Summary of responses to the HSC Discussion Document 'Safety on the Railways - Shaping the Future' Published on 27 October 2003

Introduction

1. There were 67 written responses to the Discussion Document (DD). The respondents were widespread across the rail industry and included 18 from heavy rail, 15 other rail, 4 Infrastructure Maintenance Contractors (IMCs), 6 suppliers, 2 trade unions and 22 others (passengers, other government organisations, consultants and bereaved). 8 respondents requested that their response remain confidential; copies of the remaining 59 have been sent to the public inquiry points in London, Bootle and Sheffield, where they can be viewed upon request.

General Comments

2. Respondents generally welcomed the process of engagement and dialogue, of which the DD is part, and supported the drive for more effective, simpler and better-focussed regulations.

3. However respondents, particularly from the mainline railway, made a number of general points in a wider context, focussing on what the DD does not address rather than what it does. A summary of the main points follows, with a brief explanation or indication of the action that we are taking in response.

4. The DD does not explore the role of the Health and Safety Commission/Executive (HSC/E) in the broader picture of strategic and economic regulation of the railway industry, and does not consider whether the Health and Safety at Work Act (HSWA), enforced by HSE, is appropriate for regulating railway safety

- The DD is not the appropriate means to explore HSC/E's role or the appropriateness of HSWA in regulating rail safety. In January Ministers announced a review of the structure of the rail industry, including the way safety is regulated. The Department for Transport (DfT) is leading the review, which will report in the summer of 2004.

5. The UK rail industry should not be subject to a general requirement to reduce risk ALARP (as low as reasonably practicable)

'Reasonably practicable' in the Railway Safety Directive should not be taken to have the same meaning as it has acquired in British law

- Other industries, including industries where there is potential for serious consequences in the event of an accident or incident, do not have difficulties in meeting a requirement to reduce risk ALARP. HSE is seeking to explore with the railway industry the source of their difficulties.

- Looking ahead, the Railway Safety Directive includes a goal setting duty qualified by reasonably practicability[1]. No decisions have yet been made on how this will be implemented. HSE will continue to work in an open process of dialogue with stakeholders.

6. HMRI should not be both 'permissioner' and 'prosecutor'

- Separating the roles of those who issue and revoke 'permissions' from those who enforce other health and safety requirements would double the number of enforcers, leave duty holders open to inconsistent enforcement, and would run counter to the principles of good regulation. There is no such separation in other health and safety permissioning regimes operated by HSE or, as far as we know, elsewhere (e.g. local authorities license pubs, cinemas, etc and enforce the licence conditions as well as other health, safety and environmental requirements that apply).

7. HSC/E should do more to educate the public on acceptable probabilities of railway accidents

Rail safety is out of proportion in comparison with road safety and the rail industry is over-regulated

- We believe the public has an innate, common sense understanding of low probability high consequence events – their response to chance events coming together (Great Heck) was very different from their intolerance of basic safety management failures by those charged with managing a key element of the national infrastructure (e.g. Ladbroke Grove). Furthermore, HSC/E advocacy on behalf of the rail industry would compromise its position as the independent safety regulator. This would not be in the interests of the industry or the public. However, HSC/E will use its perspective as the regulator of risk from a wide range of hazardous activities to inform and target its interventions, and will explain its approach. HSC/E often has made statements that railways are a safe form of transport.

- At their meeting on 14 October 2003 the Commission noted that comparisons between levels of public safety on the railway and private safety on the road are largely irrelevant – each is addressed in a way that meets good practice and the expectations of society as a whole. A more relevant comparison (made in paragraph 6 of the DD) is between rail and coach travel.

[1] The Directive requires "that railway safety is generally maintained and, where reasonably practicable, continuously improved".

8. The UK rail industry should not be required to do more than is set out in European requirements

- European requirements are binding only on the interoperable railway, and we agree that there should be no 'gold plating'. Some existing requirements, e.g for external audits, will be removed. We will apply proportionate controls on metros, local and heritage railway already subject to national requirements. The existing Railways (Safety Case) Regulations will be revoked. The outcome will be simpler, more consistent and proportionate requirements for safety management across the rail industry.

9. Cullen recommendations should be dropped where things have moved on

- We agree that Lord Cullen's recommendations should not be taken forward if they are no longer appropriate. However, we are conscious that Ministers have accepted all Lord Cullen's recommendations and we have to be sure that any not progressed have been properly explored and evaluated. We are still working within the 3-year timescale Lord Cullen set.

