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HEALTH AND SAFETY COMMISSION
RAIL SAFETY: MARK I EXEMPTION DECISION

A Paper by HSE Rail

Advisor(s): Robin Foster, Myles Sibley and Avril Adams

Cleared by Allan Sefton and Nick Starling on 11 October 2004

Issue

1. HSE has granted exemptions from Regulations 4(1) and 5(1) of the Railway Safety Regulations 1999 to three southern region Train Operating Companies (TOCs) and Network Rail. The exemptions, subject to conditions, allow the three TOCs¹, to continue to run Mark I rolling stock and hinged-door trains without fitting a Central Door Locking (CDL) system up until the end of November 2005 at the latest.

Timing

2. Mark I rolling stock is currently being operated under an exemption which is due to expire on 31 December 2004. The decision on this further exemption was taken by the Executive on 24 September 2004 following consultation. In accordance with our publicly available guidelines, the TOCs and Network Rail were given a further two weeks to make representations on the proposed conditions. Following consideration of any further responses the certificates will be signed during the week commencing 11 October 2004.

Recommendation

3. For information. This is a decision for the Executive on which the Commission was consulted.

Background

4. The Commission considered HSE's consultation (Paper HSC/04/81) on 3 August 2004 and made a response (Annex 1). The consultation sought views about the exemption HSE was minded to grant and the conditions it was minded to attach.

¹ New Southern Railway Ltd (Southern), South Eastern Trains Ltd, South West Trains Ltd

5. The consultation ran from 5 July to 30 August 2004. HSE reviewed its preliminary 'minded to grant' view in the light of the 27 responses received (summary at Annex 2).

Argument

6. Twenty-seven responses to the consultation were received, including rail passengers group, Strategic Rail Authority, Office of Rail Regulation and some from private individuals. The majority of consultees agreed an exemption should be granted. Most respondents were in agreement with HSE proposals to withdraw Mark I rolling stock on or after 1 January 2005 and no later than 30 November 2005 and supported the conditions that HSE proposed in the draft exemptions. The 3 train operating companies and Network Rail did not respond to the consultation.
7. In making its decision HSE concluded that no new technical issues or evidence emerged during the consultation process to substantially alter the original assessment. HSE therefore decided that the exemption should be granted on the basis that:
 - Network Rail should notify the TOCs and HSE in writing of any significant issues arising, or likely to arise, in connection with the upgrading or renewal of railway infrastructure which could affect the TOCs' implementation of the Mark I withdrawal programme;
 - Before 1 January 2005, the TOCs should submit to HSE, and obtain its agreement to, a written statement of a suitable and sufficient programme for the progressive withdrawal of Mark I rolling stock from operation on the railway;
 - The TOCs should withdraw Mark I rolling stock on or after 1 January 2005 and no later than 30 November 2005 according to the agreed programme;
 - The TOCs should implement measures to manage safety risks, so far as is reasonably practicable, in respect of the doors and windows fitted to Mark I rolling stock operated by the TOCs after 1 January 2005;
 - Immediately after the programme is agreed with HSE, the TOCs should send their copy of the agreed programme to Network Rail;
 - The TOCs should report on their implementation of the programme in writing to the HSE and Network Rail, including, but not limited to, such information as the HSE specifically may require from time to time, on the first working day of each calendar month, starting on 1 February 2005;
 - The TOCs should revise the programme whenever required to do so by the HSE;
 - The TOCs should revise the programme, subject to HSE's agreement, whenever there has been any significant change in the matters to which the programme relates which requires the statement to be revised;
 - The TOCs should notify HSE and Network Rail in writing of any significant issues arising, or likely to arise, which could affect their implementation programme.

Consultation

8. This paper has been prepared by Policy Group in consultation with the Railway Inspectorate and Solicitors.

Presentation

9. The decision is being announced by a press release and on the HSE website. A Ministerial submission is also being prepared. Responses to the consultation are publicly available at HSE Information offices. In addition HSE is writing to the consultation respondents to inform them of its decision. The earlier announcement that HSE was minded to grant exemptions received little attention in the media.

Costs and Benefits

10. The exemption facility is now being used to conclude that it is not now reasonably practicable to require the TOCs to fit CDL to the estimated residual vehicles according to the proposed timescales, as the safety benefits would be low in proportion to the cost of fitting CDL.

