

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

01 September 2014

Dear Mr Carey

Consultation on Revising Railway Safety Regulations

Thank you for opportunity to comment on the proposed changes to the Railway Safety Regulations. Our responses to each of the questions posed in the consultation document are given below.

Railway Safety (Miscellaneous Provisions) Regulations 1997

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.

Regulation 3 – Unauthorised access
Regulation 5 – Measures to prevent collisions and derailments
Regulation 6 – Brakes
Regulation 7 – Accidents to persons at work from moving vehicles

Yes. We agree that these regulations should be revoked.

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.

The reasons given for retaining this requirement are not entirely convincing.

Essentially, the argument is that the requirement for a passenger communications system in the LOC+PAS TSI applies only to mainline vehicles, therefore the requirement should be retained for non-mainline railways and tramways, which would otherwise not be covered any other safety related legislation. However 'Relying on TSIs for the mainline railway, whilst introducing a separate regulation for non-mainline railway and tramways, could lead to confusion because operators could be subject to different statutory obligations'. It's difficult to see where the confusion could arise.

It's also not clear why the logic for revoking Regulations 6, Brakes, of MPR 97 ('its aim is now met by requirements set down in ROGS, and is also supported by requirements set down in HSWA, for the assessment of risk and the safe management of railway operations') does not equally apply in this case.

However, the regulation will not impose an additional burden on the mainline railway, and therefore there is no objection to its retention.

Railway Safety Regulations 1999

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

No. We don't believe that this regulation should be retained.

It was legitimate to include requirements pertaining to train protection systems in the Railway Safety Regulations 1999 as at the time such a system was not mandated, there was a requirement to introduce one in line with the recommendations contained within the Hidden Report and, under the accepted rules for undertaking SFAIRP assessment at the time, the fitment of TPWS was not reasonably practicable thereby requiring government intervention at the overall industry level to specifically address the issue of societal concern.

Installation of TPWS, which the ORR accepts constitutes such a system, was completed in 2003. It is accepted that having an operational train protection system in place is now a fundamental safety requirement and in this respect it is no different than having in place a functioning braking system which in this consultation is proposed to be removed from Regulation 6 of Railway Safety (Miscellaneous Provisions) Regulations 1997 on the basis that this is covered under Part 3 of ROGS.

We consider that the generic requirements contained in the HSWA, Safety Directive and ROGS, which operators must demonstrate they meet through their Safety Management Systems (SMS) in order to be certificated by the ORR, along with the specific Railway Group Standards¹ applicable to train protection systems, are sufficient to ensure the on-

¹ GE/RT8075 specifically mandates "requirements for the functional operation, performance and application of the Automatic Warning System (AWS) and the Train Protection and Warning System (TPWS)" the only exceptions to this being "certain lines which are fitted with mechanical trainstops, lines fitted with European Train Control System (ETCS), and trains which operate only over those lines"

It also states that "The TPWS train sub-system shall be provided on all trains that operate over lines fitted with the TPWS track sub-system, except for:

- a) Vehicles that operate solely in T3 possession.
- b) Shunting locomotives that are not fitted with AWS and that operate over a route which has been risk assessed to demonstrate that there is little or no risk from collision with trains on running lines.
- c) Vehicles fitted with alternative train protection system(s) providing a level of protection equivalent to or better than that provided by AWS and TPWS that operate only over tracks fitted with the appropriate system(s)."

going provision of a train protection system and hence that retaining a separate regulation would be an unnecessary duplication and is therefore a missed opportunity to meet the Red Tape Challenge.

Separate to the above, we note that Clause 4.10 states that compliance with the (train protection system) legislation can be achieved by Automatic Train Protection (ATP) systems, including ERTMS and by TPWS. We presume that tripcocks (as fitted to a number of units operated by First Capital Connect, London Overground and Merseyrail) also qualify but believe this should be explicitly stated

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?

Even if the requirement for the provision of a train protection system is retained we do not believe that the additional requirement relating to the system being 'properly maintained' should be included in the regulations. This is no different to the existing requirement to maintain any other systems which are already covered under the requirements for safety management systems.

In considering the specific wording that has been proposed for the new regulation we have a number of comments, as follows:

- a. It is noted that Clause 4.11 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 what must be achieved, not how it should be achieved.
- b. Of prime concern is that the ORR does not seem to recognise that achieving the aspiration of a properly functioning train protection system places equal reliance on both the infrastructure manager and the operator. There are several specific references to the arrangements that the operators must put in place, both in the consultation document (in sections 4.11 and 4.12) and the revised regulations, but equivalent requirements for the infrastructure manager appear to be wholly absent (other than a brief reference under 'Assumptions' on page 50). The correct operation of any train protection system is clearly reliant on the correct operation of both train based and infrastructure based equipment. The latter, being the responsibility of the infrastructure manager, is something over which the operator has no effective control. The absence of any requirements for the infrastructure manager is considered an omission which needs to be addressed.

The drafting of the regulations does not clearly reflect the separation of responsibilities under ROGS 2006 between the IM and the RU (transport undertaking in ROGS terminology). Neither the IM or the RU should be checking-up on the other; in particular, it should not appear that the IM has the powers of the former infrastructure controller. If the regulation was redrafted to reflect the subsystem approach set out in the Interoperability Directive, it would also resolve the ambiguity about the roles and responsibilities of the RU and IM.

