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HEALTH AND SAFETY COMMISSION

SAFETY ON THE RAILWAY - SHAPING THE FUTURE

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ISSUE

- 1 To report to the Commission the response to its Discussion Document (DD) 'Safety on the Railway – Shaping the future' (see HSC/03/101) which invited views on the future of the main regulatory requirements for health and safety on the railways and the development of industry schemes for the supply of safety critical goods and services and licensing of key safety critical workers.
- 2 To seek the Commission's views on key issues as HSE starts to work up formal proposals for publication in a Consultative Document (CD).

TIMING

- 3 Urgent. On 8 April 2003, the Commission agreed that all new/revised legislation and voluntary industry schemes should be in place by Spring 2005. In addition, Ministers have agreed the timetable as part of the agreement over Cullen funding. If this extremely demanding timetable is to be met, a CD must be published by the beginning of August this year.

RECOMMENDATION

- 4 That the Commission:
 - notes the responses to the Discussion Document (Annex 1 on general comments and Annex 2 on the specific questions raised in the DD), and that a summary will be published on HSE's website.
 - gives a steer on the issues in paragraphs 18, 21, 24, 25, 26, 29, 38 and 44 and annex 3 so that the scope and architecture of future regulation can be agreed;
 - notes the good progress made by industry on developing accredited certification at the supply chain (paragraphs 53 –55) which currently contrasts with a lack of

progress on discussion of a voluntary accredited national licensing system, for train drivers (paragraphs 45 – 52).

BACKGROUND

- 5 HSC/03/101 set out the main reasons for this major review of the requirements for railway safety management (recommendations from public inquiries, the need to implement the Railway Safety Directive, and the need to take on board duty holder and HSE experience of operating the existing requirements since privatisation in 1994). The paper also outlined the wide engagement with stakeholders that preceded publication of the DD, which brought together a number of strands of work addressing different, but connected, aspects of health and safety on the railway and related transport systems:
- a review of the Railways (Safety Case) Regulations 2000 (RSCR)¹;
 - a review of the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994 (ROTS)²;
 - improving the management of the supply chain through the certification of suppliers of safety critical products and services³;
 - improving the management of competence, fitness and the prevention of fatigue in the rail industry through a review of the Railways (Safety Critical Work) Regulations 1994 (RSCWR)⁴; and
 - development of an accredited licensing scheme for key safety critical workers⁵.
- 6 The DD was published on the HSE website on 27 October 2003, and active steps were taken to bring publication to the attention of a wide range of stakeholders. During the consultation period, which ended on 31 December 2003, two open forum meetings were held in London and York. Some Commissioners participated, and these meetings proved to be a good way to broaden and deepen the process of engagement and dialogue with a wide range of stakeholders. 67 responses to the DD were received. We are most grateful to respondents for their contributions and inputs.
- 7 Some respondents, particularly some from the mainline railway, also raised wider concerns about the regulation of the rail industry. These are summarised in Annex 1, together with our own comments that aim to resolve misunderstandings or to indicate action in hand.
- 8 A summary of responses received on each of the main chapters in the DD is attached at Annex 2. Key issues are discussed below.

¹ The main driver for this work is the proposed Railway Safety Directive.

² Key driver is that the regulations are being gradually disapplied to the main rail network due to EU Interoperability Directives.

³ Key driver is a Lord Cullen recommendation.

⁴ Key drivers are better regulation requirements and related Cullen recommendations.

⁵ Key driver is a Lord Cullen recommendation. Also proposal for a Directive on train driver certification is likely in the near future.

- 9 A follow up seminar 'Continuing the dialogue', was held in Rose Court on 13 February for respondents to the DD. Around 60 people attended representing a very wide range of interested parties. At the seminar HSE summarised the responses received to the DD and took the opportunity to address some misunderstandings. HSE also indicated a way forward for the regulation of safety management in the rail industry (see below and Annex 3). HSC/E received positive feedback on the engagement process that has taken place with stakeholders and broad support for the proposals.

Department for Transport (DfT) Railway Review

- 10 The Commission will be aware that on 19 January the Secretary of State for Transport announced a review of the structure of Britain's railways, including the regulation of safety. (<http://www.dft.gov.uk>). The review is due to report in the summer. However, DfT officials have asked HSE Rail to continue business as usual, and this includes its work on the review of the present requirements on duty holders to manage rail safety (paragraph 5 above).

