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HEALTH AND SAFETY COMMISSION

SAFETY ON THE RAILWAY – SHAPING THE FUTURE

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Issue

1. Publication of a Discussion Document (DD) on HSE's website to invite views on options to update the main regulatory requirements for health and safety on the railways and to facilitate the development of industry schemes for the supply of safety critical goods and services and licensing of key safety critical workers.

Timing

2. **Urgent.** On 8 April, the Commission agreed that all new/revised arrangements should be in place by Spring 2005. If HSE is to meet this extremely demanding timetable, the DD must be published by the end of October this year.

Recommendation

3. That the Commission:
 - considers the strategic issues arising (paragraphs 13(a) –(c) of this paper) and provides comments;
 - agrees to publication of the draft Discussion Document (Annex 1) on HSE's website;
 - agrees that the Chair should sign the foreword to the Document at Annex 2;
 - notes HSE's intention to publish the DD as an Internet document only (paragraph 18) and that editorial work on the DD, including tidying of cross-references, is on-going.

Background

4. The draft DD is the outcome of the first stage of a major review of railway health and safety legislation driven by:

- the recommendations arising from accident inquiries, particularly Lord Cullen's inquiry into the Ladbroke Grove train crash;
 - existing and future European legislation intended to establish a single market and a common regulatory framework for railway safety;
 - better regulation requirements for the periodic review of legislation in the light of dutyholder and regulator experience.
5. The DD brings together a number of strands of work addressing different, but connected, aspects of health and safety on the railway and related transport systems, as follows:
- a review of the Railways (Safety Case) Regulations 1994. (RSCR) (chapter 3);
 - a review of the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994. (ROTS)(chapter 4);
 - improving the management of the supply chain through the certification of suppliers of safety critical products and services (chapter 5);
 - improving competence, fitness and the prevention of fatigue in the rail industry through a review of the Railways (Safety Critical Work) Regulations 1994 (RSCWR)(chapter 6);
 - development of a licensing scheme for key, safety critical workers (chapter 7).
6. These chapters are preceded by a general introduction (chapter 1) which sets out the drivers, objectives and constraints of the review and a chapter on scope (chapter 2) which explains the disparities in scope across the three sets of regulations and proposes a way forward.
7. The reviews of RSCR and RSCWR have been informed by research to evaluate the impact of the Regulations since they were first introduced in 1994. The findings of an evaluation of RSCWR by the Business Strategy Group are presented in Chapter 6 of the DD. The impact evaluation of RSCR is a major piece of work contracted to Bomel Ltd, which began in January this year. The final report will not be published until October 2003, but the key recommendations and findings have been reflected in chapter 3 on the review of RSCR.
8. The Commission was informed of plans to evaluate and review RSCR on 3 September 2002, as part of a paper on amendments to the 2002 Regulations (HSC/02/93). Proposals for a review of ROTs were notified below the line on 15 July 2003 (HSC/03/91).
9. On 8 April 2003, HSC was consulted on options for the accreditation of suppliers of safety critical goods and services (HSC/03/07), driver/signaller licensing (HSC/03/08) and the review of RSCWR (HSC/03/09). The Commission agreed that this work should be taken forward in conjunction with the reviews of RSCR and ROTs as a single package for discussion and consultation with stakeholders and that all work should be completed by the end of the financial year 2004/5 (which meant that action on the

relevant recommendations in Lord Cullen's report would not be complete until spring 2005). On the specific papers, the Commission agreed that:

- RSCWR should be retained, but should be updated and modernised;
- HSE should explore ways of facilitating an industry accreditation/certification scheme for suppliers of safety critical goods and services to include third party assessment and the possible involvement of UKAS;
- HSE should explore options for developing a driver/signalling licensing scheme to include third party assessment and the possible involvement of UKAS;
- the newly created Railway Safety and Standards Board (RSSB) should play a key role in both the above schemes.

10. Policy proposals on the accreditation of suppliers and driver/signaller licensing have recently been revised in view of the fact that RSSB is not currently minded to take on a central role in national schemes. The Commission expressed disappointment about RSSB's position when it was updated on the revised proposals on 16 September 2003 (HSC/03/98).

Argument

A Discussion Document

11. The proposals emerging from the policy reviews outlined in paragraph 5 are likely to result in the most fundamental and far-reaching changes to the health and safety regulatory framework on the railways (and other transport systems) since privatisation in 1994. As railway safety is also a politically sensitive area, HSE considers that a Discussion Document is essential to generate debate and to give stakeholders the opportunity to comment at an early stage in the policy development process. This view is supported by evidence from a recent rail stakeholder survey which found that the railway industry is strongly in favour of more dialogue with HSE and, in particular, closer interaction with policy staff on policy topics. HSE considers that to move straight to formal consultation without a Discussion Document stage might risk delaying completion of this work beyond Spring 2005.

12. The DD encourages stakeholders to contribute fully to the debate on the issues and options discussed. However, HSE has nevertheless given a steer where it is felt that this would focus discussion and comments from stakeholders.

