

Paul Carey
Office of Rail Regulation
1 Kemble Street
LONDON WC2B 4AN

22 August 2014

Dear Mr. Carey,

Revising Railway Safety Regulations

Thank you for providing Southeastern with an opportunity to comment on the ORR's proposals to modernise railway safety regulations. We note that these are being made with the intention of simplifying and updating the regulations in line with the Government's Red Tape Challenge, and welcome the removal of redundant requirements and the consolidation of the remainder.

We support the overall thrust of the proposals but are not convinced by the argument that a single set of Regulations applying to both mainline and non-mainline railways is the best approach. Our perception is that this approach complicates rather than simplifies, creating some slightly bizarre elements in the draft Regulations as a consequence (e.g. draft Regulation 3.(3)(b) appears to effectively allow London Underground Limited to operate trains anywhere on the railway system without having a train protection system in use).

As a more general point, in line with the Government's Red Tape Challenge, we also wonder whether there might be a possibility to take a further step and, rather than having separate Regulations, incorporate the residual elements of the existing Regulations within ROGS, perhaps as new Schedules, albeit with separate requirements for mainline and non-mainline railways.

In responding below to the individual questions contained in the consultation document, we have in a number of cases provided separate answers according to whether a single set of regulations, as is currently the case, is retained or a dual regulation approach as favoured above is adopted.

Response to individual questions

Q1: Do you agree that we should revoke regulations 3, 5, 6 and 7 of MPR 97? If you do not support the revocation, please tell us why.

Yes

Q2: Do you agree that regulation 4 (means of communication) should be retained in its modified form? If you do not support the retention of this provision, please say why.

For non-mainline railways

Yes

For mainline railways:

No, as this is adequately provided for within the Technical Standards for Interoperability

Q3: Do you agree that we should retain a regulation to mandate the use of a train protection system? If not, why?

No. Whilst we would agree that having an operational train protection system is essential, we consider that this requirement is adequately mandated by Railway Group Standards. Obviously it was necessary to regulate in this area in 1999, but the objective has been achieved and – as with the Regulation of Railways Act of 1889 – these requirements have now become fundamental parts of the relevant structural subsystems.

Q4: What are your views on the proposed changes to the drafting of the regulation relating to train protection systems? Are there any further changes you feel we should make?

We have a number of comments in the event that a regulation relating to train protection systems is retained.

- a. Draft Regulation 3.(1) is set in the context of operation of a train on a railway. As a result, whilst it may be intended to also cover the infrastructure manager's responsibility to provide a properly functioning train protection system, this is not explicit.
- b. Draft Regulation 3.(2) refers to the system being "properly maintained." We believe that this should instead refer to it being "properly functioning", i.e. the requirement should be defined in terms of the effect (output) rather than the action (input).
- c. Draft Regulation 3.(2)(c) appears to introduce a new requirement for continuous monitoring. It is not clear whether this is intended simply to mean that TPWS performance should be monitored or whether the intent is to require continuous monitoring of TPWS in the driving cab. If the latter this appears to be an attempt to mandate fitment of Mark 3 (or later) TPWS control units to all mainline rolling stock, although several studies have concluded that the costs of such a change would be grossly disproportionate to the safety benefits.
- d. As mentioned above draft Regulation 3.(3)(b) appears to create an unintended exemption for London Underground Limited.

ATOC has commented separately about the definition of a train protection management system and we support those comments. We also consider this concept unhelpful as the management of train protection systems is simply part of the company's overall safety management system, and the implication that a separate train protection management system is required could be confusing.

Q5: In the proposed new definition of "relevant approach", should 60mph be converted to 95km/h or 100km/h?

100 kmh.

Q6: Do you agree that we should retain the regulation to prohibit the use of Mark 1 rolling stock, with the proposed changes to the exemption system? If you do not support the retention, please tell us why?

No. There is only a relatively small pool of Mark 1 stock still in existence, the vast majority of it having been scrapped. Even if all of this were to be reintroduced to the mainline railway – and such an eventuality is inconceivable – the overall effect on risk is unlikely to be significant. If there were genuine concerns about such reintroduction, alternative approaches to preventing this could be adopted, such as removing the grandfather rights of such rolling stock not registered on the mainline rolling stock database. In our view the RSR have served their purpose in relation to Mark 1 rolling stock and provisions in relation to these vehicles are no longer required.

Note that the current draft Regulation 4.(2) contains redundant elements exempting Mark 1 rolling stock being operated on lines where it could not physically be operated, including Docklands Light Railway and the Glasgow Subway, as well as apparently allowing London Underground Limited to operate Mark 1 rolling stock wherever it may wish to do so. This is a consequence of trying to regulate for both mainline and non-mainline operations together.

Q7: Do you agree that regulation 5 (prohibition of hinged doors) should be revoked? If you do not support revocation, why do you think it should be retained?

Yes. Existing fleets have been modified as required.

Q8: Do you agree with our approach to issuing exemptions under the new Regulations? If not, please tell us why?

Not applicable to Southeastern.

Q 9: Do you agree that the remaining provision in force can be revoked? If not, please tell us why?

Yes

Q10: Do you agree with our assumptions in the impact assessment? If not please tell us why or if there are there any other factors that you think we should take into account?

Train protection requirements

In the absence of a clear description of what the ORR is expecting in respect of a train protection management system (see answer to Q4 above) it is not possible for us to assess the validity of the assumptions used in the impact assessment. However there would clearly be a significant cost to railway undertakings if draft Regulation 3.(2)(c) were to be used as a way of enforcing the upgrade of TPWS control equipment to Mark 3 or later.

Exemptions for Mark 1 vehicles

Not relevant to Southeastern.

Q11: Do you have any views or evidence that would help inform our development of an enforcement flexibility proposal?

We support the intention described in section 8, however it is clearly important in this context that both HSE and ORR take a consistent approach to risk.

We hope that these comments are helpful and assist ORR in arriving at the best regulatory solution.

Yours sincerely

A handwritten signature in black ink that reads "Colin Clifton". The signature is written in a cursive style and is underlined with a single horizontal line.

Colin Clifton
Head of Safety & Environment