ARGUMENT

Safety Case Regulations

- 11 All respondents accepted that the Safety Case Regulations will be replaced for the mainline by new 'safety management' regulations implementing the EU Railway Safety Directive. Railway operators (infrastructure managers and train operators) in future will have to obtain a five-year safety certificate or authorisation from HSE based on evidence that their safety management system has met certain requirements and concerning the provisions they have put in place to meet requirements including national requirements, necessary for safe operation. Almost all respondents agreed that the Directive had advantages compared with the Safety Case Regulations, including the implication of a less detailed 'safety case' and the ability to make changes to it without having to obtain HSE's agreement. However, the RMT felt there were dangers in removing the current requirement to gain HSE's agreement to all material revisions.

Scope

- 12 The scope of new railway safety management regulations drew considerable comment. To fully implement the Safety Directive, the new regulations will have to apply to the whole of the railway that is subject to Interoperability Directives, which within a few years will cover the whole of the network, including track access to terminals and ports. Tramways, metros and other functionally separate passenger railways will remain excluded. To avoid running two parallel permissioning regimes, the DD suggested that these metros and other functionally separate railways could be subject to the same permissioning requirements as the 'interoperable' railway, which would allow the Safety Case Regulations to be revoked. It also sought views on whether tramways should be covered.
- 13 The Confederation of Passenger Transport (CPT), representing light railways and tramways, argued that these systems should be treated differently from the main

network because of their different mode of operation and risks. They proposed that light railways, such as the Docklands Light Railway and Tyne and Wear Metro, should be subject to a simpler permissioning regime, and that tramways should continue to be excluded. The Heritage Railway Association suggested that heritage railways should be excluded, subject to meeting certain conditions.

- 14 We agree fully with the CPT and other respondents, that unnecessary cost and bureaucracy must be avoided and that regulation should be proportionate to risk. However, we believe that applying the same basic process to light railways as to the main network should not cause any difficulty. Although an application for a certificate or authorisation will need to cover all the matters listed in the directive (for example emergency procedures), the directive does not require the adoption of any specific safety measures; indeed it states that the safety management system should be 'adapted to the character, extent and other conditions of the activity pursued'⁶. In addition, some of the provisions of the directive, including the setting of common (EU) safety indicators, methods and targets, would not be relevant to metros and other functionally separate railways.
- 15 We therefore propose that the same basic permissioning regime that applies on the main network should be applied to metros. This will not result in metros being subject to more onerous requirements than at present, indeed the regime should be less onerous because of the less detailed nature of the evidence required.
- 16 At this stage we do not believe that there is a strong case for bringing tramways within a permissioning regime. Tramways are excluded from the current Safety Case Regulations. They share many of the characteristics of bus operation, in particular trams have relatively short braking distances and the driver can bring the tram to a halt within the distance he or she can see clear ahead. We think it would also be justifiable to exclude most functionally separate heritage railways and other lower-risk railways from permissioning requirements. Such an exclusion could not apply to heritage rolling stock on the mainline, but it might apply, for example, to railways that are functionally separate from the main network and which have a maximum line speed of 40 kph. This would broadly maintain the status quo, where most heritage railways meet those conditions and hold HSE exemptions from current safety case requirements.
- 17 However, we believe there is a case for making tramways, and heritage and other lower-risk railways, subject to a number of general duties in the regulations. These 'core' duties would apply both to the 'interoperable' railway and to other railways and tramways, and would reflect general provisions in the Safety Directive. They would include duties to maintain a safety management system that meets specified criteria, to implement risk control measures, and to co-operate with other operators.
- 18 We invite the Commission to endorse the approach in paragraphs 11-17, that is that we should develop our proposals on the basis of:**
- (a) applying 'core' duties to all railways and tramways;**

⁶ Article 9.2

- (b) applying, in addition, a permissioning regime (i.e requirements to obtain a safety certificate or authorisation) to:
- the interoperable railway; and
 - other railways unless they are functionally separate and operate at 40 kph or less.

