



# Fitness for Work

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# Introduction

1. Protecting and maintaining a fit workforce is an important issue for employers. This guidance aims to bring together the key legal requirements associated with the management of fitness in the workplace. In addition, it sets out good practice and provides a signpost to relevant information sources and organisations for those working in the rail sector.
2. The guidance is for the rail human resources community, those delivering occupational health services, health and safety directors/managers, trade union health and safety representatives or others involved in ensuring the competence and fitness of staff within the rail industry. A considerable amount of general guidance exists on managing many health conditions, available from agencies such as the DVLA, CIPD, SOM, ACAS, DWP<sup>1</sup> and others, so this is not covered here.
3. Companies require their staff and contractors to be sufficiently fit to support safe and efficient performance at work. Fitness requirements are not homogenous across the industry, but differ according to which company defines the medical assessment and the level of risk. Medical fitness can be compromised in a multitude of ways, through ill health, disease, mental health conditions and behaviours. Medical fitness includes long-term health conditions and age related health issues.
4. Many contingent labour workers do not work under a standard employer-employee relationship. Deciding whether such workers supplied by labour agencies are employees of the agency, or the end user, or neither, can be complex and time consuming. HSE guidance on [agency and temporary workers](#) and [contracts of employment](#) (the employment test) provides a useful steer on issues to be considered, including degree of control and any obligation to provide or accept work. However, it may be more pragmatic and efficient to treat all contingent labour as employees of the supplier for the purposes of fitness for work
5. Employers are responsible for preparing, on a case-by-case basis, a risk assessment and control strategy covering the potential impact on risk to the travelling public, the company and the individual employee when there is a foreseeable and significant change to an individual employee's fitness. It is appreciated that this can be difficult, decisions on fitness often proving to be more complex than associated with a binary "fit" or "unfit" categorisation. If the individual is doing safety critical work, whether they are an employee or not, the benchmark risk is that when controls are in place the risk of a catastrophic incident occurring would be nil or negligible and the consequence of an incident if it occurred would be a minor injury or nil.

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<sup>1</sup> DVLA is the Driver & Vehicle Licensing Agency; CIPD is the Chartered Institute of Personnel & Development; SOM is the Society of Occupational Medicine; ACAS is the Advisory, Conciliation & Arbitration Services; the DWP is the Department for Work and Pensions.

6. Risk assessment requires information about the job, the working environment and the individual's capability and is usually prepared by health and safety professionals. Occupational health professionals will often provide information for managers about any longer-term considerations/needs for an employee and, when appropriate, the occupational health adviser may contact the employee's General Practitioner where they have the agreement of the employee.
7. General return to work issues, including incorporation of the Fit For Work Scheme and implementation of the Equality Act 2010 are normally covered by existing human resource processes within the company. Very often in the rail sector it is the human resource function that takes the lead in management arrangements for fitness, supported by a case manager (internally or externally based) and a health service provider. Hence, there is a need for good co-ordination between the various professionals involved to ensure proper protection and maintenance of a fit and healthy workforce.
8. The following section sets out the main and rail sector specific legal requirements for fitness for work and highlights the overlapping company medical standards and available guidance in this area.

## Main Legal Requirements

### *General*

9. The purpose of establishing an individual employee's fitness for work is both to enable work to be carried out competently and reduce, as far as possible, the risk of pre-existing disability or ill health compromising the safety of the employee, others at work and the general public.

### *Health and Safety at Work etc Act 1974*

10. The general duty to ensure that employees are fit to carry out their work safely is implicit in the Health and Safety at Work etc. Act 1974 (**HSWA**).
11. While HSWA places the responsibility on the employer for ensuring, so far as is reasonably practicable, an employee's health, safety and welfare at work, employees also have a legal duty to take reasonable care for their health and safety and that of other persons who may be affected by their actions or omissions. Further, they should co-operate with their employer, so far as is necessary, to enable the employer to carry out their relevant statutory duties.<sup>2</sup> This would include co-operation in respect of, and reporting on, their fitness to work, if they had been instructed to do so by their employer.

### *The Management of Health and Safety at Work Regulations 1999*

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<sup>2</sup> See section 7 of HSWA.

12. In practice, an employer will meet its duty to ensure its employees are fit for work through carrying out risk assessments that identify a range of controls or compliance measures, including periodic medical assessments and monitoring of individuals.<sup>3</sup> An employee's duty under the Management of Health and Safety at Work Regulations 1999 (**MHSW**) is limited to ensuring they use equipment and machinery etc. in accordance with their training and instructions and informing the employer essentially of any matter (including changes in their fitness) that affects their operational performance or an activity's protective arrangements.<sup>4</sup>
13. Pursuant to regulation 13 of MHSW, employers are required, in entrusting tasks to their employees, to take into account their capabilities as regards health and safety, i.e. their potential impact in creating harm either to themselves or to others. In addition, every employer must ensure its employees are provided with adequate health and safety training.

### ***Railways and Other Guided Transport Systems (Safety) Regulations 2006***

14. In addition, for all safety critical work on the railway or tramway, regulation 24 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended) (**ROGS**) specifically requires the controller of safety critical work to ensure that staff are competent and fit to undertake their safety critical activities.
15. The 'controller of safety critical work', which is a defined term under ROGS, can include corporate organisations as well as individuals. As such, where an organisation is the controller of safety critical work, the organisation will be under a duty to have systems in place to make sure that individuals under their control are competent and fit.<sup>5</sup>
16. Controllers of safety-critical work must<sup>6</sup>:
  - make sure an objective, trained assessor assesses safety-critical workers as being fit to carry out the work;
  - keep and update a written record of the worker's competence and fitness, including any participation in health surveillance and/or arrangements associated with their potential health condition;
  - make their written records available for ORR to inspect, or for other affected controllers or operators to inspect, after making a reasonable request to do so;
  - put in place a suitable and sufficient system to monitor the competence and fitness of safety-critical workers; and

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<sup>3</sup> See regulations 3 to 7 of MHSW.

