

[Addressed to all UK Minor and Heritage Railways]

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Dear Sirs

MINOR RAILWAYS CIRCULAR MARCH 2012

ORR is writing to all minor railways to give a general update on a range of current issues that we see affecting the heritage and minor railways of the UK.

We expect that you will review the points in this letter to see how applicable they are to your own operations.

Governance

An outcome of a number of investigations made by ORR in the last year has been an observation that many railways do not have a suitable management structure. This results in lack of control over changes to infrastructure and procedures, poor planning and a lack of competence management.

As a result of these findings ORR and the Heritage Railway Association (HRA) will jointly be holding two seminars (20 March 2012 in West Bromwich and 24 April 2012 in Glasgow) where the issues of governance and competence will be reviewed and good practice considered. It is important that senior representatives from railways attend one of these seminars if possible. Details of the events are available from the HRA.

Issues arising from recent ORR and RAIB investigations

Railways should regularly review the publications on the website of the Rail Accident Investigation Branch (www.raib.gov.uk). There are many lessons to be learned and shared from their reports, both mainline and minor railway incidents, and railway managements should not think “that could not happen here”.

ROGS

The Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS) (<http://www.legislation.gov.uk/ukxi/2006/599/contents/made>) were made on 9th March 2006, and after the expiry of the various transition provisions, were fully in force from 1st October 2010.

Under the regulations all railways, tramways and ‘other guided transport systems’ are required to have a safety management system (SMS) that is suitable for their operations. The requirements for an SMS are set out in Schedule 1 of the regulations, and regulation 6(1)(b) makes the important requirement that the SMS of a railway must be based on the content in Schedule 1 but “adapted to the character, extent and other characteristics of the operation in question”.

There is no requirement to submit this SMS to ORR or obtain our agreement to it in advance unless you intend to undertake operations on the mainline railway; in these cases a ‘safety certificate’ is required.

ORR has produced a range of guidance documents on ROGS and SMS. These can be downloaded from our website (<http://www.rail-reg.gov.uk/server/show/nav.1511> and <http://www.rail-reg.gov.uk/server/show/nav.1520>). ORR inspectors can of course be contacted directly for advice on SMS and if safety certification is required.

Those of you who are members of the HRA will also have access to the guidance notes that they have produced.

It is important that the SMS describes the way that you operate your railway; it is not supposed to be a management system to international standards which bears no relation to the reality of your operations, but it should be ‘the way we do things around here’. This of course presupposes that your system is fit for purpose.

ROGS places an absolute requirement to have an SMS in place and this has included railways operating at no more than 40 kph (25 mph) and on tramways since 31st March 2007. It is therefore now almost five years since the legal requirement to have an SMS came into force. In the initial period after the regulations came into effect ORR inspectors took a supportive line, but sufficient time has now passed that we have a reasonable expectation that SMS will be in place. ORR inspectors will now be taking a firmer line with railways whose SMS are either absent, incomplete or not actually reflected by working practice. This may extend to serving Improvement Notices under the Health and Safety at Work etc. Act 1974 (HASWA) which may include mandatory requirements, or in some circumstances could lead to a suspension or prohibition on operations.

Please ensure that your SMS is in place, is fit for purpose and is being observed.

Application of ROGS to Volunteers

When ROGS was introduced there was debate over whether the legal construction of the regulations enabled them to properly extend to volunteers.

On 26th August 2011 the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011

(<http://www.legislation.gov.uk/ukxi/2011/1860/contents/made>) came into force. By calling up provision 52(2) of the Health and Safety at Work etc. Act 1974 in the preamble and modifying the definition of 'work' in ROGS, the regulations now clarify that the requirements in section 4 of ROGS apply equally to volunteers as they would to paid staff.

Section 4 of the regulations deals largely with competence and fitness.

Competence and Fitness

One of the important issues addressed by ROGS is the competence and fitness of those who work on railways to undertake their roles and in particular those whose roles are safety critical.

It is ORR's expectation that all railways will have identified the roles that are safety critical, decided what competence is required for those roles, ensured that they have appropriate training in place, have initial competence assessment criteria and a process of regular re-assessment, all supported by appropriate records.

Railways should also have medical standards for safety critical roles and procedures for the initial and regular re-assessment of staff and volunteers in such roles, with records being kept to show that staff have been assessed as fit for their roles.