Railways and Other Transport Systems (Works, Plant and Equipment) Regulations

- 19 The majority of respondents to the DD agreed that any future permissioning regime to replace ROTS for non-mainline operators should follow the 'lifecycle' model proposed in the DD, i.e revoking ROTS and developing a 'lifecycle' approach to safety within the new Safety Management Regulations. In practice this would mean:
- extending the scope of the Regulations to non-mainline operations;
 - building a new design notification requirement for major new works and modifications into the new Regulations;
 - possibly, requiring operators to procure independent assessment of designs before submission to HSE.
- 20 However, a majority of respondents from non-mainline operations want to retain ROTS in an amended form. They value the financial and operational 'comfort' factor provided by the ROTS approval, but also have serious concerns about the costs involved in applying for a safety certificate and procuring independent assessment of design. Tramways and heritage operators in particular, argue that the proposed requirements are disproportionate given the lower levels of risk on their systems and the relatively low level of societal concern that they attract. Cost issues are particularly relevant for heritage railways, most of which fall into the category of small and medium sized enterprises (smes).
- 21 **In view of these responses from non-mainline operators, the Commission is invited to consider whether it wishes to stick to its policy on approvals and withdraw HSE from direct approval work and thus revoke ROTS for the non-mainline railway. Does HSC wish to make an exception from its policy on approvals for the non-mainline railway?**
- 22 In coming to a view, HSC is invited to consider the following revised proposals which, we believe, may address many of the concerns expressed by non-mainline dutyholders whilst ensuring that risks continue to be properly controlled.

Higher Risk Transport Systems

- 23 We propose that application of the 'lifecycle' model should be restricted to transport systems on the non-mainline railway that are higher risk and give rise to higher levels of societal concern, specifically:
- metropolitan railways, including LUL;
 - higher risk heritage railways (i.e those operating at more than 40kph per hour and/or operating on the mainline railway);
 - other higher risk transport systems such as monorails;
 - novel guided transport systems

24 We also propose that, in place of direct approval by HSE, the onus should be placed on these dutyholders to obtain independent assessment of designs against agreed standards before they are submitted to HSE. It will take time to agree standards, etc, but this will be taken into account in determining the length of the transition period before the new requirements come into force. It is suggested that this proposal will allow HSE to withdraw fully from direct checking and approval, in line with the HSC's statement on conformity assessment. In order to help reduce costs to dutyholders, we could also explore the possibility of allowing second party (i.e internal) assessment of design if the dutyholder can demonstrate sufficient independence and competence. **HSC is invited to endorse this approach to regulating higher risk dutyholders in the non-mainline sector.**

25 Under the interoperable procedures for the mainline railway, HSE has an 'authorisation' role, essentially authorising on the basis of the detailed checking carried out by the independent assessor. Authorisation indicates that a 'structural subsystem' can be placed into service. A similar approach could satisfy the request from dutyholders for some form of 'green light' to proceed with new works. It would also deliver some degree of convergence with procedures for the mainline railway. However, it would perpetuate a second permissioning regime for these transport systems, and would add costs and a layer of process with limited health and safety value. **HSC is invited to consider whether HSE should have a role in the design verification process and, if so, what should its role be?**

Lower risk transport systems

26 Paragraph 16 sets out the arguments for excluding tramways and the majority of heritage railways from permissioning requirements in the new safety management regime. We believe that these arguments are also relevant to design permissioning and suggest that risks arising from the introduction or alteration of new works, etc can be adequately controlled through new duties to maintain a safety management system (see paragraph 17). **HSC is invited to consider whether tramways and minor heritage railways should be excluded entirely from future design verification arrangements.**

27 HSC is asked to note that the detail of the proposals outlined above will of course be subject to further consideration and discussion with internal and external stakeholders.

Interoperability and ROTS

28 For the mainline, ROTS will be disapplied as further European directives on interoperability are implemented. However the timing of the changes in regulation will be determined by the outcome of the DfT's current consultation on implementation of the Conventional (Interoperability) Directive (CIOD). All conventional rolling stock will fall within scope of the implementing Regulations, but respondents have been presented with two options on infrastructure schemes:

- a) limiting the scope of the Regulations to 40% of the conventional infrastructure until 2006 when it is expected that the Interoperability Amendment Directive will extend the scope to the entire conventional infrastructure, or
- b) extending it to all the conventional infrastructure now.

