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27th August 2014

Dear Mr. Carey,

**RE: Revising Railway Safety Regulations**

Thank you for providing us with an opportunity to comment on the ORR's proposals to modernise the railway safety regulations. We note that these are being made with the intention of simplifying and updating the regulations in line with the Government's Red Tape Challenge. This is something we fully support and we believe that this significant opportunity to further clarify and consolidate regulations can go further than your current proposals.

It is our contention that there is a compelling argument that can be made that there is no need for a requirement for a residual stand alone regulation with respect to the mainline railway at all, since all of the remaining aspects could be addressed by small changes to Railway Group Standards, and minor revision to ROGS which is currently under review due to changes in annual reporting requirements.

There would however, remain a requirement to pick up some of the proposals within a regulation for operators who fall out of the Safety Directive arrangements, we propose that their requirements are consolidated into one regulation for this group of actors.

If this aspiration is not ultimately realised and ORR determine that a separate regulation is required we suggest that rather than having a single set of regulations applicable to all railways, separate regulations be provided for mainline and non-mainline railways to mirror the differentiation used in ROGS. Benefits of this would be:

- A marked reduction in the number of exemptions needed (noting that there is a significant workload on those seeking exemptions – mainline operators should not have to apply for

derogation from regulation, this also places acceptance of risk onto the regulator granting exemption);

- A reduction in the content and hence total size of the regulations applicable to either mainline or non-mainline railways as content not relevant to that type of railway would not need to be included, thereby simplifying the process; and
- The regulations would be made clearer and hence easier to understand and interpret as there would be far fewer exceptions and exemptions applicable to any individual railway than is currently the case, placing the industry onto a risk based approach consistent with Safety Directive and HASAW principles.
- A single regulation (ROGS) would be a single source of national regulation, for mainline operators in compliance with the aims of the safety directive to reduce national safety rules, and provide clarity to market opening encouraging new operators.

We note that the consultation document does make some references to the possibility of separate individual regulations for mainline and non-mainline use but concludes that this could lead to confusion because operators could be subject to different statutory obligations (see, for example, clause 3.16). However, we contend that this will be the case in any event to the extent that a single set of regulations will inevitably include a number of specific exemptions.

In responding below to the individual questions contained in the consultation document, we have in a number of cases provided separate answers according to whether there is no specific mainline regulation; a single set of regulations, as is currently the case, is retained or a dual regulation approach as favoured above is adopted.

### **Response to individual questions**

**Q1:** Do you agree that we should revoke regulations 3, 5, 6 and 7 of MPR 97? If you do not support the revocation, please tell us why.

YES

**Q2:** Do you agree that regulation 4 (means of communication) should be retained in its modified form? If you do not support the retention of this provision, please say why.

*If no specific mainline regulation: NO* – As the consultation document notes, the Technical Specifications for Interoperability cover this requirement for rolling stock we therefore consider that there is no need to retain the requirement in respect of mainline railways. There are many other passenger safety systems, e.g. door egress devices, public address, etc., that are required to be maintained by train operators on an ongoing basis which are not subject to separate specific regulations and we can identify no reason why Means of Communication, in its various forms, should be an exception.

*If single set of regulations retained:*

YES, for the reasons stated in the consultation document, there would be an on-going need for the requirement in respect of non-mainline railways such as trams and light railways

*If dual set of regulations introduced:*

Mainline railway regulations: NO – As the consultation document notes, the Technical Specifications for Interoperability cover this requirement for rolling stock and therefore we consider that there is no need to retain the requirement in respect of mainline railways. There are many other passenger safety systems, e.g. door egress devices, public address, etc., that are required to be maintained by train operators on an ongoing basis which are not subject to separate specific regulations and we can identify no reason why Means of Communication, in its various forms, should be an exception.

Non-mainline railway regulations: YES for the reasons stated in the consultation document.

**Q3:** Do you agree that we should retain a regulation to mandate the use of a train protection system? If not, why?

NO. It was legitimate to include requirements pertaining to train protection systems in the Railway Safety Regulations 1999 as at the time such a system was not mandated and there was a requirement to introduce one in line with the recommendations contained within the Hidden Report. However installation of TPWS, which the ORR accepts constitutes such a system, was completed in 2003. Having an operational train protection system in place is now a fundamental safety requirement, but in this respect it is no different than having in place a functioning braking system. We consider that the generic requirements contained in the HSWA and Safety Directive, which operators must demonstrate they meet through their Safety Management Systems (SMS) in order to be certificated by the ORR, along with the specific Railway Group Standards applicable to train protection systems, are sufficient to ensure the on-going provision of a train protection system and hence that retaining a separate regulation would be an unnecessary duplication and therefore a missed opportunity to meet the Red Tape Challenge. We note that within ROGS operators are required to continuously improve, subject to tests for ALARP, and firmly believe that these requirements do not need to be duplicated in additional regulation.