Strategic Issues

13. HSC is asked to consider the following strategic issues in the DD:

(a) The scope of future legislative arrangements

(i) Currently there are significant variations in scope across the three sets of Regulations. RSCR, for instance, applies only to railways, whereas the scope of ROTS and RSCWR

extends beyond the mainline railway to capture tramways and guided transport systems such as monorails and guided buses (although RSCWR only applies to specified systems). The use of broad definitions such as 'railway' and 'tramway' brings lower risk systems, such as minor railways and some heritage railways, within scope of regulatory requirements. In practice this is overcome by issuing exemptions or dispensations, but HSE considers that the number of exemptions granted should be taken into account in determining the appropriate scope of the Regulations.

(ii) Chapter 2 of the Discussion Document suggests that future arrangements should avoid inappropriate differences in scope and deliver a regulatory approach that is proportionate and based on risk and takes account of societal concerns. It is suggested that this could be partly achieved by establishing criteria for a risk 'threshold' below which regulatory requirements would not apply. This would effectively take lower risk railways and other transport systems out of the scope of future regulatory regimes, although they would of course still be subject to general requirements for health and safety.

(b) The promotion of greater responsibility and accountability for health and safety in providers and operators of railway infrastructure, trains and other related forms of transport.

(i) This is reflected in recommendations for:

- a new approach to railway safety management that places greater focus on railway operators' obligations to continuously improve safety and control risk and less on detailed assessment of safety cases by HSE (chapter 3);
- application of the new safety management regime to other higher risk transport systems such as tramways and monorails (chapters 3 and 4);
- HSE's complete withdrawal from the direct approval of new/altered works, placing greater responsibility on duty holders to ensure the safety of new works by, for example, procuring independent, third party assessment (chapter 4);
- the development of industry, rather than regulatory, schemes for the certification of suppliers of safety critical products and services and the licensing of key safety critical workers (chapters 5 and 7).

(c) The circumstances in which third parties should play a role in maintaining health and safety on the railway and what that role should be.

(i) It is recommended that third parties could play a significant role in:

- verifying conformity of railway 'hardware' with standards (Chapter 4);
- certifying suppliers of safety critical goods and services to the industry according to agreed criteria (chapter 5);
- certifying medical practitioners to assess the medical fitness of safety critical workers (chapter 6);

- licensing drivers and signallers (chapter 7).

Consultation

14. HSE's Cullen Legislation Division has worked closely with Her Majesty's Railway Inspectorate (HMRI) in the development of policy options and sought advice from policy sections involved in permissioning and other regulatory regimes in the chemical, nuclear, gas and offshore industries. Advice has also been sought from HSE's Solicitor's Office, the Economic Advisers Unit and the Employment Medical Advisory Service.
15. HSE has engaged in dialogue with a wide range of industry stakeholders throughout the policy development process including:
 - ongoing, bilateral meetings with key stakeholders, as well as large, stakeholder events to discuss specific issues such as accreditation, licensing, safety management and approvals;
 - the creation of an industry stakeholder working group for the review of RSCWR;
16. A paper on the Discussion Document will be presented to the Railway Industry Advisory Committee on 9 October. Oral feedback will be provided at the Commission meeting.
17. Key stakeholders are also represented on a high level Steering Group set up to provide strategic direction for this work. The Group is chaired by HSE and includes representatives from the Department for Transport, Office of the Rail Regulator, RSSB, Rail Passengers Council, the Strategic Rail Authority, the Rail Maritime and Transport Union and the Rail Passengers Council. Members of the Steering Group have seen and commented on drafts of the DD.

Future Consultation on the Discussion Document

18. The Commission is asked to note HSE's intention to publish the DD as an internet document only. This decision has been dictated by the demanding deadlines described in paragraph 2 which do not allow sufficient time for the production and distribution of hard copies. However, there are other advantages to publication on the website such as the use of the hyperlink facility to allow easy access to other documents referenced in the text. HSE will write to stakeholders (by hard copy in the post) informing them that the DD has been published and offering to provide them with a hard copy if they do not have access to the Internet.
19. Once the Discussion Document has been published, as well as offering meetings with stakeholders, HSE proposes to hold two open meetings for stakeholders to encourage further debate. These meetings will take place in London on 19 November 2003 and in York on 3 December. Commission members are welcome to attend. HSE staff will also take all other opportunities at other events with stakeholders to promote debate on the Discussion Document during the ten week consultation period.

Presentation

20. The DD is likely to generate considerable interest in the railway industry and other related transport sectors and may attract coverage in the railway press (e.g. 'Rail' magazine). Consultation to date suggests that some proposals, such as the licensing of safety critical workers, are likely to be strongly opposed by the industry. However, the foreword will emphasise that HSC/E is still very much in 'listening' mode and welcomes a vigorous debate on key issues and the opportunity for further dialogue with stakeholders which the DD affords.
21. Publication of the DD on HSE's website will be announced by a Press Release.

