

PROPOSED AMENDMENTS TO THE RAILWAYS (SAFETY CASE) REGULATIONS 2000

REGULATORY IMPACT ASSESSMENT (POST-CONSULTATION)

PURPOSE AND INTENDED EFFECT

Issue

1. The Ladbroke Grove Rail Inquiry Part 2 Report recommended the creation of a new, independent Rail Industry Safety Body, which the railway industry intends to call the Rail Safety and Standards Body (RSSB). In addition, the Inquiry recommended removing or amending existing duties on Network Rail (formerly Railtrack) and other infrastructure controllers, such as London Underground to procure safety case assessments and annual audits from an independent “assessment body”, in practice Railway Safety. Railway Safety was established in 2000, as part of Railtrack Group but independent of Railtrack plc, the infrastructure controller. Railway Safety is expected to be wound up as a consequence of the creation of RSSB in Spring 2003. The Health and Safety Commission’s (HSC’s) proposals amend the Railways (Safety Case) Regulations 2000 to reflect the creation of RSSB and Lord Cullen’s recommendations.

Cost of railway incidents

2. Railway risk, particularly the risk of train accidents, has been the subject of extensive investigation by a range of both public and private bodies. DTLR (now DfT) have recently commissioned external research¹ which *provisionally* estimates that the total annual losses from railway incidents (of all types) is £120 million each year in current prices. The research is not yet finalised, and may be subject to change. The estimate is also subject to uncertainty in the data, and the figure of £120 million should be taken as a good central estimate. The estimate includes all the losses associated with accidents, including valuations for fatalities and injuries which follow the DfT’s valuation of fatality prevention (based on the willingness to pay among a wide group to avoid a small increase in personal risk, equivalent to one fatality amongst the whole group). The cost of public inquiries that may arise from major incidents is not included.

Objectives

3. The infrastructure controller - Network Rail so far as the main network is concerned - is required by the current Railways (Safety Case) Regulations to procure the “assessment body” (in practice Railway Safety) to carry out -

(1) assessments of infrastructure controllers’ and train and station operators’ safety cases; and

¹“Costs and benefits of reducing railway accidents”, Prof Andrew Evans, Centre for Transport Studies, University College, London (forthcoming).

- (2) annual health and safety audits of infrastructure controllers and train and station operators.

Options considered

4. The consultative paper proposes -

- (1) removing the infrastructure controller's duty to procure safety case assessments; and

- (2) amending the infrastructure controller's duty to procure annual audits, by enabling these audits to be conducted by any 'competent body' (instead of from Railway Safety as at present). The paper also floated the following alternative options:

- a) to require each railway operator (for example Network Rail, London Underground, and train and station operators) to procure an annual audit of its own activities;
- b) to specify that annual audits should be conducted by RSSB; and
- c) to delete the requirement for annual audits altogether. Schedule 1 to the Regulations will still require every safety case to demonstrate adequate arrangements for audit, but the specific requirement for an annual audit by an external body would disappear.

Following consultation, the HSC intends to pursue the proposal at paragraph 4(1) above on safety case assessment and option a) above on audit.

5. The possible economic impact of the proposals and options is considered below. In each case, the baseline of analysis is a continuation of the regime as it currently exists. This assessment takes account of information from Railway Safety, HSE, and external research.

BENEFITS

Health and safety benefits

6. In relation to safety case assessment, some efficiency benefits will arise from simplifying and shortening the current assessment process (removing one layer of assessment), and removing some duplication from the system. These efficiency benefits should have some positive, but unquantifiable, effects for health and safety.

7. Removing one layer of assessment could potentially increase the chance of health and safety issues not being fully addressed during the overall assessment process. However, this will be addressed by some additional assessment activity on the part of both Network Rail (in relation to train operators' safety cases) and HSE.

8. So far as annual audit is concerned, in economic terms there are few significant differences between the existing requirements, the HSC's main proposal and options a) and b) above; each involves an annual audit of infrastructure controllers and train and station operators, the only differences being in who procures the audits and who conducts them. Option c) (removal of the existing duty) might involve some reduction in cost to railway operators, though they would still be required to demonstrate adequate arrangements for audit, but the HSC does not consider it acceptable because external audit can add value to railway operators' own internal audits.

9. The amended proposal on audit, based on option a), differs from the present position in two respects: the duty to procure annual audit will be on each railway operator (rather than concentrated on infrastructure controllers), and it will be possible for any competent body to conduct annual audits. The latter has potential implications for health and safety, if it were to result in weak audits conducted by unsuitable bodies. HSE will seek to ensure that this does not happen by defining 'competent body' in terms of its competence and independence, publishing principles which railway operators should follow, seeking amendments to safety cases to set out the arrangements which operators will follow, and examining audit findings and ensuring that significant issues are addressed via HMRI's intervention (inspection) strategies. HSE also expects the proposal to bring some benefit in terms of fresh approaches to audit, and the ability of operators to change their auditor periodically. Furthermore, in its capacity of providing leadership, RSSB will consider running an accreditation scheme for auditing bodies working in the railway industry.