<sup>4</sup> See regulation 14 of MHSW.

<sup>5</sup> See regulation 24(1) of ROGS.

<sup>6</sup> See regulation 24 of ROGS.

- review and reassess safety-critical workers' competence or fitness if they have reason to doubt it or if the task changes significantly.
17. Regulation 25 of ROGS requires that safety critical workers are not so fatigued that the health and safety of the safety critical worker or of other persons on the transport system could be significantly affected. Individuals and the organisations that control their work activities each have fatigue management responsibilities. ORR and the Rail Safety and Standards Board (**RSSB**) have published guidance on managing rail staff fatigue, including fitness for duty.<sup>7</sup>

### ***Transport and Works Act 1992***

18. The Transport and Works Act 1992 (**TWA**) includes provisions regarding those individuals who are unfit to carry out work because of the effect of drink and drugs.<sup>8</sup> These provisions apply to railways and tramways.
19. Section 27 stipulates that those involved in train movement or in maintenance, repair or alteration will be guilty of an offence if they are unfit to carry out that work through the use of drink or drugs. The TWA defines “drug” as any intoxicant other than alcohol. Drugs, for the purpose of the TWA would therefore include prescribed or over-the-counter medicines, if they cause intoxication.
20. If an individual commits an offence under section 27, the operator of that transport system will also be guilty of an offence unless it has exercised all “due diligence” to prevent the commission of an offence under section 27. The existence of a drug and alcohol policy can be used by an employer to demonstrate it has taken steps to prevent the commission of such an offence by its employees.

### ***Construction (Design and Management) Regulations 2015***

21. The Construction (Design and Management) Regulations 2015 (**CDM**) is an example of where there is a high level, protective legal requirement in relation to health and safety.
22. CDM places responsibilities on the ‘principal contractor’ and ‘principal designer’<sup>9</sup> to ensure that risks to health and safety are, so far as is reasonably practicable, designed out to ensure the project is constructed and carried out without risks to health or safety.

### ***The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013***

23. Under regulations 8 and 9 of The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (**RIDDOR**), there is a duty on the ‘responsible person’ to

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<sup>7</sup> See: [Managing Rail Staff Fatigue](#), 2012 and [Managing Fatigue – A Good Practice Guide](#), 2012.

<sup>8</sup> See regulations 26-40 of the TWA.

<sup>9</sup> These are defined terms under CDM – see regulation 2.

follow a reporting procedure in relation to diagnoses of certain occupational diseases where these are likely to have been caused or made worse by an employee's work or where there has been exposure to biological agents. These reporting requirements cover:

- six short latency diseases (carpal tunnel syndrome; severe cramp of the hand or forearm; occupational dermatitis; hand arm vibration syndrome; occupational asthma; tendonitis or tenosynovitis of the hand or forearm);
- any occupational cancers; and
- any disease attributed to an occupational exposure to a biological agent.

24. For the purposes of regulations 8 and 9, the 'responsible person' in respect of an employee is that employee's employer.
25. For mainline duty-holders, reporting requirements are normally achieved by use of RSSB's Safety Management Intelligence Systems (SMIS), though some contractors, mainline freight duty-holders and non-mainline duty-holders [report directly to ORR](#) via the ORR website. London Underground (LUL) reports to ORR via its IE2 system.

### ***The Working Time Regulations 1998***

26. The Working Time Regulations 1998 (as amended) (**WTR**) require employers to offer a free health assessment for night workers when assigned to night work.<sup>10</sup> Such health assessments must be provided to the employee at regular intervals of whatever duration is appropriate for that employee (it is generally expected that this would be at least annually).
27. It is good practice for the night worker assessment to be carried out by the employer's occupational health provider. This is usually by questionnaire with the purpose of identifying any individual whose health may be affected by night work. If a problem is revealed, then the individual should have an occupational health assessment so that the employer can be given specific advice in relation to that employee.
28. If a night worker is experiencing health problems connected to night working, this advice may include the employer, where possible, transferring the employee to suitable work undertaken during periods other than at night. Employers must keep records of night workers' working hours for at least 2 years to show they are not exceeding the limits.<sup>11</sup> There is also government guidance on night work.<sup>12</sup>

### ***Equality Act 2010***

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<sup>10</sup> See regulation 7 of the WTR.

<sup>11</sup> See regulation 9 of the WTR.

<sup>12</sup> See: [guidance on night work](#).

29. Individuals with significant health conditions may also fall within scope of the Equality Act, 2010 (**EA 2010**).
30. For the purposes of the EA 2010, a person has a disability if they (a) have a physical or mental impairment, and (b) that impairment has a substantial and long term negative effect on their ability to carry out normal day-to-day activities.
31. Disability, is a 'protected characteristic' under the EA 2010 and as such an individual assessment should be carried out to determine whether any reasonable adjustments to equipment, the workplace or working activities should be made to protect that individual.<sup>13</sup>

## Work Specific Requirements

### Mainline Train Drivers

#### Train Driver Licences and Certificate Regulations 2010

32. Pursuant to the Train Driver Licences and Certificate Regulations 2010 (**TDLCR**), all new drivers (both cross-border and domestic) must now have a train driver licence in order to drive trains on the mainline and, from 29 October 2018, all existing drivers (both cross-border and domestic) will also be required to hold a train driver licence.
33. Regulation 8 of the TDLCR sets out the conditions a train driver must meet in order to obtain a licence. Two conditions are that a train driver must have passed a medical examination and a psychological fitness examination.
34. Schedule 1 of the TDLCR sets out the criteria and the minimum content that must be covered by the medical and psychological fitness examination. These must be carried out by or under the supervision of a recognised doctor and/or a recognised psychologist, as defined in the TDLCR. ORR publishes a register of recognised doctors and psychologists for these purposes.
35. These medical and psychological requirements bring into domestic law the requirements of European Commission Directive 2007/59/EC on the certification of train drivers operating locomotives and trains on the railway system in the Community and Directive 2014/82/EU (which amends Directive 2007/59/EC) on general professional knowledge and medical and licence requirements.