- c. Also of concern is that the ORR seems to be suggesting that there are operators which do not have management systems in place in respect of train protection (as referred to in clause 4.11). Clause 4.12 states “In practice, many operators already have these arrangements in place...” with the implication that there are operators which do not have such systems in place. Related to this is the statement in the impact assessment on page 46 that “*Train Protection systems that were already installed would be at risk of poor maintenance and falling into states of disrepair rendering them unsafe potentially*”. What is the basis of this assertion?
- d. Referring again to the train protection management system discussed in Clause 4.11, we believe that the ORR needs to provide clarity with respect to its intent. What is it trying to fix that is not covered by existing regulations and general duties on those operating the system?
- e. Overall, our view is as stated in our answer to Q3, i.e. a train protection system is conceptually no different from the train braking system. As part of their SMS, operators have maintenance plans in place for the rolling stock they operate which are designed to ensure that all safety systems operate correctly. We see no justification for why the train protection system should be subject to specific regulation when other vehicle based systems – including those on which the train protection system relies, i.e. the braking system, are not singled out in this manner.
- f. In the definition “stop signal” means a signal conveying to the driver of the train an instruction that he should stop the train needs to be revised for ERTMS. In a no signals railway it should be also defined as the point where a movement authority ends which may or may not be marked on the trackside.
- g. In summary, our view is that the requirements proposed to be placed on operators for the “train protection management system” be discarded since:
 - i. what is meant by a “train protection management system” is far from apparent (where it is noted that the ORR has been unable to provide clarity, either in the consultation document)
 - ii. they only address half of the interface requirements of such a system
 - iii. operators are already required to maintain the train protection system equipment as part of their maintenance plans which in turn form part of their SMS (that is certificated by ORR) – the proposed requirements would duplicate this
 - iv. it should be up to the industry to determine how “a properly functioning train protection system” is achieved and it is not the place of legislation to dictate this.

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

It is not clear to us (and the consultation document does not adequately explain) why the imperial units are being replaced with their metric equivalent since the railway network signage remains in the former. Beyond this, we note that RSSB Guidance Note GI/GN7608 - Guidance on the Conventional Rail and High Speed Infrastructure Technical

Specifications for Interoperability includes a table of 'speed conversions' (Table G 1) which equates 100km/h to 60mph – we suggest that for consistency 100km/h should be used in the new definition.

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?

Retention of the regulation is probably useful, though not essential. The argument that 'its aim is now met by requirements set down in ROGS, and is also supported by requirements set down in HSWA, for the assessment of risk and the safe management of railway operations' could be used to support its revocation. In theory, (re)introducing a Mark 1 vehicle onto the mainline railway would constitute a 'significant' change, requiring the risk management process set out in the CSM RA to be applied. However, it's probably simpler to retain the requirement in this particular case.

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?

No. While the reasons set out for revoking this requirement appear sound for Mark 1 vehicles, the HST fleet along with the majority of loco hauled Mark 3 coaches as well as the smaller number of Mark 2 coaches still in regular service on the mainline railway are all fitted with hinged doors. There is therefore a continuing need to prohibit the operation of such vehicles on the mainline railway unless such vehicles are fitted with central door locking.

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

In principle, yes. Rather than issue 'a certificate in writing', why not adopt the approach in Regulation 2A of the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended), and 'maintain and publish a list of exemptions'? Something along the following lines is suggested:

- (1) The Office of Rail Regulation may exempt any person or class of persons, railway, part of a railway or class of railways, train or rolling stock, or class of train or rolling stock from any prohibition imposed by these Regulations and any such exemption may be granted subject to conditions and to a limit of time
- (2) The Office of Rail Regulation may revoke or vary the conditions of an exemption granted under paragraph (1).
- (3) A person may make an application to the Office of Rail Regulation for an exemption under paragraph (1) or for such an exemption to be revoked or varied under paragraph (2) and the Office of Rail Regulation shall consider any such application.
- (4) The Office of Rail Regulation shall maintain and publish a list of exemptions.

If this system was adopted, rather than hard-wire in references to 'a railway which forms part of the Docklands Light Railway, Glasgow Subway or the Tyne and Wear Metro or is used by London Underground Limited' in draft regulation 3 (clauses 3(3)(a) and 3(3)(b)), these could simply be placed on the list of exemptions.

The list system has the great virtue of transparency – everyone can find out who and what is exempt.

Railways Safety (Miscellaneous Amendments) Regulations 2001

Q 9: Do you agree that the remaining provision in force [in the Railway Safety (Miscellaneous Amendments) Regulations 2001] can be revoked? If not, please tell us why?

Yes. There is no reason to retain the regulations.

Impact Assessments

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

We have not reviewed the impact assessments. It's true that the 'proposals represent a reduction in the regulatory burden and no significant increase in costs for the industry'. However, the changes are unlikely to cause the mainline railway to do anything differently, so equally there will be no significant reduction in costs for the industry.

Enforcement flexibility [a proposal 'which is unrelated to those already covered in this document']

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

No views.

We hope that you find this responses useful. If you require any clarifications on any of the points raised please contact me

Yours sincerely

A handwritten signature in black ink, appearing to read 'Colin Dennis', written in a cursive style.

Colin Dennis