

**The Railways and Other Guided
Transport Systems (Safety) Regulations 2006**

Guidance on Regulations

April 2006

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FOREWORD

This guidance was prepared by the Health and Safety Executive (HSE), in consultation with the rail industry, in preparation for the coming into force of The Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS). ORR assumed responsibility for rail industry health and safety regulation on 1 April 2006 and is grateful to HSE for this guidance, which it has adopted.

ORR commits to keeping the guidance under review as the industry gains experience of the Regulations. We welcome comments on, and requests for clarification of, any aspects of the guidance and invite readers to address their comments to the following email address:

rogs.guidance@orr.gsi.gov.uk

INTRODUCTION

1. This guidance explains the provisions contained in the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (the Regulations). The Regulations, subject to transitional provisions, lead to the replacement of:

The Railways (Safety Case) Regulations 2000 (RSCR);
The Railways (Safety Critical Work) Regulations 1994 (RSCWR); and
The Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994 (ROTS)

And implement important aspects of the Railway Safety Directive (RSD)¹.

2. The Regulations are made under the Health and Safety at Work etc Act 1974 (HSWA) and will be administered and enforced by Her Majesty's Railway Inspectorate (HMRI) of the Office of Rail Regulation (ORR).

3. The Regulations come into force on 10th April 2006 except for some provisions that come into force 6 months later to facilitate a transition period. Further details about when the regulations come into force can be found in the Regulations and this Guidance see paragraph 13 & Table 2.

4. Those with responsibilities for matters covered by the Regulations are advised to seek advice from ORR if they are in any doubt about the requirements that apply to them, or about the measures or standards expected.

Background

5. The Regulations implement a large part of the RSD, which is intended to harmonise the approach to regulating railway safety across the European Union (EU) and ensure improved access to the market for rail transport services. Other parts of the Directive are implemented by other legislation such as The Interoperability Regulations 2006 and The Rail Accident Investigation Regulations 2005.

6. In addition to implementing much of the RSD, the Regulations extend broadly similar requirements to railways not covered by the RSD ("non-mainline railways"), as well as to some other guided transport systems.

7. The RSD, together with other European Commission (EC) initiatives such as the Directives on Interoperability, aim to promote a more integrated European railway and a standardised railway equipment market.

8. A new agency of the EC, the European Railway Agency (ERA)², will play a major part in developing the interoperability framework and will monitor

¹ Directive 2004/49/EC.

² ERA is established by Regulation (EC) No 881/2004.

railway safety performance across Europe. As part of this role, ERA will develop Common Safety Methods (CSMs), Common Safety Indicators (CSIs) and Common Safety Targets (CSTs).

9. Some initial provisions of The Railways (Interoperability) Regulations came into force on 17th March 2006 and the remainder on 2nd April 2006. They extend the third party assessment and authorisation processes on the high-speed lines (under the Railways (Interoperability) (High Speed) Regulations 2002) to the rest of the Trans European Network (TEN) on the mainline railway and will apply to certain new and major infrastructure and vehicles projects. The Interoperability Regulations do not impose an obligation that work must be undertaken, but when major strategic change is made to infrastructure and rolling stock that is part of or operates on the TEN rail system, those parts of the rail system will have to comply with the [Regulations](#).

The Railways and other Guided Transport Systems (Safety) Regulations 2006

10. The Regulations are in five parts and apply to 'transport systems' as defined in regulation 2.

Part 1 outlines when the regulations come into force and defines terms used throughout the Regulations (further definitions can be found in other parts, where the definitions apply only to those parts).

Part 2 replaces the RSCR, the current statutory railway safety case regime, with new provisions on safety management systems, safety certification and safety authorisation and replaces ROTs with a new requirement for a written safety verification scheme, where applicable. Part 3 deals with general duties such as risk assessment, co-operation and the requirement to prepare an annual safety report for ORR. It also deals with issuing, keeping and public inspection of documents.

Part 4 replaces the RSCWR, but with modifications to implement recommendations from the ³Cullen enquiry. It imposes requirements on controllers of safety critical work on transport systems to ensure that such work is only carried out or supervised by fit and competent people, and that safety critical workers do not carry out safety critical work when fatigued. The Approved Code of Practice on the hours of work has been withdrawn and will be replaced by guidance on hours of work and fatigue ("Managing Fatigue in Safety Critical Work) which will be available on ORR's website by the time Part 4 comes into force on 1st October 2006.

³ The Ladbrooke Grove Rail Inquiry Part 1 Report – ISBN 07176 20565 and The Ladbrooke Rail Inquiry Part 2 Report – ISBN 07176 21073 are available from HSE Books.

Part 5 contains miscellaneous provisions on appeals, transitional provisions and savings etc.

11. Some transport operators, for example in industrial premises, are excluded from the Regulations (see regulation 2(1)) and some are excluded from parts of the Regulations, for example from Part 2 as a whole, or just from the safety certificate and safety authorisation requirements. All are, however, subject to the general duties under HSWA to ensure, so far as reasonably practicable, the health and safety of employees and others, including members of the public, and other health and safety requirements such as the Management of Health and Safety at Work Regulations 1999. A list of other relevant publications is available on ORR's Website at www.rail-reg.gov.uk.

Who is this guidance for?

12. This guidance is aimed at managers, safety advisers and employee representatives who work for 'transport operators' or their advisers and contractors. 'Transport operators' means any 'Transport Undertaking' or 'Infrastructure Manager' and includes train operators and those who operate other vehicles such as trams. Guidance on how to apply for safety certificates and safety authorisations together with the criteria that applications should meet is available on ORR's website. This publication gives the text of the Regulations (in italics) together with guidance to set them in context and explain their meaning.

Table 1 Main duties under the Railways and Other Guided Transport Systems (Safety) Regulations 2006 – who they apply to⁴

| 1 Duty | 2 Train/vehicle operators (outside possessions) | 3 Vehicle operators in possessions | 4 Infrastructure managers | 5 Maintainers of vehicles or infrastructure |
|--|---|---------------------------------------|---|--|
| Safety management system - regs 3(1)(a), 3(2)(a), 4(1)(a), 4(2)(a), 5, 6, Sched 1 | Yes (note reg 3 relates to trains and reg 4 relates to vehicles) | No | Yes | Only if they fall within columns 2 or 4 |
| Safety authorisation/certificate - regs 3(1)(b), 3(2)(b), 4(1)(b), 4(2)(b), 7–17, Sched 2 | Yes, except on transport systems with a max line speed not exceeding 40kph and tramways. (note reg 3 relates to trains and reg 4 relates to vehicles) | No | Yes, except on transport systems with a max line speed not exceeding 40kph and tramways | Only if they fall within columns 2 or 4 |
| Risk assessment – reg 19 | Yes | Yes | Yes | Only if they fall within columns 2 or 4 |
| Co-operation - reg 22 | Yes | Yes | Yes | Yes, (contractors); and if they fall within columns 2 or 4 |
| Annual safety reports – reg 20, Sched 3 | Yes (if they are required to have a safety certificate or authorisation) | No | Yes (if they are required to have a safety certificate or authorisation) | Yes (if they are required to have a safety certificate or authorisation) |
| Safety critical work – regs 23 - 26 | Yes ⁵ | Yes ⁵ | Yes ⁵ | Yes ⁵ |

⁴This table refers only to operators on a “transport system”, as defined in regulation 2. Operators on systems excluded from that definition (for example railways on factory premises) are not subject to any of the duties in these Regulations.

⁵ Maintenance work and vehicle operation are within the definition of safety critical work.

PART 1 INTRODUCTION

REGULATION 1 - CITATION AND COMMENCEMENT

1. *These Regulations may be cited as the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and shall come into force-*

(a) as respects all regulations except for regulations 19,23 to 26, 29 and 34 on 10th April 2006;

(b) as respects regulations 19,23 to 26, 29 and 34 on 1st October 2006.

13. Different parts of the Regulations come into force on either 10th April 2006 or 1st October 2006.

Table 2 – Dates when the Regulations come into force

| Regulations coming into force on 10 th April 2006 | Regulations coming into force on 1 st October 2006 |
|---|---|
| Part 2, (Regulations 3-18) (safety management systems, safety certificates, safety authorisations and the requirement for a written safety verification scheme where applicable). There are transitional arrangements in Schedule 5 that give operators holding accepted safety cases under RSCR additional time to comply with Part 2. | The prohibition on operating without the relevant safety certificate or safety authorisation applies only from 1 st October 2006, as specified in (Regulations 3 and 4). |
| Applications for safety certificates and/or safety authorisations may be made and considered, and competent persons for safety verification purposes may be appointed and start their work. | The provision in Part 3 on risk assessment, (Regulation 19) - (existing provisions concerning risk assessments remain in place under the Management of Health and Safety at Work Regulations 1999. The specific duty referred to here will be transferred from the RSC Regulations to these Regulations on 1 st October 2006). |
| The provisions in Part 3 concerning annual safety reports, sending, issuing and keeping of documents and co-operation (Regulations 20-22). | Part 4, safety critical work (Regulations 23 – 26). |

| | |
|---|---|
| Part 5 concerning Appeals, Offences, Exemptions, Defence of Due Diligence and Amendment of ROTS and Consequential Amendments (Regulations 27,28,30,31,32 and 33). | The provisions in Part 5 on 'transitional provisions and savings and revocation' (Regulations 29 and 34). |
|---|---|

REGULATION 2 - INTERPRETATION AND APPLICATION

2 (1) In these Regulations—

“building operation” means the –

(a) construction, structural alteration, repair or maintenance of a building and “maintenance” shall include repointing, redecoration and external cleaning of the structure;

(b) demolition of a building; or

(c) preparation for and laying the foundation of an intended building,

but does not include any operation which is a work of engineering construction;

“bus” means a motor vehicle which is designed or adapted to travel along roads and to carry more than eight passengers but which is not a tramcar

“cableway installation” means an installation made up of several components that-

(a) is used or intended to be used for the purpose of providing an operational system for carrying persons in vehicles, on chairs or by towing devices;

(b) uses cables positioned along the line of travel to provide suspension or traction or both; and

(c) is one of the following-

(i) cable car (including a gondola and chair lift) where the cabins or chairs are lifted or displaced by one or more carrier cables;

(ii) drag lift, where users with appropriate equipment are dragged by means of a cable; or

(iii) funicular railway or other installation with vehicles mounted on wheels or on other suspension devices where traction is provided by one or more cables;

but does not include cable operated tramways, rack railways or lifts;

“carriageway” has the same meaning as in the Highways Act 1980, or in Scotland the Roads (Scotland) Act 1984;

“common safety methods” (“CSMs”) means the methods, developed pursuant to article 6 of the Directive, to describe how—

(a) safety levels;

*(b) achievement of safety targets; and
(c) compliance with other safety requirements,
are assessed, as revised and reissued from time to time;*

*“common safety targets” (“CSTs”) means the safety levels, developed pursuant to article 7 of the Directive, that must be reached by–
(a) different parts of the mainline railway system; and
(b) that system as a whole,
expressed in risk acceptance criteria, as revised and reissued from time to time;*

“competent person means, except for the purposes of Part 4, a person who –

*(a) has sufficient skills, knowledge, experience and resources to undertake the safety verification in relation to which he is appointed;
(b) has not borne such responsibility in relation to any of the matters he has to consider in undertaking that safety verification that might compromise his objectivity; and
(c) is sufficiently independent of a management system, or a part thereof, which has borne responsibility for any of the matters he has to consider in undertaking the safety verification, to ensure that he will be objective in carrying out the safety verification for which he is appointed.*

14. The person appointed to undertake safety verification will need to be a ‘competent person’. The definition covers skills, knowledge, experience, resources and independence. For further guidance on competence see paragraphs 72 -74 and Annex 3.

