actuals" system, based on hours worked, to a levy based system" (Deloitte and Touche Report on the Evaluation of the impact of charging on railways – Para 1.18 & 5.73). Thus, introducing a levy would take on board the recommendations from the evaluation report.

OTHER BENEFITS

25. The improved health and safety management and performance which would result from a more effective regulatory regime would reduce the costs to the industry which result from poor performance, including such costs as those associated with disruption of services following major accidents and infrastructure failure.

BUSINESS SECTORS AFFECTED

26. Railway infrastructure controllers. Train operating companies (TOCs). Freight operating companies. Light rail, tramway operators, London Underground and operators of guided bus systems. Some infrastructure maintenance contractors, which use trains or train-like vehicles.

COSTS

27. The introduction of a levy regime would increase industry costs in 2004\05; after that year they would start to decrease but from a higher level than now.
28. Our estimates suggest that the industry costs of the current charging regime would rise from a current level of £9.2m per year (2001/02) to £20 million by 2004/05, an increase of £10.8m. However, this needs to be set in the context of industry turnover in excess of £7billion (this includes all train operators and infrastructure controllers). Full cost recovery by HSE through this levy would therefore represent a small amount of industry turnover (estimated to be less than 0.5% of train operators + infrastructure controller turnover)
29. It is arguable that the introduction of a levy may weaken any economic incentive to raise health and safety performance engendered by the “actuals” scheme, where good performance might be reflected in fewer visits and lower charges. There is no tangible evidence of such an effect, however, and any incentive that existed would be very limited because the amount charged is a small proportion of turnover. In any case, a levy provides little incentive because the charge to a railway operator is not influenced by their behaviour.
30. Railway operators may pass on the resulting increase in costs to customers (e.g. infrastructure controllers might pass on increases to passenger TOC and FOC by increasing track access charges).
31. Ultimately this would become an increase in fares or tariffs for freight or be passed on to the Government in the form of higher subsidy demands.
32. There may be issues regarding consistency with OGDs’ transport policy. OGDs will be consulted on this proposal

ISSUES OF EQUITY AND FAIRNESS

33. The impact for many potential levy payers is likely to be very limited because they can seek increased funding from the SRA; this is not so for freight operators who may be disproportionately affected.
34. We will explore in more detail whether there are more issues of equity or fairness.

IMPACT ON SMEs

35. Only very few of the businesses affected will be SMEs. At present we do not believe this affect SME’s disproportionately. We will look at this further.

COMPETITION ASSESSMENT

36. It is not possible to judge at this stage whether the introduction of the rail levy would pass the competition filter. This will be dependent upon the eventual basis and scope of the levy, which could affect the various market sectors of the railway industry differently, due to the nature of industry subsidisation as well as other factors. Industry views will be sought on the scope, basis and timing of the levy by consultation. This will enable a detailed competition assessment to be undertaken and included in the full RIA.

ENVIRONMENTAL IMPACT

37. None likely.

SECURING COMPLIANCE

38. The RIA for implementing Regulations will address compliance aspects

UNCERTAINTIES

39. At this stage we are uncertain as the timing on implementing regulations. The target implementation date is 1 April 2004, however, there is a number of issues still to be resolved such as the scope and method for the levy. These need to be fully debated with those affected and their views taken into account. Further detailed analysis of different levy options would be required if it were agreed in principle that this was the best way forward.
40. HSE has already begun some preliminary work to examine the consequence of switching from an “actual” cost system to a levy, however, this requires further refinement and consultation with industry stakeholders.
41. The HSE has also already prepared a questionnaire to be sent out to industry stakeholders once the principle of introducing a levy has been accepted. The questionnaire will seek views on the basis of the levy (turnover, profit, employees etc), the timing of the levy, the scope of the levy, and finally a section examining the potential impact of the levy.