29 Under option a) 60% of conventional infrastructure would remain within scope of ROTS until at least 2006. However, the outcome of this consultation will not be available until April 2004. HSC is invited in paper HSC/04/31 to consider its response to the DfT consultation. The outcome of this will dictate when ROTS is disappplied to the mainline infrastructure. If HSC agree (paragraph 21) that ROTS should be disappplied from other transport systems, we would envisage a final date of 2006 for disapplication following a transition period. This would allow dutyholders to have a long preparation period. Thus this would align with the date for implementation of the Interoperability Amendment Directive which would complete disapplication of ROTS to the mainline interoperability system. **Is HSC content for HSE to explore a long period of transition for disapplication of ROTS to non-mainline systems?**

Railways (Safety Critical Work) Regulations 1994

- 30** Stakeholders who participated in the Evaluation of the RSCW Regulations⁷ and responded to the DD recognise the importance of competence, fitness and the absence of fatigue in controlling risks from safety critical activities. However, the majority of stakeholders responding to the DD believe that the RSCW Regulations should be repealed and the requirements subsumed into the RSC Regulations or the future regulations that will implement the EU Railway Safety Directive.
- 31** One of the basic elements of the safety management system (SMS) required by the Safety Directive is a system to ensure staff competence. This 'competence system' would be a core requirement of the 'European model' for railway safety management (see Annex 3). Although not explicit in the Safety Directive, the Directive envisages the continued existence of a 'national safety rule' for staff carrying out safety critical tasks until a suitable 'Technical Specification for Interoperability' is in place⁸. HSE agrees with respondents that systems for managing fitness and fatigue of staff undertaking safety critical work should also be part of a SMS. **HSE proposes** that as well as a duty for systems to manage competence under the 'core' of the 'European model', that there should also be a requirement ('national safety rule') appropriate management of fitness and the risks from fatigue.
- 32** The duties under the RSD are placed upon infrastructure managers and railway undertakings. A key finding of the Evaluation, and an issue raised by many respondents, was a concern that many safety critical tasks are carried out by staff who are not directly employed by safety case holders and that it is harder to control work where there are long contractual chains. Issues have also come to light over the employment status of some workers on the railway and hence the enforceability of the existing RSCW Regulations, where the duty is on employers in relation to their employees. Although, HSE recognises the important role that infrastructure managers and railway undertakings take in ensuring the safety of their activities, and the fact that the industry is taking action to improve contractor management (such as the establishment of supplier accreditation), HSE considers that there needs to be effective and transparent arrangements along all parts of the contractual chain where safety

⁷ Conducted by Business Strategy Group. Report can be found at <http://www.hse.gov.uk/railways/screport.htm>

⁸ There is a proposal for a TSI on Traffic Operations and Management, but this is subject to ongoing dialogue.

critical work is involved. **HSE proposes** that the duty to manage competence, fitness and the risks from fatigue should also apply to other employers or those in 'control' of staff undertaking safety critical tasks who are not required to have a SMS under the RSD.

- 33 The DD recognised that it may be appropriate to establish a 'risk threshold' in which to better define the level at which certain requirements would apply. The majority of respondents supported this, but raised concerns about the practicability of doing so. **HSE proposes** that such a threshold, based upon 'potential for harm' would appear appropriate for the proposed legal requirements on managing competence, fitness and the risks from fatigue. This would be particularly relevant to some of the smaller heritage operations who use a significant number of volunteers who are not employees, but would now fall within scope of the proposed regulations due to the 'control' element. If the threshold could not be established, it would be important to retain a provision to allow the regulator to exempt 'lower risk operations' from all, or parts of the regulations. Suitable exemption criteria would need to be established within HSE.
- 34 The current definition of 'safety critical work' raised a number of concerns. Many considered a definition necessary, as this would ensure that duty holders concentrate only on those workers who are critical to safety and would ensure consistency of application across duty holders. Whereas others thought that management of competence should apply to all workers, not just those who are safety critical. Most respondents thought that a definition should be based upon work activities / tasks and not job titles (as is often used in the current definition). **HSE proposes** to work with industry to better define in future regulations the term 'safety critical task'; this will be supported as necessary, by ACOP and guidance.
- 35 The competence of those undertaking assessments is a key aspect for ensuring that safety critical tasks are only undertaken by staff who are competent and fit. In general, respondents stated that many duty holders had insufficient in-house expertise in relation to the competence of those undertaking medical assessments. They considered that a system of external accreditation for supply of medical services was needed, possibly backed up by a requirement in a Railway Group Standard or through regulations. In response to the issues raised in the DD on the supply chain, most respondents thought that the supply of medical practitioners should be subject to the voluntary accredited certification system that was being proposed for safety critical products and services. There was no consensus for the need for licensing of individual medical practitioners. **HSE proposes** that it would be appropriate to place a requirement on duty holders to ensure that competent persons carry out the assessments. Further clarification, and reference to the supplier accreditation scheme (when it is established) could be provided through guidance.
- 36 There were mixed views on the current requirement for safety critical workers to have a means of identification. Many respondents considered that a standardised ID was not necessary. Historically, the greatest concern about worker identification appeared to be transient construction type activities carried out trackside. Many respondents considered that Network Rail's SENTINEL system was now a sufficient means of identification. **HSE considers** that there is no longer a need for a detailed regulation requiring means of identification for safety critical workers.

