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HEALTH AND SAFETY COMMISSION

Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS):
Post Consultation Update

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Summary

1. Amendment to the proposed Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS). This follows consultation on the extension of the scope of safety verification to the mainline railway in light of Government proposals to limit the scope of interfacing requirements for interoperability (see para 7). Further to this, it is proposed that the safety verification provisions be incorporated into the requirements for a Safety Management System (SMS). The approach does not alter the policy objective to ensure that safety risks continue to be controlled on the whole railway system.

Timing

2. Urgent. If the recommendations are adopted, HSE will immediately press ahead with arrangements to bring the Regulations into force by 2 April 2006 (to follow the anticipated handover of responsibility for railways from HSC/E to the Office of Rail Regulation (ORR) on 1 April 2006, and to meet the deadline of 30 April 2006 for implementing the Railway Safety Directive).

Recommendations

3. That the Commission:
- a. Agrees to the changes to the proposed ROGS regulations outlined in this paper: i.e. to place the duty to conduct safety verification of initial integrity into the Safety Management System (Part 2 of the regulations) and to apply it to the whole railway network, except where interoperability is applied. (Paras 7-21).
 - b. Notes minor drafting changes to Part 4 of the regulations (on safety critical work). (Para 22).
 - c. Confirms it is HSC's view, in light of the risks outlined in this paper, that an Approved Code of Practice (ACoP) on safety critical work should be introduced. (Paras 24-26).

- d. Agrees that the proposed Regulations (at Annex A) be submitted to Ministers to be signed in time for coming into force on 2 April 2006 and agrees the draft letter to Ministers attached at Annex B. (Para 27).

Background

Original ROGS Package (March 2005)

4. The ROGS package was designed to fulfil three key objectives: implement the safety management and certification provisions in the Railway Safety Directive; streamline the existing regulatory framework for rail by replacing regulations on safety cases, safety critical work and the approval of works, plant and equipment with one set of regulations; and implement Lord Cullen's recommendations following his inquiry into the incident at Ladbroke Grove.

5. HSC approved the proposed package of railway safety regulations, consulted on in 2004 and now known as ROGS, in March 2005 (HSC paper 05/03 refers). HSC/E's proposals included a requirement for safety verification to consider the initial integrity risk arising from the introduction of new or altered vehicles or infrastructure. The requirement replaces the previous Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations (known as ROTS). This would apply on all parts of the railway system except for the mainline, where it was anticipated that the interoperability procedures (required by EC Directives to harmonise technical standards) would provide the mechanism to ensure the control of the risk.

6. ROGS was submitted to the Secretary of State (SoS) for Transport in 2005, however the submission indicated that the package might need to be reviewed in light of the Department for Transport's (DfT's) approach on implementing the Interoperability Directives, in the event that it did not provide full coverage for the mainline.

Proposed changes to safety verification – consultation (September 2005)

7. In September 2005, DfT consulted on its proposals for interoperability. DfT proposed to implement interoperability according to a 'strategic threshold' and with a much narrower scope than was envisaged in March 2005. This would mean that parts of the mainline railway would not be covered by interoperability. In order to ensure that initial integrity issues would continue to be considered on the whole railway, HSC proposed that the requirements for safety verification be extended to the mainline. The Commission agreed that a question on this should be included as part of DfT's consultation on interoperability (HSC Paper 05/101 refers).

8. DfT's formal consultation ended in November 2005. In light of early feedback, HSE officials have worked with industry throughout the consultation, and afterwards, to refine the proposals for safety verification. HSE also took the opportunity to consider comments on other aspects of ROGS, although these were not intended to be part of DfT's consultation.

Argument

Response to consultation on extension of safety verification to the mainline

9. Given the reduced scope of DfT's proposed interoperability regulations, it was proposed, in DfT's consultation, that provisions in ROGS on safety verification be extended to cover the mainline railway network. An extract of DfT's draft consultation analysis report is attached at Annex C.

10. Although there was some support for the proposal, there was substantial co-ordinated opposition from the mainline railway sector, which would be most affected by the revised approach. It was perceived that there would be, for that sector, two parallel regimes for assuring initial integrity, which could result in duplication and confusion, particularly over the interface with interoperability. This was compounded by a 'lack of detail' that could lead to a wide variation in interpretation and introduce further uncertainty.

