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HEALTH AND SAFETY COMMISSION

HSC RESPONSE TO THE DfT CONSULTATION “RAILWAY INTEROPERABILITY – CONVENTIONAL ROLLING STOCK AND INFRASTRUCTURE”

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Issue

1. Response to DfT consultation package and draft regulations to implement the EC Conventional Interoperability Directive.

Timing

2. DfT require responses by 16 April.

Recommendation

3. HSC agrees to send the letter at Annex A.

Background

4. The Department for Transport (DfT) has published a Consultation Document (CD), “Railway Interoperability – Conventional Rolling Stock and Infrastructure”. This sets out the draft implementing regulations for the Conventional Interoperability Regulations. It is available in full at <http://www.dft.gov.uk/railways/interoperability>
5. The Conventional Interoperability Directive is similar to the High Speed Interoperability Directive, which was implemented in the UK in 2001. The HSC discussed the High Speed Interoperability Directive on a number of occasions prior to its implementation.
6. The two interoperability Directives - one for designated High Speed Rail routes (1996/48) and the other dealing with designated conventional rail routes (2001/16) – aim to deliver technical harmonisation of the railways across the EU. DfT launched a consultation exercise on implementation of the Conventional Interoperability Directive on January 21 2004. We expect

implementing regulations to be laid before Parliament's Summer Recess in 2004.

7. A further proposed Directive to align the requirements of both Directives and progressively extend the scope of interoperability to the whole of the heavy rail network is part of the Second Rail Package. This is currently in conciliation between the European Parliament, Council and Commission. Adoption is expected in Spring 2004.
8. The implementing regulations will disapply the existing Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations (ROTS) 1994 under which HMRI approves plant and equipment, to the extent that interoperability applies (see paragraph 13-17). Under the Directives, Contracting Entities (essentially duty holders) need to employ third party Notified Bodies to check that the subsystem (rolling stock, signalling, infrastructure etc.) meets the Essential Requirements of the Directives. To satisfy themselves that the Essential Requirements have been met, the Notified Bodies check against agreed European Technical Specifications for Interoperability (TSIs) or against national standards notified by each Member State to the European Commission in cases where TSIs either do not exist, are incomplete or where a project has received a derogation from the TSIs. TSIs are agreed by a Committee of Member States set up under the Directive. The ROTS Regulations do not fulfil the third party checking and authorisation requirements of the Directives; neither is ROTS in line with HSC/E's policy objectives on the use of conformity assessment, rather than direct involvement in approvals.
9. Under Interoperability HSE is responsible for:
 - a. issuing "screening decisions" on whether the provisions of interoperability apply;
 - b. authorising new subsystems to be placed into service based on information from the Notified Bodies and the Contracting Entity;
 - c. issuing decisions on placing some projects (especially infrastructure projects) into service in stages (staged work decisions); and
 - d. enforcing the Regulations (the enforcement provisions of HSWA are applied to the Regulations).

Argument

Scope

10. The Conventional Interoperability regulations will apply to all new construction projects, upgrades and renewals on lines and Rolling Stock on the Conventional Trans European Network (TEN), which consists of about 40% of the network, and all non-High Speed Rolling Stock (both freight and passenger). Annex B shows a map of the Conventional TEN.
11. Paragraphs 13-17 below discusses the extent to which the regulations will cover the heavy rail network. The Conventional Interoperability regulations will not apply to metros, tramways or heritage railways.

12. The main areas of the draft regulations which will impact on HSE's regulatory approach are set out below.

Disapplication of ROTS for the whole of the heavy rail network

13. As currently drafted the remainder of the network outside of the scope of the regulations – ie all subsystems (except rolling stock) which are not on the conventional TEN, will still need to be approved (where necessary) under ROTS. This leaves the potentially confusing circumstance of two parallel authorisation/approvals procedures operating on the mainline. However, it may be possible to extend the scope of the regulations to the whole heavy rail network in anticipation of the Second Railway Package. The CD asks whether this would be desirable, if a suitable legal basis could be found.

14. Potential confusion is worsened by the fact that unlike new or upgraded subsystems, renewals remain outside of the scope of the High Speed Interoperability Regulations and will have to be approved under ROTS. This is not true of the Conventional Regulations. The Second Railway Package will bring renewals into the scope of the High Speed Directive in 2006 but it may be possible to amend the high speed regulations in advance of the package.

15. HSE recommend the HSC support the idea of extending the scope of the interoperability regulations to the whole conventional rail network, as this allows for the early simplification of having only one procedure and reduces bureaucracy associated with two regimes. We would also recommend that HSC ask DfT to amend the High Speed Interoperability Regulations to include renewals within the scope of those Regulations. This would remove HSE from direct "hands-on" approval, in line with the policy of HSC, for all heavy rail; and remove problems for HSE caused by regulation 4 (4) (a) of ROTS, which allows works to be placed temporarily into service without authorisation.