The HRA guidance notes (http://www.heritagerrailways.com/mem_documents.php) will be useful and the majority of safety related guidance is accessible by non-members.

ORR produces a general guidance document on staff competence RSP1 which is available from our website (Document <http://www.rail-reg.gov.uk/upload/pdf/sf-dev-staff.pdf> on page <http://www.rail-reg.gov.uk/server/show/nav.1647>)

Boilers

ORR continues to support the work being done by the Heritage Railway Association to develop guidance on the best practice in steam locomotive boiler maintenance. We are grateful to all those who contribute their experience and knowledge to the guidance notes that the HRA is publishing.

Given the important safety aspect of the guidance the HRA has made these available to non-members as well as members and they can be downloaded from their website. A number of guidance documents have been published already and further documents are being prepared.

ORR encourages the adoption of this guidance as boiler maintenance and repair good practice.

Competence in locomotive management

Over the last year there have been a number of incidents involving steam locomotives both on minor railways and operating on the main line network where fusible plugs have operated.

The causes of these incidents are diverse and encompass both staff competence and training and locomotive maintenance issues.

Competence in the overall management of boilers remains a fundamental issue however. From the staff who repair and maintain the machines through to the footplate staff operating them, everyone should be competent to understand the role they are undertaking and the consequences both in terms of the potential for serious, catastrophic damage to the boiler, and the risk of prosecution under HASWA if they do not undertake that role in the optimum way.

Level Crossings

In August this year ORR republished its guidance on level crossings, and took the opportunity to incorporate the guidance on level crossing orders

The document can be downloaded from the ORR website (http://www.rail-reg.gov.uk/upload/pdf/level_crossings_guidance.pdf).

Much of the guidance is understandably focused on the mainline railway, but it remains equally applicable to minor railways and we encourage you to review it.

It is important that risks at each crossing on a railway have been assessed and the appropriate measures taken to control those risks.

A continuing issue at all crossings remains a need to ensure that proper sightlines are maintained. Railways should have regular inspections and work to cut back vegetation where this affects the intervisibility between train crew and crossing users.

Railways should also ensure that the proper signs are displayed at private crossings and gates maintained.

The Private Crossings (Signs and Barriers) Regulations 1996 (<http://www.legislation.gov.uk/ukxi/1996/1786/made>) give railways the right to erect certain signs at crossings as well as gates or barriers. The associated section 55 of the Transport and Works Act 1992 (<http://www.legislation.gov.uk/ukpga/1992/42/part/II/chapter/II/crossheading/signs-and-barriers-at-private-crossings>) then creates criminal offences for failing to comply with the instructions on those signs.

Update on asbestos

Railways are reminded that under the Control of Asbestos Regulations 2006 they have a duty to manage the risk from asbestos on their premises. The HSE website (<http://www.hse.gov.uk/asbestos/campaign/duty.htm>) has clear guidance on what this duty means in practice. In particular the first step is to take reasonable steps to find out if there are materials containing asbestos on the premises, and if so, how much, where it is and what condition it is in. That information must then be recorded.

The HSE has recently consulted on some changes to asbestos regulations that will change the work that has to be notified to HSE. There will be no change to the scope of work that will require a licence, but where asbestos might be damaged, or be damaged as it is worked on, then HSE will need to be notified. Please see the HSE website for further information.

HSE continues to work on the application of the EU REACH Directive which effects our existing UK legislation on asbestos. At present the current regulations and exemptions only permit the transfer of items containing amphibole asbestos. The REACH effects will require new exemptions to be drafted. The HSE is leading this work.

RIDDOR reporting

Railways should be aware that some types of incidents and accidents must be reported to ORR under the provisions of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.

The old HSE guidance book on RIDDOR specific to railways (publication L75, ISBN 0-7176-1022-5) is no longer in print but it described in more detail than the general RIDDOR guidance what was and was not in the scope of reporting.

ORR can email a scanned copy of the guidance to railways which require it. Please email jan.raxton@orr.gsi.gov.uk to request a copy by email.

As a reminder in general a report should be made where staff or volunteers are a) killed at work, b) sustain a 'major' injury, c) sustain an injury that leads to them being off work for three days or more, or d) develop a reportable disease. Accidents to the public are reportable either if there is a fatality or a where the member of the public is known to have been taken from the railway to hospital.