Separate to the above, we note that Clause 4.10 states that compliance with the (train protection system) legislation can be achieved by Automatic Train Protection (ATP) systems, including ERTMS and by TPWS. We presume that tripcocks (as fitted to a number of units operated by First Capital Connect, London Overground and Merseyrail) also qualify but believe this should be explicitly stated, should our objection to the proposal be rejected.

**Q4:** What are your views on the proposed changes to the drafting of the regulation relating to train protection systems? Are there any further changes you feel we should make?

As mentioned above in our response to Q3, we believe that there is no justification for a regulation relating to the mandatory use of a train protection system as such systems are integral to our operations as laid out in our safety certification documents.

However, we have a number of comments in the event that a regulation relating to train protection systems is retained.

- a. It is noted that Clause 4.11 refers to the system being “properly maintained.” We believe that this should instead refer to it being “properly functioning”, i.e. the requirement should be defined in terms of what must be achieved, not how it should be achieved.
- b. It is worrying that the ORR does not seem to recognise that achieving the aspiration of a properly functioning train protection system places equal reliance on both the infrastructure manager and the operator of the train. There are several specific references to the arrangements that the train operators must put in place, both in the consultation document (in sections 4.11 and 4.12) and the revised regulations, but equivalent requirements for the infrastructure manager appear to be wholly absent (other than a brief reference under ‘Assumptions’ on page 50). The correct operation of any train protection system is clearly reliant on the correct operation of both train based and infrastructure based equipment. The latter, being the responsibility of the infrastructure manager, is something over which the operator has no effective control. The absence of any requirements for the infrastructure manager is considered an omission which needs to be addressed, should this proposed regulation be adopted.
- c. Also of concern to us is that the ORR seems to be suggesting that there are train operators who do not have management systems in place in respect of train protection (as referred to in clause 4.11). Clause 4.12 states “In practice, *many* operators already have these arrangements in place...” with the implication that there are a few operators who do not have such systems in place. Related to this is the statement in the impact assessment on page 46 that “*Train Protection systems that were already installed would be at risk of poor maintenance and falling into states of disrepair rendering them unsafe potentially*”. What is the basis of this assertion as robustness of protection systems is monitored as a key safety performance indicator by our engineering teams and Executives?
- d. Referring again to the train protection management system discussed in Clause 4.11, we believe that the ORR needs to provide clarity with respect to its intent. What is it trying to fix that is not covered by existing regulations and general duties on those operating the system?
- e. It is noted in Clause 4.11(ii) of the consultation document that the train protection management system will “provide for monitoring and regular assessment.” However, this is not in accordance with the text of the draft regulation in that Regulation 3. (2) (c) states “provides for continuous monitoring and regular assessment” which seems to be suggesting

something significantly different. Clarity on this requirement is required please.

- f. Overall, our view is as stated in our answer to Q3, i.e. a train protection system is conceptually no different from the train braking system. As part of their SMS and stated in safety certification documents, train operators have maintenance plans in place for the rolling stock they operate which are designed to ensure that all safety systems operate correctly. We see no justification for why the train protection system should be subject to specific regulation when other vehicle based systems – including those on which the train protection system relies, i.e. the braking system, are not singled out in this manner.
- g. In summary, our view is that the requirements proposed to be placed on operators for the “train protection management system” be discarded since:
  - i. what is meant by a “train protection management system” is far from apparent and in particular it is far from clear what ORR have in mind for the “continuous monitoring.....of the safety performance of the safety performance of the train protection system.”
  - ii. The requirements as written only address half of the interface requirements of such a system insofar as the infrastructure manager is not required to maintain, or continuously monitor their contribution to the system.
  - iii. operators are already required to maintain the train protection system equipment as part of their maintenance plans which in turn form part of their SMS (that is certificated by ORR) – the proposed requirements would duplicate this
  - iv. it should be up to the industry to determine how “a properly functioning train protection system” is achieved and it is not the place of legislation to dictate this. Monitoring of effectiveness of the system is undertaken by our engineering teams and reported in KPIs.