Scope of Interoperability

16. There are some works, plant and equipment which fall outside of the scope of the Interoperability Directives, such as possibly level crossings where HSE has a limited role in approval under ROTS

17. The recent HSC Discussion Document, "Safety on the Railway – Shaping the future" explained and set out options for the review of ROTS for the non-interoperable railway. Officials are working together to ensure consistency between implementation of the interoperability Directives and the ROTS review. This is discussed further in the Commission paper (HSC/04/25) on the Discussion Document.

18. More generally ROTS has been used to enable HSE to carry out detailed checking and to take an overview of design integrity issues including managing the risk of introducing new works, plant and equipment on the railway. Under interoperability requirements, this is addressed in a different way through NoBos checking against prescriptive standards. HSE will oversee the extent to which NoBos have followed due process but HSE's interest in aspects of the management and initial use and of risks arising from the design will have to be covered by the Safety Case regime. The period before the new safety management regulations will involve a transition period which HSE will have to manage (for example through additional guidance or

through a requirement for dutyholders to check or amend their current Safety Case to cover design issues which were previously covered under ROTS).

19. If ROTS is disapplied from all mainline systems, HSE will need to work closely with SRA and DfT to agree how best to manage any safety risks from the transition arrangements.

Timing

20. The DfT CD proposes a grace period of 6 months after passing of the regulations before the checking and authorisation systems are used. This may cause some unwelcome confusion, however, this extra time allows for:
 - a. the list of notified national standards to be edited, making them easier to apply and more consistent with notified body checking and the prescriptive nature of TSIs;
 - b. the first set of TSIs for the conventional network to be published;
 - c. HSE to develop and publish the criteria by which authorisations, screening and staged works decisions will be made (the Interoperability Project);
 - d. Projects already underway to be completed under the old regime, thus avoiding two separate processes for the same project. Any subsystem which will be brought into service AFTER this 6 months would have to be dealt with under the new regulations.
21. The CD also mentions the possibility of a list of projects which could exceptionally be dealt with until completion under ROTS – industry are asked for examples and justification for why this would be preferable.
22. HSE is content to agree with DfT a longer grace period for specific projects already underway, especially those beyond the design stage, and which would be approved under ROTS within a specific time period.
23. From HSE's perspective, there would be considerable benefits if DfT delayed making the regulations until the review of the Safety Case regime was complete and the new regulations on safety management were available. This would mean for interoperability that one set of new regulations could cover both interoperability directives, implement the amendments from the forthcoming Second Railway Package and repeal the current HSI Regulations. This would enable new regimes to be introduced for both Safety Cases and interoperability at the same time, thus dealing with risks arising from transition issues explained in paragraph 17 above, and eliminating confusion between the parallel approval/authorisation regimes. However, such a course would delay implementation of the Conventional Interoperability Directive which is already overdue, and for which the UK faces infraction proceedings. HSE proposes to discuss the viability of such delay with DfT.

The Interoperability project

24. An interoperability project has been set up as part of HSE's Rail Delivery Programme. This will be producing criteria for authorisations, screening and staged works decisions to help external stakeholders (Contracting Entities

(CEs), Notified Bodies (NoBos) etc) to understand what is required of them, and for use internally by inspectors and administrators. This will include, for example, guidance on what will be considered a renewal and what heavy maintenance, to be fed into the “one stop shop” guidance facilitated by SRA.

25. Should these regulations be made in 2004, a project under the Rail Delivery Programme will work up proposals for dealing with the Design Integrity issues highlighted in Paragraph 18.

Consultation

26. RPC, RI, PEFD and Solicitors’ office.
27. RIAC discussed this response on 24 February and their comments have been taken into account in the letter

Costs and Benefits

28. A partial RIA is attached to the Consultation package.

Financial/Resource Implications for HSE

29. With ROTS being disapplied by these regulations, HMRI will no longer be able to charge for approvals under ROTS for the affected lines. The implementing regulations will, however, have a provision for charging under the new regulations for authorisations, screening and staged works decisions using the fees and charges set under HSEs Fees and Charges Regulations.
30. The change in the nature of HMRI’s role may lead to some change in resource requirements in the long term but it is not possible to estimate these at present.
31. The cost of continued work on these regulations is covered by the resources received for legislative reform following Lord Cullen’s recommendations.
32. Should these regulations be made by DfT before the new Safety Case regulations in 2005, there will be a cost associated with the additional work required, both in terms of developing proposals to cover design integration issues in the transition period, and to resource solutions such as any need for material revisions of dutyholders’ safety cases. It is not possible to estimate what these costs would be at this time.

Environmental Implications

33. The Interoperability Directives were made under the European Commission’s Common Transport Policy. One of the aims of this policy is to achieve a cross-modal shift from road to rail, with positive environmental implications.

Other Implications

34. None

Action

35. HSC is asked to:
 - a. Note the contents of this paper; and

b. Approve the draft response at Annex A.