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Paul Carey  
Office of Rail Regulation  
1 Kemble Street  
LONDON WC2B 4AN  
02 September 2014

**RE: Revising Railway Safety Regulations**

Dear Sir,

Thank-you for your invitation to allow London Midland (LM) to contribute to the formal consultation process for the reduction of the legislation set out above. London Midland is supportive of the overall strategy of simplification and reduction of the legislative burden in order to meet the principles of the Prime Ministers 'Red Tape challenge'. We do however believe that there are opportunities to take this further than what is included in the current proposals.

Specifically, 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 the Railways and Other Guided Transport Systems (Safety) Regulations 2006. Alternatively, to have a single set of section based regulations that would enable the sensible separation of the duties of mainline and non-mainline operators.

This would ensure that there would be a significant reduction in the number of exemptions required, proving beneficial in reducing the time, diligence required on obtaining exceptions and their subsequent renewals. This would by default reduce the overall size of the regulations, content would be more applicable and thus one would argue, allow for more pragmatic interpretation, and furthermore it would potentially improve the response to compliance.

The request for specific responses to the set questions is set out below. However, there are potentially differing outcomes, dependant on whether the outcome will result in a single or dual regulatory instrument.

**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.**

- *If single set of regulations retained: YES*

- *If dual set of regulations introduced: 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 a single set of regulations were introduced: Yes, however it must be recognised that there are general requirements under existing broad regulation and best practice documents that advocate effective communication as part of an organisations safety management system. Thus, it does seem to be a 'gold plating exercise' to retain a regulation for what is actually good business practice to communicate with persons that are using our premises. .
- 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 LM believes that to retain this requirement in respect of mainline railways would be unnecessary. There are a multitude of passenger safety systems that are required to be maintained by TOC's which are not specifically set out within the provisions, so there would be no reason that LM could identify that communication 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. Whilst historically there was a necessity to ensure good standards were applied to many different systems including Train Protection, this is now an expectation that the travelling public, court system and indeed the operators themselves expect to be in place. Therefore, it does not merit being retained for mainline operators as this standard is well established.
- We also believe that the HASWA 1974 and its associated daughter regulations, which all employers must demonstrate that through use of Safety Management Systems that they meet their provisions. In addition, specific to the rail industry, these conditions must be met in order to be certificated by the ORR.

**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?**

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

- It is apparent from reading the consultation document, that more weight appears to be allocated to the TOC rather than to the infrastructure organisation. LM believe that this is unhelpful, as LM and other TOC's have no control over infrastructure arrangements, merely able to raise issues with the infrastructure organisation or indeed with the regulator as necessary.
- We do have cause to raise the point that a criticism exists within the consultation document that implies that TOC's are not maintaining/using TPS, please note comments on page 46, LM believe that this is at the very least unfair, potentially unfounded and could possibly be construed as advocating poor practice.

Overall, our view is as stated in our answer to Q3, thus already part of the way that LM and other TOC's already operate. By means of a Safety Management System that complies with broad regulatory requirements, thus not necessary in this regard.

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

- Primarily, we would like to understand the ORR’s intention in this regard, as LM believes it is well-established that the UK use imperial measurements, particularly for speed. If this were to be migrated to a metric system then elements such as driver habit and driver behaviour will likely lead to an increased potential confusion, this will likely cause a significant increase in incidents, including operational and safety related negative outcomes. In addition, there are likely to be significant cost implications to changing infrastructure, train upgrades and other associated systems. It is therefore of interest to LM how this potential change would be funded, LM therefore require some clarity on this matter.

**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 a single set of regulations Yes –However, LM would also point out that amongst mainline operators LUL are the only TOC that operates MK 1 coaching stock. Therefore, whilst provision should perhaps be made, it is a question of how this should be portrayed, as there is a danger of being overly prescriptive in what LM believes is intended to be a ‘goal setting’ set of regulations.
- If a dual set of Regulations Yes - It is therefore the position of LM that these requirements are retained, but as above, consideration is given to a goal setting approach.

**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?**

- No- Irrespective of whether these are dual or singular sets of regulations, LM believe that there is a need to ensure that any rolling stock that is used in mainline operations should have a central door locking system. Following on from previous points made, rather than being prescriptive in how this is communicated by use of a ‘distinct prohibitive approach’, consideration should be given to communicating this in terms of a goal setting approach, therefore avoiding the use of a historically based provision.

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

- It is not clear at this time to LM as to the extent, potential complexity or indeed the actual requirements of the revised system will be. If the new system has streamlined the exemptions process, with appropriate assurances and decisions on permissions/refusals simplified then this would be very welcome. However, if the output of the revised process is to further complicate the existing system rather than simplify it, this would not be desirable.

**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 – At this time, LM are not clear as to the expectations the ORR actually have in respect of a train protection management system it is therefore 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 LM does not operate Mark 1 rolling stock, hence we have no comment over and above what has already been indicated.

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

- It would be beneficial for a degree of certainty to exist in these matters. LM believes that it should not be an overly complex matter to resolve, as both organisations have similar enforcement powers and technical knowledge base. This agreement is also unlikely to directly affect any of the TOC's as LM understands this to be an exercise of cooperation and likely to be cost neutral. However, we are aware of the Fees for Intervention approach currently taken by the HSE, which would have a significant bearing on our position were this to be an additional cost if enforced by HSE. We therefore wish to be assured that there would be no increase in the NET cost to LM from Enforcement activity, regardless of which organisation was involved.

Yours sincerely,

Gilbert Fraser

A handwritten signature in black ink, appearing to read 'Gilbert Fraser', with a long, sweeping flourish extending to the right.

Head of Safety and Environment