

**Industry Consultation: Revising Railway Safety Regulations : Railway Safety (Miscellaneous Provisions) Regulations 1997, the Railway Safety Regulations 1999 and the Railway Safety (Miscellaneous Amendments) Regulations 2001. 8 July 2014.**

**NR (HS) Ltd Response to the Industry Consultation.**

Question 1: Do you agree that we should revoke Regulations 3, 5, 6 & 7 of MPR 97? If you do not support the revocation, please tell us why.

Response: We support the proposal.

Question 2: 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.

Response: We agree it should be retained.

Question 3: Do you agree that we should retain a regulation to mandate the use of a train protection system?

Response: Yes, we believe that there should be regulation to mandate the use of a train protection system. However, there should be flexibility within the regulation for specific types of operations that do not meet the criteria. Our rationale for this is to be found in our response to Q4.

Question 4: What are your views on the proposed changes to the drafting of the regulations on train protection systems? Are there any further changes you feel we should make?

Response: Whilst we are in agreement with the broad principles contained within the proposed changes, we are of the opinion that, noting our comment to Q3, there should be opportunity to provide for a degree of flexibility in operation. Whilst the provision and use of a train protection system should be mandated upon revenue passenger and freight services, there should be sufficient flexibility allow for the operation of Engineering Trains, Maintenance Plant, Rescue of failed trains and Test Trains that do not have the train protection system without the requirement for specific legislative exemption.

The responsibility for the safe operation of the railway system lies within the remit of the respective IM's and TOC's / FOC's, being discharged through their respective Safety Management Systems. These are subject to "co-operation" as determined by ROGS Reg 22.

Therefore, the responsibility for operation of a train not fitted with a train protection system compatible with the infrastructure (as indicated above) should lie within the remit of the respective Operators and IM's through application of their Safety Management Systems and not require specific authority in the form of an exemption from the ORR.

The following is provided in support of this rationale:

### ROGS:

Within ROGS the definition of a “railway” which does not offer any differentiation for lines which are open to traffic and those which are under a form of possession, i.e. not available to normal traffic operation.

However, ROGS requires a Safety Management System to be in place, appropriate to the system operation. This covers all circumstances, both when the railway is open to traffic and when under a form of possession. The NR (HS) Ltd SMS provides this.

### HSAWA 1974:

The HSAWA 1974 covers occupational health and safety, requiring the employer to manage safety, assess risks etc., the MHASAW 1999 being of particular significance in this instance. The NR (HS) Ltd SMS provides this.

### Railway Safety Regulations 1999:

As presently written, the existing RSR 1999 Regulation 3 mandates a train protection system for “...a train on a railway....”. As indicated above, the definition of railway (as detailed in ROGS) does not differentiate between a line that is open to traffic and one that is under a form of possession.

To comply with the current legislation, NR (HS) Ltd and the Train Operators have exemptions (both dated 24 April 2013) that require that permission of the ORR be obtained before making changes to Module UF of the HS1 Rule Book or Section 11 of the Sectional Appendix to the HS1 Rule Book. It should be noted that, to date, nearly all of the moves made under these exemptions on HS1 have been made outside of normal traffic hours.

Both the Rule Book Module UF and Sectional Appendix Section 11 are elements of the NR (HS) Ltd safety management system that are provided in order for NR (HS) Ltd to discharge its’ responsibilities under ROGS and HSAWA. These are amongst the documentation referenced within the Safety Authorisation and the overall Health and Safety Management System summary document and form part of the NR (HS) Ltd SMS.

Such an arrangement would place the discharge of responsibility for safe management with the appropriate IM / TOC through their SMS, and leave the ORR to determine compliance through an appropriate focussed audit regime, rather than the present situation where the ORR is placed in a position of making decisions and acting as the regulatory body for those decisions. We would expect that the ORR would be consulted in connection with such decisions so that they would have full visibility and be in an informed position.

Question 5: In the proposed new definition of “relevant approach”, should 60mph be converted to 95km/h or 100 km/h?

Response: We support the conversion to a value in km/h.

Question 6: 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?

Response: We would question the need for the retention of this regulation on the grounds that Interoperability requires vehicles to comply with the Reference Document Database which would in itself restrict their access. The ORR could control through authorisation (or otherwise) of the vehicle onto the infrastructure.

Question 7: 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?

Response: We support revocation, but would use the argument in Question 6 as the basis for this.

Question 8: Do you agree with our approach to issuing exemptions under the new Regulations? If not, please tell us why?

Response: We agree with a process, however would argue that this should be through the authorisation process detailed in question 6.

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

Response: We are in agreement with revocation.

Question 10: Do you agree with our assumptions in the impact assessments? If not, please tell us why or if there are any other factors that you think we should take into account?

Response: We are in agreement.

Question 11: Do you have any views or evidence that would help inform our development of an enforcement flexibility proposal?

Response: This relates to the enforcement of the proposed Regulations and the amendment of EARR to identify where the responsibilities of the ORR and HSE will 'mix'. There is the suggestion that a guidance note will be produced to clarify how this will work. Our comment would be that the guidance note needs to clearly identify how an Infrastructure Manager would report and to whom the report would be made – one point of contact would be the most practical approach. Likewise, the document would need to identify what would fall under the reporting requirement i.e. with regards to Stations would the ORR be notified of events which occur in the retail areas of the stations? This would for example include power supplies to the retail units (if an accident or incident was caused by our systems). Would the SMIS database be used for all notification and reporting and the need for a formal point of contact with the ORR/HSE be made obsolete?

S James,

Head of Safety & Assurance,

On behalf of NR (HS) Ltd.

15 September 2014