“conventional Directive” means Council Directive 2001/16 of the European Parliament and of the Council on the interoperability of the conventional rail system;

“deemed safety authorisation” shall be construed in accordance with paragraph 1(b) of Schedule 5;

“deemed safety certificate” shall be construed in accordance with paragraph 1(a) of Schedule 5;

“the Directive” means Directive 2004/49/EC of the European Parliament and of the Council on safety on the Community’s railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of infrastructure capacity and the levying of charges for the use of infrastructure and safety certification;

15. The Directive is referred to as the RSD throughout this guidance.

“engineering possession” means a section of track which is closed to normal traffic and where the closure is for the purpose of carrying out maintenance

which shall include any repair, alteration, reconditioning, examination or testing of infrastructure;

“European Railway Agency” means the Community agency for railway safety and interoperability established by Regulation (EC) No. 881/2004 of the European Parliament and of the Council establishing a European Railway Agency;

“factory” means a factory within the meaning of section 175 of the Factories Act 1961 and premises to which section 123(1) or (2) or 125(1) of that Act applies; “guided bus system” means a system of transport, used wholly or mainly for the carriage of passengers, that employs buses which for some or all of the time when they are in operation-

(a) travel along roads; and

(b) are guided (whether while on the road or at other times) by means of-

(i) apparatus, a structure or other device which is fixed and not part of the bus; or

(ii) a guided system which is automatic;

“guided transport” means a system of transport used wholly or mainly for the carriage of passengers, employing vehicles which for some or all of the time when they are in operation are guided by means of-

(a) rails, beams, slots, guides or other apparatus, structures or devices which are fixed and not part of the vehicle; or

(b) a guidance system which is automatic;

“harbour” and “harbour area” have the meanings assigned to them by regulation 2(1) of the Dangerous Substances in Harbour Areas Regulations 1987;

“heritage railway” means a railway which is operated to-

(a) preserve, re-create or simulate railways of the past;

(b) demonstrate or operate historical or special types of motive power or rolling stock;

and is exclusively or primarily used for tourist, educational or recreational purposes;

“high-speed Directive” means Council Directive 96/48/EC on the interoperability of the trans-European high-speed rail system;

“infrastructure” means fixed assets used for the operation of a transport system which shall include, without prejudice to the generality of the foregoing-

(a) its permanent way or other means of guiding or supporting vehicles;

(b) any station; and

(c) plant used for signalling or exclusively for supplying electricity for operational purposes to the transport system;

16. 'Infrastructure' is wider than 'railway infrastructure' in RSCR. It includes the infrastructure of *transport systems*, not just *railways*, and it also includes *stations*.

"infrastructure manager" means the person who—
(a) in relation to infrastructure other than a station, is responsible for developing and maintaining that infrastructure or, in relation to a station, the person who is responsible for managing and operating that station, except that it shall not include any person solely on the basis that he carries out the construction of that infrastructure or station or its maintenance, repair or alteration; and
(b) manages and uses that infrastructure or station, or permits it to be used, for the operation of a vehicle;

17. 'Infrastructure manager' generally equates with 'infrastructure controller' in RSCR, although the wording is different. The definition reflects the concepts now included within *infrastructure* and the co-operative relationship between infrastructure managers and train operators arising from the transposition of the Railway Safety Directive. The definition also includes station operators who manage and operate stations. The last clause in paragraph (a) excludes construction, maintenance or renewal contractors from the definition of infrastructure managers.

"interoperability regulations" means The Railways (Interoperability) Regulations 2006;

"mainline application" means an application for—
(a) a safety certificate or an amended safety certificate; or
(b) a safety authorisation or an amended safety authorisation,
made in relation to an operation on the mainline railway;

"mainline railway" means any railway except for any railway or part of a railway—
(a) the infrastructure and rolling stock of which are reserved strictly for—
(i) a local use; or
(ii) the operating of a heritage railway; or
(iii) the purposes of tourism; or
(b) the infrastructure of which is functionally separate from any other railway which does not fall within sub-paragraph(a);

18. "Mainline Railway" refers to that part of the UK network which is already, or is intended to be in the future, covered by Technical Specifications for Interoperability (TSIs). It is made up of the high-speed railway, the conventional railway and the domestic railway. It excludes light rail, trams, metros, heritage railways etc.

19. "Functionally separate" includes, but is not limited to, systems that are physically isolated ie where vehicles from one system cannot transfer to the other without external assistance. It can also include physically connected

systems, where limited operation of a railway transport undertaking from a connected system on part of a mainline railway would not bring the other elements of that undertaking within the definition of 'mainline railway', so long as its main functions are distinct from that of the mainline and effective controls over movement between the two systems, by those systems' 'transport operators', minimise risks so far as is reasonably practicable. Criteria to aid assessment of 'functionally separate' are available at http://www.rail-reg.gov.uk/upload/pdf/crit_aidassess-300806.pdf

“mainline railway system” means the mainline railway and the management and operation of the mainline railway as a whole;

“material” includes plant;

20. Material' appears in regulations 5(d)(i) and 6(c)(i), Schedule 1 paragraph 2(d)(ii). It has a very wide meaning. Under section 53(1) of HSWA plant 'includes any machinery, equipment or appliance', which would include any rolling stock or vehicle. 'Material' includes plant, aggregates (ballast, etc) and substances (paint, etc).

“military establishment” means an establishment intended for use for naval, military or air force purposes or for the purposes of the Department of the Secretary of State responsible for defence;

“mine” has the meaning assigned to it by section 180 of the Mines and Quarries Act 1954;

*“national safety rules” means any legislation and other requirements—
(a) applicable to the whole of Great Britain; and
(b) which contain requirements (including common operating rules) relating to railway safety which are imposed on more than one railway undertaking,*

except that where the requirements in sub-paragraph (b) consist of common operating rules of the mainline railway it shall not include such rules which regulate matters which are covered by a TSI;

21.The term 'national safety rules' is found in regulations 5(1)(a)(ii), 5(7)(c)(i), 7(5)(a), Schedule 1 paragraph 2(c)(ii), and Schedule 2 paragraph 2(a). It includes railway safety requirements in health and safety legislation (Act and Regulations) ie this is a broad scope and covers general health and safety legislation as well as that specific to the railways.

“new” in relation to regulations 5 and 6 means new to the transport system in question;

*“non-mainline application” means an application for—
(a) a safety certificate or an amended safety certificate; or
(b) a safety authorisation or an amended safety authorisation,
made in relation to an operation on a transport system other than the mainline railway;*

“operator of last resort” means a transport operator appointed by the Secretary of State to provide transport services in accordance with section 30 of the Railways Act 1993

“Part A of a safety certificate” means that part of a safety certificate certifying the matters set out in regulation 7(4)(b)(i) and related expressions shall be construed accordingly;

“Part B of a safety certificate” means that part of a safety certificate certifying the matters set out in regulation 7(4)(b)(ii) and related expressions shall be construed accordingly;

“quarry” has the meaning assigned to it by regulation 3 of the Quarries Regulations 1999 (<http://www.opsi.gov.uk/si/si1999/19992024.htm>)

*“railway” means a system of transport employing parallel rails which—
(a) provide support and guidance for vehicles carried on flanged wheels; and
(b) form a track which either is of a gauge of at least 350 millimetres or crosses a carriageway (whether or not on the same level),
but does not include a tramway;*

22. *“Railway” has the meaning assigned to it by section 67(1) of the Transport and Works Act 1992 except that it does not include any part of a railway—*

- (a) within a harbour or harbour area, or which is part of a factory, mine or quarry unless, in each case, it is being used or is intended to be used for the carriage of fare paying passengers;*
- (b) used solely for the purpose of carrying out a building operation or work of engineering construction;*
- (c) within a maintenance or goods depot;*

“relevant infrastructure manager” means the infrastructure manager for any infrastructure used in relation to the operation in question;

*“relevant infrastructure or vehicle” means any new or altered—(a) infrastructure; or
(b) vehicle,
falling within regulation 5(4) or 6(4) and related expressions shall be construed accordingly;*

“responsible person” means in relation to any relevant infrastructure or vehicle, any person who –

(a) has contracted with another person for the manufacture or construction by that other person of that infrastructure or vehicle; or

(b) manufactures or constructs that infrastructure or vehicle for his own use, or for sale to, or use by, another person but not where he is contracted to do so by a person falling under sub-paragraph (a), and includes an authorised representative established in Great Britain of such a person.

23. 'Responsible person' means someone who contracts with another to manufacture or construct the infrastructure or vehicles or, where there is no such person, it means a person who actually manufactures or constructs them for their own use or for sale to or for use by someone but *not* where they are contracted to do so by someone as in sub paragraph (a). In the case of newly constructed systems or extensions where there is no 'operator' at the time of design and construction this would be the person or organisation that lets the contract for the work.

"risk" means in Parts 1 and 2 a risk to the safety of a person;

"road" means in the definition of "guided bus system" and "tramway"-

*(a) in England and Wales, any length of highway or of any other road to which the public has access, and includes bridges over which a road passes; and
(b) in Scotland, has the same meaning as in the Roads (Scotland) Act 1984;*

"rolling stock" has the meaning in section 83(1) of the Railways Act 1993;

24. 'Rolling stock' means 'any carriage, wagon or other vehicle used on track and includes a locomotive'. 'Locomotive' is defined as 'any railway vehicle which has the capacity for self-propulsion, whether or not the power by which it operates is derived from a source external to the vehicle'.

"ROTS" means the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994;

"safety authorisation" means a safety authorisation issued by the Office of Rail Regulation in accordance with regulation 10 or 12;

"safety authority" means—

(a) as regards a member State other than the United Kingdom, the authority established in that State in accordance with article 16.1 of the Directive;

(b) as regards Great Britain, the Office of Rail Regulation; or

(c) as regards Northern Ireland, the Department for Regional Development established by article 3(1) of the Departments (Northern Ireland) Order 1999;

"safety certificate" means a safety certificate issued by the Office of Rail Regulation in accordance with regulation 7 or 9;

"safety management system" means the organisation and arrangements established by a transport operator to ensure the safe management of its operation;

“significant safety risk” means, in relation to new or altered infrastructure or a new or altered vehicle the design or construction of which incorporates significant changes compared to any infrastructure or vehicle already in use on the transport system, the capability of significantly increasing an existing safety risk or creating a significant safety risk to –

*(a) passengers on the transport system in question; or
(b) members of the public in roads and any other location where the transport system in question operates and to which the public have access (including a place to which the public has access only on making a payment), except a location which is a crossing subject to an Order made under Section 1 of the Level Crossings Act 1983*

25. ‘Significant safety risk’ is the criterion for deciding whether the design or construction of new or altered vehicles or infrastructure requires safety verification in accordance with Regulations 5 or 6 and Schedule 4. This applies where the change would be capable of significantly increasing an existing risk or creating a significant new risk to the safety of:

- passengers on the transport system; or
- the public where the transport system operates in a road or other public place.

Examples of significant risk projects can be found at Annex 4. If Transport Operators are in doubt they should contact ORR for advice.

“station” means a passenger stop, station or terminal on a transport system but does not include any permanent way or other means of guiding or supporting vehicles or plant used for signalling or exclusively for supplying electricity for operational purposes to a transport system;

“technical specifications for interoperability” (“TSIs”) means technical specifications for interoperability which are published in the Official Journal of the European Communities pursuant to–

- (a) Article 6.1 of the high-speed Directive; or
(b) Article 6.1 of the conventional Directive,
and in force;*

“train” includes any rolling stock;

26. ‘Train’ is defined (section 82 of the Railways Act 1993) as a locomotive (on its own) or two or more items of rolling stock coupled together, where at least one is a locomotive. ‘Rolling stock’ is described in paragraph 24.