10. The DD does not address the issue of shared risk in railway operation

- The DD follows the approach in the Railway Safety Directive, which everyone accepts as the way forward for the mainline railway. This places responsibilities for safety firmly on railway undertakings and infrastructure managers, and requires them to cooperate with each other as appropriate in implementing necessary risk control measures. This aligns broadly with the approach taken now in the Railway Safety Case Regulations made under HSWA.

11. There is insufficient emphasis on costs and cost reduction

The Regulatory Impact Assessments (RIAs) are poor

- Costs and benefits are mentioned explicitly in the Chair's foreword to the DD, and are listed as a factor we take into account in regulating hazardous activities (paragraph 29 in the DD). Consideration of costs and benefits is inherent in HSC/E's approach and in the concept of reducing risk ALARP.

- The five RIAs are initial stabs only – the intention is that industry should contribute data to refine the RIAs. However, to date data from industry has not been forthcoming, though some offers have been made to input at a later stage.

Chapter 2 – Transport Systems in Scope of this Discussion Document

12. Many respondents recognised the potential benefits of bringing greater commonality of scope or of merging the regulations together, as this would make the regulatory framework clearer and easier to understand. However this must not be at the expense of placing inappropriate requirements on some operators.

13. A number of respondents suggested there should be differentiated requirements for different types of railway and transport system.

14. The suggestion for a 'risk threshold', below which operators would be excluded from scope of some or all regulations, was generally welcomed in principle. However many respondents felt that it would be difficult to frame a suitable exclusion in regulations, because of the large number of factors and combinations of factors that would need to be considered.

Chapter 3 – Review of Railways (Safety Case) Regulations 2000 (RSCR)

Safety Directive

15. Nearly all respondents agreed that the regime in the Directive had advantages compared with the current Safety Case Regulations, including the submission to HSE of rather higher-level documentation compared with existing safety cases, and the fact that changes will not in future require HSE acceptance unless they substantially alter the type or extent of the operation.

16. Most of the other changes that will be necessary in consequence of the directive drew little adverse comment. These include removing existing requirements to procure annual external audit and to submit risk assessments to HSE for acceptance, and new requirements to report annually to HSE on progress with safety targets and indicators and the results of internal audits.

17. The removal of specific duties on the infrastructure manager, including duties to make recommendations to HSE on the acceptance of train operators' safety cases and to check that accepted safety cases are complied with, was widely welcomed. However Network Rail expressed concern that without explicit duties of this kind the new regulations will not reflect the full scope of its obligations under HSWA.

Other Issues

18. Risk assessment: a substantial number of respondents favoured a railway-specific requirement to undertake and record risk assessments, amplifying existing requirements in the Management of Health and Safety at Work Regulations. Others preferred to rely on existing requirements supported by railway-specific guidance.

19. Stations: most respondents agreed that the new Regulations should continue to cover, in principle, the whole of stations rather than just platforms and the immediate access to platforms.

20. IMCs and others operating rail vehicles for maintenance or construction purposes: nearly all respondents supported removing them from scope where they operate entirely within possessions. However, most, including the Railway Industry Association which represents such companies, thought they should be within scope where they operate vehicles on the main network.

21. Other provisions in the Safety Case Regulations but not specified in the directive: nearly all respondents wished to retain provisions on consultation with employees, public availability of safety cases, record-keeping, a right to appeal (currently to the Secretary of State), and a power of HSE exemption (which would have to be limited to operations not subject to the requirements of the directive, i.e. not on the main network).

22. Third-party assessment of safety cases: most respondents were unhappy about moving to a system analogous to the 'notified body' system for interoperability where HSE makes only the final decision, at least for the present. Additional cost, absence of safety benefit, and the importance of HSE sustaining its relationship with dutyholders were commonly cited.

Scope

23. The proposal to extend the scope of the new regulations beyond the mandatory scope of the Safety Directive to self-contained railways, and possibly other transport systems such as tramways drew considerable comment. The Confederation of Passenger Transport, representing light rail and tramways, and a number of their members who responded separately, argued that light railways and tramways should be treated differently from the main network because of their different mode of operation and risks.

24. Most respondents considered that other guided transport systems such as monorail systems should continue to be excluded, although some, including the Rail Safety and Standards Board[2] (RSSB) and the Rail Passenger's Council thought there was a case for making them subject to a proportionate permissioning regime.

