Managing rail staff fatigue

2. Legal duties

2.1 This section provides the legal duties of employers and employees with regards to the management of fatigue, and makes reference to:

- The Health & Safety at Work Act 1974 ('HSWA 1974').
- The Management of Health & Safety at Work Regulations 1999 ('MHSWR 1999').
- The Railways & Other Guided Transport Systems (Safety) Regulations 2006 ('ROGS 2006').
- The Working Time Regulations 1998 ('WTR 1998').

The Health & Safety at Work Act 1974 ('HSWA 1974')

2.2 Sections 2(1) and 3(1) HSWA 1974, place general duties on all employers, including the self-employed, so far as reasonably practicable, to protect the health, safety, and welfare at work of their employees. This also includes a duty, so far as reasonably practicable, to ensure that others are not exposed to health and safety risks through their undertaking (e.g. risks from staff fatigue).

2.3 Section 7 HSWA 1974, places a duty on employees to take reasonable care of their own health and safety and that of other persons who may be affected by their activities at work. Accordingly, employees should take positive steps to understand the risk factors in their work (e.g. causes of fatigue), comply with safety rules and procedures, and ensure their actions or omissions at work do not put others at risk.

Section 2 HSWA 1974 - General Duties of Employers to their Employees

(1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.

(2) Without prejudice to the generality of an employer's duty under the preceding subsection, the matters to which that duty extends include in particular—

(a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;

(b) …

(c) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees;

(d) …

(e) …

(3) Except in such cases as may be prescribed, it shall be the duty of every employer to prepare and as often as may be appropriate revise a written statement of his general policy with respect to the health and safety at work of his employees and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of all of his employees.

(4) …

(5) …

(6) It shall be the duty of every employer to consult any such representatives with a view to the making and maintenance of arrangements which will enable him and his employees to co-operate effectively in promoting and developing measures to ensure the health and safety at work of the employees, and in checking the effectiveness of such measures.

(7) …

2.4 Therefore, in summary, this requires dutyholders, so far as reasonably practicable, to:

- **Provide safe systems of work** that are without risks to health (e.g. appropriate work patterns/rosters) and to keep those systems under review.
- **Provide information, instruction and training on fatigue and supervision** to ensure the health and safety of their employees.
- Develop, carry out and revise (as often as appropriate) a **Fatigue Risk Management Policy**,

either as a standalone document or integrated within a wider Health and Safety Policy.

- Bring the Fatigue Risk Management Policy (and any consequent revisions) **to the attention of all employees.**
- **Consult with staff** on the development and maintenance of safe working patterns or rosters to facilitate effective co-operation.
- **Check the effectiveness** of such measures.

2.5 Sections 4 to 9 provide detailed guidance in these areas.

Section 7 HSWA 1974 - General Duties of Employees at Work

It shall be the duty of every employee while at work—

(a) to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work; and

(b) as regards any duty or requirement imposed on his employer or any other person by or under any of the relevant statutory provisions, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with.

2.6 Therefore, in summary, this requires employees, so far as reasonably practicable, to:

- **Co-operate with their employer**, e.g. by ensuring that they are adequately rested to do their work safely.
- **Report any concerns** about fatigue promptly to their employer.

2.7 Sections 4 to 9 provide detailed guidance in these areas.

The Management of Health & Safety at Work Regulations 1999 ('MHSWR 1999')

2.8 MHSWR 1999, requires employers to assess risks arising from their operations, including risks from staff fatigue, and to put in place effective arrangements for the planning, organisation, control, monitoring, and review of these controls.

Regulation 3 - Risk Assessment

(1) Every employer shall make a suitable and sufficient assessment of -

(a) the risks to the health and safety of his employees to which they are exposed whilst they are at work; and

(b) the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking,

for the purpose of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions...

Paras (3) – (6) not copied herein.

Regulation 5 - Health and Safety Arrangements

(1) Every employer shall make and give effect to such arrangements as are appropriate, having regard to the nature of his activities and the size of his undertaking, for the effective planning, organisation, control, monitoring and review of the preventive and protective measures.