- 37 Most respondents thought that the management of the risks from fatigue should be part of a SMS and that it should include all the factors listed in the DD (although some factors were affected by individual issues which were harder to control). **HSE proposes** to provide further clarification on the management of risks from fatigue in an ACOP and guidance.
- 38 **HSE invites the Commission to endorse the proposed approach (outlined above) to develop regulations requiring employers and those in control of staff to put in place suitable arrangements to manage the competence, fitness and the risks from fatigue of their staff undertaking safety critical tasks.**

Application and Approach of New Regulations

- 39 A general approach to proposed new regulations for rail safety management that brings together the ideas on safety management permissioning, interoperability and design verification, and safety critical tasks is set out in Annex 3. In essence the approach is simple:
- a) The mainline railway is subject to the requirements of the Railway Safety Directive, including formal permissioning by the safety regulator on the basis of their safety management systems;
 - b) Metros are subject to similar requirements as the mainline railway; and
 - c) Tramways and railways meeting specified criteria (in practice including most heritage railways) are not subject to permissioning, but are required to establish safety management systems.
- 40 However, an alternative approach that has been put to us would be to impose the permissioning requirements of the Directive on all rail transport systems and seek to apply the regulations proportionately by operating the permissioning regime in a way that demands more in proportion to risk, and by using exemptions as appropriate.
- 41 The main advantage of the first (Annex 3) approach is that the rigour and resource demands of permissioning is explicitly reserved for those hazardous activities where it is needed in line with the Commission's policy statement 'Our approach to permissioning regimes' (<http://www.hse.gov.uk/enforce/permissioning.pdf>). Where a permissioning regime is applied it is graded to risk. However the main disadvantage is that boundaries have to be defined in the regulations in terms of relatively simple criteria such as mode of transport and speed. Boundaries inevitably have an element of arbitrariness and the diversity of rail transport systems in practice could lead to anomalies, although sparing and targeted use of exemptions could help to smooth these.
- 42 Conversely the main advantages of the second approach are uniformity and, in principle, a graded approach to risk across a wider range of rail transport. However, considerations of openness and transparency would require HSE to set out what is expected of different types of duty holders to obtain permission, so difficulties at the boundaries would still arise. Tramways are not presently within scope of the Safety Case Regulations (though they are presently subject to ROTS) and they, represented by CPT, are strongly against introduction of formal safety management permissioning. Furthermore, bringing operators within scope of legal requirements and then

processing applications for exemption is difficult to justify as sensible use of industry or regulator resource. The position now whereby as many operators have been exempted from the requirement to have an accepted safety case as there are holders of accepted safety cases under the Safety Case Regulations is arguably already unsatisfactory.

43 HSE's preference is for the first (Annex 3) approach, i.e. to focus formal permissioning on heavy and light rail, and to apply to trams (and railways meeting specified criteria) only some of the requirements of the Railway Safety Directive. We think this represents a good fit with the Commission's policy and is, on balance, a more targeted approach that makes better use of HMRI and industry's resources.