“tramway” means a system of transport used wholly or mainly for the carriage of passengers–

- (a) which employs parallel rails which–
(i) provide support and guidance for vehicles carried on flanged wheels;*

- (ii) are laid wholly or partly along a road or in any other place to which the public has access (including a place to which the public has access only on making a payment); and
- (b) on any part of which the permitted maximum speed is such as to enable the driver to stop a vehicle in the distance he can see to be clear ahead;

27. The definition of tramway differs from that in section 67(1) of the Transport and Works Act 1992 which was previously used in RSCR. The new definition now incorporates the concept that the driver is able to stop a vehicle in the distance he can see to be clear ahead, often termed 'line of sight', and that the operation is on a road or other public place. Each of these features must exist on at least part (but not necessarily all or most) of the system. The whole of such a system is then defined as a tramway. This reflects the development of UK tramway systems that often make extensive use of former railway alignments before emerging onto the street. The principal features relating to line-of-sight operation are detailed in 'Railway Principles and Guidance, Part 2: Section G' (<http://www.rail-reg.gov.uk/upload/pdf/rspg-2g-trmwys.pdf>).

"transport operator" means any transport undertaking or infrastructure manager;

"transport system" means a railway, a tramway or any other system using guided transport where that other system is used wholly or mainly for the carriage of passengers but a transport system does not include—

- (a) a guided bus system;
- (b) a trolley vehicle system;
- (c) any part of a transport system—
 - (i) within a harbour or harbour area or which is part of a factory, mine or quarry;
 - (ii) used solely for the purpose of carrying out a building operation or work of engineering construction;
 - (iii) within a maintenance or goods depot;
 - (iv) within a siding except where Part 4 applies; or
 - (v) which is within a military establishment;
- (d) any fairground equipment;
- (e) any cableway installation; or
- (f) any transport system where the track forms a gauge of less than 350mm except where such a track crosses a carriageway (whether or not on the same level),

except where the transport system in question forms part of the mainline railway;

28. The Regulations apply not just to railways but also to tramways and other guided transport systems. Guided transport systems include monorail systems, airport people movers (unless they are cableway installations), and Maglev (magnetic levitation) systems. 'Transport System' does not include goods depots or any sidings, although safety critical work in a siding is within scope of the

Regulations. More information on Sidings and Safety Critical Work is available at http://www.rail-reg.gov.uk/upload/pdf/Def_siding_for_ROGS.pdf.

29. With the exception of (c)(iv) the other exclusions in paragraphs (c) and (f) of the definition broadly reflect the previous scope of RSCR. However, the exclusion of industrial railways in (c) has now been simplified including the removal of the provision in RSCR that no fare-paying passengers are carried. Accordingly it will no longer be necessary to seek an exemption if an operator wishes to operate or permit access to a passenger charter train on these railways.

30. A railway in a factory or mine may include some lines lying outside the factory or mine boundary. Sections 175(3) and (6) of the Factories Act 1961, indicate that a line or siding used in connection with and for the purposes of a factory is deemed to be part of the factory, unless it is part of a 'railway used for the purposes of public traffic, whether passengers, goods or other traffic'. Similarly, section 180(5) of the Mines and Quarries Act 1954, indicates that a railway line serving a mine is deemed to form part of the mine unless the line belongs to a railway company.

31. The exclusion of cableway installations reflects the existing position where such systems are generally either excluded from the RSC Regulations (if they do not have flanged wheels and so are not railways) or hold an exemption from the requirements of RSCR (as in the case of small cliff railways). Cableway installations are subject to the Cableway Installations Regulations 2004 which implement European Community Directive 2000/9, the two fundamental objectives of which are passenger safety and the creation of a single market ensuring the free movement of cableway components. HSE is the supervisory authority for cableways.

32. The exclusion of transport systems within military establishments covers a number of private railways controlled by the Ministry of Defence (MoD) and serving depots for military equipment and other MoD facilities. Many parts of these railways will also fall within the separate exclusion for maintenance or goods depots.

33. Fairground equipment is defined in section 53 of HSWA as "any fairground ride, any similar plant which is designed to be in motion for entertainment purposes with members of the public on or inside it or any plant which is designed to be used by members of the public for entertainment purposes either as a slide or for bouncing upon, and in this definition the reference to plant which is designed to be in motion with members of the public on or inside it includes a reference to swings, dodgems and other plant which is designed to be in motion wholly or partly under the control of, or put in motion by, a member of the public".

34. The exclusion in paragraph (f) is intended to apply to systems such as miniature railways with gauges of less than 350mm; however, due to the additional risks the exclusion does not apply to such systems where they cross carriageways (either under, on the level or over them).

“transport undertaking” means any person who operates a vehicle in relation to any infrastructure but shall not include a person who operates a vehicle solely within an engineering possession;

35. Transport undertakings’ includes train operators (not drivers), referred to as ‘Railway Undertakings’ in the RSD for the mainline railway, and those who operate other *vehicles* such as trams. However, it excludes those who operate vehicles within engineering possessions. Regulations 3 and 4 contain a similar exclusion.

“trolley vehicle system” means a system of transport by vehicles constructed or adapted for use on roads without rails under electric power transmitted to them by overhead wires (whether or not there is in addition a source of power on board the vehicles);

“vehicle” includes a mobile traction unit;

“work of engineering construction” means the—

(a) construction of any line or siding otherwise than on an existing transport system; and

(b) construction, structural alteration, repair (including repointing and repainting) or demolition of any tunnel, bridge or viaduct except where carried on upon a transport system; and

“writing” apart from its usual meaning includes any text transmitted using electronic communications that is received, or accessible by the person to whom it is sent, in legible form.

(2) Any reference in these Regulations to a person who operates a train or a vehicle is a reference to the person operating the train or vehicle for the time being in the course of a business or other undertaking carried on by him, whether for profit or not, but it does not include a self-employed person by reason only that he drives or otherwise controls the movement of a train or vehicle.

36. The Regulations apply to companies that operate *trains* or other *vehicles* on a *transport system* (not drivers) in the course of a business or other undertaking, whether or not for profit. This includes operations that are run on a voluntary basis, without any employed or self-employed people. ‘Person’ is used throughout the Regulations to mean a company; however, under section 37 of HSWA it is also possible to prosecute individual directors, managers or other company officers in some circumstances. Section 7 of HSWA places a duty on employees at work to take reasonable care of their own health and safety and that of others who may be affected by their work activities and to co-operate with their employer.

(3) Parts 2 and 3 of these Regulations shall not apply to or in relation to the operation of a train or the management or use of infrastructure in the tunnel system within the meaning of section 1(7) of the Channel Tunnel Act 1987.

37. Parts 2 and 3 of the Regulations do not apply to the Channel Tunnel system which comprises the tunnel itself and the terminal areas on both sides. The requirements of the RSD will be implemented for the Channel Tunnel system by means of bi-national regulations drawn up by the Channel Tunnel Intergovernmental Commission which will be the “safety authority” in respect of that system.

PART 2 SAFETY MANAGEMENT, CERTIFICATION AND AUTHORISATION

38. Any transport undertaking (ie a vehicle operator, vehicle includes a train and a mobile traction unit but not those within an engineering possession), or infrastructure manager (which includes a station operator), will need to establish a safety management system (SMS) that meets the specified requirements of these Regulations. The SMS will need to be maintained as an effective working system at all times.

39. In addition, transport undertakings (except transport systems with a maximum speed of 40kph or less, and tramways) will need to obtain a safety certificate, and infrastructure managers are required to obtain a safety authorisation, from ORR, before they can operate. The status of a safety certificate and a safety authorisation is the same (ie they allow access), although the scope will be different. Infrastructure managers should ensure that a transport undertaking seeking access to their infrastructure has a valid safety certificate. This requirement relates to a transport undertaking obtaining access to the network but does not impose a positive requirement on the infrastructure manager to monitor the compliance of a transport undertaking with its safety certificate or other general health and safety requirements.

40. Both infrastructure managers and transport undertakings will need to monitor the effectiveness of their SMSs, as part of their risk management process. Where it is necessary for monitoring to extend to beyond a company's immediate operation the parties involved will need to co-operate to allow effective risk management. The duty of co-operation is described in paragraphs 156 - 164. The monitoring activity should be focussed on the control of risks for which the organisation carrying out that monitoring is responsible. In addition, ORR will seek to assure, by means of its planned inspection activities, that all parties are co-operating effectively to monitor and control risks.

41. Applicants for safety certificates and/or safety authorisations will need to provide evidence about their general SMS, and other information relevant to the safety of the specific transport system. They will need to consult safety representatives or other employee representatives and other transport operators as relevant, and make the application, including all supporting evidence, available to affected parties, who may then send any comments on the application to ORR within 28 days. ORR can then request any further information they may require to assess the application.

42. ORR will come to a decision on the application within 4 months of the expiry of the 28 day period allowed for affected parties to make representations. ORR is permitted to restart the four month period upon receiving any further information that it has requested, but it will in general seek to avoid doing this unless strictly necessary. ORR will provide written

reasons for its decision and will also make provision for those reasons to be made available to affected parties, but will not do so in the cases where the applicant is an operator of last resort.

43. Safety certificates and safety authorisations are valid for up to 5 years. Part A of a safety certificate for a transport undertaking on the mainline railway relates to the SMS. The application for a safety certificate/safety authorisation will need to contain sufficient evidence (in the case of a written safety verification scheme this will need to be an 'outline' of the scheme) that the SMS satisfies the requirements in the Regulations. The certificate will be valid for any other equivalent operations that are undertaken by the holder, including other European Member States.

44. The application for Part B of the certificate will need to contain sufficient evidence of the national provisions adopted to meet the requirements necessary to ensure safe operation and an explanation of how the SMS will ensure compliance with these. See Annex 1 of this Guidance and Schedule 2 of the Regulations for further detail.

45. The holder should obtain an amended safety certificate and/or safety authorisation from ORR before making substantial alterations, and will need to notify certain major changes without delay.

46. Safety representatives should be consulted and affected parties made aware of these applications and notifications.

47. ORR may also require a safety certificate or safety authorisation holder to apply for an amendment following changes to legislation which could have an affect on the safety of the transport system in question. It may also revoke a safety certificate or safety authorisation if the SMS as a whole or other arrangements for ensuring safety are inadequate and there is a significant risk to safety. Applicants who have been refused a safety certificate or a safety authorisation, or an amendment, or have been served with a direction or a revocation notice, have a right of appeal to the Secretary of State.

48. Safety certificate and safety authorisation holders will need to keep safety documentation, including risk assessment and safety audit records, at a notified address. A copy of the safety certificate and/or safety authorisation and the evidence of managing safety, including any updates as a result of any notified major changes or other revisions, and annual reports sent to ORR will need to be available for public inspection.

49. Information on how to apply for a safety certificate or a safety authorisation, and the criteria for issuing them is included in HMRI's guidance for inspectors "Safety Certificate and Authorisation Assessment Manual" which is also available to duty holders at www.rail-regulation.gov.uk.

50. Existing safety case holders under RSCR are given additional time to comply with the requirements for a safety certificate/safety authorisation. The requirements that apply during that transitional period are in Schedule 5 of the regulations.

51. Applications for safety certificates/safety authorisations should be sent to HMRI account holders, contact details can be found on [ORR's website](#). If an application is made for the purpose of operating for the first time you should contact ORR who will be able to give advice about where you should send your application.

52. Transport operators will also need to ensure that in addition to a safety certificate and/or a safety authorisation they also have a licence (or a licence exemption) in order to operate. To apply for such a licence (or for an exemption) please contact ORR at licensing.enquiries@orr.gsi.gov.uk.

REGULATION 3 - USE OF INFRASTRUCTURE ON THE MAINLINE RAILWAY

3—(1) *After 30th September 2006 no person shall operate a train in relation to any infrastructure on the mainline railway unless—*

(a) he has established and is maintaining a safety management system which meets the requirements set out in regulation 5(1) to (4); and

(b) he holds a current safety certificate in relation to the operation in question,

except to the extent that he is doing so within an engineering possession.