#### *Medical Assessment*

36. Schedule 1 of the TDLCR replicates the areas of medical fitness cited in Annex II of Directive 2007/59/EC (this is further reproduced in Railway Industry Standard RIS-3451-TOM Issue

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<sup>13</sup> See section 20 of the EA 2010.

1<sup>14</sup>). Railway Industry Standard RIS-3751-TOM Issue 3<sup>15</sup> describes a standard for, and provides guidance on, the standardised psychometric assessment of train driver candidates.

37. Schedule 1 of the TDLCR includes general requirements in relation to medical fitness and requires that drivers must not be suffering from any medical conditions or be taking any medication, drugs or substances that are likely to cause:

- a sudden loss of consciousness,
- a reduction in attention or concentration,
- sudden incapacity,
- a loss of balance or co-ordination, or
- significant limitation of mobility.

This has relevance to any train driver with conditions such as: diabetes, epilepsy, obstructive sleep apnoea, heart rhythm disturbances, knee, hip or spinal disorders and neurological conditions.

38. The coverage of the medical assessment includes a general medical examination and an assessment of sensory function (visual, colour perception and hearing capability) and test(s) for diabetes mellitus and other conditions as well as screening for drugs and alcohol abuse. At the examination pre-appointment as a train driver, there should be an electro-cardiogram (ECG) at rest, but after appointment the ECG is only required for train drivers over 40 years of age.

39. Following appointment as a train driver, medical assessments must be taken at least every 3 years up to the age of 55 and then annually. However, a recognised doctor may request a more frequent re-assessment if the health of an individual so requires.

40. The physical fitness of the driver must also be checked regularly and after any occupational accident or any period of absence following an accident. A recognised doctor can also decide to carry out an additional appropriate medical examination, particularly after a period of at least 30 days' sick leave.

41. ORR recognises that train drivers diagnosed with diabetes are able to continue to drive trains providing they are able to appropriately control blood sugar levels through diet and/or medication and have no other disqualifying medical condition. Their employer must make the appropriate risk assessments, taking advice from their occupational health provider and/or GP where necessary, to establish that risks to the driver and passengers are

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<sup>14</sup> See: <https://www.rssb.co.uk/rgs/standards/RIS-3451-TOM%20Iss%201.pdf>.

<sup>15</sup> See: <https://www.rssb.co.uk/rgs/standards/ris-3751-tom%20iss%203.pdf>.

controlled. They must also make sure that monitoring arrangements are in place to ensure risks are managed or controlled. If necessary this could include the train driver not being allowed to drive if in the employer's judgement, they are not fit to do so. In practice, a plan is agreed between the driver, doctor and employer.

42. Specific advice on medical assessments for drivers with diabetes is available in Annex F of RSSB's GO/GN3655 Guidance on Medical Fitness for Safety Critical Workers.<sup>16</sup> A similar approach of risk assessment, monitoring and risk control would also be appropriate for a train driver who was diagnosed with sleep apnoea but had been effectively treated with a CPAP machine and was compliant with its use. Specific advice on drivers with obstructive sleep apnoea is available in Annex G of RSSB's GO/GN3655.<sup>17</sup>
43. ORR is aware that some drivers have medical complaints that render them potentially ineligible for a train driver licence under the existing medical requirements of Schedule 1 of the TDLCR. ORR will be re-considering its policy on certain medical issues in respect of the medical requirements that must be met as part of the licence application and have asked the European Commission to set up an Expert Group to advise on where the boundary is for those who have certain medical conditions and whether they will or will not be able to get a licence notwithstanding that medical condition.

The requirements of the TDLCR do not apply for drivers who only drive within depots and similar<sup>18</sup> or on the non-mainline railway or for engineering possessions. RIS-3452-TOM Issue 1<sup>19</sup> sets out the medical requirements for shunters and competent persons accompanying train drivers.

### *Psychological Assessment*

44. The purpose of the occupational psychological examination is to support the organisation in the appointment and management of staff.
45. The psychological assessment, as a minimum, should take into account cognitive, psychomotor and behavioural and personality markers in order to establish whether the applicant driver has any established occupational psychological deficiencies, which are likely to interfere with the safe exercise of the duties.

### *Recognised Doctor*

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<sup>16</sup> [GO/GN 3655 Issue 2 Appendix F](#)

<sup>17</sup> [GO/GN 3655 Issue 2 Appendix G](#)

<sup>18</sup> ORR's interpretation of the Train Driving Licences and Certificates Regulations 2010 as applied to drivers in certain depots. [mailto:http://orr.gov.uk/\\_data/assets/pdf\\_file/0020/24068/depot-driver-position-statement-2017.pdf](mailto:http://orr.gov.uk/_data/assets/pdf_file/0020/24068/depot-driver-position-statement-2017.pdf)

<sup>19</sup> See: <https://www.rssb.co.uk/rgs/standards/GORT3452%20Iss%201.pdf>.

46. The TDLCR uses the term “recognised doctor” which denotes those doctors registered on ORR’s published register (as required by regulation 23 of the TDLCR) for conducting train driver medicals.
47. To be a recognised doctor for these purposes the doctor must meet the requirements of independence, competence and impartiality and have:
- demonstrated that they are a registered medical practitioner;
  - at least 2 years’ experience in occupational medicine, meet the ARIOPS competency guidance and have a recognised qualification in occupational medicine e.g. verified by the Faculty of Occupational Medicine, Diploma, Advanced Diploma or MSc in Occupational Medicine; and
  - conducted medical assessments to cover the requirements of Schedule 1 of the TDLCR.

