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HEALTH AND SAFETY COMMISSION

Railways and Other Guided Transport Systems (Safety) Regulations 200[x]: Residual Amendments

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Issue

1. Amendment to the proposed Railways and Other Guided Transport Systems (Safety) Regulations 200[x] (ROGS), in relation to the application of safety verification to the mainline railway system, the replacement of the associated ACoP with guidance and next steps.

Timing

2. Urgent. DfT expect to launch their consultation on the proposals for the implementation of the Interoperability Directives in late September 2005. Any necessary alterations to the ROGS regulations will need to be consulted on in parallel with DfT's consultation.

Recommendation

3. That the Commission:
- (a) Supports the extension of the requirement for safety verification to the mainline railway system, where authorisation under the Interoperability process is not required (paras 7 - 11)
 - (b) Notes that Ministers may wish to change the proposed ACoP to guidance (paras 12 - 13)
 - (c) Notes that minor changes are needed to clarify the intent of the Regulations and deliver the Commission's policy (paras 14 - 15).
 - (d) Accepts DfT's offer at official level to consult on the changes necessary so that work can proceed (para 18).

Background

4. HSC approved the proposed ROGS regulations in March 2005 (HSC paper 05/03 refers). The key elements of the draft regulations are summarised at **Annex 1**. The covering letter to the SoS identified the need to review the regulations in the light of DfT's proposals to implement the Interoperability Directives. Work on the DfT package has progressed and we believe changes to the ROGS regulations are needed to ensure continued safety in respect of new or altered plant or equipment for the mainline railway.

5. A number of other changes are needed in the light of issues that have emerged since the regulations were submitted. Most of these are minor. However, in the light of advice from DfT and HSE lawyers, DfT are considering amending the package to substitute the ACoP on safety critical work with guidance.
6. Inevitably, the work on the interoperability package has delayed HSE's timetable for ROGS. DfT now believes it is in a position to put final proposals to Ministers on interoperability and advice for the SoS to reply formally to the Commission's package for ROGS. DfT Ministers have not yet considered the issues raised in this paper. HSC's views can therefore be fed back to inform the SoS's response on ROGS.

Argument

Safety Verification – Mainline Railway

7. When the Commission considered the proposed new Regulations in March the approach that DfT planned to take to implement the Interoperability Directives was uncertain. However, indications were that DfT was considering the option of significantly restricting the projects in scope to those where there is a benefit in applying the interoperability process, i.e. only a few large high profile strategic projects. In anticipation of this HSC explicitly referred in its letter to the SoS to the option of extending the safety verification requirements of ROGS to the mainline railway, where interoperability did not apply. At that time, the issue was also discussed briefly with key stakeholders.
8. As the work has progressed, and the probable scope of the interoperability regulations has emerged, it is clear that a significant number of schemes on the mainline network will not be picked up by third party assessment. DfT's policy will not now provide the same scrutiny to ensure the management of initial integrity risks as the existing approvals process or as presented to HSC when the ROGS package was developed.
9. Accordingly, colleagues in HSE Rail have carefully considered a number of options in the light of this development:
 - Continuing to apply the ROTS regulations on the mainline network where the high level, interoperability process did not bite;
 - Relying solely on interrogation of the safety management system of duty holders to check whether their systems for ensuring initial integrity are adequate;
 - Extending safety verification requirements applied to other parts of the UK network to the mainline where the interoperability process did not apply.
10. On balance, we believe it is a step too far at this stage to rely solely on duty holders' own management arrangements for controlling initial integrity without a specific duty for independent safety verification. It also appears that across Europe, national safety authorities are leaving in place their existing arrangements to ensure initial integrity of their railways below the level of the interoperability process. Whilst we do not think it is necessary to retain the approval process under ROTS, we do believe that the option flagged in March - a specific duty for independent safety verification - is needed to provide the focus for this important work and to provide reassurance for stakeholders at a time of considerable change in the rail industry.
11. Initial feedback from key stakeholders on this issue has indicated that there was support for safety verification from Network Rail and some qualified support from other groups.

The safety verification approach has led to concerns about the extent to which design risks are shared between infrastructure managers and train operators. However, DfT intend to embark on an informal round of internal consultation with key stakeholders on this issue before formally consulting on this change to the regulations.