(2) *After 30th September 2006] no person who is responsible for developing and maintaining infrastructure other than a station or who is responsible for managing and operating a station on the mainline railway shall manage and use it, or permit it to be used, for the operation of trains unless—*

(a) he has established and is maintaining a safety management system which meets the requirements referred to in regulation 5(7);

(b) he holds a current safety authorisation in relation to the infrastructure in question; and

(c) where he is using it or permitting such use, the person who is to use the infrastructure has complied with paragraph (1)(b).

53. These requirements come into effect on 1st October 2006. The Regulation prohibits anyone operating trains on the mainline railway, except in an engineering possession, unless:

(a) they have a SMS that meets the requirements of regulation 5 (1)-(4) and Schedule 1 by setting up and maintaining a working and effective safety management system, and documenting it; and

(b) they hold a current safety certificate.

54. No transport operator (ie transport undertaking or infrastructure manager) on the mainline railway may operate trains or allow others to operate trains, unless:

- (a) they have a SMS that meets the requirements of regulation 5(7) and Schedule 1. This means setting up and maintaining a working and effective SMS, and documenting it;
- (b) they hold a current safety authorisation. Applications for and the issue of safety authorisations are covered in regulation 10; and
- (c) they ensure that all transport undertakings on their infrastructure or serving their stations hold a valid safety certificate.

55. From the 1st October 2006 anyone wishing to start a new operation, or to take over an existing operation, on or after that date will need to have a safety certificate and/or safety authorisation. However, regulation 29 and Schedule 5 contains transitional provisions that permit existing safety case holders, and certain other operators, to operate without obtaining a safety certificate or a safety authorisation until a later date. Please see the guidance on Schedule 5 for details.

56. Although the definition of 'infrastructure' now includes stations it should be noted that the requirement to hold a safety authorisation does not apply to vehicles used on stations such as luggage trolleys, electric people carriers, catering tugs.

REGULATION 4 - USE OF INFRASTRUCTURE ON OTHER TRANSPORT SYSTEMS

4 (1) *After 30th September 2006 no person shall operate a vehicle in relation to any infrastructure on a transport system other than the mainline railway unless—*

- (a) he has established and is maintaining a safety management system which meets the requirements set out in regulation 6; and*
- (b) subject to paragraph (3), he holds a current safety certificate in relation to the operation in question,*

except to the extent that he is doing so within an engineering possession.

(2) *After 30th September 2006 no person who is responsible for developing and maintaining infrastructure, other than a station, or who is responsible for managing and operating a station on a transport system other than the mainline railway shall manage and use it, or permit it to be used, for the operation of a vehicle unless—*

- (a) he has established and is maintaining a safety management system which meets the requirements set out in regulation 6; and*
- (b) subject to paragraph (3)-*
 - (i) he holds a current safety authorisation in relation to the operation in question, and*

(ii) where he is using it or permitting such use, the person who is to use the infrastructure has complied with paragraph (1)(b).

(3) Paragraphs (1)(b) and (2)(b) shall not apply to the extent that the operation in question is only carried out—

(a) on a tramway; or

(b) on a transport system on no part of which there is a permitted maximum speed exceeding 40 kilometres per hour.

(4) Where the operation in question falls within (3)(a) or (b), the requirement in paragraphs (1)(a) and (2)(a) shall be read as if the date was, in each case, after 31st March 2007.

57. Regulation 4 deals with the requirements for a SMS, safety certificates and safety authorisations for operators of a transport system other than the mainline railway.

58. After 30th September 2006 no one may operate a vehicle on a non mainline transport system, except in an engineering possession and as in paragraph 61 below, unless they:

- (a) have a SMS that meets the requirements of regulation 6 and Schedule 1; and
- (b) hold a current safety certificate (but see paragraph 61). Applications for and the issue of safety certificates are covered in regulation 7 and Schedule 2.

59. No transport operator may operate vehicles, or allow others to do so on their infrastructure, unless:

- they have established a SMS that meets the requirements of regulation 6 and Schedule 1. Again, this means setting up and maintaining a working and effective SMS, and documenting it;
- they hold a current safety authorisation [but see paragraph 61]. Applications for and the issue of safety authorisations are covered in regulation 10 and Schedule 2; and
- they ensure that all vehicle operators on their infrastructure or serving their stations hold a valid safety certificate.

60. Anyone wishing to start a new operation, or to take over an existing operation, on or after the 1st October 2006, other than those covered by paragraph 61 below, will need to have a safety certificate and/or a safety authorisation in place from day one. However, for current operators Regulation 29(6) and Schedule 5 contain transitional provisions that permit existing safety case holders, and certain other operators, to operate without

obtaining a safety certificate or safety authorisation until a later date, depending on the status of that safety case. The guidance on Schedule 5 gives details.

61. Under regulation 4(3), no safety certificate or safety authorisation is required by those who manage infrastructure, or who operate vehicles or stations, on any transport system where the permitted maximum speed does not exceed 40 kilometres per hour, or on a tramway (regardless of speed). However, such operators and infrastructure managers are still required, by 31st March 2007, to establish and maintain a SMS that meets the requirements of regulation 5 and Schedule 1.

62. Although the definition of 'infrastructure' now includes stations it should be noted that the requirement to hold a safety authorisation does not apply to vehicles used on stations such as luggage trolleys, electric people carriers, catering tugs.

REGULATION 5 - SAFETY MANAGEMENT SYSTEM FOR THE MAINLINE RAILWAY

5.—1) *The requirements for a safety management system referred to in regulation 3(1)(a) are that—*

(a) subject to paragraph (2), it is established to ensure that the mainline railway system—

(i) can achieve the CSTs; and

(ii) is in conformity with relevant national safety rules and relevant safety requirements laid down in TSIs;

(b) it applies the relevant parts of CSMs;

(c) it meets the requirements and contains the elements set out in Schedule 1, adapted to the character, extent and other characteristics of the operation in question;

(d) subject to paragraph (2), it ensures the control of all categories of risk including new or existing risks associated with the operation in question which, without prejudice to the generality of the foregoing, shall include such risks relating to the—

(i) supply of maintenance and material;

(ii) use of contractors; and

(iii) placing in service of new or altered vehicles the design or construction of which incorporates significant changes compared to any vehicle already in use on that transport system and which changes would be capable of significantly increasing an existing risk to safety or creating a significant safety risk;

(e) it takes into account, where appropriate and reasonable, the risks arising as a result of activities carried on by other persons; and

(f) all parts of it are documented.

(2) The requirements in paragraphs (1)(a) and (d) shall be met where the safety management system of a transport operator or of an applicant for a safety certificate or a safety authorisation (“the first operator”) taken with that of any relevant transport operator is capable of meeting the requirements of the paragraph in question.

(3) In paragraph (2), “relevant transport operator” means another transport operator whose operation is capable of materially affecting the safety of the operation carried on by the first operator.

(4) In paragraph 1(d)(iii) where such new or altered vehicles are intended to be placed in service, then before that placing in service the transport operator shall ensure that he has-

- (a) an established written safety verification scheme which meets the requirements and contains the elements set out in Schedule 4; and*
- (b) appointed a competent person to undertake that safety verification, and the competent person has undertaken that safety verification in relation to the new or altered vehicles.*

(5) Where a new or altered vehicle has been authorised under regulation 4(1)(a) of the Interoperability Regulations for the placing into service on the mainline railway, that authorisation shall be treated as satisfying the requirements of paragraph (4).

(6) In this regulation placing into service shall mean first placed into service for the provision of a transport service, and in ascertaining when this takes place no regard shall be had to any trials or testing that takes place to the relevant vehicle.

(7) The requirements for a safety management system referred to in regulation 3(2)(a) are the requirements in paragraphs (1) to (6) save that any reference to new or altered vehicles in those paragraphs shall be replaced with a reference to new or altered infrastructure and that-

(a) it ensures the control of all categories of risk associated with the placing into service of new or altered infrastructure the design or construction of which incorporates significant changes compared to any infrastructure already in use on that transport system and which changes would be capable of significantly increasing an existing risk to safety or creating a significant safety risk

(b) it takes into account the effects of operations of transport undertakings; and

(c) it contains provisions to ensure that the way in which the infrastructure manager carries out his operation makes it possible for any transport undertaking to operate in accordance with-

- (i) relevant TSIs and national safety rules; and*
- (ii) the means adopted by the transport undertaking to meet the requirements referred to in regulation 7(4), of which the Office of Rail Regulation accepted that there was sufficient evidence upon issue or amendment of its safety certificate pursuant to these Regulations; and*

(d) aims to co-ordinate the emergency procedures of the infrastructure manager or of the applicant for a safety authorisation with those of transport undertakings,

and in each case the requirements in sub-paragraphs (a) to (d) shall only apply in relation to transport undertakings that operate or will operate a train in relation to the infrastructure of the infrastructure manager or of the applicant for a safety authorisation in question.

63. The requirements of Regulation 5 come into force on 10th April 2006. Regulation 5(1)-(6) sets a number of broad requirements for the SMS of a transport operator on the mainline railway:

(a) The SMS should aim to ensure that the mainline railway system as a whole can achieve any published common safety targets (CSTs), and that it meets, where appropriate, relevant technical specifications for interoperability (TSIs) and relevant national safety rules (regulation 5(1(a))). National safety rules include the statutory provisions referred to in paragraph 77(a). However, an individual transport operator cannot achieve this in isolation. Regulation 5(2) therefore provides that a transport operator is considered to have met the requirements of regulation 5(1)(a) if its SMS together with the SMSs of other relevant transport operators (whose operation is capable of materially affecting the safety of its operation - see regulation 5(3)) are together capable of meeting those requirements. In effect this requires interfacing transport operators to co-operate and ensure their SMSs fit together so that there is no gap in safety protection.

CSTs are yet to be developed by the European Railway Agency (ERA). CSTs are expected to come in two phases, the first being a baseline ('a snapshot') of performance, measured according to UK national definitions of the Common Safety Indicators (CSIs) detailed in the Directive. The second phase is expected to both use harmonised definitions for CSIs, and address 'areas of concern' for European railway safety. More information can be found on the ERA website: www.era.eu.int

The duty to set out in the SMS how CSTs are to be met is not immediately applicable. However, transport operators should consider whether their own performance measurement and target-setting systems could be used to influence the development of CSTs and relay these to UK industry representatives or to the international railways safety policy team at ORR.

(b) The SMS should apply the relevant parts of published common safety methods (CSMs). As with CSTs, CSMs are yet to be developed by ERA, and the advice given above on CSTs applies here. More information on CSMs can be found on the ERA website: www.era.eu.int

(c) The SMS should meet the requirements in Schedule 1 paragraph 1 and contain the basic elements in Schedule 1 paragraph 2. These requirements and elements should be 'adapted to the character, extent

and other characteristics of the operation in question', which acknowledges that the SMS will be different in nature and complexity reflecting the nature, size and complexity of the operation. Please see Schedule 1 for further guidance.

- (d) The SMS should ensure the control of all categories of risk (including new or existing risk) associated with the operation, including risks relating to the supply of maintenance and material, plant and equipment (see definition of material) and the use of contractors. It will also need to include the risks associated with placing in service new or altered vehicles or new or altered infrastructure (see paragraphs 65 - 71 for further detail). Risk means risk to the safety of persons (see definition in regulation 2). In deciding what constitutes significant risk, transport operators will need as part of their SMS a system that identifies occasions where the regulations would apply. Annex 4 contains examples of significant risk projects. However, these are only provided as guidelines and should not be seen as definitive.
- (e) The SMS should take into account, where appropriate and reasonable, the risks arising from other people's activities. "Other people" includes third parties who are not directly associated with the running of the operation e.g. trespassers, other people carrying out work adjacent to the transport system and the wider public.
- (f) All parts of the SMS should be documented and it should be treated as a 'living document' and embedded into the wider management system.

64. For more information on CSTs, CSMs, TSIs and national safety rules, please see the sections on 'Introduction' and the 'definitions of these terms' in regulation 2.

