



Welcome to RIHSAC 103

Dilip Sinha, Secretary, RIHSAC

4 October 2016



Remove this killer dust

Make all workplaces asbestos-free

***Paul Clyndes – Senior Health and
Safety Officer - RMT***





This year, according to official figures, 5,000 people in Britain are likely to die prematurely as a result of asbestos exposure. This is around three times the number of road accident deaths.

In the railways deaths are still occurring and will continue to occur as a result of the historical legacy of the railways where asbestos was commonly used in rolling stock, buildings, tunnels, location cases, wiring and signalling systems.

RMT regularly secure compensation payments for past exposure to asbestos in the rail industry. Compensation figures are usually at least six figure sums.





RMT have joined the TUC's campaign to look afresh at asbestos management in UK industry. RMT policy is now for the removal of all asbestos rather than simply managing it.

This policy follows on from an All-Party Parliamentary Group on Occupational Safety and Health report which calls for asbestos to be eradicated from workplaces and public buildings by 2035.

RMT believe there should be an industry enquiry into a fundamental shift in attitude by the rail industry and a cross industry group set up which will look at the long term implications of such a change.





RMT believe that the long term costs, year on year, of 'managing asbestos' in the rail industry will eventually far outweigh the cost of a proportionate and managed approach to asbestos removal.

RMT have evidence of both approaches to managing asbestos and removing it.

Success in removing – Location Boxes in Sussex.

Lack of success in managing – Northern and City Line tunnels.





Britain's largest specialist transport union

LINKS:

<https://www.tuc.org.uk/workplace-issues/health-and-safety/asbestos/asbestos-eradication-campaign>

https://www.tuc.org.uk/sites/default/files/Guide%20for%20reps%20May%202016%20pdf_0.pdf

<https://www.tuc.org.uk/sites/default/files/asbestoseradication.pdf>





PR18 – health and safety themes

Tracy Phillips, ORR

RIHSAC, 4 October

Purpose of session

- To update RIHSAC on where the PR18 process has got to.
- Outline the approach being taken in relation to health and safety.
- Provide a flavour of the proposed key health and safety messages and themes for PR18.

PR18 to date

- Context for PR18 - to “*support a more efficient, safer and better used railway, delivering value for passengers, freight customers and taxpayers in CP6 and beyond*”.
- Initial consultation document May 2016 setting out proposed approach.
- June through August 2016 – working papers on route level regulation, system operation, enhancements and outputs framework.
- Conclusions notes published Nov onwards.
- Key milestone – issuing of guidance to Network Rail for production of Strategic Business Plan (SBP) and route plans – scheduled Nov 2016.

Approach to health and safety

- No discrete health and safety project (lesson learnt from PR13).
- Essential therefore that h & s embedded across all workstreams and projects.
- ORR safety teams have considered core health and safety messages to run through PR18; to be articulated in guidance on SBP.
- These are consistent with themes and opportunities to improve as set out in ORR annual h & S report and industry's own strategy.

Proposed core health and safety messages

Still subject to ORR discussion/agreement but consider it important that –

- NR continue to implement their CP5 enabling commitments around culture, rules and competence, innovation and assurance;
- maintain focus on/prioritise core maintenance, renewal and operational activity; and
- NR complies with all relevant legal obligations under HSWA over period, including reviewing implications of greater route devolution.

Other health and safety themes ORR would look to be reflected

- Managing growth and change.
- Embedding of health and safety by design.
- Realising safety benefits afforded potentially by Digital Railway.
- Realising the unified industry health and safety strategy.
- Embedding/promoting thriving health management culture.
- Improved RM3 evaluations.
- Management of specific risk areas –
 - level crossings; assets; track and off-track; earthworks, structures and drainage; track worker safety; occupational health; electrical safety and third rail depots; safety by design and construction.



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Any
comments or
questions?