Financial/Resource Implications for HSE

11. Railway Inspectorate and Solicitors' time on this exemption process is recoverable through charging. Policy work and monitoring of exemption conditions are funded by Cullen resources.

Environmental Implications

12. None.

Other Implications

13. None.

Action

14. None.

Annex 1
HSC's consultation response to HSE



Health & Safety Commission
From the Chair
Bill Callaghan

Mark Apostolou
HSE
3NW
Rose Court
Southwark Bridge
London SE1 9HS

24 August 2004

Dear Mr Apostolou

**RAILWAY SAFETY REGULATIONS 1999 – TOCs/NETWORK RAIL'S
APPLICATION FOR EXEMPTIONS**

As you know the Commission considered the consultation package at its meeting ~n 3 August 2004 (paper number HSC/04/81 refers).

The Commission has considered this consultation package and the exemption that HSE is minded to grant. We have noted the decision was for HSE, and that we were being formally consulted on our views on the proposals set out by HSE.

The Commission is pleased to note that good progress that has been made by the industry since mid 2002 under the stewardship of the SRA, to withdraw Mark 1 rolling stock. We very much welcome the close cooperation that has developed between the industry parties to coordinate delivery of this major new trains programme and the constructive dialogue between the industry and HSE. We are also pleased to note that, in removing this rolling stock and fitting TPWS (train protection and warning system) also required by these Regulations, the network wide safety risk associated with these trains has reduced significantly. However, we understand that despite these efforts, the TOCs are not going to be able to replace all the Mark 1 rolling stock by the deadline of the end of the year. In order to avoid potentially significant disruption to passengers we recognise the need for some form of further exemption in the circumstances.

The background to these Regulations was a long history of accidents giving rise to several fatalities and a continuing lack of progress by the industry either to improve the level of safety associated with these trains or to withdraw them. Whilst welcoming reduction in network wide risk, we share HSE's concerns about the ongoing individual risk associated with the remaining trains and the heightened risks to vulnerable groups such as school children. We consider that it is important that HSE, as the independent safety regulator, should be able to continue to monitor and influence the ongoing withdrawal programme to help ensure that the industry's commitment is delivered.

We are satisfied that HSE's proposals for an exemption to agree in advance of 1 January 2005 a programme on the basis of their suggested criteria should help deliver the original regulatory intention in a practicable and reasonable way.

Yours sincerely

Bill Callaghan
HSC Chair

Annex 2

Consultation responses summary table

Respondent	Q1	Q2	Q3	General comments
1) Dina Groden – Individual	Disagree	-	-	Against exemption for many reasons regarding poor quality of conditions on Mark I trains. Also adds that in light of previous history, what will prevent another exemption application being requested
2) Daniel Wright – Surrey County Council	Reluctantly agree – SCC feels that the railway industry's failure to develop a plan to meet its legal obligations means that forcible compliance with the deadline would simply result in services being cancelled. This would increase crowding on the remaining services and could potentially dissuade travellers from using the railways in favour of more dangerous travel modes. Furthermore SCC believe that the various players in the railway industry might have managed to get rather more Mark I trains out of service by the end of 2004 if they had had their minds concentrated by the belief that the end of 2004 deadline was non-negotiable.	Generally agree- SCC are concerned over whether SRA's timetable for Mark I replacement is accurate. They welcome HSE's statement that it would expect the TOC's to run Mark I rolling stock up until end of November 2005 only if the programme risks identified materialise.	-	
3) Stuart Boner – English Welsh and Scottish Railways	Agree - support the Exemption and the HSE view on the basis that imposing the legal deadline would bring bigger risks to the railway industry as the TOC's withdraw heavily utilised services due to having inadequate numbers of non-MK1 vehicles. The MK1 fleet will all be replaced during 2005 and this appears to be a pragmatic solution to a short-term problem.	Agree – On the condition that such vehicles are withdrawn as soon as is reasonably practicable		
4) Mike Strzelecki – London Underground	Agree	Agree	-	LUL supports the TOC's/network Rail's case for exemption and HSE's minding to grant the exemptions with conditions
5) Gwyneth Dunwoody MP – Transport Select Committee	-	-	-	The committee does not respond to such consultations but these documents will be of particular interest in light of our evidence session on the power supply