WRITTEN SAFETY VERIFICATION SCHEME

65. In addition to the requirements of regulation 5(1-3) described above the SMS of transport operators will need to meet the additional requirements listed in regulation 5(4 and 6) (regulation 5(5) relates to interoperability authorisation) if they are introducing new or altered vehicles or new or altered infrastructure into service.

66. The safety verification requirements do not apply to new vehicles/infrastructure authorised to be placed into service on the mainline railway under the Interoperability Regulations 2006, as that authorisation will be seen as satisfying the requirements in Regulation 5(4).

67. For safety verification the definition of significant safety risk includes significant change (Regulation 5(1)(d)(iii) and 5(7)(a)). A significant change in design, for example, would be where the functionality of a proposed change in equipment is very different. The change from the track circuit system to axle counters would be seen as a significant change under safety verification. Although both are utilised to detect train position, the way they do it is very

different. Subsequent installation of axle counters in other parts of the network is unlikely to be significantly different as they already exist on the system.

68. 'New' is defined in regulation 2 as 'new to the transport system in question' and may therefore include vehicles/infrastructure that have previously been used in another operation. The requirements of Regulation 5 also apply when vehicles/infrastructure have been substantially altered and are to be brought back into service.

69. Prior to new or altered vehicles or new or altered infrastructure being put into service transport operators will need to evaluate the scheme against a 'difference' test (how novel the scheme is or whether it is simply the application of established technology in a new location) and then a 'risk' test (introduction of new or significantly increased risk)

70. If the scheme is significantly different from that which is currently found on the transport system, *and* it would be capable of significantly increasing an existing risk or creating a significant safety risk to the passengers or the public, then before placing the scheme into service transport operators will need to;

- draw up a suitable written verification scheme for the proposal (regulation 5(4)(a)) which should meet the requirements in Schedule 4;
- appoint a competent person to undertake the safety verification (regulation 5(4)(b));
- keep a written record of the verification scheme and document this process as part of the SMS, Schedule 1 lists the requirements of a SMS.

71. An example of when a scheme would require written safety verification would be where the potential consequences of a failure of a component of new or altered rolling stock vehicles could result in a collision or derailment. Where schemes did not need to be approved under the ROTs process, because they were excluded by a General Notice, then they would not normally need to be subject to a safety verification process. The General Notices detailing excluded schemes are reproduced in Annex 5.

APPOINTMENT OF A COMPETENT PERSON

72. In the case of *new* infrastructure or vehicles the competent person should be appointed by a 'responsible person' as defined in regulation 2 and para 26. The intention is to ensure that a competent person is appointed early enough to enable any safety matters they raise to be taken into account before the design or construction is completed or selected (regulation 5(4)). Where the work is commissioned by an existing transport operator then that transport operator would be the responsible person.

73. In the case of *altered* infrastructure or vehicles, the transport operator who intends to put the infrastructure or vehicles into service should appoint the competent person. In these cases the infrastructure or vehicles will have already been in use by the same infrastructure manager or operator (since infrastructure or vehicles previously used in another operation count as 'new'). The transport operator will have a direct interest in the alterations and may commission the work, in which case will be in a suitable position to appoint a competent person.

74. A person who appoints a competent person will need to provide them with any information and resources they may reasonably require.

THE SMS OF AN INFRASTRUCTURE MANAGER

75. As well as the requirements of regulation 5(1-4 and 6), (regulation 5(5) relates to interoperability authorisation) described above, the SMS of an *infrastructure manager* will need to meet the additional requirements listed in regulation 5(7)(a-d) which reflect the role of the infrastructure manager in relation to the co-ordination of their emergency procedures with those of the transport undertakings who operate on their infrastructure. The requirements in Regulation 5(1)-(6) refer to vehicles but apply equally to infrastructure as detailed in Regulation 5(7). To meet these duties infrastructure managers will need to ensure the control of risk from the placing into service of new or altered infrastructure and satisfy themselves that the SMS is consistent with the SMSs of transport undertakings that use its infrastructure. In particular regulation 5(7) requires the infrastructure manager's SMS to:

- (a) address the control of all categories of risk from the placing into service of new or altered infrastructure where that infrastructure is significantly different from that which is already in use on the transport system and where the changes would be capable of significantly increasing an existing risk or creating a significant safety risk;
- (b) take into account the effects of transport undertakings' operations. This will involve, for example, taking steps to ensure that the infrastructure and maintenance arrangements are suitable and adequate for the traffic associated with different transport undertakings' operations.
- (c) enable transport undertakings to carry on their operations. The infrastructure manager's SMS should not contain anything that without good reason prevents transport undertakings from operating in accordance with the safety arrangements which were accepted by ORR when it issued a safety certificate. This is consistent with the requirement in regulation 5(1)(a) and (2) to co-ordinate SMSs.
- (d) co-ordinate the infrastructure manager's emergency procedures with the transport undertakings' emergency procedures.

76. Whilst regulation 5(7)(d) applies to all infrastructure managers, it has greatest relevance to those who control track and signalling. They will, for example, need to take a strong role in co-ordinating emergency procedures for the benefit of the safety of the railway system and this should be reflected in their SMS. The infrastructure managers SMS should also aim for the co-ordination of emergency procedures, for example with regard to the respective roles of train crew and station staff in the event of fire, dangerous crowding or other emergencies at a platform.

REGULATION 6 - SAFETY MANAGEMENT SYSTEM FOR OTHER TRANSPORT SYSTEMS

6. (1) *The requirements for a safety management system referred to in regulation 4(1)(a) and 4(2)(a) are that—*

(a) it is adequate to ensure that the relevant statutory provisions which make provision in relation to safety will be complied with in relation to the operation in question;

(b) subject to paragraph (7), it meets the requirements and contains the elements set out in Schedule 1, adapted to the character, extent and other characteristics of the operation in question;

(c) subject to paragraph (2), it ensures the control of all categories of risk to safety associated with the operation in question which, without prejudice to the generality of the foregoing, shall include such risks relating to the—

(i) supply of maintenance and material; and

(ii) use of contractors; and

(iii) placing in service of new or altered vehicles or infrastructure the design or construction of which incorporates significant changes compared to any vehicles or infrastructure already in use on that transport system and which changes would be capable of significantly increasing an existing risk to safety or creating a significant safety risk;

(d) it takes into account, where appropriate and reasonable, the risks arising as a result of activities carried on by other persons; and

(e) all parts of it are documented.

(2) The requirement in paragraph (1)(c) shall be met where the safety management system of a transport operator or an applicant for a safety certificate or a safety authorisation (“the first operator”) taken with that of any relevant transport operator is capable of meeting the requirements of the paragraph in question.

(3) In paragraph (2), “relevant transport operator” means another transport operator whose operation is capable of materially affecting the safety of the operation carried on by the first operator.

(4) In paragraph 1(c)(iii) where such new or altered vehicles or infrastructure are intended to be placed in service, then before that placing in service the transport operator shall ensure that he—

- (a) has an established written safety verification system which meets the requirements and contains the elements set out in Schedule 4; and*
- (b) has appointed a competent person to undertake that safety verification and the competent person has undertaken that safety verification in relation to the new or altered vehicle or infrastructure.*

(5) In this regulation placed in service shall mean first placed in service for the provision of a transport service, and in ascertaining when this takes place no regard shall be had to any trials or testing that takes place to the relevant vehicle or infrastructure.

(6) In this regulation the requirements of paragraph (4) shall apply in the absence of a transport operator to a responsible person as they would apply to a transport operator.

(7) Paragraph 2(c) of Schedule 1 shall apply in relation to transport systems other than the mainline railway as if it read as follows—

“(c) procedures—

(i) to meet relevant technical specifications; and

(ii) relating to operations or maintenance,

insofar as they relate to the safety of persons, and procedures for ensuring that the procedures in sub-paragraphs (i) and (ii) are followed throughout the life-cycle of any relevant equipment or operation;”.

77. Regulation 6, which comes into force on 10th April 2006, sets requirements for the SMS of transport operators that are not operating on the mainline railway. The requirements are broadly similar to those in regulation 5 for the mainline railway, except there are no additional requirements for infrastructure managers as in regulation 5(7) and no references to CSTs, CSMs and TSIs. The requirements are that the SMS:

- (a) should be adequate to ensure that the relevant statutory provisions concerning safety will be complied with. ‘Relevant statutory provisions’ is defined in HSWA section 53(1) and includes the general duties in the HSWA and other regulations made under the HSWA. It also includes the Level Crossings Act 1983 and provisions in the Transport and Works Act about directions regarding to speed or weight and level crossings, all of which were brought within the ambit of HSWA by section 117 of the Railways Act 1993.
- (b) should meet the requirements in Schedule 1 paragraph 1 and contain the basic elements in Schedule 1 paragraph 2. These requirements and elements should be ‘adapted to the character, extent and other characteristics of the operation in question’, which acknowledges that the SMS will be different in nature and complexity reflecting the nature, size and complexity of the operation. Please see Schedule 1 for further guidance.

(c) should ensure the control of all categories of safety risk associated with the operation, including risks relating to the supply of maintenance and material, plant and equipment (see definition of material in regulation 2), the use of contractors and placing in service new or altered vehicles or infrastructure. Risk means risk to the safety of persons (see definition in regulation 2). In deciding what constitutes significant risk, transport operators will need as part of their SMS a system that identifies occasions where the regulations would apply. Annex 4 contains examples of significant risk projects. However, these are only provided as guidelines and should not be seen as definitive.

(d) should take into account, where appropriate and reasonable, the risks arising from other people's activities. "Other people" includes third parties who are not directly associated with the running of the operation e.g. trespassers and the wider public.

(e) should be documented (all parts), and be treated as a 'living document' and embedded into the wider management system.

78. Where Regulation 6(1)(c)(iii) applies Regulation 6(4) will be applicable ie establishing a written safety verification scheme and appointing a competent person, see paragraphs [65 - 74] for guidance.

79. In the absence of a transport operator the requirements in Regulation 6(4) will apply to a responsible person.

80. Paragraph 2(c) of Schedule 1 applies but for transport systems other than the mainline railway under regulation 6(7) it requires that *procedures to meet relevant technical specifications and relating to operations or maintenance* should be included in the SMS throughout the life cycle of any relevant equipment or operation.

REGULATION 7 - SAFETY CERTIFICATE

7 (1) *An application for a first safety certificate in respect of an operation shall—*

(a) be made to the Office of Rail Regulation;

(b) subject to regulation 17(1) and (2), include the information set out in—

(i) Part 1 of Schedule 2 in respect of a mainline application; and

(ii) Part 2 of Schedule 2 in respect of a non-mainline application; and

(c) if it is a mainline application, clearly indicate in respect of which part of the safety certificate any information is provided.

(2) *Where—*

(a) an applicant sends to the Office of Rail Regulation in relation to a mainline application the matters specified in paragraphs 1(a) and 1(b)(i) of Schedule 2; and

(b) the Office of Rail Regulation is satisfied that the certificate in question is for an equivalent operation to that in respect of which the application is made,

then that certificate shall be deemed to be Part A of the safety certificate for the operation in respect of which the application is made.

(3) Subject to regulation 17(7), within four months of the date of receipt of the application, the Office of Rail Regulation shall—

(a) issue a safety certificate for the operation in question; or

(b) notify the applicant that it has refused the application,

and in either case shall give reasons for its decision.

(4) A safety certificate shall—

(a) specify the type and extent of the operation in respect of which it is issued; and

(b) certify acceptance by the Office of Rail Regulation that the applicant has provided sufficient evidence—

(i) subject to paragraph (2), to demonstrate that the safety management system of the applicant meets the requirements set out in regulations 5(1) to (4) in respect of a mainline application or regulation 6 in respect of a non-mainline application; and

(ii) of the provisions adopted by the applicant to meet the requirements that are necessary to ensure safe operation on the transport system in question,

and reference the information on which such acceptance is based; and

(c) be valid for no longer than five years from the date of issue and the period of validity shall be indicated in the safety certificate and where Part A of the certificate is deemed to be such a Part A in accordance with regulation 7(2) that period shall expire on or before the date of expiry of the certificate which is deemed to be the Part A.