Changes are being made to the reporting regulations on 6 April 2012. Amongst a number of changes the current reporting period of being off work for three days will be changed to only require reporting where the period off work is seven days. The revisions to the regulations do still require records to be kept of three day or more injuries however. The modification regulations can be seen at: <http://www.legislation.gov.uk/ukxi/2012/199/made>.

If you are unsure whether an accident or incident is reportable you can telephone ORR's Information and Intelligence team and discuss it with them.

The demarcation between when reports should be made to HSE or a Local Authority rather than ORR can be complex and if you are unsure please contact the ORR information and intelligence team or your railway inspector for advice.

For accidents ORR now has an on-line RIDDOR reporting system that allows you to enter the accident details directly via our website.

This system does not accommodate the 'bulk report' type of incident; these should still be submitted on form F2508C.

More guidance on RIDDOR reporting to ORR is available on our website: <http://www.rail-reg.gov.uk/server/show/nav.1210#hsreporting> along with the contact details for telephone enquiries (http://www.rail-reg.gov.uk/upload/pdf/reporting_serious_incidents.pdf).

The regulations themselves can be viewed at: <http://www.legislation.gov.uk/uksi/1995/3163/contents/made> .

CDM rules and on-line submission

Under the Construction (Design and Management) Regulations 2007 (<http://www.legislation.gov.uk/uksi/2007/320/contents/made>) various duties are placed on clients, designers, contractors and workers.

The HSE website has straightforward advice on the regulations and their requirements (<http://www.hse.gov.uk/construction/cdm.htm>).

When there is a requirement to notify a project under the regulations then a form, the F10, has to be submitted to ORR as the regulator. ORR shares the HSE computer system for F10 notifications so if you wish to make an on-line submission you should use the HSE website and then email your ORR inspector the reference number that the system assigns to your project; we are not automatically advised on new projects added into the system. You can still make a hardcopy form submission and this should be sent direct to your ORR inspector and not to the HSE.

The links to the online system and to a downloadable form for manual completion are on the HSE website: <https://www.hse.gov.uk/forms/notification/index.htm>.

For information, ORR's internal guidance to inspectors on this subject is available at: <http://www.rail-reg.gov.uk/upload/pdf/rqd-2009-04-dedacted.pdf>.

Age

It is important to recognise that the abilities of people change over time and that the tasks that they can safely undertake will also change. Railways need to balance the rights that people have under equality legislation against the duty they have to ensure the health and safety of those people and others who may be affected by their actions.

The HSE website has some advice on the steps that should reasonably be taken to review the capabilities of people: <http://www.hse.gov.uk/diversity/age.htm>.

There remains in this advice the strong message that age alone is not a good indicator of physical or mental capability.

People should be subject to individual review on the basis of their personal abilities and the tasks they need to undertake. Railways are advised to set out policies on how they will manage staff who are no longer able to meet the requirements for particular roles

The HSE website has an extensive research review on the subject for those interested (<http://www.hse.gov.uk/research/rrpdf/rr832.pdf>).

Locomotive Hiring

Where locomotives are hired to a railway it is important that the railway and the owner come to a clear understanding about the standards to which the locomotive will be maintained while it is on hire.

There should be a distinction between the standards for routine inspection and the standards for maintenance work.

Railways should ensure that the contracts they enter into with Owners are clear about the records that they will be required to keep and return with the locomotive at the end of the hire period.

There should also be agreement over which types of repair will, and will not, require the consent of the owner before they are undertaken.

Railways are also reminded that they should conduct a fitness to run examination on any locomotive or other rolling stock hired or loaned to them before permitting it to operate on their system.

Signalling

The Institution of Railway Signal Engineers formed its Minor Railways Section in 2009 and has already produced some guidance notes (<http://www.irse.org/minorrailways/public/library.aspx>).

Further documents are in preparation and railways are advised to review these for applicability to their own systems.

Railways are encouraged to send their S&T engineers to the Section seminars to ensure that good practice and knowledge is shared in this area. Further details are available from the Section website (<http://www.irse.org/minorrailways/default.aspx>).