Brexit and rail safety regulation







Martin Jones
Head of Railway Safety Policy

4 October 2016

Purpose of this session

- ✓ High level consideration of different types of railway health and safety regime that might exist in UK after we have left the EU
- ✓ Focus on different scenarios and their:
 - Advantages
 - Disadvantages
 - Likely impact
- ✗ Implications for Channel Tunnel (this has its own bespoke bi-national legal framework)
- ✗ Changes to general health and safety legislation (we are alert to how DWP/HSE responds to any pressure to review or deregulate EU-derived legislation)
- ✗ Detailed examination of legal mechanisms needed to make specific provisions work (this will come later)

General working assumptions

	Would we still comply with EU law?	How might domestic law be affected?	What about relationships with Europe?
Today / until we leave 	Yes	No change, prepare to implement 4RP	Continue full participation
No deal / WTO membership  	No <u>mandatory</u> compliance with EU rail legislation	HSWA and regulations made under it <u>including</u> <u>ROGS</u> continue to apply; <u>ORR</u> continues as rail H&S regulator and enforcing authority under Railways Act 2005 and EAR Regulations 2006; Other legislation implementing EU <u>Directives</u> , such as train driver licensing, remains in force until repealed (e.g. by repealing EC Act 1972); EU <u>Regulations</u> , such as the common safety methods, would cease to have effect (unless UK chose to replicate them in our own law)	No formal representation
EEA membership 	Full compliance with current <u>and future</u> EU rail legislation	No change, implementation of 4RP	“Observer” status
Bespoke deal with EU  	Flexibility, likely to include substantial implementation of rail acquis	Possible amendment to incorporate any flexibility arising from agreed deal <u>or</u> to support continued compliance with EU law if required.	New arrangements to be negotiated

Important questions

1. What are the objectives of our railway safety regulatory framework?
2. What are the key principles and building blocks that make it work?
3. Which EU-derived additions would we consider keeping, replacing or repealing?
4. What evidence do we have to support our views?

Objectives for our regulatory framework

■ For example:

- Supporting continuous improvement in safety performance / assurance
- Securing market access to / from EU
- Achieving better regulation objectives
- Minimising implementation costs for industry (sunk and future)
- Managing / minimising change (immediate and over time)
- Supporting not constraining structural and operational innovations
- Optimising the regime for different duty holders (e.g. RU vs IM; international vs domestic; mainline vs non-mainline)

The building blocks of the UK railway safety framework

■ For example:

- Application of general health and safety legislation and the key principles it sets out around management and control of risk to the whole rail sector;
- A “permission to operate” regime under the responsibility of the independent safety regulator (rather than the infrastructure manager)...
- ...based on assessment and supervision of a high-level safety management system (rather than a detailed safety case);
- Joint responsibility for system safety with appropriate sharing of responsibility between train operators and the infrastructure manager, supported by a duty of co-operation and industry-led development of standards;
- Risk assessment of significant changes supported by independent verification;
- A sector-specific health and safety regulatory authority and a separate independent accident investigating body.

■ To what extent, if at all, do these rely on EU legislation?

The additions: keep, replace or repeal?

■ For example:

- Single safety certificate, including those issued by ERA and the use of the EU “one stop shop” application system;
- Train driver licensing;
- Certification of “entities in charge of maintenance”;
- Common safety methods placing obligations on the industry (risk assessment, monitoring);
- Common safety methods placing obligations on the regulator (supervision, conformity assessment);
- Safety indicators and annual reporting; other data collection activities and initiatives.

The evidence

- For example:
 - *Ex post* evaluation of specific legislation
 - *Ex ante* impact assessments by ORR or ERA
 - Other review work eg. RSSB review
 - Industry data on costs / health and safety performance
 - Stakeholder views incl non-mainline, passengers, freight
 - Operational experience incl enforcement activity and prosecutions
 - ERA cross-audit and “matrix” work
- How do we develop the evidence base for individual elements of legislation / regulation?

