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1 June 2010

RESPONSE TO CONSULTATION:

CPT/10/10

Dear Mr Valentino,

**ORR Consultation: The Railways and Guided Transport
(Miscellaneous Amendments) Regulations 2010**

The Confederation of Passenger Transport UK (CPT) is the national trade association for the bus, coach and light rail industry. Our members include the owners and operators of all the principal light rail and tramway systems in the UK, as well as heritage and minor tramways.

Thank you for your consultation on the Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010, numbered CPT/10/10 in our series, which for simplicity I shall refer to as ROGS Amendments Regulations. We are grateful for the opportunity to comment. I have circulated the consultation to our light rail and tramway members and invited comments, and I am responding on behalf of these members.

We understand that the proposed regulations are largely concerned with the implementation in national law of the revised Railway Safety Directive and the CSI Directive, together with proposals for a few other amendments to the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (commonly known as ROGS).

Response to Consultation Questions

Question 1: Do you agree that we should not change the current position on the exclusions from ROGS? If you do not agree, please explain why.

We agree that the exclusions in ROGS for heritage and tourist railways which are mentioned in paragraph 2.9 of the Consultation should be retained.

However, we would point out that the Directives also allow Member States to exclude metros, trams and other light rail systems from scope. ROGS

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Doc # 399635.01

accordingly contains two sets of provisions: one implementing the Directives for the mainline railway (regulations 3 and 5), and one which applies parallel requirements for metros, tramways and other transport systems (regulations 4 and 6). Furthermore, regulation 4(3) excludes tramways and low-speed railways from the requirements for safety certification and authorisation.

We would appreciate confirmation that the ROGS Amendments Regulations do not (intentionally or otherwise) impose new requirements on non-mainline systems. In this connection, special attention needs to be paid to the Tyne and Wear Metro, which is a metro system but with interworking with the interoperable railway, to Manchester Metrolink, which operates for a short distance on Network Rail infrastructure but without any interworking, and to tram-trains, which are vehicles capable of operating both on line-of-sight and on a signalled railway. We would urge ORR to enter into discussion with UKTram to resolve the issue.

Questions 2 to 5 regarding the Entity in Charge of Maintenance:

We do not believe that the requirements regarding maintenance are intended for metros and tramways which do not operate on the mainline railway. Maintenance is the responsibility of the operator of the system in question, and the ECM provisions are not necessary. However, we have some comments on the individual questions 2 to 5.

Question 2: Do you know of any circumstances in which vehicles registered and maintained according to the laws of a non-EU Member State enter Great Britain? If so, please explain.

This sometimes happens in museum circles. For example, in the case of the National Tramway Museum, a Johannesburg (South Africa) tramcar was acquired in 1964 and a Douglas (Isle of Man) tramcar was acquired in 1975, both from outside the EU. Other tramcars were acquired by the Museum before the states in question entered the EU, viz. from Austria, Czechoslovakia and Portugal.

Question 3: Do you know of any circumstances in which vehicles with track gauges other than standard gauge enters Great Britain? If so, please explain.

There are at least 3 tramways (Seaton, Black Country Museum and Great Orme Tramway) which use non-standard gauge, and numerous heritage railways. Furthermore, the Glasgow Subway uses vehicles of non-standard gauge. Replacement vehicles might be obtained for any of these systems from outside the EU. There was also an example at the National Tramway Museum where a Hill of Howth (Dublin) tramcar was acquired and was subsequently re-gauged to standard gauge.

It is quite possible that a future tramway in the UK might be built to a non-standard gauge, possibly metre-gauge which is quite common in Europe. There are a number of advantages to using the narrower gauge, and vehicles are readily available from manufacturers in other countries, both EU and non-EU.



We do not really understand why the gauge employed should be used as a criterion in determining whether alternative maintenance requirements should apply. The essential point is whether or not the vehicle in question operates on the mainline railway. As far as tramways are concerned, the ability to use a non-standard gauge should be retained as an important element of their flexibility.

Question 4: Do you know of any circumstances in which military equipment or special transport will require an ad hoc permit to be delivered prior to being in service? If so, please explain.

No.

Question 5: Do you know of any circumstances in which those vehicles that are excluded from the mainline railway, as defined in ROGS, may require an ad hoc permit to be delivered prior to being placed in service in Great Britain? If so, please explain.

No.

Question 6: Do you agree that RAIB should be the investigating body for accidents on tramways in Scotland?

Yes, we agree with this proposal, having pressed for it at the time that the Railways and Transport Safety Act 2003 was before Parliament.

Question 7: Do you have any comments on the new definitions? If you have any objections, please could you explain why and suggest an alternative.

In the definition of “vehicle” in regulation 4(2)(g), if the term “mobile traction unit” is intended to include tramcars as stated in paragraph 4.12 of the consultation paper, we question whether it would be wide enough to include tramcar trailers as employed, for example, on the Blackpool tramway. We suggest (a) should read “includes a mobile traction unit and rolling stock.” Otherwise, we agree with the proposal to amend the definition to include trams.

Question 8: Do you agree that these regulations should contain the date by which domestic vehicles should have been registered in the NVR?

Where our members do not operate on the mainline railway, they are not subject to NVR and it is not appropriate for them to be so. We have referred in the response to Question 1 to Tyne and Wear Metro and to Manchester Metrolink which interact with the mainline railway, but only to a limited extent. We do not think it is appropriate for the NVR to include these vehicles.

Question 9: Do you have any comments on the proposal to extend the meaning of work to include voluntary work?

We agree with this proposal, for which we have pressed since 2005. Anyone who carries out safety critical work should have the necessary competence and fitness, irrespective of employment status. However, we believe that care



should be taken to avoid placing disproportionate administrative burdens on small voluntary organisations.