25. The Heritage Railway Association proposed an exclusion from the regulations that will replace the Safety Case Regulations, for self-contained heritage railways with a line speed not exceeding 40 kph. This should, they

[2] RSSB is a not-for-profit company owned by major industry stakeholders. The company is limited by guarantee and is governed by its members, a board and an advisory committee. It is independent of any single railway company and of their commercial interests.

suggested, be coupled by a power for HSE to authorise the railway to permit occasional access to other operators' charter trains, or to operate at higher speed, without becoming subject to the regulations.

Chapter 4 - Review of Railway and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994 (ROTS)

Type of permissioning regime

26. The majority of respondents agree that any future permissioning regime to replace ROTS should follow the 'lifecycle' model proposed in the DD. This would involve revoking ROTS, building a notification requirement for new works into the revised safety management regulations and extending the requirement to prepare a safety case to all those transport systems brought within scope.

27. **However**, a majority of respondents from transport systems in the non-mainline, non-interoperable sectors (i.e those in the 'remainder' of ROTS) are in favour of retaining ROTS in an amended form. These respondents (including the Heritage Railway Association, London Underground, the Confederation of Passenger Transport (representing tram and bus operators) and Tramtrack Croydon) believe that ROTS has worked well and that an approvals system is needed 'to ensure that there is adequate inspection of new works so that promoters and constructors get it right'. They value the operational and financial 'comfort' factor provided by the approval. The 'interoperable' permissioning model, on the other hand, is seen by these dutyholders as costly and there may be practical difficulties in agreeing appropriate standards and in finding qualified third parties to assess designs. Their main objection to the 'lifecycle' option is the proposed extension of the safety case regime. This is seen as unnecessarily burdensome, bureaucratic and costly in view of the perceived lower risk of the transport systems concerned.

Acceptance/authorisation of designs

28. Most respondents do not distinguish between acceptance and authorisation, but the majority feel that HSE should provide some form of affirmative action in response to designs.

Independent, third party assessment of designs

29. A slim majority of respondents agree that there might be a role for independent assessment, but nearly all think that duty holders should be able to use internal assessment, as long as it is sufficiently independent.

Scope

Works, plant and equipment

30. The majority of respondents agree that any future permissioning regime for the introduction of new works, etc should only apply to works, plant and equipment giving rise to 'significant safety risks' due to 'size, complexity or …novelty of the works themselves'. Lower risk, minor works should be excluded from scope.

Transport systems

31. The majority of respondents agree that higher risk transport systems such as metros, maglevs, monorails, people movers and novel transport systems should be included in any future permissioning regime for new works, etc. There is also broad agreement that tramways and heritage railways should be in scope, but any regulatory requirements should be proportionate to risk and, in the case of heritage railways, should reflect the extent to which they interface with the mainline railway.

32. Most respondents agree that trolleybuses should be taken out of scope on the grounds that they are adequately covered by road traffic and construction legislation. However, the Confederation of Passenger Transport believes that there is a continuing need for a permissioning regime due to the specific hazards associated with the electrification of trolley bus systems.

33. Similarly most respondents agree that guided buses should be taken out of scope, but the Confederation of Passenger Transport believes, subject to further consultation with members, that the infrastructure at least should continue to be in scope of permissioning requirements.

Chapter 5 - Improving the management of the supply chain through certification of suppliers of safety critical products and services

34. There is broad support for the need to improve the management of the supply chain in the rail industry and for the certification of suppliers of safety critical products and services to the rail industry. The majority of respondents support accreditation of the certification scheme. No significant objections were raised to the United Kingdom Accreditation Service (UKAS[3]) taking on this role, although a minority stated that the use of other 'accreditation' bodies should also be explored. Some respondents questioned the benefits of a safety only accredited certification scheme. The majority of respondents wanted the scheme to look at all issues relating to performance i.e. safety and business critical products and services. Many respondents said that one of the most important benefits of such a scheme would be a reduction in 'death by audit' (whereby numerous companies audit suppliers for similar reasons and ask similar questions).

35. There is broad agreement that this should be a voluntary system and that is should be developed and overseen by a Steering Group led by the RSSB and made up of key industry stakeholders. Many respondents

[3] UKAS is the sole accreditation body recognised by government to assess organisations that provide certification, testing and inspection services against internationally recognised standards.

considered that the scheme should be limited to those products and services where it is likely to deliver enhanced safety assurance in a cost-effective manner. This would ensure the greatest economic benefit for the industry. Many respondents thought the scheme should initially be limited to key products and services until the scheme had bedded down. There was broad support for the alignment of definitions within existing schemes and with legislation, such as the Railways (Safety Critical Work) Regulations (if this is in place). Although, some thought that the scheme should not be constrained by existing definitions. Alignment was considered by many to aid consistency.