Next steps

- Continuing to influence and implement new safety and interoperability Directives and secondary regulations
- At the same time talking to stakeholders about other options and legal approaches
- We have established “UK Interop & Safety Industry Group”: DfT-chaired, ORR-hosted, cross-industry membership
- Purpose is to steer our 4RP influencing and implementation work and gather information on implications of EU exit scenarios
- We will keep RIHSAC informed through the regular Europe update item



- **Economic regulator** for railway infrastructure (Network Rail and HS 1)
- **Health and safety regulator** for the rail industry
- **The industry's consumer and competition authority**



Fitness for Work Guidance : Consultation

Claire Dickinson
ORR Occupational Health Programme Manager

www.orr.gov.uk/health

Fitness for Work

- Fitness to support safe and efficient performance at work
- Physical fitness standards – set down the benchmarks and decision-making criteria
- Mental or Medical fitness – no existing condition that compromises competence or safety

- Fitness impairment through drink, drugs, medication, fatigue, consequently legal requirements aimed to control these risks

Introduction

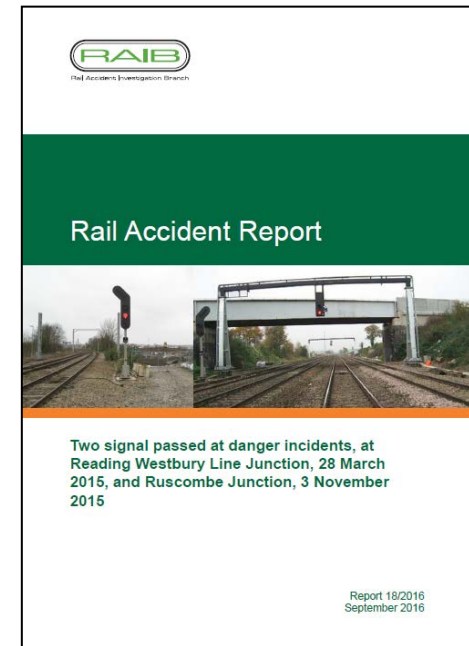
■ Upturn in enquires on fitness for work

- Recent incidents and investigations
- Medicals - What needs to be assessed ?
- GP or Recognised Doctor or Responsible Doctor
- Challenging the decisions and coding on Sentinel cards
- How to appeal decision making

■ Prepared Fitness for Work Guidance : Consultation

- Responses to claire.dickinson@orr.gsi.gov.uk
by 1st November 2016

■ Coverage – Legal requirements and information sources



Germanwings pilot Andreas Lubitz kept diary that shows his descent into depression

Glasgow bin lorry crash: driver lied about health history, inquiry finds

Accident inquiry says Harry Clarke concealed nearly 40 years of ill health, lied to doctors about blacking out at the wheel of a bus in 2010

Muslim train driver who went through two red lights and crashed causing days of delay had gone without any food or drink for 15 HOURS because of Ramadan

- The Great Western train driver went through a double red light in London
- The train hit a gantry and brought down power lines in June this year
- Rail accident experts claims he had not eaten anything for 15 hours

Legal Requirements

- General duties : **HSWA [1974], MHSW Regs [1999]** - Employer
- Safety Critical : **ROGS Reg. 24** (Fitness) **Reg. 25** (Fatigue) - Controller
- Safety Critical : Commission Regulation (EU) **2015/995 (OPE TSI)**
 - No medical condition or taking medication likely to cause a sudden loss of consciousness, reduced attention or concentration, sudden incapacity, a loss of balance or co-ordination or significant limitation of mobility
 - **GO/GN 3655** Guidance (Annex A-G Medication, Laser eye surgery, Diabetes, Sleep Disorders)
 - **GO/RT 3452** Train Dispatchers, Shunters, Competent Persons
- Drink & Drugs : Transport and Works Act 1992 Section 27
- Train Drivers : TDLCR [2010], Reg 8 and Sch 1, Reg 23 register of Recognised Doctors and psychometric assessors
 - European Directive 2007/59/EC, Annex II
 - Schedule 1 - No medical condition or taking medication likely to cause a sudden loss of consciousness, reduced attention or concentration, sudden incapacity, a loss of balance or co-ordination or significant limitation of mobility
 - **GO/RT 3451 Issue 4** (medical), **RIS-3751-TOM Issue 3** (psychometric)
- Equality Act

