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Dear Paul

ORR CONSULTATION ON REVISING RAILWAY SAFETY REGULATIONS

Please find attached the Railway Industry Association's responses to the ORR consultation on revising railway safety regulations. We have provided our responses to your direct questions in boxes in the following pages. Where appropriate for clarity or to provide more detail, we have also provided more detailed responses to individual paragraphs.

If you have any queries in relation to it, or wish to discuss any matter further, please contact me. In particular, if you consider that we have wrongly interpreted either your proposals or existing legislation and regulations in formulating our responses, please advise me in order that we can re-consider the matter before you publish the consultation responses.

Yours sincerely

FRANCIS HOW (MR)
Technical Director, Railway Industry Association

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, we agree with the proposed revocation.

3.6 Given that provisions in both HSWA and ROGS contain duties for transport undertakings and infrastructure managers to demonstrate how they will prevent trespass and how they will minimise the risk to others which is generated by their activities, we concluded that the retention of a specific regulation setting out these requirements would be a duplication of statutory obligations which existed elsewhere and could therefore be revoked.

We agree with this proposal (para 3.6).

3.8 We ... propose to revoke this requirement [measures to prevent collisions and derailments] on the grounds that its aim – a mandatory application of fundamental principles of safe rail operation – is already met by requirements set out in ROGS (Part 3, Regulation 19, Risk Assessment).

We agree with this proposal (para 3.8).

3.10 We ... propose to revoke this requirement [provision of brakes] on the grounds that its aim is now met by requirements set down in ROGS, and is also supported by requirements set down in HSWA, for the assessment of risk and the safe management of railway operations.

We agree with this proposal (para 3.10).

3.11 We considered whether this provision [prevention of accidents to persons at work from moving vehicles] was covered by any other applicable safety legislation, in particular HSWA, the purpose of which is to enshrine in law requirements for the safety of employees and other persons in the workplace. We concluded that the obligations placed upon an employer under section 2 of HSWA would give equivalent provision to ensure that they must provide a safe environment in which a person at work could carry out their duties. Regulation 19 of ROGS further reinforces this by requiring the assessment and management of risk as does Regulation 3 of the Management of Health and Safety at Work Regulations 1999. For this reason, we propose to revoke this requirement.

We agree with this proposal (para 3.11).

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.

YES, we agree with the proposed revocation. Note that it is important that, in retaining this regulation, it is important that the wording does not contradict anything stated in the TSIs.

3.16 We are ... proposing to retain this provision [means of communication for passengers with a person in charge of the vehicle] because it addresses an on-going need for passenger safety and performs a function that is not met by any other safety related legislation. Relying on TSIs for the mainline railway, whilst introducing a separate regulation for non-mainline railway and tramways, could lead to confusion because operators could be subject to different statutory obligations. Furthermore, the increased occurrence of driver-only operation makes the ability of passengers to communicate with the driver more important and retaining this requirement is in the interests of passenger safety.

We agree with this proposal (para 3.16). Note that it is important that, in retaining this regulation, it is important that the wording does not contradict anything state in the TSIs.

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

We are not convinced that there is a need to retain this requirement. The CCS TSI, which in the latest version combines high speed and conventional rail) now applies to the whole of the national rail network, except where the Interoperability Regulations explicitly exclude certain lines). Therefore, the requirement to have a train protection system, either in the form of ERTMS or in the form of a "Class B" system (which in GB is TPWS+AWS or BR-ATP), is already mandated. We question what additional value there will be in retaining a UK regulation in this area.

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

Since we are not convinced that retention/revision of this regulation is required, we have not responded to this question.

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

Since we are not convinced that retention/revision of this regulation is required, we have not responded to this question.

4.7 We considered if the time was right to repeal this legislative requirement [for train protection systems], given that one policy aim of these Regulations had been met. We looked at other rail safety legislation and concluded that no other statutory provision was so specific as to require the use of a train protection system as standard.

We believe that other rail safety regulation (specifically, the Interoperability Regulations and the associated revised CCS TSI) provide an adequate and specific requirement for a train protection system as standard.

4.8 We also considered that removing regulation in this area would not support the industry wide programmes designed to necessitate improvements to TPWS or any developments in train protection afforded by the European Rail Traffic Management System ('ERTMS').

We consider that the industry wide programmes to improve TPWS and to introduce ERTMS are sufficiently well advanced that the retention or removal of UK specific regulation will make no difference to whether/how these programmes of work are taken forward. The requirement to provide ERTMS in conjunction with the upgrading of signalling systems is effectively enshrined in the Interoperability Regulations, added to which the DfT and ORR between them have mechanisms to insist on fitment in both franchises and through Control Period settlements.

4.9 We consider that any definition of a train protection system must allow operators to be compliant whilst they continue to use TPWS or ATP, but ensure the migration to ERTMS is not impeded.

We agree with this statement, and we believe that the requirements of the Interoperability Regulations and the associated CCS TSI ensure this.

4.15 Defences for operation without an operational train protection system have been clarified. There are now separate defences for infrastructure managers and railway undertakings and the elements of the defence in regulation 3(4) of RSR 99 have been amended and simplified. Additionally, following the revision to the definition of a train protection system, the defence in regulation 3(5) of the RSR 99 becomes redundant and has been removed, as provided either type of train protection system is in operation, no offence will have been committed.

Any defence for not having an operational train protection system would have to be justified to the DfT (in respect of the Interoperability Regulations), and quite possibly to the European Commission (as a breach of duty under the Interoperability Directive and associated CCS TSI).

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?

We have no view to express 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?

We have no view to express on this matter.

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

We agree with the proposed approach.

4.25 We have granted a number of exemptions under the existing Regulations particularly in relation to the operation of Mark 1 rolling stock on the mainline railway. The proposed regulation includes transitional arrangements which allow any exemption certificate issued under the MPR 97 or RSR 99 to be treated as if it were granted under the new Regulations. We propose to review any exemptions that we have issued under

the existing regulations in line with better regulation principles after the new Regulations have come into force.

We agree with this approach.

Q 9: Do you agree that the remaining provision in force [definition of a railway] can be revoked? If not, please tell us why?

We agree with this proposed revocation.

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

We do not have any views to offer at this time, although in general terms we believe that this proposal is to be welcomed.