36. The framework for the scheme should apply to both products and services. Although many recognised that there would have to be differences in approach at the lower levels. There were mixed views as to what level the certification should be at – company, product, systems or process. Many considered that the main benefit came from looking at generic systems. There was strong support among duty holders to enable them to undertake additional assessments if the generic assessments did not look at all issues relating to their undertaking. Others raised concerns that assessment by dutyholders could lead to inconsistencies.

37. There were mixed views on how certification should be kept under review. Many considered that risk should be the basis, whereas some others thought it should be a fixed period. Many said that ongoing monitoring would still be necessary and that any information fed back on supply performance should be acted upon. One mentioned the need for a confidential reporting system for suppliers.

38. There were mixed views on who should define safety critical. Most agreed that the framework criteria would assist the process, but many thought that assessments needed to be done by the duty holder and the supplier on a case-by-case basis. Concern about knowledge of the assessor was often mentioned. Many thought that HSE's Railway Inspectorate (HMRI) should not ask for additional evidence if the duty holder signed up to the scheme and outlined this in the Railway Safety Case. They considered that HMRI's safety case assessment criteria should be changed accordingly.

39. London Underground appeared to be the only non Network Rail controlled infrastructure duty holder interested in the scheme, but was concerned that the Steering Group and scheme being developed would be mainline led. There was no support from light rail, trams and heritage for a scheme. It was thought by these stakeholders that because of their bespoke systems, specialist suppliers and lower risks, supplier accreditation would not be cost effective.

40. Train operators on the mainline put forward an alternative model for UKAS accreditation of auditing companies to certify suppliers. However, the core elements of this scheme align with the model proposed.

41. Concern was raised by a small minority that suppliers who are not members of the Railway Industry Association, the main trade association representing the UK rail industry suppliers, may not be adequately represented on the Steering Group. Most said that suppliers of training provision and medical practitioners should be subject to the scheme. Although some thought personnel certification may be required. Many mentioned the RSSB Research on supplier management and that the research attributes could be used as framework criteria. There was strong support for building upon existing schemes and that they should be benchmarked against a common framework.

Chapter 6 Improving the management of competence, fitness and fatigue of safety critical workers in the rail industry

Scope

42. The majority of respondents, including the Association of Train Operating Companies[4] (ATOC), RSSB and Network Rail believe the Regulations should be repealed and subsumed into the Railways (Safety Case) Regulations or be laid down in Railway Group Standards to provide a simplified framework.

43. Many felt the scope should include infrastructure controllers, train operators (passenger and freight), contractors working on the infrastructure or train systems and any other personnel who can affect the safe movement of trains including designers and inspectors. Some respondents felt all dutyholders with management responsibility for planning and controlling requirements of competence, fitness and fatigue which relies greatly on worker input and performance should be within the scope of the Regulations.

44. Mixed views were expressed in terms of which railway systems needed to be in scope. Views of the respondents varied from all railway systems being in scope to suggestions that lower risk railways, such as light rail and trams, could be excluded. Many respondents preferred a risk-based approach, with respondents from the light rail, the heritage sector and tramways suggesting this could be on a case-by-case basis.

Safety Critical Work Definition

45. Overall consensus was greater clarity could be achieved for the definition of safety critical work through option (a), which suggested amending the definition of Safety Critical Work. This option provided a certain level of clarity and uniformity in its application across industry. Furthermore, many felt this option needed to be supplemented with updated guidance.

46. A number of suggestions were made in clarifying the definition through work activities. This could be by splitting the Regulations into operations,

[4] ATOC represents 24 train operating companies.

engineering and infrastructure maintenance and to include those in control of safety critical work.

Competence management system (CMS)

47. On the whole, respondents recognised the importance of a CMS in demonstrating a robust and vigorous management system. However, many considered that there should not be one 'standard format' CMS, but that the arrangements should be proportionate to the size, type of activities and the risks those activities create.

48. Generally, respondents recognised fitness and fatigue to be an integral part of the dutyholder's safety management system. Some considered that there should be separate arrangements for the management of competence, fitness and fatigue.

Medical fitness assessments/Standard setting body

49. In general, most respondents agreed with the accredited certification schemes as in option (b) and (c) in order to cover both contracted and directly employed medical practitioners. The overall majority of respondents favoured option (b), which suggested developing an accredited certification system for medical/ assessment services. This option was seen as more capable of adjusting to evolving best practice.