Other company driven fitness requirements

e.g. PTS – Level 4

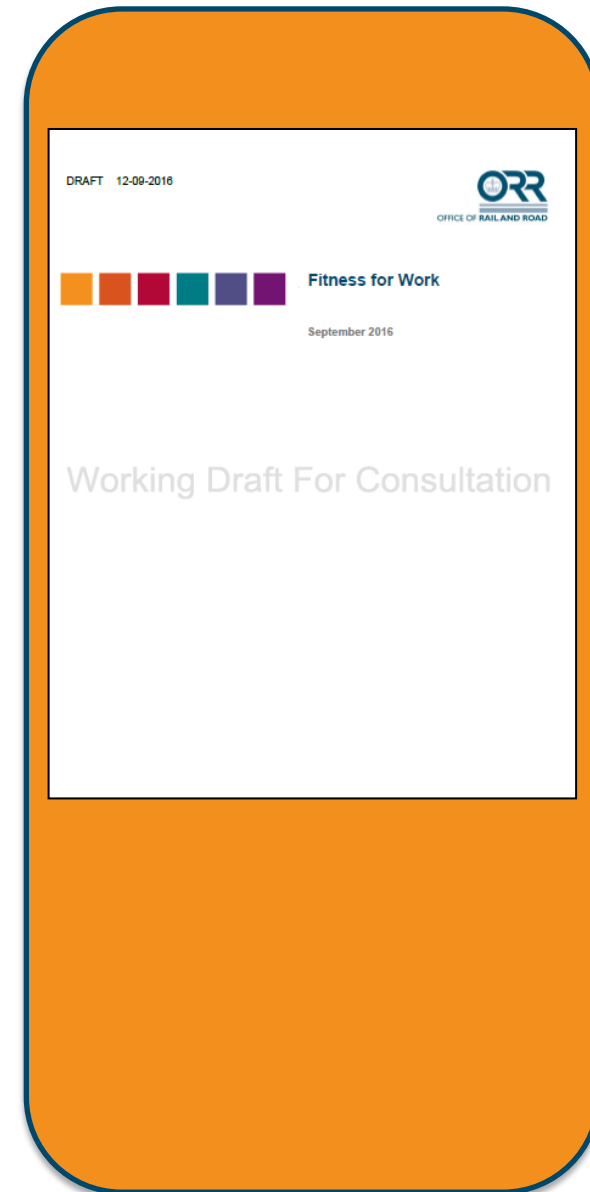
- NR/L2/OHS/00124 – “Competence Specific Medical Fitness Requirements” - defines 6 levels for all safety critical roles and periodicity of medicals
- Fitness : alcohol, drugs, fatigue, illness, treatment, general health
- Medical supplier approved by NR
- Visual acuity, colour vision, hearing, general health (sudden loss of consciousness, impairment of awareness or concentration, sudden incapacity, visual impairment, impairment of balance or co-ordination, significant limitation of mobility)
- Level 4 – General Health
 - Hearing loss not exceeding 30dB over 0.5, 1 and 2 kHz
 - Visual acuity 6/9 in better eye, 6/12 in other eye corrected
 - Specific restrictions may be accommodated – SSoW risk assessment

Principles

- 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. Effective management in place to manage this risk and the individual treated fairly and proportionately.
- Each company responsible for:
 - Ensuring their fitness standards are suitable for the risks involved
 - Ensuring access to responsible, professionally competent doctor
 - Procedures for reporting changes to individual fitness
 - System for ensuring that fitness checks and assessments are carried out satisfactorily and at the correct frequency
 - Suitable and sufficient risk assessments and effective management/organisational controls in place

Fitness For Work Guidance

- Guidance vs. Briefing Note vs. AN Other ?
- Issues emerging
 - Lines to take on balancing fitness and risk ?
 - Fitness decision making – fair ? Is there a means of resolving challenge ? Is there appropriate collaboration of the right people in decision making ?
 - Sufficient understanding of rail environment ?
 - Variable conditions – how fit is fit enough ?
 - Are those with a specific decision making role clear on the standard, their responsibilities, governance ?
 - Sufficient clarity on how the system fits together to ensure a safe railway



Consultation & Discussion

- Guidance ? A position or briefing paper ?
- Is the guidance helpful ?
- Content comprehensive and accurate ?
- Any additional key points or areas to be included ?
- Any insight on the financial or operational impact of fitness legal requirements on your business ? Available to discuss with ORR later ?

- Response to :

Claire.Dickinson@orr.gsi.gov.uk

by the 1st November 2016





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Any Questions ?

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