Stefano Valentino
Senior Executive
Safety Policy Team
Railway Safety Directorate
Office of Rail Regulation
1 Kemble Street
London
WC2A 4AN

22 October 2012

Dear Stefano

Consultation on the Railways and Other Guided Transport (Miscellaneous Amendments) Regulations

Please find our comments attached in respect of the set questions on the proposed changes outlined in the consultation document, which in the main are aligned with the ATOC position.

Yours sincerely

Seamus Scallon
Safety Director, UK Rail

ORR Consultation on Changes to ROGS Regs

Question 1: Do you have any comments on ORR's role as certification body? If so, please state.

As we operate 5 Railway Undertakings, each of which requires a Safety Certificate in order to operate, we have confidence that similar ORR's processes and tools can efficiently ensure a proper examination of competence of potential ECMs.

Question 2: Do you have any comments on the proposed new regulation 4(4A) of EARR? If so, please state

No

Question 3: Do you agree with the proposed approach for carving out specific railway systems from the mainline railway requirements in ROGS through the use of an Approved List? Please explain your answer.

The use of an Approved List of exemptions is a pragmatic solution to clarify where the mainline exists, or not, and is easier to maintain than listing the UK mainline by routes which would be the alternative approach. As new routes are developed, such as in Scotland, they clearly, by default fall under the mainline railway system, therefore the requirements, such as compliance with TSIs etc are understood very early in the design and development process.

Question 4: Are there any systems that should not be on the Approved List? Please identify them if so and explain why they should not be exempted.

FirstGroup is not aware of any.

Question 5: Are there any systems that are not on the Approved List that should be? Please identity them if so and explain why they should be included.

FirstGroup is not aware of any.

Question 6: Do you agree with the proposal to issue one safety certificate instead of two? If not, please explain why.

Issuing one Certificate removes any potential conflicts between both submissions as presumably only one combined submission and associated SMS is required and needs to be maintained. This is both less costly for the applicant and regulator. It is therefore a sensible approach.

Question 7: Do you agree with the proposal to remove from ROGS the requirement for mainline operators to carry out safety verification? Please explain your answer.

Yes. Change management processes are part of the requirements of an SMS, so we foresee no circumstances for mainline operators of conventional trains to have to apply SV, and this has led to potential confusion and duplication of effort.

The proposal to remove SV from the regulations, and hence remove the doubt that may have otherwise existed is welcomed.

Question 8: Do you agree with the proposal to make the 28-day consultation period run concurrently with ORR's four month processing time? Please explain your answer.

Yes.

The 28 day "suspension" in the acceptance process awaiting consultation responses adds no value to the task. It generally take ORR around 6 weeks to draft an issue log based on their own review, it is a simple matter to run both ORR and external review concurrently and combine issue logs.

The proposal also reduces pressure on new incumbents of franchises to produce a new submission for Safety Certificate/Authorisation within a very short time frame.

Question 9: Do you agree with the proposal to remove the requirement for non-mainline operators to submit annual safety reports to ORR? Please explain your answer.

Yes agree, however, would raise concern with the risks and safety performance when running on mainline track and how this is added into national data and the SRM.

Question 10: Do you agree with the proposal to clarify that the monitoring arrangements of the controller of 'safety-critical work' have to be suitable and sufficient? Please explain your answer.

No, as this is already in place during assessment of the application for a safety certificate/authorisation where it clearly states that risks have to be identified, controlled, and monitored. The Competence Management System is a risk control measure and is included in the application. If an applicant's measures are not "suitable and sufficient" then this would form grounds for refusal to issue the certificate, and/or issuing of an Improvement Notice as they are not monitoring their risk control measures. Reg 19 already requires "effective" monitoring to be in place, and Reg 24 requires so far as reasonably practicable, management and supervision arrangements to be in place.

This will be further reinforced by CSM Monitoring in coming months. Adding the words "suitable and sufficient" do not remove the need for some form of value judgement to be made and would be argued in the Courts regardless of their inclusion. It also raises the point that if "suitable and sufficient" is added for this one activity, it would need to be added uniformly throughout the Regulations, otherwise implying that other control measures are not required to be (as) suitable and sufficient!

Question 11: Do you have any other comments in relation to the issues raised in this consultation document (and annexes)?

It was helpful to have a copy of the consolidated Regs to refer the changes against.