## Mainline Operations

### *Commission Regulation (EU) 2015/995*

48. The intention of Commission Regulation (EU) 2015/995, which concerns the technical specification for interoperability relating to the ‘operation and traffic management’ subsystem of the rail system in the European Union (**OPE TSI**), is that all staff performing safety-critical tasks (e.g. signallers, train dispatchers) must have the appropriate fitness to ensure that overall operational and safety standards are met.
49. The OPE TSI therefore indicates, for the staff concerned, the professional qualifications and health and safety conditions at work that are required for the operation and maintenance of the subsystem concerned.<sup>20</sup> In particular:
- Railway undertakings and infrastructure managers are required to set up and document in their safety management system the processes they have put in place to meet the medical, psychological and health requirements for their staff;
  - Medical examinations and any associated decisions on the individual fitness of staff must be conducted by a medical doctor;<sup>21</sup>
  - Safety critical tasks are not to be carried out whilst vigilance is impaired by alcohol, drugs or psychotropic medications and the employer must have in place procedures to control the risk of staff attending for work under the influence of such substances or

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<sup>20</sup> See Chapter 4 (and in particular paragraph 4.7) of the OPE TSI.

<sup>21</sup> Note that RSSB’s Guidance on Medical Fitness for Railway Safety Critical Workers (GO/GN3655) at paragraph 2.3 states that medicals are to be conducted by **or under the supervision of a doctor**.

consuming such substances at work. These requirements are reproduced in RSSB's Guidance on Medical Fitness for Railway Safety Critical Workers (GO/GN3655).

50. The requirements of the medical examination under the OPE TSI is similar to that for train drivers under the TDLCR.
51. In respect to the frequency of periodic medical examinations, the OPE TSI provides these are to be carried out every 5 years for staff up to 40 years of age, for those aged 41-62 every 3 years and annually for those aged over 62 years. As with the TDLCR, an increased frequency can be specified by the doctor if they have concerns over an individual's health.
52. Paragraph 4.7.2.2.3 of the OPE TSI stipulates that an additional specific medical examination and/or psychological assessment must be performed where there is reasonable ground for doubting the medical or psychological fitness of a member of staff or reasonable suspicion of use of drugs or use of alcohol over the limits allowed. This would be the case especially after an incident or accident caused by human error on the part of the individual.

## Tramway Driver Requirements

### ***Road Traffic Act 1988***

53. Pursuant to the Road Traffic Act 1988 (**RTA**), tramway drivers are required to have a Category B (motor car) driving licence.<sup>22</sup> DVLA Group 1 medical fitness requirements apply to Category B licence holders. An application for a driving licence must include a declaration by the applicant declaring whether they are suffering or have at any time suffered from any relevant or prospective disability.<sup>23</sup> 'Disability' for the purpose of the RTA includes disease and the persistent misuse of drugs or alcohol.
54. Holders of a driving licence have a duty to notify the DVLA if they become aware that they are suffering from a relevant or prospective disability not previously disclosed to the DVLA or if a relevant or prospective disability, which has been previously disclosed, has become more acute since the licence was granted.<sup>24</sup> Notifiable conditions are anything that affects the ability to drive safely, including: epilepsy, strokes, neurological and mental health conditions, physical disabilities, visual impairments. Failure to notify is an offence under the RTA.<sup>25</sup> It

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<sup>22</sup> Regulation 8 of the Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992 amended section 87 of the Road Traffic Act 1988 so that section 87 of the RTA, which requires drivers of motor vehicles to have driving licences, also applies to tramcars.

<sup>23</sup> See section 92 of the RTA.

<sup>24</sup> See section 94(1) of the RTA.

<sup>25</sup> See section 94(3A), which was inserted into the RTA by section 18(2) of the Road Traffic Act 1991.

should, however, be noted that the RTA only applies in respect of driving a vehicle on a road.<sup>26</sup>

55. The General Medical Council (**GMC**) recognises that doctors owe a duty of confidentiality to their patients but that they also have a wider duty to protect and promote the health of patients and the public. The GMC has therefore published guidance<sup>27</sup> setting out the steps to be taken when the doctor is aware a patient is continuing to drive when they may not be fit to do so. If the doctor believes the patient's refusal to stop driving creates a risk of death or serious harm to others, the doctor should contact the DVLA (or DVA in Northern Ireland). The GMC recommends that a doctor seeks patient consent to disclose information, unless it is unsafe or not practicable to do so. If consent is denied, the doctor should inform the patient they are required to, and will be, notifying the DVLA. It is the DVLA's legal responsibility for deciding if a person is medically unfit to drive.
56. Extensive advice and information is available from the DVLA website and medical practitioners assessing tram drivers should be aware of the government's guide for medical professionals in relation to assessing fitness to drive.<sup>28</sup>

## Trackworker Requirements

57. Fitness requirements are set out for those accessing the mainline track in NR/L2/OHS/00124 Issue 3 company standard.<sup>29</sup> The Network Rail standard medical requirements are dependent on the level of risk involved in the job and whichever "level" is assigned.
58. People carrying out work on non-Network Rail infrastructure should seek information from the relevant infrastructure controller on their specific fitness requirements.

## Industry Standards & Guidance

59. Medical fitness assessment requirements are set down in the following industry standards published by RSSB:
- RIS-3451-TOM Issue 1 (December 2016) for train drivers;

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<sup>26</sup> 'Road' is defined in section 192 of the RTA in relation to England and Wales as any highway and any other road to which the public has access, and includes bridges over which a road passes, and in relation to Scotland means any road within the meaning of the Roads (Scotland) Act 1984 and any other way to which the public has access, and includes bridges over which a road passes,

<sup>27</sup> See: [http://www.gmc-uk.org/guidance/ethical\\_guidance/30653.asp](http://www.gmc-uk.org/guidance/ethical_guidance/30653.asp).