50. There were mixed views on whether the accredited certification of medical services should be voluntary or regulated. Some respondents including Network Rail, ATOC and RSSB did not believe the accredited certification scheme should be regulated. They believed they should be included in the Railway Group Standards and contractual safety cases or contracts for Contractors. A slight majority favoured the voluntary route.

51. Most respondents suggested that RSSB was the most appropriate organisation to maintain medical fitness standards for railways operating on the national rail infrastructure and the Heritage Rail Association for the Heritage sector (based upon the RSSB guidance). Many recognised the advisory role that the Association of Rail Industries Occupational Physicians could make in developing these standards.

Fatigue

52. Although the overall consensus was to include all the suggested fatigue factors (hours of work, work activity, duration of work activity, work pattern and human factors) in an Approved code of Practice (ACoP) / guidance. The RMT union and HSC's Railway Industry Advisory Committee's Human Factors Working Group considered that the proposed Regulations should still require employers to have in place arrangements for the control of hours worked/work patterns within defined limits on maximum hours, minimum rest

breaks and arrangements for workers to be properly rested when commencing their duty. Many considered that more detailed requirements should be specified within the ACoP. Whilst others believed the focus of the Regulations should be on fatigue management, and should not go beyond requiring dutyholders to have systems in place for managing risks other than that associated with employee fatigue.

53. A number of suggestions were made in reference to examples of good practice in managing fatigue:

- HSE Fatigue index
- RSSB "The impact of Shift work on fatigue and safety"
- Western Australian Government- "Fatigue management for Commercial Vehicle Drivers"
- Amey Rail Document "Worksafe procedure- Assurance Management System".

54. One respondent suggested formal research was necessary to determine best practice within the rail industry.

Means of Identification (ID)

55. Many respondents expressed their views on the validity of an ID for safety critical workers. Some respondents, including ATOC, believed the ID cards were of limited value and if a requirement for an ID card was still retained then any information required should be kept to a minimum. The freight operators and suppliers were also in favour of this minimal approach; the former considering the individual's name, employer and photo should be all that is needed on the card. Others, including London Underground, the trade unions and some IMCs considered it important to include information on the individual's competencies if there was to be an ID card.

56. A number of respondents (Network Rail and maintenance companies) suggested the existing Sentinel card system was an excellent model for a safety critical ID card.

57. The light rail, tramways and metros were not in favour of a national standard ID across all sectors

58. On the issue of using smart card technology, of those that commented there were mixed views. While some respondents favoured its implementation, as they could see the possible benefits of such technology in terms of data capacity and ease of use, some saw possible problems in terms of cost. Although the smart cards themselves are low in cost, the portable card readers could prove prohibitively expensive. These reservations based on cost were also expressed by the heritage sector, due to its reliance on volunteers and the small scale of its individual operations.

Chapter 7 - Assurance of competence and fitness through the development of an accredited licensing system for key safety critical workers

59. Not all respondents to the DD commented on Chapter 7 and the questions dealing with the proposal to establish a non-regulatory accredited licensing system for key safety critical workers.

60. ATOC (which represents 24 train operating companies) did not believe that a voluntary, industry owned, accredited national licensing system for drivers was necessary. With one exception, this was also the view of those train operating companies operating on Network Rail controlled infrastructure that submitted an individual response.

61. RSSB raised concerns about the costs of an accredited national licensing system and that HSE should not try to anticipate future European requirements for driver licensing[5]. However, it was prepared to facilitate work with its member companies to address issues in respect of licensing of rail industry staff.

62. There was little support from Heritage, Light Rail and Metro operators for a national licensing system.

63. Otherwise, there was broad support across other respondents for an accredited national licensing system. Several respondents regarded the better tracking of workers as being the greatest benefit in such a system.

64. There was a wide range of views expressed on the detailed questions raised in this chapter of the DD. Those respondents that did not support an accredited national licensing system, in many cases, chose not to answer many of these questions.

65. Respondents were generally less supportive of accredited national licensing for signallers. The main reason given was there was less need for portability and that only one employer, Network Rail, employed the majority of signallers.

66. There was no consensus for accredited national licensing of other key safety critical workers. Network Rail considered that the SENTINEL system already has many of the features of the proposed licensing system.

[5] The European Commission committed in July 2003 to producing a proposal on train driver certification. A proposal for a Directive of the European Parliament and of the Council on the certification of train crews operating locomotives and trains on the Community's rail network, COM(2004)142 was published on 3 March 2004. If the proposed Directive is adopted, it will have to be implemented in the UK and this will require a regulatory route. For further details see: http://europa.eu.int