(2) Where the employer employs five or more employees, he shall record the arrangements referred to in paragraph (1).

Regulation 10 - Information for Employees

(1) Every employer shall provide his employees with comprehensible and relevant information on—

the risks to their health and safety identified by the assessment;

the preventive and protective measures;

(c) – (e)...

Paras (2) - (3) not copied herein.

Regulation 13 - Capabilities and Training

(1) Every employer shall, in entrusting tasks to his employees, take into account their capabilities as

regards health and safety.

(2) Every employer shall ensure that his employees are provided with adequate health and safety training—

(a) on their being recruited into the employer's undertaking; and

(b) on their being exposed to new or increased risks because of—

(i) their being transferred or given a change of responsibilities within the employer's undertaking,

(ii) the introduction of new work equipment into or a change respecting work equipment already in use within the employer's undertaking,

(iii) the introduction of new technology into the employer's undertaking, or

(iv) the introduction of a new system of work into or a change respecting a system of work already in use within the employer's undertaking...

(3) The training referred to in paragraph (2) shall—

(a) be repeated periodically where appropriate.

(b) be adapted to take account of any new or changed risks to the health and safety of the employees concerned; and

(c) take place during working hours.

2.9 Therefore, in summary, the MHSWR 1999 requires dutyholders to:

- Carry out **suitable and sufficient risk assessments** to assess the risks of fatigue in their organisation.
- Put in place **appropriate preventative and protective controls.**
- **Develop and record a Fatigue Risk Management System (FRMS)** which could be based on the Plan, Do, Check, Act framework outlined in this guidance (in sections 5 to 9) which should be proportionate to the degree of risk.
- **Train their staff in fatigue risks and controls.**

2.10 Sections 4 to 9 provide detailed guidance in these areas.

The Railways & Other Guided Transport Systems (Safety) Regulations 2006 ('ROGS 2006')

2.11 ROGS 2006 provides the regulatory regime for rail safety, including the mainline railway, metros (including London Underground), tramways, light rail and heritage railways. It places specific duties on controllers of safety critical work in the railway industry, as defined in regulation 23 of ROGS 2006, for the management of competence and fitness, as specified in regulation 24, and for the management of fatigue, as specified in regulation 25, and repeated here:

'Controllers of safety-critical work' means 'any person controlling the carrying out of safety critical work on a transport system or in relation to a vehicle used on a transport system'

'Safety critical work' means any safety critical task carried out by any person in the course of their work . . . on or in relation to a transport system and related expressions shall be construed accordingly.

'Safety critical task' means—

(a) in relation to a vehicle used on a transport system—

(i) driving, dispatching or any other activity which is capable of controlling or affecting the movement of that vehicle;

(ii) signalling, and signalling operations, the operation of level crossing equipment, receiving and relaying of communications or any other activity which is capable of controlling or affecting the movement of that vehicle;

(iii) coupling or uncoupling;

(iv) installation of components, other than where the installation of those components is subject to supervision and checking by a safety critical worker or a controller of safety critical work;

(v) maintenance, other than where the carrying out of that maintenance is subject to supervision and checking by a safety critical worker or a controller of safety critical work; or

(vi) checking that that vehicle is working properly and, where carrying goods, is correctly loaded before being used;

(b) in relation to a transport system—

(i) installation or maintenance of any part of it or of the telecommunications system relating to it or used in connection with it, or of the means of supplying electricity directly to that transport system or to any vehicles using it or to the telecommunications system other than where the carrying out of that task is subject to supervision and checking by a safety critical worker or a controller of safety critical work;

(ii) controlling the supply of electricity directly to it or to any vehicles used on it;

(iii) receiving and relaying of communications; or

(iv) any person ensuring the safety of any persons working on or near to the track, whether or not the persons working on or near to the track are carrying out safety critical work;

(c) in relation to training, any practical training or the supervision of any such training in any of the tasks set out in sub-paragraphs (a) to (b), which could significantly affect the health or safety of persons on a transport system;

Regulation 24 - Competence and Fitness

(1) Every controller of safety critical work shall, so far as is reasonably practicable, ensure that a person under his management, supervision or control, with the exception of where that person is receiving practical training in a safety critical task, only carries out safety critical work where—

(a) that person has been assessed as being competent and fit to carry out that work following an assessment by an assessor.