44 The Commission is invited to give a steer on whether HSE, in drawing up new requirements for safety management for the railway industry, should follow the approach in paragraph 39 and Annex 3 above or apply the main requirements of the Directive to all rail transport systems (paragraph 40).

Licensing of Key Safety Critical Workers

45 At their meeting in April 2003, the HSC expressed the view that driver and signaller licensing should be pursued; that independent third party involvement was needed and that RSSB could take an important role in the licensing system. In view of an impending EC Directive on train driver certification, it was HSC's intention that the development of any national licensing system envisaged by Lord Cullen was taken forward as an industry led initiative with a view to assisting European negotiations on the Directive.

46 Since then, HSE investigated setting up an industry Steering Group to determine how the accredited national licensing system could be established. RSSB has been looking at whether this could be fulfilled via an existing industry liaison group, but we have yet to have this confirmed. It was hoped that the Group would be able to agree how, if possible, *existing* industry systems could be accredited by UKAS as long as they met the key conditions that the assessors would be competent, independent and impartial and that there is no 'conflict of interest' in the assessment and licensing process. HSE wants ATOC to play a key part in this Group, but so far they have been reticent to engage because of their opposition to the model proposed in the DD.

47 It is clear from the responses to the EC Consultation Document on the proposed Train Driver Certification Directive, and discussions between the Member State safety authorities, that there is a strong consensus amongst Member States in favour of some form of train driver licensing system and independent oversight of the licence issuing process. However, the UK train operators have also expressed concerns about the European proposal. HSE anticipate publication of the draft Directive in early March 2004. Early indications suggest that the certification of drivers in cross-border services would be required by 2008-2010, with the implementation of certification for all other drivers and staff as late as 2010 – 2015.

48 In responding to the HSC's DD, the train operators do not believe that an accredited national licensing system for drivers is necessary (with one exception). There was little support from Heritage, Light Rail & Metro operators. Otherwise, there was widespread

support across other respondents for an accredited national licensing system for train drivers.

- 49 The main concern of ATOC is the requirement for accredited independent assessors and licence issuers. They believe that this would prejudice the integrity of the train operator's overall safety management system and that independent third-party assessors would not be able to adequately assess their drivers as competent because they would not have sufficient and intimate knowledge of the particular train operating company's processes, its rolling stock or its routes. In addition, train operators are concerned that there could be significant additional costs and loss of commercial flexibility, particularly if frequent updating of route knowledge had to be centrally recorded. ATOC argue that public assurance about the training of drivers is adequately addressed by the current policy of safety cases and independent audit of the train operator's overall safety case. In their response to the DD, ATOC members said they believed that train drivers should be 'licensed', but only by the train operator themselves. They suggested, if additional assurance is required, that this could be provided by additional audits of train operator's arrangements for selecting, training, assessing and 'licensing' staff.
- 50 Opposition to an accredited national licensing system by the train operators will make progress on the development of a voluntary, industry owned and run scheme challenging.
- 51 Respondents to the DD were generally less supportive of accredited national licensing for signallers, stating this was because only one employer employs the majority, therefore there would be less need for portability. However, Network Rail stated that it would like to see its SENTINEL system as a certification body for signallers and will be looking at the benefit that accreditation could bring. HSE intends to assist Network Rail in its plans.
- 52 There was little comment on the need for signaller licences for other sections of the rail industry, and there was no consensus for accredited national licensing of other key safety-critical workers.

Supplier Accreditation

- 53 The key points from the analysis of the responses to the DD were:
- Broad support for the need to improve the supply chain and for certification of suppliers to the rail industry;
 - Many said that a performance management approach was needed and that the proposed scheme should include business critical as well as safety critical products and services (there were a few concerns raised about the safety benefits of a scheme);
 - Majority supported the proposal for the certification scheme to be accredited by UKAS;
 - Agreement that the certification system should be voluntary and overseen by a Steering Group led by Rail Safety & Standards Body (RSSB) which should include key stakeholders involved in the supply chain (there were some suggestions that this should include supplier companies, as well as the main supplier organisations, and the main trade unions offered their assistance);

- London Underground was the only non-mainline duty holder interested (but had concerns about the mainline focus); and
- There was support from many stakeholders to limit the initial scope of the scheme until the benefits become known.