The clarification should not be limited to Part 4 of the regulations. For example, it should also apply to regulation 22 and to Schedule 1.

Question 10: Do you have any other comments to make in relation to this consultation document?

We wish to raise the following further issues for ORR's consideration as part of the review of the ROGS regulations, and we have some comments below about the consultation itself.

On-street Tramways

Problems are currently arising in areas where tramways are to be introduced into highways or where their existing location in highways is to be radically changed. In such circumstances, the local highway authority is almost invariably the infrastructure manager, and consequently the transport operator, for the purposes of regulation 6(4) of ROGS. The highway authorities were never adequately consulted on the duties associated with this role, which is totally alien to all other aspects of their operations. Indeed, they have not been consulted as such on this occasion. We have spoken to two of the affected highway authorities who have indicated that they would like to comment, but in view of the lack of consultation with these bodies and the reduced consultation period, we expect to have a formal report after the closing date for comment.

The situation would be greatly alleviated if in the case of local highway authorities the ROGS provisions could be modified so that where such authorities are infrastructure managers, the verification requirements could be replaced by a requirement for authorisation by the Secretary of State or by ORR. Approval by one or other of these bodies of highway works is already a requirement under a number of local Acts, so the opportunity could be taken at the same time to tidy up the position by replacing these individual special powers with one straightforward authorisation provision under ROGS. This would have the effect of reducing the bureaucracy as well as helping to mitigate the problems faced by highway authorities.

Trolleybuses

In view of the recent approval of plans for a trolleybus scheme in Leeds, we would draw your attention to the lack of an adequate safety regime to govern the installation, maintenance and operation of trolleybus systems. Such systems were originally subject to approval by HMRI under the ROTS regulations, but they were excluded from ROGS with nothing put in their place.

Minor issues:

- (a) *New regulation 1:* We note that the consultation document and the draft regulations use the title "Railways and Guided Transport (Miscellaneous Amendments) Regulations" whereas the citation in regulation 1 refers to "Railways and Other Transport Systems..." The

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original ROGS uses the phrase “Railways and Other Guided Transport Systems...” We suggest that the ROGS phraseology should be used. Apart from the desirability of consistency, the title as it stands implies that railways are not guided transport, which of course is not true.

Also in regulation 1, the sub-heading (1) is superfluous.

- (b) *New regulation 4(2)(g)(b)*: Should not the word “circulation” in the first line be changed to “operation”?
- (c) *Existing regulation 23(1)(b)(i)*: Is there a case for inserting in the first line after “part of it” the words “or of the permanent way relating to it or used in connection with it”? This general reference, apart from being in accord with communications and electrical supply, would also overcome the gaps in (b)(iv), which exclude reference to safety of the public and is limited to track and so does not cover other aspects such as foundations.
- (d) *Existing regulation 23(1), after (c)*: The concluding line is limited to “safety of persons on a transport system,” so that a pedestrian outside the vehicle who was killed in a collision with a tramcar would not be protected by any of the foregoing fundamental safeguards. We suggest that the scope be widened by referring to the “safety of persons on *or in relation to* a transport system,” the phraseology used in 23(4)(a).
- (e) *Existing regulation 23(4)(a)*: The term “fire service” should be replaced with “fire and rescue service.” Apart from this being the term currently in use, in a transport context the service is most likely to be involved in extricating persons trapped in collisions.
- (f) *Existing regulation 24(3)*: A corresponding point to that raised in (d) above also applies here.
- (g) *Existing regulation 25(1)*: A corresponding point to that raised in (d) above also applies here.
- (h) *Existing Schedule 1*: The references to “voluntary work” in paragraphs 1(c), 2(a) and (e) should be omitted as redundant, if the revised definition of “work” is extended to Schedule 1.

Some general points regarding the consultation

(1) Consultation conduct:

Paragraph 1.4 of the Consultation Document states that the UK’s implementing measures for the Railway Interoperability Directive must be in force by 19 July 2010, and in the footnote to paragraph 1.19 this is used as an excuse for a reduced consultation period of 10 weeks. We do not see the necessity for the reduced period. The Directives were made in 2008 and 2009, and ORR have had sufficient time to draft the regulations. We believe ORR have neglected their duty to allow adequate time for the normal prescribed consultation period and Parliamentary process.

The reduced consultation period leaves the industry with little time for proper consideration of comments received from its members in response to the

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consultation. We would be seriously concerned if this implies that ORR will not give serious consideration to the major issues raised by us and others. We should be glad to receive your assurance that this will not be the case.

We also note that one category of dutyholders has been omitted from the list of those consulted, namely the highway authorities which have a street-operating tramway in their area and who have important duties as infrastructure operators. This would appear not to be in accord with the Railways Act 2005, Schedule 3, paragraph 2 (6), or the Government's Code of Conduct on consultations. We would urge ORR to consult these highways authorities and to extend the consultation period to allow them time to respond. This need not affect the implementation of the Directives, the provisions for which could be dealt with separately from the remainder of the proposed Regulations.

(2) Jurisdiction:

Paragraph 1.2 refers to the regulations being "...transposed into UK law..." This is loose terminology as England and Wales, Scotland and Northern Ireland have different legal systems.

Likewise, paragraph 4.4 says the Department for Transport believes that the powers of RAIB should be extended to Scottish tramways. We agree with the proposal, but question whether this is a matter for DfT. Transport is a devolved issue, so it is the view of Transport Scotland which counts.

(3) Units

Paragraph 2.9 refers to heritage railways which "operate at a line speed of greater than 40 kph." The term "kph" is not a recognised unit; we suggest using "km/h" or writing "kilometres per hour" in full as in the ROGS regulations.

Disclosure

I can confirm that CPT has no objection to its response being made public.

Yours sincerely,

David Walmsley
Fixed Track Executive