(b) there is an accurate and up to date record in writing of that person's competence and fitness which references any criteria for determining competence and fitness against which that assessment of competence was made.

(c) the record, or an accurate summary of the record referred to in sub-paragraph is available for inspection, on reasonable request, by any other controller of safety critical work or any operator who may be affected by any safety critical work carried out or to be carried out by that person, for the purposes of establishing that person's competence and fitness to carry out safety critical work; and

(d) there are in place (suitable and sufficient) arrangements for monitoring the competence and fitness of that person.

(2) Every controller of safety critical work shall without unreasonable delay review any person's competence or fitness assessment where—

(a) they have reason to doubt the competence or fitness of a person to carry out that safety critical work; or

(b) there has been a significant change in the matters to which the assessment relates, and where, as a result of any such review a reassessment of competence or fitness is required, that reassessment of competence or fitness shall be carried out to ensure that the requirements of paragraph (1) are met.

(3) Where a reassessment of competence or fitness under paragraph (2) is required, the controller of safety critical work shall, so far as is reasonably practicable ensure that, as a result, the health and safety of persons on a transport system is not prejudiced.

2.12 Therefore, in part, ROGS 2006 accordingly require controllers of safety critical work to:

- Ensure that people carrying out such work have been assessed as **competent and fit for that work.**
- Have arrangements in place for **monitoring the ongoing competence and fitness** of such staff. These fitness assessments and monitoring arrangements should take potential risks from fatigue into account, e.g. in fitness for duty checks.

2.13 Sections 4 to 9 provide guidance in these areas.

Regulation 25 - Fatigue

(1) Every controller of safety critical work shall have in place arrangements to ensure, so far as is reasonably practicable, that a safety critical worker under his management, supervision or control does not carry out safety critical work in circumstances where he is so fatigued or where he would be liable to become so fatigued that his health or safety or the health or safety of other persons on a transport system could be significantly affected.

(2) The arrangements in paragraph (1) shall be reviewed by the controller of safety critical work where he has reason to doubt the effectiveness of those arrangements.

2.14 Therefore, in summary ROGS 2006 accordingly require controllers of safety critical work:

- To **have in place arrangements** to ensure, so far as is reasonably practicable, that a safety critical worker under their management, supervision or control **does not carry out safety critical work** in circumstances where they are **'so fatigued' or where they would 'become so fatigued'** that their health or safety or the safety of other persons could be significantly affected. This requires the dutyholder to understand what is 'so fatigued'. This guidance aims to provide dutyholders with an understanding of what is 'so fatigued' and provides an approach to help avoid reaching that point, including good practice work patterns/ arrangements based on current research.
- To **review their arrangements** for complying with regulation 25 where there is reason to doubt the effectiveness of those arrangements, e.g. if staff surveys indicate high levels of fatigue or if an incident occurs where fatigue is identified as an underlying cause. This review could be via HSEs 'Plan, Do, Check, Act' approach as detailed in this guidance.

The Working Time Regulations 1998 ('WTR 1998')

2.15 When considering fatigue management, reference is often made to the WTR 1998 as amended, which among other aspects, places maximum limits on the amount of time an employer can ask an employee to work. Employers and other dutyholders need to consider and comply with the requirements of WTR 1998, but compliance is not in itself sufficient to adequately control risks from staff fatigue - some work patterns could comply with WTR 1998 but still be potentially fatiguing. For more information, see ORR's RGD-2004-16 and the other WTR 1998 references in 'Further Information'.

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