

## **Revised proposals for publishing enforcement notices consultation : Response from London Rail, TfL**

### **Introduction**

We are commenting on the proposals as set out in the Consultation letter and Annex. Our comments are balanced between direct response to the consultation and some additional suggestions. We have woven this in at what we hope is the most appropriate point against our comments on the four options.

### **Option 1 : Do Nothing**

We believe that this has merit. It maintains a consistency with the other core safety regulator for our sector. It continues with the current position about appeal and publication (which have been long understood and accepted). The position about notification to employees is also well understood and we feel currently works. With 24 hour news, pressure to be transparent is well understood, but then things will always leak out, and this does not seem in itself a justification for change.

### **Option 2 : Immediate Publication on ORR Website**

In fact we do not think this will have much immediate impact on any of our businesses, and as such is not objectionable. However we want to raise the following points.

The details that are published currently on the listing of improvement notices are not set out in sufficient detail to make much impact. In this industry, those using the web site, will be well aware of the type of issues making up the bulk of the enforcement actions, such as risks from level crossings, core safety management failures and construction related risks. So a more rapid publication is not likely to achieve a significant increase in risk awareness.

We agree that the summary does not in itself jeopardise an appeal. However by placing the summary on a register within three days of service, there is a clear implication of misdemeanour, and Notices will still be appealed against, and even if they are rarely overturned, where they are they would still then need to be withdrawn, and a change made to the site. Again this is understood in the sector, and so the disclaimer seems a bit irrelevant.

In the end it is probably only by looking at the full register that any reasonable knowledge can be developed, and see also our comment at Option 3.

We are not convinced that in fact this option does improve the compliance with S28(8), but that is a question of different legal interpretation.

The issue of any enforcement notice should be seen as a serious matter needing a response that is timely and proportionate to the act or omission identified. However notices can be seen as negative to reputation (after all that is in part why they are issued to encourage compliance and improvement) and early publication of Notices, could have a negative impact on the development of positive safety cultures, especially if later withdrawn. What is important is that all notices are issued in line with the published enforcement policy, and that in difficult times this threshold is not altered on other than genuine safety grounds.

#### Option 3 : Publication on the ORR Public Register in accordance with ESIA

This meets the legal requirement, and can support the principle ORR wish to follow. However we believe that a more useful position, if publication is really about changing approaches/leading to real learning, is for the full notice to be published (preferably once the appeal time has expired), in an easily web searchable format, with contextual explanation of circumstances posted alongside by the regulator, as in this way some real learning could be applied. As this has not been specifically consulted upon we realise this is *obiter*, but we believe it would have far more impact.

We note too that ORR has an advisory role in informing duty holders of trends and new areas of risk for the purposes of improving safety across the industry, and doubt that just publishing notices is in itself enough. For instance ORR should take a proactive stance in providing greater explanation of risk topics and issuing email safety alerts to duty holders via web subscription would be more effective. This is currently undertaken very successfully by HSE and RAIB.

#### Option 4 : Publication on the ORR Public Register as soon as they are served

This option is not being considered, but in any case would add administrative delays and extra cost that do not seem to be justified.

#### Conclusion

Overall then we favour Option 1, backed up with some real change as set out in comments to options 3. However we do not object to option 2.

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