11. Further to this, it was maintained that the requirements for a Safety Management System (SMS) should provide the Safety Authority with sufficient assurance that safety risks would be suitably controlled.

12. The supporting schedule in the draft regulations and draft Approved Safety Requirements were criticised for similar reasons and did not meet the expectations of those used to the *Railway Safety Principles and Guidance*, which supports the current regulatory framework.

Revised approach to safety verification (February 2006)

13. Working closely with industry representatives, HSE officials have developed a revised approach to safety verification in ROGS, for the purpose of controlling risks associated with initial integrity.

14. It is now proposed that the provisions for safety verification are moved into Part 2 of the draft Regulations, and be incorporated as a higher-level duty under the requirements for a Safety Management System. The requirements will be somewhat less prescriptive (they will not require the creation of a specific safety verification file or certificate), giving the dutyholder more flexibility on choosing how to comply.

15. Dutyholders will be required to complete a process of safety verification prior to taking into service any new or altered infrastructure or vehicles (subsystems), except where interoperability procedures apply to a particular subsystem. Dutyholders will be first required to compare a new subsystem to that which already exists on the system and assess the risk of its introduction. If the new design is significantly novel and introduces a new or significantly increased risk to the system, then a written verification scheme would have to be drawn up, to be implemented by a competent person.

16. Documentary evidence of the application of the verification scheme would be retained to demonstrate how that part of the SMS continues to deliver statutory requirements to assure safety.

17. The approach is similar to that adopted in the offshore sector and HSE officials are satisfied that the revised approach will satisfy the policy objective of ensuring that initial integrity risks are suitably controlled. The requirements would be enforced in the field, meeting HSC's policy of moving specialist inspector resource out of direct approvals work and back into the front-line.

18. Given the higher-level approach to safety verification, it is proposed that the draft Approved Safety Requirements 'layer' be withdrawn from the proposals. The proposed Regulations would, however, be supported by extensive guidance.

Remaining concerns regarding safety verification

19. Once a broad consensus on the extension of safety verification was obtained with mainline sector representatives, HSE officials discussed the new SMS-based approach with stakeholders in the metro, tram, light rail and heritage sectors, and with trade unions. The metro sector, including London Underground, was content with the revised approach.

20. The light rail, tram and heritage sector continue to oppose safety verification, whatever form it takes. For light rail and tram operators, there is a remaining concern that the competent person will be under commercial pressure from the constructor to verify infrastructure works within tight timescales, leaving operational and, potentially, safety risks, to the operators on handover. Operator representatives have conceded, in discussions, that safety verification is not a problem in principle, for those aspects of the work that are in the control of the operator. It is HSE's view that the regulations apply equally to the constructor as they do to the operator.

21. Heritage sector representatives are opposed to the withdrawal of the current ROTS regime. The extension of safety verification, and its subsequent inclusion in the SMS do not appear to be the major concern. Heritage operators anticipate that there will be a limited pool of competent persons with experience in their activity, and that professional indemnity insurance would be difficult or expensive to obtain. However, HSE expects that a market to insure competent persons will exist, as similar roles already exist in other industries. Affordability can only be tested when the market itself is tested.

Other issues considered since March 2005 – Safety Critical Work

22. Although they were not subject to reconsultation, HSE has been asked to look again at the requirements for safety critical work. Industry representatives were concerned that the wording of the requirements to assure safety critical work implied a repetitive cascade of checks and maintenance of paperwork throughout the supply chain. This was a misunderstanding of the policy intention. The text has been

modified to clarify the policy objective, i.e. to ensure that safety critical tasks are carried out or supervised by a suitably trained person.

23. Trade unions have expressed concern that the regulations would not cover safety critical work undertaken on infrastructure in sidings. The design and maintenance of sidings, including those in goods depots and maintenance facilities, are out of scope of the safety critical work provisions in ROGS, but are covered in general health and safety legislation. We believe that this is a proportionate approach to target risk and gives a consistent approach to facilities with similar risk profiles. Sidings were previously commonly exempted from the Safety Case Regulations because of the low risk involved. HSE has now taken the opportunity to align ROGS with current practice by excluding them from the regulations.