(5) In paragraph (4)(b)(ii) “requirements” means in relation to—

(a) a mainline application, the TSIs, national safety rules and other safety requirements referred to in paragraph 2(a) of Schedule 2; and

(b) a non-mainline application, the relevant statutory provisions, technical specifications and procedures referred to in paragraph 5 of Schedule 2.

81. Regulation 7 concerns the issuing of safety certificates. Applications for a first safety certificate for an operation should be made to ORR and should contain the information required by Schedule 2. In the case of a *mainline application* (to operate on the mainline railway) the application will need to be clear about which information relates to Part A of the certificate and which to Part B (regulation 7(1) (c)). The reason for this requirement is that a Part A certificate for a mainline railway operation will be valid for any other equivalent operations undertaken by the same operator anywhere in the EU and Parts A and B will therefore need to separately reference the evidence on which they were based.

82. If the applicant already undertakes an equivalent operation elsewhere, and already has a Part A certificate in respect of that operation, issued by either ORR or by the safety authority in another member state or in Northern Ireland, the existing Part A may be deemed to be Part A of the certificate for the operation for which a certificate is being applied for.

MEANING OF EQUIVALENT OPERATION

83. The ERA will agree an EU wide definition for 'equivalent'. Until it has been agreed at a European level the description of 'type and extent' (see paragraph 82) will be used by ORR to determine whether a new operation is 'equivalent' based on criterion 1 in the application assessment guide "Safety Certification and Authorisation Assessment Manual – Assessment criteria for safety certificates and authorisation applications made under ROGs" at <http://www.rail-reg.gov.uk/upload/pdf/284.pdf>

84. The applicant should send ORR a copy of the existing Part A certificate in respect of the other operation, and provide information about the type and extent of the proposed operation. Provided ORR is satisfied the two operations are equivalent, the existing Part A certificate will then be deemed to be Part A of the certificate that is being applied for. The applicant will still have to provide the required information for a Part B certificate (regulation 7(2)).

MEANING OF TYPE AND EXTENT

85. 'Type and extent' means a description of the railway operation and will set in context the activities from which hazards are most likely to arise, and the potential scale of the resulting risks. Further information about 'type and extent' and what it includes is available from criterion 1 in the application assessment guide "Safety Certification and Authorisation Assessment Manual – Assessment criteria for safety certificates and authorisation applications made under ROGs" at <http://www.rail-reg.gov.uk/upload/pdf/284.pdf>.

86. A certificate that is issued following this procedure cannot be given an expiry date that is later than the expiry date of the existing Part A certificate for the other equivalent operation (regulation 7(4)(c)).

87. Where applications for a Part B are being made under an existing Part A, the existing Part A must have a remaining validity of at least 18 months, otherwise there will be insufficient time for ORR to process applications for two successive Part Bs once the existing Part A is renewed. Further information about the content of applications is available in Schedule 2.

88. Applicants will need to copy their applications to (or notify) affected parties. Please see regulation 17(3) and paragraphs 128 - 133 of this guidance for further detail.

89. After receiving an application, ORR will either issue or refuse a safety certificate within four months from the end of the 28 day period allowed for affected parties to make representations, effectively therefore the maximum

duration allowed for the whole process will always be at least 5 months but see paragraphs 135 - 139 for guidance on timescales for submission of applications. The four month period will be extended if ORR requires additional information (regulations 7(3), 17(6) and 17(7)(a)-(b)) subsequent to the receipt of the application, allowing the four month period to run from the date at which the last information is received, effectively 'resetting the clock' every time fresh information is received.

90. Applicants should therefore begin preparing their applications so that they are in a position to submit them at least 6 months before the date by which a certificate is required. However, in general it will be ORR's policy to meet the four-month deadline (from the end of the period allowed for representations) without 'resetting the clock'. There may be exceptions to this where there is a good reason, e.g. the application is fundamentally deficient and requires major revision in order for a safety certificate to be issued, and in which case the applicant will be advised at the earliest opportunity.

91. ORR will give reasons for issuing or refusing a certificate (regulation 7(3), 17(4)) and will also make the provision for those reasons to be made available to affected parties.

92. In the case of an existing operation for which the applicant already holds an accepted safety case under RSCR, the time allowed for ORR to make a decision on the application may be extended if the application is made more than 9 months before the deadline in Schedule 5 for obtaining a safety certificate (regulation 17(7)(c)).

93. A safety certificate will –

- (a) specify the type and extent of the operation for which it is issued (regulation 7(4)(a));
- (b) certify that ORR accepts that the applicant has provided sufficient evidence that the SMS meets the requirements of regulation 5 or 6 (the Part A certificate) and sufficient evidence of the applicant's measures for meeting the requirements necessary for safe operation on the transport system in question (the Part B certificate) (regulation 7(4)(b));
- (c) reference the information on which ORR's acceptance was based (regulation 7(4)(b)); and
- (d) specify an expiry date not more than 5 years from the date of issue. However where Part A of the certificate is an existing Part A for an equivalent operation the expiry date will be on or before the date of expiry of the certificate deemed to be the Part A (regulation 7(4)(c)).

REGULATION 8 - AMENDED SAFETY CERTIFICATE

8. *(1) Where it is proposed that the type or extent of an operation in respect of which a safety certificate has been issued is to be substantially changed then*

the holder of the safety certificate shall apply to the Office of Rail Regulation for the safety certificate to be amended accordingly and the substantial change shall not be made until the safety certificate is so amended.

(2) An application for an amended safety certificate under this regulation shall—

(a) provide details of the change proposed;

(b) provide details of any consequential changes to any information sent to the Office of Rail Regulation in respect of the operation in question which remains relevant to that operation; and

(c) if it is a mainline application, clearly indicate in respect of which part of the safety certificate any information is provided.

(3) Where Part A of a safety certificate in respect of which an application is made is deemed to be such a Part A in accordance with regulation 7(2) then the Office of Rail Regulation shall—

(a) consider whether the Part A in question would still be for an equivalent operation if the change were made; and

(b) if it considers that it would not be equivalent, notify the applicant in accordance with paragraph (4) that it has refused the application and that he should apply for a new safety certificate under regulation 7 if he wants to make the proposed change,

except that, in relation to Part B of the safety certificate, he only need provide the details set out in paragraph (2) above.

(4) Subject to regulation 17(7), within four months of the date of receipt of the application the Office of Rail Regulation shall—

(a) issue a notice making any necessary amendments to the matters set out in the safety certificate; or

(b) notify the applicant that it has refused the application,

and in either case shall give reasons for its decision.

94. Regulation 8 deals with applications for an amended safety certificate. A safety certificate holder wishing to make a substantial change to the type or extent of the operation must first apply to ORR for an amendment to the certificate (regulation 8(1)). An amended certificate must be obtained before making the change. On the mainline railway these substantial changes may, but equally may not, be major projects attracting the requirements of the Interoperability Regulations 2006.

MEANING OF SUBSTANTIAL CHANGES

95. For amended safety certificates the change is limited to the 'type and extent' of the operation. For example, a freight operator who did not normally transport dangerous goods would need to apply for an amended safety certificate if the scope of the operation was changing to include the transportation of dangerous goods. The harmonised certificate proposed by ERA has a number of categories covering 'type of operation', 'staff numbers' and 'size of operation' (in terms of tonnage for freight and passenger

kilometres for passenger operation). Any change in operation that would result in the harmonised certificate no longer accurately reflecting the operation would be considered a significant change to 'type and extent' and the operator would need to apply for an amended safety certificate. Further information is available in the assessment guide "Safety Certification and Authorisation Assessment Manual – Assessment criteria for safety certificates and authorisation applications made under ROGs" at <http://www.rail-reg.gov.uk/upload/pdf/284.pdf>.

96. Safety certificate holders anticipating such a change should contact their local ORR inspector at an early stage to discuss how long may be needed to assess the application – for complex changes around 6 months may be recommended. However, if the change would not involve substantial alterations i.e. would not give rise to a significant increase in risk, the certificate holder only needs to notify ORR (See Regulation 13), no prior ORR acceptance would be needed.

97. The application should provide details of –

- (a) the proposed change; and
- (b) any consequential changes to the evidence previously sent to ORR (that is, the information referenced in the certificate, as amended by any major changes later notified to ORR under regulation 13).

98. A mainline application should clearly state which information relates to Part A of the certificate and which to Part B (regulation 8(2)(c)).

99. ORR cannot amend a Part A certificate that was issued in another Member State. Where the existing Part A certificate falls under regulation 7(2) – in other words where it is was originally issued for a different, equivalent operation and has been deemed to be a Part A certificate for the present operation - ORR will consider whether after the proposed substantial change the operation will still be equivalent to the other operation.

100. If ORR considers it will no longer be an equivalent operation the application will be refused and the applicant will need to apply for a new certificate under regulation 7 in order to make the proposed change. In that event the applicant will need to submit information for a new Part A certificate, although for the Part B certificate it would only be necessary to provide details of any proposed changes to the current Part B information sent to ORR (regulation 8(3)).

101. After considering the application ORR will either issue a notice making any necessary amendments to the matters set out in the certificate or refuse the application, and give reasons in either case. A certificate amendment notice will include any appropriate changes to the description in the certificate of the type or extent of the operation, and reference the information on the basis of which the certificate is amended. The time limits for ORR are the same as for deciding an application for a certificate, as explained in paragraph 135 - 139 (regulation 8(4)).

REGULATION 9 - FURTHER SAFETY CERTIFICATE

9. (1) *Before the expiry of a safety certificate the holder of that safety certificate may apply to the Office of Rail Regulation for a further safety certificate to be issued for the operation in question.*

(2) *An application for a further safety certificate shall set out particulars of any changes to any information sent to the Office of Rail Regulation in respect of the operation in question which remains relevant to that operation.*

(3) *Regulations 7(1)(c) and 7(2) to (4) shall apply to an application for and the issuing of a further safety certificate as they apply to an application for and the issuing of a first safety certificate under regulation 7.*

102. Regulation 9 concerns the issuing of further safety certificates. The holder of a safety certificate may apply for a further certificate before the expiry of the existing certificate, which may also be valid for up to 5 years (regulation 9(1)). To apply for a further certificate it is not necessary to re-send the existing information already in ORR's possession, only any changes that are proposed (regulation 9(2)). Nevertheless, holders are advised to contact ORR at least six months before a certificate expires, as there may be matters of concern in relation to the current certificate and improvements to be made before a further certificate can be issued.

103. The provisions in regulations 7(1)(c), 7(2), 7(3) and 7(4) apply to further certificates as they do to first certificates. Therefore the guidance in paragraphs 126 - 127 and 135 – 139 on distinguishing Part A and Part B evidence, the time limits on ORR, and the content and validity of certificates apply equally to further certificates.

REGULATION 10 SAFETY AUTHORISATION

10(1) *An application for a first safety authorisation in respect of infrastructure shall–*

(a) *be made to the Office of Rail Regulation;*

(b) *subject to regulation 17(1) and (2), set out particulars of–*

(i) *the infrastructure in question;*

(ii) *how the safety management system of the applicant meets the requirements in regulation 5(7) in relation to a mainline application or in regulation 6 in relation to a non-mainline application; and*

(iii) *how the provisions adopted by the applicant meet any requirements which are necessary for the safe design, maintenance and operation of the infrastructure in question.*

(2) *Subject to regulation 17(7), within four months of the date of receipt of the application the Office of Rail Regulation shall–*

(a) *issue a safety authorisation in relation to the infrastructure in question;*
or

(b) *notify the applicant that it has refused the application; and*

(c) in either case shall give reasons for its decision.