Costs and Benefits

22. This will depend on which options are taken forward (see initial Regulatory Impact Assessments at the annexes to the DD. However, HSC is asked to note the potential cost implications of proposals to apply the new safety management regime to other forms of transport such as tramways (paragraph 13b) and to increase third party involvement in a number of areas (paragraph 13c). The impact of these proposed changes is likely to be greatest on small businesses such as the majority of heritage railways, which are currently exempt from HSE charges, but all duty holders will be affected.
23. The impact of these measures may be mitigated in part by the introduction of the risk threshold described in paragraph 13(a) to exclude lower risk minor and heritage railways from permissioning requirements. Economies may also be achieved through the rationalisation of existing industry schemes, e.g. for certifying suppliers of safety critical products and services.
24. Overall, HSE considers that the benefits of the proposed changes should outweigh the costs by delivering a modern health and safety framework for the railway and related transport systems that is consistent with European developments.

Financial/Resource Implications for HSE

25. The cost of taking this work forward can be met from existing funding for Cullen related work. However, the proposals are likely to result in a change of emphasis in HMRI's ways of working. The detail of this will be considered in the forthcoming months as decisions are made on the final direction for this work.
26. Approximately 50% of RI's operational activities (including safety case acceptance, related enforcement/inspection under RSCWR and approvals under ROTS) are chargeable under the Fees and Charges Regulations 2003. The current charging regime based on an hourly rate will be eventually replaced by a levy on safety case holders. Work on developing regulations to introduce a levy is underway and will include a full assessment of how this will affect HSE resources.

Environmental Implications

27. None

Other implications

Devolution implications

28. There are no devolution implications.

European Implications

29. HSE proposes to implement those aspects of the Railway Safety Directive related to safety management early through new safety management regulations in order to minimise burdens on industry that would otherwise arise from sequential changes firstly in response to Lord Cullen's recommendations and then in implementing the Directive.
30. Proposals for the future of ROTS take account of a series of Directives that will progressively extend interoperability to the whole of the mainline railway, disapplying ROTS.
31. HSC has agreed that it would not be sensible to anticipate proposals for an EU directive on driver licensing. However, the non-regulatory approach described in chapter 7 may help the UK to influence the directive during negotiations.

Small and Medium Sized Enterprises

32. The majority of heritage railways and a few 'people movers' are classed as small businesses. The potential cost implications of proposals on small businesses are discussed in paragraphs 22-24. HSE is currently engaged in dialogue with the Heritage Railway Association about how new costs might be managed most effectively.

Action

33. HSC is asked to consider the issues highlighted in paragraph 3. Any other comments on the draft Discussion Document will also be welcomed.

The draft Discussion Document is appended

Draft Foreword

Railway safety legislation was reshaped in 1994 to address potential risks arising from the fragmentation of the industry following privatisation. With some amendments the same requirements apply today. Statistically the regulations have served their purpose in that the number of serious accidents on the railway has continued to decline. However, recommendations from public inquiries into high profile accidents have pointed to significant shortcomings in the railway industry's safety systems and approach. They have also pointed to the need to improve the legislation and consider action in other areas such as the supply of safety critical goods and services.

Last year HSC commissioned an extensive public dialogue on automatic train protection systems and views on railway safety. This was part of a wider independent review of the industry's own proposals on ERTMS (European Rail Traffic Management System). Key issues were the robustness of the available technology, costs and benefits, but we also wanted to probe public perceptions of railway safety and to reach a broader range of public opinion beyond those traditionally consulted. Ministers accepted our advice based on this review which endorsed the industry view that ERTMS level 2 was the best system for this country and that further development of the technology should be led by the SRA. Members of the public involved in this work had welcomed our independent assessment of the industry's proposals. This also showed how we can engage the industry in developing a common understanding of the best way forward in some of the most difficult areas of railway safety..

This Discussion Document takes forward our wider review of railway safety by opening up for public debate the present requirements for day-to-day management of safety on the railways. At one level the ground is familiar and applicable to any industry – safety standards of plant and equipment, competence of staff and suppliers, and effective safety management systems. In the context of the railway, however, there are additional factors. Some reflect present realities in the industry – responsibility for track, train and stations is split; there is a recent history of serious accidents; and a significant percentage of the mainline network will soon be part of a single European rail system with common principles for the management, regulation and supervision of railway safety. Other issues include the extent to which HSE as the safety regulator should formally permit railway operations, and the scope for independent third parties to provide safety assurance.

The Commission does not expect absolute safety. We do, however, expect the railways, just like other industries, to meet good practice, and we share the intolerance shown by society as a whole where basic failures to manage safety lead to serious preventable accidents. In short, we expect the railway industry to reduce risk as low as is reasonably practicable, taking into account good engineering and managerial practice, costs and benefits, and the expectations of society as a whole.

This Discussion Document invites your views on how we can move forward together and develop the right safety regulatory framework for a modern railway. Please let us know your views.

Bill Callaghan
Chair, Health and Safety Commission