24. HSC members and trade unions have supported the proposed introduction of an ACoP on managing fatigue of safety critical workers, but it is now a cause for concern within HSE. Following the transfer of rail responsibility from HSC/E to ORR any ACoP for railways would immediately become 'fossilised.' This is because ORR will not have ACoP making or modifying powers. HSE considers it to be undesirable to proceed with the introduction of an ACoP in these circumstances and asks HSC to consider the risks in the paragraph below.

25. Such an ACoP could never be modified, withdrawn or replaced. It might not be possible to align supplementary advice developed by the safety authority in light of new knowledge or experience in applying the ACoP. This would cause confusion amongst dutyholders on the requirements and would render the ACoP difficult to enforce. The ACoP would have uncertain legal status, which would prove difficult if its application was ever tested in the Courts.

26. The Commission is asked to confirm whether it supports the introduction of an ACoP, notwithstanding the risks outlined above, or whether it would like HSE to pursue an alternative approach to guiding stakeholders on the management of fatigue.

Next Steps and Timing

27. If the Commission approves the revisions to ROGS with respect to safety verification at this meeting, HSE officials will work to ensure that the revised package is delivered to Ministers as soon as possible. A draft letter to the Secretary of State for Transport is attached at Annex B.

28. If Ministers are content, it is anticipated that the regulations would be made on 3 March and laid before Parliament by 10 March, with a Coming Into Force (CIF) date of 2 April. It is anticipated that the CIF will directly follow that for the Railway Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations (expected to CIF on 1 April 2006).

Presentational Issues

29. Before coming into force, HSE intends to present changes to the regulatory regime in a series of workshops for inspectors. Industry representatives will then be

invited to take part in a conference, including sessions to explain the new European approach to safety certification under the Railway Safety Directive.

30. Since the regulations will come into force after the anticipated transfer of HSE Rail to ORR, the new package will be formally announced in an ORR Press Release. The regulations will be supported by guidance and extensive information on ORR's website.

Costs and Benefits

31. The proposed change to the safety verification process is the only major change to the ROGS package since March 2005. Since the Regulatory Impact Assessment (RIA) (at Annex D) was submitted, HSE has assessed the change in approach to safety verification to be cost neutral or cost beneficial. An analysis has been annexed to the RIA and a summary is given below.

32. It is believed that the more flexible requirements under a SMS would result in a reduction of bureaucracy, with costs savings of approximately 10% for the whole railway system, compared to the previously proposed requirements.

33. It has always been expected that the safety verification process will be cheaper than the interoperability process (when comparing both to the current ROTS regime), but with the application of safety verification extended to the mainline, the two have been directly compared. Since it is not known how frequently safety verification will be applied on the interoperable railway (instead of interoperability), a range of costs savings estimates is presented.

34. Using the RIA's original timeframe, if interoperability is applied to all new projects, then the costs savings only reflect those on the non-mainline and range from cost neutral to £60,000. If interoperability is never applied on the mainline, and safety verification is applied, then the costs savings range from approximately £4.7 million to £9 million. Ranges for 10%, 50% and 90% application of safety verification on the mainline are also presented.

35. The RIA has been amended to include some minor corrections, and includes a reference to the annexed safety verification analysis described above. For the purposes of Parliamentary scrutiny of the implementation of the Railway Safety Directive (RSD), the ROGS RIA will include a further annexed 'stand-alone' RIA for the draft Railways (Access to Training Services) Regulations 2006. These regulations do not form part of HSC/E's proposals, and their reference in this paper is purely for HSC's information.

Consultation

36. Within HSE Rail (Rail Policy and HMRI) and with HSE's Legal Adviser's Office.

Financial Resource and other implications for HSE

37. Following the transfer of HSE Rail to ORR, there are no ongoing costs anticipated for HSE.

Environmental Implications

38. None.

Other Implications

39. None.

Action

40. HSC to consider the recommendations in paragraph 3 of this paper.

Annexes

A - Draft ROGS Regulations

B - Covering letter to Secretary of State for Transport

C - Summary of consultation responses (question on safety verification)

D - Regulatory Impact Assessment including Annex 1 (analysis on safety verification proposals), but not including Annex 2 (RIA for access provisions)