<sup>28</sup> See: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/618072/assessing-fitness-to-drive-a-guide-for-medical-professionals.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/618072/assessing-fitness-to-drive-a-guide-for-medical-professionals.pdf).

<sup>29</sup> See: <https://safety.networkrail.co.uk/wp-content/uploads/2016/12/NR-L2-OHS-00124-Standard-Briefing-note.pdf>.

- RIS-3452-TOM Issue 1 for train dispatchers, shunters, or a competent person who accompanies train drivers;
- RIS 3751-TOM Issue 3 sets out the selection process and standardised psychometric assessment of prospective train driver candidates;
- There is also a voluntary RSSB guidance note GO/GN 3655 Issue 2 for other railway safety critical workers that includes a series of appendices on laser eye surgery, colour vision, hearing, safe use of medicines, diabetes and sleep disorders.

Copies of all standards and guidance notes are located at <http://www.rssb.co.uk/railway-group-standards>.

60. Competence-specific medical fitness requirements are also set down in company standards mandated by both Network Rail (NR/L2/OHS/00124 Issue 3) and Transport for London (TfL) (Documents S1601-S1605).
61. Questions and concerns are frequently raised on the interpretation of the company fitness standards and in particular any restrictions they may impose. These should be directed to the respective organisation that owns the particular standard. The employer or primary sponsoring company has a responsibility to conduct a risk assessment and there should be good and fair communications surrounding any such restrictions with those allocating or overseeing operational work.
62. The current Sentinel Scheme Rules (as at June 2015 v2) set out requirements on primary sponsors for fitness for work. Section 3.2(b) of the scheme rules stipulate that the Primary Contract of Sponsorship shall '*regardless of the employment status of the individual, commit the primary sponsor to fulfil the role of the employer for the purposes of health and safety*'. This would include duties for fitness assessments, statutory health surveillance and RIDDOR reporting.
63. Under Network Rail's Code of Conduct for Labour (February 2015), their external supply chain is expected to provide workers who are competent and fit for work and these workers are required to comply with Sentinel Scheme Rules.
64. In recent times, the Rail Delivery Group (RDG), RSSB and train operators have been doing more on health risk and giving consideration to good practice for the passenger operators.

One example is the guidance on legionella risk and controls.<sup>30</sup> Another is Network Rail's guidance on the impact of fasting during Ramadan.<sup>31</sup>

65. The Heritage Railway Association (2016) guidance note on fitness assessment<sup>32</sup> advocates heritage railways or tramways appoint a medical officer and advise completion of a medical questionnaire and examination for all safety critical workers.

## Collaboration and Co-operation Requirements

66. Employee safety representatives (which may be trade union or staff representatives) have an important role in encouraging their members to actively attend medical assessments, raise workplace issues or challenge companies on how they are delivering their fitness for work scheme.<sup>33</sup>
67. Under the [Conduct of Employment Agencies and Employment Businesses Regulations 2003](#) (enforced by Department of Business Innovation and Skills not ORR) agencies and businesses that use workers supplied by them must co-operate and exchange the information they both need to ensure the safety of workers.

## Competency of Doctors

68. Employers should ensure that the doctor with overall responsibility for medical fitness, the "Responsible Doctor" is professionally competent. They must be a registered medical practitioner and should be competent to undertake the role. The doctor will normally need to be a Member of the Faculty of Occupational Medicine, or have an equivalent overseas qualification. The doctor should have sufficient experience of work on railways to enable sound judgements, especially for safety critical work. It is standard for occupational assessments and most statutory health surveillance to be carried out by a trained occupational health nurse, under the supervision of a doctor.<sup>34</sup>
69. The Association of Railway Industry Occupational Health Practitioners (ARIOPS) revised Competency Framework (2017)<sup>35</sup> defines requirements for Responsible Doctors,

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<sup>30</sup> <mailto:https://www.rssb.co.uk/rgs/oodocs/atocgn013%20iss%202.pdf> ATOC/GN013 Issue 2 October 2014, ATOC Guidance Note – Control of Risk Posed by the Presence of Legionella Bacteria in On-train Non-potable Water Systems

<sup>31</sup> Network Rail Everyone Managing... Religion in the Workplace - Ramadan Version 1.3  
<mailto:https://www.rssb.co.uk/library/depot-sidings/everyone-managing-ramadan-in-the-workplace.pdf>

<sup>32</sup> Fitness assessment for safety critical workers HGR-A0015 [http://www.hra.uk.com/docs/HGR-A0015-Is03-Fitness%20Assessment%20for%20Safety%20Critical%20Workers.pdf](mailto:http://www.hra.uk.com/docs/HGR-A0015-Is03-Fitness%20Assessment%20for%20Safety%20Critical%20Workers.pdf)

<sup>33</sup> See, for example, The Safety Representatives and Committees Regulations 1977 and The Health and Safety (Consultation with Employees) Regulations 1996 which both contain provisions setting out the functions of a safety representative.

<sup>34</sup> Nursing Medical Council registration is usually as a Registered Specialist Community Public Health Nurse – OH and verifiable on the NMC Register.

<sup>35</sup> This is currently being revised.

Recognised Doctors and Medical Examiners. Their Competency Framework document sets down knowledge, experience and areas of understanding required for each role.

