

<b>Health and Safety Commission Paper</b>		<b>MISC/04/01</b>	
<b>Meeting Date:</b>	None	<b>Open Gov. Status:</b>	Fully Open
<b>Type of Paper:</b>	MISC	<b>Paper File Ref:</b>	DRP/101/1002/03-02
<b>Exemptions:</b>	None		

## **HEALTH AND SAFETY COMMISSION**

### **Railway Safety Regulations 1999 : HSE grants exemption to Network Rail from the requirement to fit TPWS at speed restrictions of a temporary nature**

#### **A Paper by HSE Rail**

**Advisor(s): Liz Gibby, Myles Sibley, Avril Adams, John Moyer**

**Cleared by Allan Sefton and Nick Starling on 30 December 2003**

#### **Issue**

1. Following consultation, HSE has granted Network Rail's application for exemption from the requirement to fit the Train Protection and Warning System (TPWS) at speed restrictions of a temporary nature.

#### **Timing/Recommendation**

2. For information. This was a decision for the Executive on which the Commission had the opportunity to respond to the consultation in November – paper HSC/03/132.

#### **Background**

3. The Commission is aware from HSE's work on exemptions during 2003 of the growing body of evidence that TPWS is much less effective at mitigating overspeeding (mainly derailment) risk than was hoped at the time the Railway Safety Regulations were developed in 1998-99. The Regulations require TPWS fitment at certain speed restrictions over 3 months duration from 2 January 2004. Network Rail has fitted or obtained other exemptions for those classified by the railway as permanent, but has not fitted those classified by the railway as temporary.
4. HSC/03/132 informed the Commission that, subject to consultation, the Executive was minded to grant an exemption in response to Network Rail's application made in late September. Network Rail sought a complete exemption from TPWS fitment, covering all speed restrictions the industry describes as temporary. In practice, this includes

several which have been in place for many months, even years. HSE concluded that the evidence for such an open-ended exemption was not strong enough, and that it would also be difficult to draft such an exemption without compromising the legal certainty required for those persons who could be subject to enforcement action and criminal sanctions in the event of non-compliance with exemption conditions.

5. HSE consulted from 29 October to 28 November, with draft certificates proposing TPWS fitment after 6 months. HSE also proposed a condition requiring Network Rail to prepare and consult on a health and safety management statement on temporary speed restrictions (TSRs).

## Argument

6. HSE received 19 responses to its consultation including ASLEF, the Strategic Rail Authority, the Rail Safety and Standards Board (RSSB) and the Rail Passengers Council (RPC). All but one supported an exemption. Most consultees including RSSB, RPC, ASLEF and some of the TOCs supported HSE proposals for extending the time limit requiring the fitment of TPWS but ATOC and the SRA supported Network Rail's case for exempting all TSRs from the requirements of the Regulations. These responses did reveal some confusion and a degree of industry disagreement on the potential effectiveness of TPWS at certain types of TSR.
7. The consultation influenced HSE to modify the exemption to require TPWS fitment prescriptively after 12 months duration, or within 6 months if it is reasonably practicable to do so. The management statement condition has been retained. Network Rail eventually indicated that they are content with this approach though they identified possible difficulties with the risk assessment of TSRs. We have clarified to them that the conditions do not require anything additional to that already expected under the Management of Health and Safety Regulations.
8. This approach is likely to represent a stopgap solution, avoiding the difficulties of non-compliance with the Regulations from 2nd January 2004, and deferring any prescriptive TPWS fitment at TSRs in place over 6-12 months to 2nd January 2005. Under the terms of this exemption TPWS will still need to be fitted on a prescribed regulatory basis to certain TSRs in place after 12 months even though risk assessment identifies that it is not a reasonably practicable measure. Network Rail can seek further exemption in these cases but HSE believes that this is not a tenable longer term position.
9. HSE and Network Rail both also believe that if further evidence was gathered from train operators and drivers of the practical experience of TPWS as an overspeeding risk mitigation measure, a compelling case against further fitment on a prescribed regulatory basis could be made. Given the difficulties of drafting this exemption, inconsistencies which could emerge on 2<sup>nd</sup> January 2005, and an improving knowledge base, consideration may need to be given to amending the Regulations in relation to speed restrictions. HSE would clearly need to return to the Commission with available evidence and proposals for discussion. An above-the-line paper has been booked for February 2004 to explore this issue in more detail.

## **Consultation**

10. This paper has been prepared by Policy Group in consultation with the Railway Inspectorate, PEFD, and Sols.

## **Presentation**

11. A low-key press release is likely to be made, aimed at the rail industry trade press. The exemption decision is another example of HSE responding to credible, risk-based evidence from the rail industry, and demonstrating its mind is not closed to reviewing its position on TPWS.

## **Costs and Benefits**

12. The exemption facility is once again being used to ensure TPWS is not fitted where the safety benefit is low and the cost disproportionate to the risks.

## **Financial/Resource Implications for HSE**

13. 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. HSE will discuss with the RSSB and train operators whether they would be in a position to sponsor any further work on TPWS effectiveness, although in the time available (1 year) it may be more realistic for HSE to use Cullen resources.

## **Environmental Implications**

14. None.

## **Other Implications**

15. None.

## **Action**

16. None.