54 An industry Steering Group was established in November 2003 under the leadership of RSSB. The Group includes representatives from HSE, Network Rail, Association of Train Operating Companies, Railway Industry Association (which represents suppliers), Strategic Rail Authority, Lloyds Register & AEA (as potential certification bodies). The first meeting was constructive and broad agreement was made to work towards establishing an industry owned voluntary accredited certification system for railway suppliers. The remit of the scheme will be the Railway Group i.e. those operators using Network Rail Controlled Infrastructure. A sub working group is currently developing common principles for a framework for the scheme and should build upon the work of existing schemes in the industry.

55 HSE consider that the rail industry has shown commitment and is now making steady progress to develop the accreditation scheme for suppliers of safety critical products and services that Lord Cullen had in mind. It is likely that the scheme developed by the Steering Group will address the key factors that HSC wanted to see included in a supplier accreditation scheme (HSC/03/07). A decision has not yet been made by the Steering Group on whether it is possible for the industry to develop this scheme by April 2005.

CONSULTATION

56 We have met with various organisations to discuss their response to the DD, for example Network Rail, ATOC, Heritage Railway Association, Confederation of Passenger Transport, Railway Forum, Strathclyde Passenger Transport Executive and Jacob Tools.

57 Consultation continues with HMRI, Solicitors and the Project Steering Group (which includes representatives from SRA, ORR, DfT, RSSB, passengers and Trade Unions).

58 Following very positive feedback from the 'Continuing the dialogue' seminar on 13 February, we are considering arranging a similar event before we return to the Commission in July with a draft Consultative Document, to which we hope representatives of the Commission might attend.

PRESENTATION

59 There is likely to be interest in these proposals due to the implications of the DfT railway review and that many of the issues relate to recommendations made by Lord Cullen following the Ladbroke Grove train crash.

- 60 A summary of the responses to the DD will be published on the HSE Website. Copies of the detailed responses will be sent to HSE's public inquiry points in London, Bootle and Sheffield.
- 61 Further industry workshops and meetings will take place as the policy development process continues.

COSTS AND BENEFITS

- 62 Initial regulatory impact assessments (RIA) were included in the DD and HSE's Economic Advisory Unit will develop these further.
- 63 HSE consider that the benefits of the proposals may well outweigh the associated costs by delivering a modern, simplified health and safety framework for the railway and related transport systems that is consistent with European developments.

FINANCIAL/RESOURCE IMPLICATIONS FOR HSE

- 64 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, as part of the Rail Delivery Programme.
- 65 Approximately 50% of RI's operational activities (including safety case acceptance and approvals under ROTS) are chargeable under the Health and Safety (Fees) Regulations 2003. The current charging regime based on an hourly rate may eventually be replaced by a levy on train operating companies and infrastructure managers.

ENVIRONMENTAL IMPLICATIONS

- 66 None

OTHER IMPLICATIONS

Devolution Implications

- 67 The Welsh Assembly and the Scottish Executive were consulted. A response has been received from the Scottish Executive which raised issues for discussion on the need for a consistent safety regime across Great Britain.

European Implications

- 68 HSE proposes to implement those aspects of the EU RSD related to safety management early in 2005 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. In addition, since the RSD has no transition provision, early implementation with suitable transition arrangements needed to ensure the UK is compliant by the due date.

69 Proposals for the future of ROTS take account of a series of Directives that will progressively extend interoperability to virtually all of the mainline railway, disapplying ROTS.

70 HSC agreed in April 2003 that it would not be sensible to anticipate proposals for an EU Directive on driver certification. However, engagement with the industry to develop a voluntary licensing system may help the UK to influence the Directive during negotiations.

Small and Medium sized enterprises

71 The majority of heritage railways are classed as small businesses.

ACTION

72 The Commission is asked to:

- note the responses to the Discussion Document (Annex 1 on general comments and Annex 2 on the specific questions raised in the DD), and that a summary will be published on HSE's website.
- give a steer on the issues in paragraphs 18, 21, 24, 25, 26, 29, 38 and 44 and annex 3 so that scope and architecture of future regulation can be agreed;
- note the good progress made by industry on developing accredited certification for the supply chain (paragraphs 53 –55) which currently contrasts with a lack of progress on discussion of a voluntary accredited national licensing system for train drivers (paragraphs 45 – 52).