70. The specific responsibilities of a Responsible Doctor should include the following:
- to professionally manage the medical assessment system ensuring that assessments are carried out competently and to correct standards and carrying out periodic audits to ensure that the medical assessment of train drivers is consistent with good practice;
  - to be responsible for giving medical input into any risk assessment of an individual's fitness for railway work where the individual's medical condition can be accommodated if a safe method of working can be devised and for liaising with the company on any decisions of medical fitness/unfitness made as a consequence of a fitness assessment;
  - ensuring that health surveillance requirements emerging from risk assessments are arranged, that there are effective arrangements if there is a need to make a statutory report to SMIS, ORR (or HSE) and consequences to the individual are implemented;
  - to ensure that suitable notification of medical fitness/unfitness is supplied to the company at all times;
  - to ensure that confidential medical records are maintained;
  - to develop and maintain an effective communication link with the company's human resources, health and safety, in-house case managers or other external health-related providers e.g. physiotherapy or psychology services;
  - to maintain current evidence of continuous professional development i.e. knowledge, experience and understanding, relevant to occupational health practice in the rail sector.
71. It is considered good practice that those involved in fitness decision-making are aspiring or SEQOHS accredited. SEQOHS stands for Safe, Effective, Quality Occupational Health Service and is a set of standards and a voluntary accreditation scheme for occupational health services. SEQOHS accreditation is a formal recognition that a health service provider has demonstrated that it has the competence to deliver against six standards: business probity, information governance, people, facilities and equipment, relationship with purchasers and relationship with workers.

## Good Practice Principles

72. Each employer has responsibility for ensuring that their fitness standards are suitable for controlling the risks involved in delivering the company's operations and activities.
73. For all staff, the employer should have a procedure in place that requires individuals to communicate information about their fitness or changes to their fitness in relation to risks from their work. The procedure must take account of the personal nature of the information

being disclosed to ensure it is appropriately protected. Information must be sensitively handled and only disclosed to managers and HR.

74. The employer should have arrangements in place to medically assess an individual as soon as is reasonably practicable after an incident has occurred, where there are reasonable grounds to believe their fitness could have been relevant. Where necessary, this should be on a confidential basis. This is to determine if the individual was medically fit to work or whether their health status may have had an influence on their performance.
75. The employer has overall responsibility for the fitness of its staff, including contractors, and for employing, or buying in the services of a doctor to be responsible for assessing medical fitness. Guidance is available from RSSB on procuring health services.<sup>36</sup>
76. The employer also needs to have systems for ensuring that:
  - fitness checks and assessments are carried out satisfactorily and at the correct frequency;
  - individual fitness problems are addressed;
  - records of physical fitness/unfitness are maintained; and
  - When problems arising from the use of drink or drugs or from fatigue are detected or reported, they need to be addressed in a timely manner.
77. Where suitable fitness standards already exist, they should be used. If the standards are not appropriate to the activities to be undertaken, suitable standards should be established based on an assessment of the risks.
78. Fitness standards should be reviewed in the light of changes in work activities, advances in scientific knowledge regarding fitness standards, and new knowledge resulting from incident investigations.
79. Periodically, an audit should be conducted to systematically review compliance with the standards and identify points for achieving continuous improvement.

## Contemporary Areas

80. Road driving and fitness for work has recently come to the fore with a number of incidents in which rail company or contractor staff were involved in incidents on the road network where fatigue was seen as a contributory factor. In 2016, PACTS Road User Behaviour Working Party published “Fit to Drive ?”, a report that highlights where improvements are to be made

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<sup>36</sup> Occupational Health: The Wise Buyer <mailto:https://www.rssb.co.uk/library/improving-industry-performance/2017-03-guide-occupational-health-the-wise-buyer.pdf>

in order to reduce death and injury on the road. An RSSB project group has led the development of good practice guidance on work-related driving safety.<sup>37</sup>

81. In the high profile 'Germanwings' case, the pilot deliberately crashed a plane, killing himself and all passengers on board. The incident raised the issue of concealment of mental health issues and the information that is shared between a company's human resources, occupational health service provider and an individual's general practitioner.
82. The following points, set down by the RSSB Health & Well-Being Professionals Committee/Health & Well-Being Policy Group, are made in the recognition that the Germanwings incident was an extremely rare event and that technical train protection systems are in place:
  - "...whilst depression is one of the most common mental health issues, these events are rare. Therefore, whilst it has emerged that the Germanwings pilot was depressed it cannot be assumed that this was the sole cause of his actions. Indeed, the type of mild-moderate depression that would be picked up by a generic screening measure will not provide any further information or risk assessment, and as such this is not a good safety or preventative measure to prevent this type of incident occurring."
  - All employees who have safety critical tasks should be subject to a programme of unpredictable, mandatory unannounced drug and alcohol testing.
  - Companies are advised to ensure that employee contracts require disclosure of medications and illnesses that may affect safe working. An acceptable alternative is to set down this requirement in a Code of Conduct or similar.
  - Employer provision of safe reporting, e.g. Close Call: Employees can report medical concerns using the company reporting system in addition to other issues and 'near misses', having an assurance that their treatment will be proportionate, fair and equitable.
  - The railway is encouraged to consider that on recruitment a pre-employment questionnaire assessing fitness includes a statement by the individual's GP that the contents are accurate and complete. The GP would be asked if they have concerns about suitability. Whilst this is regarded as best practice, it is routine practice in other industries where safety is paramount.
83. The Glasgow Bin Lorry case concerned someone who had blacked-out some years ago but the cause was not fully appreciated and consequently the necessary restrictions on driving a corporation bin lorry were not in place. The driver subsequently blacked out while driving a Glasgow City Council bin lorry and killed six people. It was adjudged that there was

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<sup>37</sup> <mailto:https://www.rssb.co.uk/improving-industry-performance/road-risk>

insufficient evidence to make it foreseeable that the driver would lose consciousness whilst driving, it being the first blackout he had experienced in the previous 4½ years and he having no indication of feeling unwell when commencing driving. No doctor had advised the driver that he was unfit to drive or told him to notify the DVLA. There was no evidence that he had sought to deceive his employers, he had advised the Occupational Health doctor of the earlier incident and this was recorded in his medical and employment records. As a consequence of insufficient evidence, the decision was made not to prosecute the driver. However, the case led to much debate about health disclosure and the consequences of failing to disclose information about their health relevant to their working activity.