(3) A safety authorisation shall—

(a) specify the infrastructure in respect of which the authorisation is issued;

(b) accept that the applicant has provided sufficient evidence to demonstrate that the safety management system of the applicant meets the requirements—

(i) referred to in regulation 5(7) in relation to a mainline application; or

(ii) in regulation 6 in relation to a non-mainline application;

(c) accept that the applicant has provided sufficient evidence of the provisions adopted by the applicant to meet any requirements that are necessary for the safe design, maintenance and operation of the infrastructure in question;

(d) reference the information on which the acceptance referred to in subparagraphs (b) and (c) is based; and

(e) be valid for no longer than five years from the date of issue and the period of validity shall be indicated in the safety authorisation.

104. Regulation 10 requires applications for a first safety authorisation for an operation to be made to ORR and should include particulars of –

(a) the infrastructure in question;

(b) how the SMS meets the requirements of regulation 5 or 6, as applicable; and

(c) how the applicant's arrangements meet the necessary requirements for the safe design, maintenance and operation on the infrastructure in question (regulation 10(1)).

105. After receiving an application, ORR will either issue or refuse a safety authorisation within four months of the end of the 28 day period allowed for affected parties to make representations, effectively therefore the maximum duration allowed for the whole process will always be at least 5 months. The four month period will be extended if ORR requires additional information (regulations 10(2), 17(6) and 17(7)(a)-(b)) subsequent to the receipt of the application, allowing the four month period to run from the date at which the last information is received, effectively 'resetting the clock' every time the fresh information is received.

106. Applicants should therefore begin preparing their applications so that they are in a position to submit them at least 6 months before the date by which an authorisation is required. However, in general it will be ORR's policy to meet the four-month deadline (from the end of the period allowed for representations) without 'resetting the clock'. There may be exceptions to this where there is a good reason e.g. the application is fundamentally deficient and requires major revision in order for a safety authorisation to be issued.

107. ORR will give reasons for issuing or refusing an authorisation (regulation 10(2) and 17(4)) and will also make the provision for those reasons to be made available to affected parties.

108. A safety authorisation will specify the infrastructure in respect of which it is issued (regulation 10(3)(a)), and an expiry date of not more than 5 years from the date of issue (regulation 10(3)(e)). It will indicate that ORR accepts that the applicant has provided sufficient evidence of the matters in paragraph 104(b&c) above, and will reference the information on which that acceptance is based.

REGULATION 11 - AMENDED SAFETY AUTHORISATION

11 (1) *Where it is proposed that a substantial change is to be made to—*

(a) the infrastructure in respect of which a safety authorisation has been issued;

(b) any energy supply, not falling within sub-paragraph (a), which is used in connection with the infrastructure in question; or

(c) the principles of operation and maintenance of such infrastructure or energy supply,

then the holder of the safety authorisation shall apply to the Office of Rail Regulation for the safety authorisation to be amended accordingly and the substantial change shall not be made until the safety authorisation is so amended.

(2) *An application for an amended safety authorisation under this regulation shall provide details of—*

(a) the substantial changes proposed; and

(b) any consequential changes to any information sent to the Office of Rail Regulation in respect of the operation in question which remains relevant to that operation.

(3) *Subject to regulation 17(7), within four months of the date of receipt of the application the Office of Rail Regulation shall—*

(a) issue a notice making any necessary amendments to the matters set out in the safety authorisation; or

(b) notify the applicant that it has refused the application,

and in either case shall give reasons for its decision.

MEANING OF SUBSTANTIAL CHANGES

109. Please see the definition in para 98 and the link to further guidance on the meaning of 'substantial change'.

110. Regulation 11 requires that a safety authorisation holder wishing to make a substantial change to the infrastructure, or energy supply, or to the principles of their operation or maintenance, to first apply to ORR for an amendment to the safety authorisation (regulation 11(1)).

111. The application must provide details of –

- the proposed change/s;
- any consequential changes to the evidence previously sent to ORR (i.e. the information referenced in the authorisation, as amended by any major changes later notified to ORR under regulation 13).

112. After considering the application ORR will either issue a notice making any necessary amendments to the matters set out in the safety authorisation, or refuse the application, and will give reasons in either case. A safety authorisation amendment notice will include any appropriate changes to the description in the certificate of the type or extent of the operation, and reference the information on the basis of which the authorisation is amended. The time scales for ORR are the same as for deciding an application for a first authorisation (regulation 10(2)), as explained in paragraphs 135 - 139.

REGULATION 12 - FURTHER SAFETY AUTHORISATION

12. (1) *Before the expiry of a safety authorisation the holder of that safety authorisation may apply to the Office of Rail Regulation for a further safety authorisation to be issued for the infrastructure in question.*

(2) *An application for a further safety authorisation shall set out particulars of any changes to any information sent to the Office of Rail Regulation in respect of the operation in question which remains relevant to that operation.*

(3) *Regulations 10(2) and 10(3) shall apply to an application for and the issuing of a further safety authorisation as they apply to an application for and the issuing of a first safety authorisation under regulation 10.*

113. Regulation 12 requires the holder of a safety authorisation who wishes to apply for a further safety authorisation to apply before the expiry of the existing one. A further safety authorisation may also be valid for up to 5 years (regulation 10(3(e))). In the case of a further safety authorisation it is not necessary to re-send the existing information already in ORR's possession, only any changes that are proposed (regulation 12(2)). Nevertheless, holders are advised to contact ORR at least six months before an authorisation expires, as there may be matters of concern in relation to the current authorisation and improvements to be made before a further authorisation can be issued.

114. The provisions in regulations 10(2) and 10(3) apply to further authorisations as they do to first authorisations. Accordingly the guidance in paragraphs 135 - 139 on the time limits on ORR, and the content and validity of safety authorisations apply equally to further authorisations.

REGULATION 13 - NOTICE OF CHANGES BY HOLDER OF A SAFETY CERTIFICATE OR A SAFETY AUTHORISATION

13 *The holder of a safety certificate or a safety authorisation shall, without delay, notify the Office of Rail Regulation—*

(a) of any major changes—

(i) to the means by which he meets the requirements relating to the safety management system as set out in—

(aa) regulation 5(1) to (4) in relation to an operation of a transport undertaking on the mainline railway;

(bb) regulation 5(7) in relation to an operation of an infrastructure manager on the mainline railway; or

(cc) regulation 6 in relation to an operation which is not carried out on the mainline railway;

(ii) in the case of a transport undertaking, to the provisions adopted by him to meet any requirements necessary to ensure safe operation on the transport system in relation to the operation in question; or

(iii) in the case of an infrastructure manager, to the provisions adopted by him to meet any requirements that are necessary for the safe design, maintenance and operation of the infrastructure in question;

(b) when persons first commence work directly relating to the operation which is of a type which has not previously been carried out in relation to that operation; or

(c) when types of vehicle which are new to the operation in question are first introduced.

115. Regulation 13 requires safety certificate or safety authorisation holders to notify ORR without delay where there are major changes to:

- (a) the safety management system as described in the information sent to ORR and references in the certificate or authorisation (regulation 13(a)(i));
- (b) their measures for meeting the requirements necessary for safe operation (in the case of a certificate holder) or for the safe design, maintenance and operation of the infrastructure (in the case of an authorisation holder) (regulation 13(a)(ii)-(iii)).

116. Holders will also need to notify ORR without delay when new types of work (directly relating to the operation), or new types of vehicle, are introduced. This includes work by contractors as well as by the holder's own staff, and vehicles that are used but new to the operation (regulation 13(b)-(c)). While there is no requirement to notify these changes before making them, holders may choose to do so.

117. Changes that are consequential upon a 'substantial' change under regulations 8 or 11 will need to be described in the application for the required amendment to the safety certificate or safety authorisation (regulations 8(2)(b) and 11(2)(b)). This will satisfy the requirements of regulation 13.

REGULATION 14 - DIRECTION TO APPLY FOR AN AMENDED SAFETY CERTIFICATE OR SAFETY AUTHORISATION

14. (1) *Where there is a substantial change to any of the relevant statutory provisions which make provision in relation to the safety of the transport system in question, then the Office of Rail Regulation may direct the holder of a safety certificate or a safety authorisation to apply to the Office of Rail Regulation for an amendment to its safety certificate or safety authorisation.*

(2) *A direction issued under paragraph (1) shall—*

(a) state the reasons why the Office of Rail Regulation considers that it is necessary for the transport operator to apply for an amended safety certificate or safety authorisation;

(b) identify the information—

(i) on the basis of which the Office of Rail Regulation's acceptance referred to in regulation 7(4) or 10(3) was made upon issue or amendment of the safety certificate or safety authorisation; or

(ii) notified to the Office of Rail Regulation under regulation 13,

which it considers will have to be changed; and

(c) specify the period, being not less than 28 days from the date of issue of the direction, within which the application shall be sent to the Office of Rail Regulation.

(3) *An application for an amended safety certificate or safety authorisation pursuant to this regulation shall provide details of any changes to any information—*

(a) sent to the Office of Rail Regulation in respect of the operation in question which remains relevant to that operation; and

(b) which is consequential upon the relevant change to the relevant statutory provisions.

(4) *Regulations 8(2)(c) and 8(4) shall apply to an application for and the issuing of a notice of amendment to a safety certificate under this regulation as they apply to an application for and issuing of an amendment to a safety certificate under regulation 8.*

(5) *Regulation 11(3) shall apply to an application for and the issuing of a notice of amendment to a safety authorisation under this regulation as it applies to an application for and issuing of an amendment to a safety authorisation under regulation 11.*

118. Regulation 14 requires ORR to direct a safety certificate or safety authorisation holder to apply for an amendment where a substantial change is to be made in relation to any of the relevant statutory provisions which would affect the safety of the transport system. ORR will give reasons, identify the information that requires amendment, and give the holder at least 28 days to provide amended information (regulation 14(1)-(3)). The provisions set out in paragraphs 126 127 and 135 - 139 on distinguishing Part A from Part B evidence and the time limits on ORR, apply in these cases (regulation 14(4)-(5)).

119. ORR does not expect to exercise this power of direction often. It is aimed at important changes to the legal framework that require the adoption of substantial new measures. Moreover any new measures arising from such changes would be likely to be major changes which are required to be notified by regulation 13.

REGULATION 15 - REVOCATION OF SAFETY CERTIFICATE

15 (1) *The Office of Rail Regulation shall revoke—*

(a) either Part A or Part B of a safety certificate if it is satisfied that the holder is no longer satisfying the conditions of that part of the safety certificate and that there is a significant risk arising as a result;

(b) a safety certificate if it is satisfied that the holder—

(i) is no longer satisfying the conditions of that safety certificate and that there is a significant risk arising as a result; or

(ii) is not operating a vehicle in relation to any infrastructure on a transport system as intended pursuant to that safety certificate and has not done so throughout the period of one year commencing with the date of issue of the safety certificate by the Office of Rail Regulation,

except that this paragraph shall not apply in relation to Part A of a safety certificate where it is deemed to be such a Part A in accordance with regulation 7(2).

(2) *In this regulation, “conditions” means in relation to—*

(a) Part A of a safety certificate, any part of the requirements relating to the safety management system set out in—

(i) regulation 5(1) to (4) in relation to an operation carried out on the mainline railway; or

(ii) regulation 6 in relation to an operation carried out on a transport system other than the mainline railway;

(b) Part B of a safety certificate, that the provisions adopted by the applicant are sufficient to meet any requirements that are necessary to ensure safe operation on the transport system in question in relation to the operation in question; or

(c) a safety certificate, the matters referred to in sub-paragraphs (a) and (b).

(3) *Before revoking any safety certificate or Part A or B of it, the Office of Rail Regulation shall—*

(a) notify the holder that—

(i) it is considering revoking that safety certificate or Part A or B of it and the reasons why;

(ii) within a period specified in the notice, which shall be not less than 28 days, the holder may make representations in writing to the

Office of Rail Regulation or, if the holder so requests, may make oral representations to the Office of Rail Regulation; and

(b) consider any representations which are duly made and not withdrawn.