Railways are reminded of the requirements that arise under regulation 5(2)(c) of the Railway Safety (Miscellaneous Provisions) Regulations 1997. In particular that there should be procedures and equipment in place to ensure that trains are not derailed by incorrectly set points. As a reminder, paragraph 39 of the guidance to the Regulations states:

“The suitability of any particular signalling system will depend on, among other things, the speed and frequency of trains and their braking performance. For simpler transport systems, a simple signalling system which may require a higher level of human intervention for safe operation may be satisfactory as long as it is backed by procedures which together provide an adequate level of control and safety. On this basis it should be possible for the operators of heritage railways to continue to use original equipment. In all cases there needs to be adequate protection against the effects of human error and against equipment failing in an unsafe mode.”

The final sentence of the guidance should be noted; whilst simpler systems may be permissible for heritage railways there should still be adequate protection against human errors.

The guidance to the regulations is currently out of print but railways who would like to receive an electronic copy should email ian.raxton@orr.gsi.gov.uk.

Availability of HSE guidance on line for free download

For some time now the HSE has made the vast majority of its publications available for free download via the HSE Books website

<http://books.hse.gov.uk/hse/public/home.jsf>.

Many of the issues against which ORR inspectors take action such as slips and trips, work at height, manual handling for example are not 'railway' subjects and are more than adequately covered by the HSE guidance books.

With this information available there is little excuse for railways not to understand what good practice is in these many areas of general health and safety.

Please make use of these publications; they are freely available there for you to review.

Lifting

Railways have many kinds of lifting equipment from workshop cranes, to forklift trucks and road rail vehicles. All equipment used for lifting will be subject to the Lifting Operations and Lifting Equipment Regulations 1998 (LOLER)

(<http://www.legislation.gov.uk/ukxi/1998/2307/contents/made>).

In general, LOLER requires that any lifting equipment used at work for lifting or lowering loads is:

- strong and stable enough for its use and marked to indicate safe working loads;
- positioned and installed to minimise risks;
- used safely, i.e. the work is planned, organised and performed by competent people; and
- subject to on-going thorough examination and, where appropriate, inspection by competent people.

Full details of the requirements of LOLER are contained in the supporting Approved Code of Practice Safe use of lifting equipment. Lifting Operations and Lifting Equipment Regulations 1998. Approved Code of Practice and Guidance. L113 (<http://books.hse.gov.uk/hse/public/saleproduct.jsf?catalogueCode=9780717616282>).

Railways need to ensure that they are complying with these regulations and particularly that volunteer staff have sufficient training to understand which equipment can be used and the training required in each case.

Contacts at ORR

For accidents and emergencies

The Office of Rail Regulation (ORR) Accident Section is staffed Monday to Friday from 09.00 hrs to 17.30 hrs. Accidents occurring during these hours should be reported to the Accident Section on the following number:

Tel: 020 7282 3910

Fax: 020 7282 2118

Outside these hours, weekends and public holidays, serious incidents should be reported to the Department for Transport Duty Officer on:

Tel: 020 7944 5445

Where an incident is RIDDOR reportable you should also make an online submission using the process set out earlier in this letter.

Separate requirements apply for reporting of incidents to the RAIB and these can be found on their website: http://www.raib.gov.uk/report_an_accident/index.cfm

For Minor Railways Team

From 1 September 2011 Ian Raxton is temporarily covering the role of team leader following the promotion of David Keay to the position of Head of the Rail Operators Group in ORR.

Inspector contact details:

<u>Name</u>	<u>Area</u>	<u>Telephone</u>	<u>Email</u>
Ian Raxton	Southern UK	020 7282 3853	ian.raxton@orr.gsi.gov.uk
Steve Turner	Northern UK	020 7282 3765	steve.turner@orr.gsi.gov.uk
Chris Goodlad	Tramways and North Wales	020 7282 3743	christopher.goodlad@orr.gsi.gov.uk

Railways should note the recent retirement of Mr Chris Jacquier after many years of service to the Railway Inspectorate. Any issues that would have been raised with Mr Jacquier should now be referred in the first instance to Ian Raxton.

As soon as practicable a copy of this letter will be placed on ORR's website on the 'Minor and heritage railways' page to make access to the internet hyperlinks easier.

As a final point I would like to remind everyone that Inspectors are here to support and advise you, not just to regulate when things go wrong.

Yours sincerely



Eur Ing Ian Raxton
HM Inspector of Railways