				upgrade in the southern region
6) Lord Bradshaw	Agree	-	-	Believes exemption should be granted in all circumstances
7) David Walmsley – Confederation of Passenger Transport UK	Agree	Agree	-	CPT’s light rail and tramway members are not affected by proposals and so CPT has no objection to HSE’s approach
8) John Cartedge – Rail Passengers Council	Agree	Agree	-	RPC is persuaded that it would be neither reasonable nor practicable to resist the rail operators’ application for a time-limited extension to the exemption from the Mark I regulations. Agree with a deadline date of 30 th November 2005, and that in the interim period TOC’s should take such enhanced safety measures as are reasonably practicable in respect of doors and windows in any Mark I stock that remains in operation after the end of this year.
9) Michael Beswick – ORR	Agree	Agree	-	The ORR believe adequate stock should be held in reserve during the early months of 2005 to deal with any unforeseen reliability problems that may arise with the new trains. Industry should also plan ahead with regards to considering additional berthing facilities for the new fleet.
10) Peter Benford – Sevenoaks RTA	Agree – Feels that not granting exemption would lead to severe problems/delays to commuters	-	-	Believes that HSE has taken a piecemeal attitude to safety and has not had regard to the cumulative effect of a number of regulations, for examples see document 10.
11) Donald Benn – Individual	Agree-	-	-	Feels that HSE have no option but to extend the deadline for the elimination of the slam door stock had there not been such pressure to remove them with undue haste then no doubt the TOCs would have been able to better manage the introduction of the new stock. Compared to the daily carnage on the roads there simply is no safety case to worry about. Today’s safety culture is encouraged and fuelled by organisations like the HSE. Believes deadline will not be met without cuts to services. Suggests HSE diary this for January 2006 to confirm this.
12) Andrew Barnes - Individual	Agree – Believes that Mark I stock is far more reliable than new ‘space-age’ trains	-	-	‘Most passengers just want a punctual, reliable service’
13) Henry Law - Individual	Agree – Mark I stock should be allowed to continue in use indefinitely subject to fitting of CDL, window bars and door-jam guard strips.	Suggests that continued use of Mk I stock should be subject to the fitting of CDL, window bars and door-jam guard strips. HSE should commission the development of an economical CDL. In some circumstances Mk I stock should run with the provision of a barrier vehicle or		States that “the economies of CDL are dependent on the future life of the vehicles. If this is extended, the exercise becomes cost-effective.”

		portion of vehicle.		
14) Sean Forster – Arriva Group	Agree	Agree	-	
15) Matthew Bartle – East Sussex County Council	No comments	No comments	-	East Sussex County Council supports the earliest practicable withdrawal of the remaining Mark 1 rolling stock subject to the reliable operation of train services in the region.
16) Alan Cooksey - Individual	Agree – Insisting that Mark I withdrawal immediately is not sensible.	-	-	To require definite programme for Mark I withdrawal may be appropriate but what do you do if the programme slips?
17) Jim Cross – Rail Passengers C’tee Southern England	Agree	-	-	If power upgrade is completed by June 2005 and new trains have been introduced and operationally without problems, then slam door trains can be removed. If power upgrade takes longer than June 2005 and slam door trains run into 2 nd half of 2005, then a complete refurbishment programme of existing slam door trains must be undertaken for passenger safety and comfort.
18) Rob Andrews - SRA	Agree	Agree	-	SRA is in complete agreement with the HSE proposals. SRA supports the conditions that HSE is minded to propose in granting exemptions.
19) Rob Gifford – PACTS	Agree – Although disappointed by substantially large numbers of Mark I’s in use, this is partly due to circumstances beyond the TOCs control.	Agree	-	PACTS believe that in terms of monitoring progress towards replacement, it would seem appropriate that HSE receives information on a monthly basis. HSE must be kept informed against that timescale of progress during the coming year.
20) Richard Wallace – Transport for London, London Rail	Agree – TfL London Rail support the application for exemption and, also suggest, that it may be pertinent to look at extending this time scale 6 months later than proposed to account for any further problems in the delivery programme of new rolling stock or related to Thames Blockade.	Fully support and agree with the inclusion in the Exemption Notice of measures to manage safety risks in respect of doors. Would like end date of November 2005 to be flexible to cater for any contingencies. Suggests that before the end date of November is finalised in any exemption, a final review of any existing risk should be undertaken and, if necessary, appropriate contingency is allowed for to ensure that train services are not cancelled or short formed as a result of the need to withdraw the remainder of Mark I rolling stock by end of November 2005. Would like to be reassured that there would be no adverse impact upon rail passengers in respect of overcrowding or	.	If the exemptions were not granted, the consequent service withdrawal would result in the transfer of a number of passenger journeys to other modes of transport. The risk in respect of journeys undertaken by car would be far greater than those undertaken by trains.