10. In terms of objective risk, HSE believes that its proposals are broadly neutral when viewed in isolation. However, they form part of a large package of measures arising from Lord Cullen's report, including the creation of RSSB whose purpose will be to lead the industry towards higher health and safety standards. To that extent, the proposals should have a positive, though unquantifiable, impact on health and safety. Even a 1% reduction in the annual losses associated with railway incidents would be valued at some £1.2 million a year.

Other benefits and competition assessment

11. The proposals, and the wider package of which it is part including the creation of RSSB, should reduce societal concern. The present arrangement, where Railway Safety is part of Network Rail Group, is seen by many (including Lord Cullen in his report on the Ladbroke Grove accident) as not wholly satisfactory. The proposals will have a positive impact in relation to competition. Placing the audit duty on each railway operator, rather than concentrating the duty on infrastructure controllers, will improve the competitive position since different operators will be free to make different choices of audit body.

COSTS

Business sectors affected

12. The proposals affect railway operators that hold safety cases under the Railways (Safety Case) Regulations: infrastructure controllers, train operators and

station operators. However small operators and heritage railways which are wholly 'vertically integrated' (i.e. where the infrastructure controller, train and station operator are one and the same) are not subject to the current assessment and audit duties, or to the proposals. The proposals will directly affect that part of Railway Safety that deals with assessment and audit. This is a small part of its work, other major areas including managing Railway Group Standards, risk assessment work and technical research and research management.

Compliance costs to business, charities and voluntary organisations

13. The railway industry's costs will not be significantly affected by these proposals. Except for London Underground, railway operators do not pay Railway Safety for assessments and audits functions directly; the cost is part of the total cost of Railway Safety which Network Rail pays and recoups from train operators. Where staff transfer from Railway Safety to Network Rail in order to increase Network Rail's assessment and monitoring effort, they will remain part of Network Rail's costs, which will be recouped. Similarly, where HSE's assessment and audit activity increases as a result of the proposals, the additional cost will be recouped from railway operators through HSE's charging regime. However, to the extent that there is some duplication in the assessment system, there will be some overall cost saving. The revised arrangements for annual audit may also result in some cost saving, since they provide operators with choice, providing conditions for competition.

14. It is difficult at this stage to estimate the precise effects for Railway Safety. It currently has fourteen specialist staff engaged in audit, spending about two-thirds of their time on audit work (ten equivalent full-time posts). A further two full-time staff are devoted to safety case assessment work, with technical support from other specialist Railway Safety staff amounting to about two further full-time equivalent staff. All these staff are employed by Network Rail on secondment. When RSSB is created and the secondments end, a number of these staff may return to Network Rail, enabling Network Rail to increase its activity in the areas of assessment and compliance monitoring; others may transfer to RSSB, which may, as an interim measure, continue to offer assessment and audit services in competition with others. If as a result a small number of existing staff are no longer needed for assessment and audit functions in Network Rail or Railway Safety, their skills are unlikely to be lost as they should find ready employment elsewhere in the industry.

Costs for a 'typical' business, small businesses and total compliance costs

15. There are no additional compliance costs associated with these changes.

Costs to HSE

16. The proposals imply some increased HMRI activity in assessing safety cases and reviewing intervention plans in the light of significant audit findings. This increase is likely to be modest, because of existing duplication in the system and the fact that Network Rail intends to increase its activity in this area, and is currently expected to be accommodated within existing HMRI resources. However the

situation will be need to reviewed once the changed arrangements have bedded down. The costs will largely be borne by the industry under HSE's current charging regime. There are no other costs to HSE, except for the small cost of developing the policy.

ENVIRONMENTAL IMPACTS

17. None.

BALANCE OF COSTS AND BENEFITS

18. As discussed above, these proposals may bring some health and safety benefits arising from more efficient targeting of resources, and are closely linked to the creation of RSSB which should bring important health and safety benefits to the industry.

19. The proposals do not involve any significant additional cost, and some savings resulting from the removal of one layer of assessment (currently paid for indirectly through Network Rail's access charges) and possibly also from increased competitiveness in the provision of audit. In cost terms there is little to choose between the various options concerning audit which were floated in the consultative document, and the HSC's choice of option a) (placing the duty on each railway operator) rests on wider policy considerations.

20. In cost-benefit terms, this assessment therefore shows there to be a clear overall benefit in the HSC's proposals.

Uncertainties

21. These are as stated in the text.

Arrangements for monitoring and evaluation

22. HSE has begun a fundamental evaluation and review of the Railways (Safety Case) Regulations, which is expected to be completed in 2004. This will include an independent impact evaluation, which will examine the initial impact of the Regulations (first introduced on privatisation in 1994), and of the subsequent amendments.

HSE

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February 2003

DEPARTMENT FOR TRANSPORT
FEBRUARY 2003

REGULATORY QUALITY CERTIFICATE

Regulatory Quality Declaration.

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed by the responsible Minister

Date

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