84. Reporting relevant information to employers, self-reporting to the DVLA and foreseeability of potential ill-health is relevant to the rail sector, with early interventions to be considered wherever possible. A company needs to be confident that they will be able to detect a sick or unfit employee who poses a risk to public safety. If pre-employment references provide relevant information, there is a need for a good procedure on how to ensure the appropriate information is shared with the relevant people. If someone is identified that gives rise to risk or concern, then effective arrangements need to be in place to manage this risk and ensure that the individual is treated fairly and proportionately.

## Assessment of fitness

85. Medical assessments, to the appropriate medical standards, should be carried out by, or under the supervision of the responsible doctor. This doctor may delegate all, or part, of the medical assessment to others who they supervise, but there should in turn be suitable processes in place to ensure the competence and experience of those individuals. Even so, the doctor retains overall responsibility for the process and the result.
86. The Union Internationale des Services Médicaux des Chemins de Fer (UIMC) is a working group comprised of medical experts from across the world that produces recommendations on medical fitness. The UIMC operates under the aegis of the UIC and there is close collaboration with the Community of European Railways (CER). The UIMC medical guidelines have been adopted by European policymakers, and as such inform all medical assessments with a basis in European legislation. Periodically this group is asked to meet or review the technical material to revise the medical criteria.
87. The medical assessment against the fitness standard(s) and decision on fitness/unfitness should be made by a competent person, who may be the Responsible Doctor or staff properly trained to undertake the assessment. Employers should have a procedure for dealing with assessments where the outcome is in doubt or subject to appeal. This procedure may be similar to existing management procedures for resolving disputes. Their line manager, trade union representative or company should give employees accurate information about whom they should contact and how they can be supported.
88. Some medical conditions may be more prevalent in older people or may become more severe with increasing time since diagnosis and, hence, age. Standards already include a requirement for increased frequency of medical assessment beyond a certain age.

However, age itself is not an impairment and assessments focus on the conditions that may affect fitness rather than the individual's age.

## Maintaining Fitness

89. It is important to ensure that staff assessed as fit to carry out their duties, continue to meet the required standards. Systems must be in place to identify changes in fitness status. These will normally include periodic reassessments, appropriate health surveillance, self-reporting of changes to health, the assessment of individuals following periods of sickness absence or injury, and a review of sickness absence records. Managers have a responsibility to be vigilant. For many safety critical workers the daily booking-on procedure before starting work helps to ensure they are not unfit to carry out their work because of drink, drugs or fatigue. Recognising that it can be difficult to decide whether someone has had enough recent sleep to remain fit for the whole of their shift, RSSB research project T1082 reviewed fitness-for-duty decision aids.<sup>38</sup>
90. Further guidance to support decision-making on medical fitness for work is available via the RSSB website.<sup>39</sup> RSSB research has previously considered obstructive sleep apnoea<sup>40</sup>(T299) and managing the risk associated with sudden incapacity in safety critical occupations<sup>41</sup>(T663). T663 promotes a way of quantifying the risks from sudden incapacity as an input to decision making. Guidance has been developed, along with worked examples, on how acceptable frequencies of unavoidable impairment were derived that underpin medical fitness decisions.

## Health Surveillance

91. Mandatory health surveillance under health and safety law (as distinct from fitness for task medicals and wellbeing checks) is about identifying early signs of work-related ill health, and about acting on the results to improve risk controls and protection for individuals. It needs to be properly targeted, effective and efficiently carried out. Information on what health surveillance is required in your workplace can be obtained from HSE<sup>42</sup>.

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<sup>38</sup> Developing fitness for duty checks and predicting the risk of experiencing fatigue (T1082)

<mailto:https://www.rssb.co.uk/pages/research-catalogue/t1082.aspx>

<sup>39</sup> Clinical guidance for practitioners <mailto:https://www.rssb.co.uk/improving-industry-performance/workforce-health-and-wellbeing/health-practitioners/clinical-guidance-for-practitioners>

<sup>40</sup> Human factors study of obstructive sleep apnoea in train drivers (T299)

<mailto:https://www.rssb.co.uk/pages/research-catalogue/t299.aspx>

<sup>41</sup> Managing the risk associated with sudden incapacity in safety-critical occupations (T663)

<mailto:https://www.rssb.co.uk/pages/research-catalogue/t663.aspx>

<sup>42</sup> Is health surveillance required in my workplace? <mailto:http://www.hse.gov.uk/health-surveillance/requirement/index.htm>