		withdrawal of services if the end date was not flexible.		
21) Robin Kellow - Individual	Agree	Agree	-	Respondent hopes that any exemption that is granted will carry a statement referring to the incompetence shown by TOCs/Network Rail in introducing a 'simple' upgrade.
22) Health and Safety Commission	Agree	We are satisfied that HSE proposals for an exemption to agree in advance of 1 January 2005 a programme on the basis of their suggested criteria should help deliver the original regulatory intention in a practicable and reasonable way.		
23) Mark Balaam, west Brompton Station Users' Group	Agree	Strongly recommend that the final date for operation of Mark I rolling stock be postponed from November 2005 to at least 31 March 2006 or even later to 30 June 2006.		<p>Group's main concern is over the risk to service on the West London Line (WLL). Over the past 2 years services have been affected by the withdrawal of through trains between the WLL and points south of Clapham Junction in the crucial Monday to Friday peak. The Group's first priority is the re-instatement of the through trains south of Clapham and has written to Southern and Network Rail to seek this. Southern have now requested this from Network Rail, as well as an increased frequency of 2 trains per hour. The Group is unsure if there will be enough stock available for Southern to run this service pattern on WLL by December 2005 timetable changes. Their reasons for this are:</p> <ul style="list-style-type: none"> i) Need for 319 units to be transferred from West London Line to Thames Link before the Thames Blockade; ii) Unreliability of 319 units. This would result in transferring 377 units to Thames Link service; iii) Erratic performance of 377 units due to mechanical/electrical failure and/or lack of staff ability to open the doors. <p>In relation to points of clarification raised by HSE (Pages 21-47), it is not clear how class 319 and 377 units are to be deployed on Thameslink/WLL other services and if this meets the service requirements.</p> <p>It is also not clear from HSE consultation paper if any of the TOCs have plans to develop services (eg by increasing peak hour frequencies) that would require, or benefit from, the retention of Mark I stock beyond 30</p>

				November 2005.
24) David Daters – Orpington District Travellers' Association	Agree	Agree	-	
25) M J Whitson Individual	Agree	Would like Mark I rolling stock strategic reserve to be maintained until 2007 to cover the possibility of a generic fault emerging in the new rolling stock leading to a severe depletion in the number of rolling stock available to maintain services. Also agrees that in view of the relatively short life being allotted to the remaining Mark I and in the absence of any specific information on the number of incidents involving passengers injured by the absence of CDL, expenditure on CDL is not justified.		Since it has been demonstrated that TPWS has vastly improved safety then it becomes far less urgent matter to remove Mark I rolling stock and fitting CDL for its remaining life could probably have been justified.
26) Chris Wadey – Angel Trains	Agree	Agree	-	Angel Trains would also like to draw HSE's attention to the exemption under the Asbestos (prohibition) Regulations (1992) which is currently in force permitting the leasing of vehicles that previously contained amphibole asbestos. Angel Trains have concerns regarding HSE's decision to rescind this exemption from 1 January 2005. This would prevent Angel Trains and other companies from leasing certain Mark I stock from that date. Angel Trains would like to clarify this issue and ensure that such an issue will not prevent the continued operation of the Mark I fleet under the terms of the proposed exemption.
27) Kevin Taylor, the Tonbridge Line Commuters (formally known as Tonbridge and District Rail Travellers Association)	Agree	It is felt that the proposals for exemption are too prescriptive and could lead to complications. The Association would welcome the additional clause in the exemption to enable the deadline to be extended without the necessity for further exemption. This is not unreasonable considering that the HSE original proposed deadline was 1 January 2007. The Association agrees with the continuation of		The Association do not object to the process of regular formal progress reports to HMRI.

		exemption from Central Door Locking.		