**Q5:** In the proposed new definition of “relevant approach”, should 60mph be converted to 95km/h or 100km/h?

It is not clear to us (and the consultation document does not adequately explain) why the imperial units are being replaced with their metric equivalent since the railway network signage remains in the former. Beyond this, we note that RSSB Guidance Note GI/GN7608 - Guidance on the Conventional Rail and High Speed Infrastructure Technical Specifications for Interoperability includes a table of ‘speed conversions’ (Table G 1) which equates 100km/h to 60mph – we suggest that for consistency 100km/h should be used in the new definition if at all.

**Q6:** Do you agree that we should retain the regulation to prohibit the use of Mark 1 rolling stock, with the proposed changes to the exemption system? If you do not support the retention, please tell us why?

*If no specific mainline regulation: NO – The requirement to prohibit access of Mark 1 rolling stock to the mainline railway in the future could be simply achieved through a change to Railway Group Standards.*

*If single set of regulations retained: YES*

*If dual set of regulations introduced:*

Mainline railway regulations: *NO – The requirement to prohibit access of Mark 1 rolling stock to the mainline railway in the future could be simply achieved through a change to Railway Group Standards.*

Non-mainline railway regulations: *Would not be applicable.*

**Q7:** Do you agree that regulation 5 (prohibition of hinged doors) should be revoked? If you do not support revocation, why do you think it should be retained?

*If no specific mainline regulation: YES – The requirement to prohibit the use of hinged doors on the mainline railway **without secondary door locking** could be simply achieved through a change to Railway Group Standards.*

*If single set of regulations retained: YES – The requirement to prohibit the use of hinged doors on the mainline railway **without secondary door locking** could be simply achieved through a change to Railway Group Standards.*

*If dual set of regulations introduced:*

Mainline railway regulations: *YES – for the reasons stated above.*

Non-mainline railway regulations: *Would not be applicable.*

**Q8:** Do you agree with our approach to issuing exemptions under the new Regulations? If not, please tell us why?

*If no specific mainline regulation: YES due to the variances in non-mainline systems*

*If single set of regulations retained: YES, although it potentially conflicts with the safety directive aims to avoid specific national rules (thereby exemptions), and places a burden of risk acceptance onto the regulator granting the exemption.*

*If dual set of regulations introduced:*

Mainline railway regulations: *YES – for the reasons stated above.*

Non-mainline railway regulations: *Would not be applicable.*

**Q 9:** Do you agree that the remaining provision in force can be revoked? If not, please tell us why?

YES

**Q10:** Do you agree with our assumptions in the impact assessment? If not please tell us why or if there are there any other factors that you think we should take into account?

#### *Train protection requirements*

In the absence of a clear description of what the ORR is expecting in respect of a train protection management system (see answer to Q4 above) it is not possible for us to assess the validity of the assumptions used in the impact assessment.

#### *Exemptions for Mark 1 vehicles*

This is of limited relevance to us as we don't operate Mark 1 rolling stock, hence we have no comment.

#### *Additional point*

We also note that the description included at the top of page 41 refers to 'train operating systems' – presumably this should say 'train protection systems'

**Q11:** Do you have any views or evidence that would help inform our development of an enforcement flexibility proposal?

We have no such views or evidence but would support the intention described in Section 8 if the agencies believe there is merit.

### **Other comments on the draft Regulations**

#### **Stop Signal Definition**

There is a need to update the definition included in the Regulations for a "stop signal." You will no doubt be aware that the European Train Control System does not rely on physical stop signals – since it places reliance on granting movement authorities. The ETCS system intervenes to prevent a train from passing the extent of these movement authorities. Therefore the definition of "stop signal" needs to be updated to incorporate this "end of authority" – which is in effect the equivalent of a stop signal for ETCS.

#### **In Conclusion**

We believe that there is scope to go beyond the current proposals as the Railway Safety Directives have evolved and introduced a more risk based approach to regulation since the proposed

regulations for withdrawal were introduced. We submit the view that ROGs supported by a few Railway Group Standards (as national safety rules) should be the basis for regulation of mainline train operators, with a similar single regulation for those railway/ tramway operators who are outside the scope of ROGs/ RGS. The requirement for an additional residual regulation does not meet the objectives of the “Red Tape Challenge”.

Yours sincerely,

Nigel Ellam