Noise health surveillance

<mailto:http://www.hse.gov.uk/noise/healthsurveillance.htm>

COSHH health surveillance

<mailto:http://www.hse.gov.uk/coshh/basics/surveillance.htm>

92. For some high hazard exposures to asbestos and lead, medical surveillance carried out by HSE-approved appointed doctors is a legal requirement. However, in most cases where health surveillance is needed, it will be at a lower level based on risk. As a minimum, health surveillance can be limited to keeping individual health records (e.g. for suspect carcinogens). Beyond this, basic checks done by a responsible person may be sufficient: these might include skin checks, or review of self-reported symptoms using, for example, questionnaires. In some cases a higher level of surveillance may involve symptom enquiry, inspection and examination by a qualified person, often an occupational health nurse. More detailed clinical examinations by a doctor may then be necessary for formal diagnosis of any symptoms identified (e.g. HAVS, asthma, silicosis, chronic obstructive pulmonary disease). Guidance is available from HSE.
93. For some chemical exposures health surveillance can include biological monitoring, which provides an indication of exposure by measuring chemicals or their breakdown products in workers' urine, blood or breath. In railway workers the main use of biological monitoring is to measure blood lead levels (under the Control of Lead at Work Regulations 2002 (**CLAW**)) and isocyanates in urine (under the Control of Substances Hazardous to Health Regulations 2002 (**COSHH**)). There is more detailed HSE guidance on both health surveillance and biological monitoring.<sup>43</sup> RSSB has also just published relevant guidance including a good practice booklet on health surveillance and screening.<sup>44</sup>
94. Employers that have railway workers significantly exposed to asbestos (for example, notifiable non-licensed work (Control of Asbestos Regulations 2012)); lead dust or fume (CLAW); respirable crystalline silica; isocyanates; solvents, welding fume (COSHH 2002); noise (The Control of Noise at Work Regulations 2005); or hand arm vibration (Control of Vibration at Work Regulations 2005), will generally need these employees to be under health surveillance.
95. Where there is no requirement for formal health surveillance, for example mental health, musculoskeletal disorders, diesel engine exhaust emissions, and biological hazards, it is good practice to make affected workers aware of and encourage them to report any symptoms, and to monitor and investigate reported symptoms and absences to help identify weaknesses in risk control. Progressive employers have comprehensive health surveillance programmes based on risk assessments across the whole of their business.

It is also good practice that companies monitor and report on sickness rates as well as health surveillance compliance rates and health surveillance outcomes at senior management level to promote continual improvement.

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<sup>43</sup> Biological monitoring in the workplace: A guide to its practical application to chemical exposure <mailto:http://www.hse.gov.uk/pubns/books/hsg167.htm>

<sup>44</sup> Health surveillance and screening <mailto:https://www.rssb.co.uk/library/improving-industry-performance/rssb%20pro%20active%20health%20policies%20booklet%203.pdf>

# Appendix 1 – Useful organisations

A number of organisations with a role in rail staff fitness are listed below:

ARIOPS <http://www.ariops.org.uk/>

ATOC <http://www.atoc.org/>

HSE <http://www.hse.gov.uk/>

RSSB <http://www.rssb.co.uk/>

- Standards link <http://www.rssb.co.uk/railway-group-standards>
- Health Policy <http://www.rssb.co.uk/improving-industry-performance/workforce-passenger-and-the-public/workforce-health-and-wellbeing>
- Health Practitioner Information <http://www.rssb.co.uk/improving-industry-performance/workforce-passenger-and-the-public/workforce-health-and-wellbeing/health-practitioners>
- H&W Professions Committee <http://www.rssb.co.uk/groups-and-committees/rssb-board/health-and-wellbeing/health-and-wellbeing-policy-group/health-and-wellbeing-professions-committee>

Transport for London (TfL) <https://tfl.gov.uk/info-for/suppliers-and-contractors/health-safety-and-environment/london-underground/health>

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5. The Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended) SI 2006/599 The Stationary Office 2006 ISBN 0 11 074307 5
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8. Transport and Works Act 1992 Chapter 42  
The Stationery Office 1992 ISBN 0 10 544292 5, or available at [www.legislation.gov.uk/ukpga/1992/42/pdfs/ukpga\\_19920042\\_en.pdf](http://www.legislation.gov.uk/ukpga/1992/42/pdfs/ukpga_19920042_en.pdf)
9. The Equality Act 2010. Available at <http://www.legislation.gov.uk/ukpga/2010/15/contents>
10. Rail Industry Standard for Train Driver Selection RIS 3751-TOM, Issue 3. March 2015. Available at <http://www.rssb.co.uk/rgs/standards/ris-3751-tom%20iss%203.pdf>
11. Managing health and safety in construction. Construction (Design and Management) Regulations 2015. Guidance on Regulations, 2015 HSE Website, <http://www.hse.gov.uk/pubns/books/l153.htm>
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13. Working Time Regulations 1998 <http://www.legislation.gov.uk/uksi/1998/1833/contents/made>

14. Commission Regulation (EU) 2015/995 (OPE TSI) <http://www.era.europa.eu/Document-Register/Pages/OPE-TSI.aspx>
15. European Directive 2007/59/EC on the certification of train drivers operating locomotives and trains on the railway system in the Community.  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:315:0051:0078:en:PDF>
16. COMMISSION DIRECTIVE 2014/82/EU of 24 June 2014 amending Directive 2007/59/EC of the European Parliament and of the Council as regards general professional knowledge and medical and licence requirements [http://www.saferail.nl/TD/TDDOCS/RL\\_14-82\\_EN\\_wijz-bijl-TDD.pdf](http://www.saferail.nl/TD/TDDOCS/RL_14-82_EN_wijz-bijl-TDD.pdf)
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  - [Wise Buyer Guidance Occupational Health: The Wise Buyer, 2017](#)
18. Sentinel Scheme Rules, June 2015  
<http://info.railsentinel.co.uk/asset/f7c7a814/79285670.pdf/>
19. NR Code of Conduct, February 2016  
<http://www.networkrailmediacentre.co.uk/news/network-rail-announce-new-code-of-conduct-to-keep-suppliers-on-the-right-track>
20. NR Standards <https://login.ihserc.com/login/erc?loginCode=LOGOUT&sess=327468338>
21. TfL Standards S1601-1605 personal correspondence with TfL
22. Railway Group Standards <http://www.rssb.co.uk/railway-group-standards>
  - RIS-3451-TOM Issue 1 Train Drivers - Suitability and Medical Fitness Requirements
  - RIS-3452-TOM Issue 1 Train Movement - Medical Fitness Requirements
  - GO/GN 3655 Issue 2 Guidance on Medical Fitness for Railway Safety Critical Workers

■ [RIS-3751-TOM](#) Issue 3 Rail Industry Standard for Train Driver Selection

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