Approved Code of Practice

12. Part 4 of the ROGS regulations revokes the current Railways (Safety Critical Work) regulations 1994, building on the experience of enforcing those regulations. To support this section of the regulations an ACoP was produced and formed part of the HSC submission to the SoS.
13. The future status of the ACoP has been considered by both DfT and HSE lawyers. Both advise that because the ACoP is railway specific, the HSC, following the transfer of its railway functions to the ORR, will not have powers to modify or withdraw it. The ORR will not have any powers in relation to ACoPs. Legal advice is therefore that the ACoP could not be modified or withdrawn by any party. Such a position could be unhelpful, particularly for enforcement, should guidance on the management of safety critical work need to change to represent emerging best practice. Accordingly, DfT is likely to advise Ministers that the best way forward is to change the status of the ACoP to that of guidance, which would allow ORR to amend and alter it in the future as necessary. Whilst this is not ideal, we believe this is a practical way forward.

Minor Amendments and Other Legal requirements.

14. Since the ROGS regulations were drafted, it has become clear that there are a number of minor amendments that need to be made to the proposed ROGS regulations. The amendments do not result in changes of policy but rather clarify the requirements of the regulations or correct typographical errors.
15. In addition, HSE officials have identified an issue in relation to direct approvals work on Light Rail and Heritage schemes. Following discussions with HSE lawyers and DfT officials it is proposed that DfT draw up Orders under the relevant Acts to remove a residual duty for direct approval in this area since any significant changes would also be subject to the requirements of Safety Verification in ROGS. This would then fully deliver the policy objective of withdrawing from direct approvals work.

Representations by Industry

16. Following submission of the proposed regulations by HSC, some sections of industry have continued to raise concerns both at official level at DfT and at Ministerial level. The key areas of concern remain the scope of the proposals for safety critical work, primarily the extent to which the requirements go down the supply chain, and the removal of the current HSE direct approvals regime (ROTS) from the Light Rail and Heritage sectors.

Next Steps and Timing

17. DfT officials will put forward their proposals to Ministers on their return. The SoS is then expected to write to the Commission on the ROGS package, seeking agreement to the way ahead. DfT's current estimate is that the consultation process would start at the end of September (and run for a period of six weeks) with regulations ready to come into force in January 2006, allowing implementation of ROGS before the 29th April 2006 deadline in

the Railway Safety Directive.

18. The extension of safety verification to the mainline railway will need further consultation. There will be other minor amendments, although these will not need to be consulted on. DfT have offered to carry out this consultation as part of their wider exercise on interoperability and we support this approach. The position with respect to the ACoP being converted into guidance is being clarified. We believe that this issue might require a very limited and targeted consultation, if at all.

Presentational Issues

19. The extension of safety verification to the mainline railway may be seen to complicate the control of initial integrity risks in that it leaves the mainline railway with two processes. This was something that most had wished to avoid but the cost savings from a very strategic implementation of interoperability are likely to outweigh any significant reservations stakeholders may have. Indeed, the flexibility of the safety verification process allows dutyholders to develop verification processes in a co-ordinated way.
20. The replacement of an ACoP with guidance will be welcomed by some stakeholders but questioned by others. The need for this alteration arises because of a legal difficulty and we will offer a clear explanation of this issue, in addition to ensuring that the guidance covers the same issues as the proposed ACoP.

Costs and Benefits

21. The benefits for industry relate to the ability of DfT to approach interoperability in a very strategic way, reducing the extent of Notified Body assessment work and the associated costs. The delivery of this benefit lies with DfT and the implementation of the interoperability Directives. The costs and benefits will be detailed in a regulatory impact assessment for those regulations.

Consultation

22. Within HSE Rail and HSE solicitors, and informally with ORR and DfT.

Financial/Resource and Other Implications for HSE

23. The limited consultation, amendment of the regulations, redrafting of the ACoP and delay, all place an additional resource burden on HSE. At present no additional funding by DfT has been secured for this work. There are no immediate other implications for HSE.

The key elements of the proposed ROGS regulations were:

- Amending the requirements of the existing Railway Safety Case Regulations in relation to Safety Management Systems to implement the requirements of the Railway Safety Directive for the mainline railway, and providing for a proportionate approach to Safety Management Systems for other railways and guided transport systems;
- Development of a process of Independent Safety Verification of designs, removing the need for HSE to continue with direct approvals work whilst ensuring that risks associated with Initial Integrity of design and installation were appropriately addressed;
- Amendment of the provisions for safety critical work to reflect the experience HSE has gained in the enforcement of the current regulations, providing a flexible, risk-based framework to ensure that people undertaking safety critical work are competent, fit and not so fatigued as to significantly affect people's health and safety;
- Replacement of three existing sets of rail safety regulations on safety cases, safety critical work and approval of rail works with one integrated set of requirements;
- Conclusion of regulatory action on safety management in response to Lord Cullen's recommendations following the Ladbroke Grove accident.