(4) Where the Office of Rail Regulation revokes a safety certificate or Part A or B of it, it shall send to the holder with the notice of revocation a statement of the reasons why.

(5) Where—

(a) the Office of Rail Regulation revokes Part B of a safety certificate; and

(b) Part A of that safety certificate is deemed to be Part A of a safety certificate pursuant to regulation 7(2) and was issued by the safety authority in another member State or in Northern Ireland,

then the Office of Rail Regulation shall notify that safety authority as soon as reasonably possible of that revocation.

120. Guidance on the revocation of safety certificates and safety authorisations has been grouped together at paragraphs 121 - 124.

REGULATION 16 - REVOCATION OF SAFETY AUTHORISATION

16. *(1) The Office of Rail Regulation shall revoke a safety authorisation if it is satisfied that the holder is no longer satisfying the conditions of that safety authorisation and there is a significant risk arising as a result.*

(2) In this regulation, “conditions” means—

(a) any part of the requirements relating to the safety management system—

(i) referred to in regulation 5(7) in relation to an operation carried out on the mainline railway; or

(ii) in regulation 6 in relation to an operation carried out on a transport system other than the mainline railway; or

(b) that the provisions adopted by the applicant are sufficient to meet any requirements that are necessary for the safe design, maintenance and operation of the infrastructure in question.

(3) Before revoking any safety authorisation, the Office of Rail Regulation shall—

(a) notify the holder that—

(i) it is considering revoking that safety authorisation and the reasons why;

(ii) within a period specified in the notice, which shall be not less than 28 days, the holder may make representations in writing to the Office of Rail Regulation or, if the holder so requests, may make oral representations to the Office of Rail Regulation; and

(b) consider any representations which are duly made and not withdrawn.

(4) Where the Office of Rail Regulation revokes a safety authorisation, it shall send to the holder with the notice of revocation a statement of the reasons why.

121. Regulations 15 and 16 require ORR to consider, under certain conditions, the revocation of a safety certificate (or Part A or Part B of the certificate) or a safety authorisation if:

- (a) the holder is no longer complying with regulations 5 or 6 (safety management system), or
- (b) the measures for meeting the requirements necessary to ensure safe operation (or in the case of a safety authorisation holder the requirements necessary for the safe design, maintenance and operation of the infrastructure) are inadequate; and
- (c) there is a significant risk arising as a result (regulations 15(1) and 16(1)).

122. Before revoking a safety certificate or a safety authorisation, ORR will:

- (a) send a notice informing the holder that it is considering doing so;
- (b) give the holder at least 28 days to make representations, and consider those representations (regulation 15(3) and 16(3));
- (c) copy the notice to affected parties and consider any representations they make (regulation 17(4) and (6)).

These procedures will generally give sufficient time for the holder to take remedial action and avoid revocation. If no such action is taken and ORR is obliged to revoke, ORR will notify the holder and send a statement of its reasons (regulations 15(4) and 16(4)).

123. ORR will also revoke a safety certificate if the operation for which it was issued has not started within a year of its issue. This is to prevent speculative applications, which would be a drain on ORR resources, and to allow for the possibility that circumstances detailed in the original application may have changed within the year.

124. ORR cannot revoke a Part A certificate that was issued by the safety authority of another member state or in Northern Ireland. In these circumstances the Part B certificate will be revoked if conditions (b) and (c) in paragraph 118 are met or if the operation has not started within a year of issue. ORR will then notify the authority that issued the Part A certificate about the revocation of the Part B certificate as soon as reasonably possible (regulation 15(1) and (5)).

REGULATION 17 - GENERAL PROVISIONS RELATING TO SAFETY CERTIFICATES AND SAFETY AUTHORISATIONS

17. (1) *Where an application is made under these Regulations for a safety certificate or safety authorisation or for an amended safety certificate or safety authorisation which relates to an operation on the mainline railway and on a transport system other than the mainline railway then—*

- (a) one application may be made for that operation but it shall be split into separate parts for the mainline railway and the other transport system; and*
- (b) these Regulations shall apply to those parts as if they were a mainline application and a non-mainline application,*

except that where the same information is required it need not be stated twice.

(2) A transport operator may make one application for an operation in relation to which he requires both a safety certificate and a safety authorisation or an amended safety certificate and an amended safety authorisation but—

(a) such application shall be split into separate parts relating to the safety authorisation and the safety certificate; and

(b) these Regulations shall apply to those parts as if they were an application for a safety authorisation and a safety certificate or an amended safety authorisation and an amended safety certificate,

except that where the same information is required it need not be stated twice.

(3) Where—

(a) an applicant sends—

(i) an application for a safety certificate or safety authorisation, an amended safety certificate or safety authorisation; or

(ii) further information to the Office of Rail Regulation pursuant to paragraph (5); or

(b) the holder of a safety certificate or a safety authorisation sends a notice pursuant to regulation 13 or paragraph 9 of Schedule 5,

then he shall at the same time either copy it to any affected party or notify any affected party without delay that the application or further information has been sent and of the address of the website where those documents may be accessed and how they may be accessed and, in either case, shall notify such a party, where the document in question is an application, of the time for making representations to the Office of Rail Regulation pursuant to paragraph (6).

(4) Where the Office of Rail Regulation issues a—

(a) safety certificate or safety authorisation, other than to an operator of last resort;]

(b) notice amending a safety certificate or safety authorisation;

(c) notice refusing an application for a safety certificate or a safety authorisation or an amended safety certificate or safety authorisation;

(d) direction to apply for an amended safety certificate or safety authorisation;

(e) notice that it is considering revoking a safety certificate or a safety authorisation; or

(f) notice revoking a safety certificate or a safety authorisation,

then the Office of Rail Regulation shall at the same time either copy it and the reasons given for the Office of Rail Regulation's decision to any affected party

or notify any affected party that the relevant document has been issued and of the address of the website where those documents and the reasons given for the decision may be accessed and how they may be accessed and, in either case, shall notify such a party, where the document in question is a notice that it is considering revocation as mentioned in sub paragraph (e), of the time for making representations to the Office of Rail Regulation pursuant to paragraph (6).

(5)The Office of Rail Regulation may upon receipt of–

- (a)an application for a safety certificate or safety authorisation;*
- (b)an application for an amended safety certificate or safety authorisation;*
- (c)any further information requested under this paragraph,*

request as soon as reasonably possible such further information as it may reasonably require and the applicant shall provide such information as soon as reasonably possible except that in a case falling within paragraph (7)(c) the Office of Rail Regulation may request such information as soon as reasonably possible after the date at which the 4 month period starts to run as specified in that paragraph.

(6)Where an affected party receives a copy of an application or a notice relating to revocation pursuant to paragraph (3)(a) or (4)(e) then–

- (a)he may make any representations in writing to the Office of Rail Regulation, which are relevant to the application or notice, within 28 days of the date of issue of the application or notice in question; and*
- (b)the Office of Rail Regulation shall consider any such representations in making its decision.*

(7)The period of 4 months for the Office of Rail Regulation to make a decision referred to in regulations 7(3), 8(4), 10(2) and 11(3) shall not start to run–

- (a)until the expiry of the 28 day period referred to in paragraph (6);*
- (b)until the date of receipt of the last information requested pursuant to paragraph (5); or*
- (c)where the application is made in respect of an operation for which the applicant holds a deemed safety certificate or deemed safety authorisation, until the date which falls 9 months before the date of expiry of that certificate or authorisation in accordance with paragraph 5 of Schedule 5 which shall apply as if paragraph 5(a) of that Schedule were omitted,*

whichever is the later and in any event shall not start to run until 30th June 2006.

(8)Paragraph (7)(c) shall apply to an application in relation to a safety certificate or a safety authorisation made 1st October 2006 in respect of which the applicant has an accepted safety case pursuant to the Railways (Safety Case) Regulations 2000 as if Schedule 5 were already in force.

(9)An employer who makes an application for a safety certificate or safety authorisation, an amended safety certificate or safety authorisation or sends a notice to the Office of Rail Regulation under regulation 13 or paragraph 9 of Schedule 5 shall, in relation to its preparation, consult–

- (a) *safety representatives within the meaning of regulation 2(1) of the Safety Representatives and Safety Committees Regulations 1977; and*
(b) *such other employees as he is required to consult by virtue of regulation 3 of the Health and Safety (Consultation with Employees) Regulations 1996.*

(10) *In this regulation, “affected party” means for a document sent or issued in relation to—*

- (a) *a safety certificate or an application for a safety certificate—*
- (i) *any relevant infrastructure manager;*
 - (ii) *a trade union which is a recognised trade union within the meaning of regulation 2(1) of the Safety Representatives and Safety Committees Regulations 1977 in relation to employees of the operator or applicant employed in relation to the operation in question; and*
 - (iii) *the Rail Passengers’ Council and the London Transport Users’ Committee where, in each case, it represents passengers’ interests in relation to the operation in question; and*
- (b) *a safety authorisation or an application for a safety authorisation—*
- (i) *any transport undertaking who is or will be operating on the infrastructure of the applicant or infrastructure manager in question;*
 - (ii) *any infrastructure manager who manages infrastructure which interfaces or will interface with the infrastructure of the infrastructure manager in question; and*
 - (iii) *any person falling within paragraph (10)(a)(ii) or (iii).*

125. Regulation 17 contains a number of general provisions about applications for safety certificates or safety authorisations and the need to involve affected parties and employee representatives.

APPLICATIONS THAT COVER INFRASTRUCTURE AND/OR OPERATION, EITHER ON ONE OR BOTH OF THE MAINLINE AND NON-MAINLINE

126. A transport operator wishing to apply for a safety certificate or safety authorisation for an operation that is partly on the mainline railway and partly on another transport system may, as an alternative to sending separate applications, send one application split into separate parts. Similarly, an applicant who requires both a certificate and an authorisation may submit a split application (for example the operator of a vertically integrated transport system, or a transport undertaking who also operates stations).

127. Information relevant to both parts of a split application needs only to be stated once, for example it could be set out in one part and referred to in the other. However, the evidence for the safety certificate and the safety authorisation should be clearly distinguished, as each needs to reference the evidence on which acceptance was based (regulations 7(4)(b) and 10(3)(d)). Split applications are treated as separate for the purposes of the Regulations, so ORR would issue separate safety certificates or safety authorisations. It would therefore be possible, for example, to later amend one of the safety

certificates or safety authorisations without the other, under regulation 8 or 11 (regulation 17(1)-(2)).

INVOLVING 'AFFECTED PARTIES'

128. Applicants for a safety certificate or safety authorisation, or an amendment, should at the time of application, either copy their application to 'affected parties', or inform affected parties without delay that the application has been made and how it can be accessed on a website. It is not a requirement to make the documents available electronically or via a website but should the information be available by such means then there is no requirement to also provide a paper copy. The same requirements apply when an applicant provides ORR with further information at its request, or when an operator notifies ORR of a major change under regulation 13 or (in the case of a safety case holder during the transitional period) a material revision under Schedule 5 paragraph 9. Applicants for a safety certificate, safety authorisation or amendment will also need to inform affected parties of the time limit within which they can make representations to ORR (regulation 17(3) and (4)(a)-(c)).

129. 'Affected party' is defined in regulation 17(10) and includes other interfacing operators, trade unions and passenger organisations. Specifically, 'affected party' means for:-

- a) a transport operator, the infrastructure managers on whose infrastructure they operate or whose stations they serve;
- b) an infrastructure manager, any transport undertaking operating on their infrastructure (or serving a station they operate), and the infrastructure manager of any infrastructure that interfaces with their own; and
- c) both transport operators and infrastructure managers, any trade union they recognise for collective bargaining purposes, and (where it represents the interests of passengers using the transport system in question) the Rail Passengers' Council and/or London Transport Users' Committee (note: these are the legal titles of the bodies which now operate under the names 'Passenger Focus' and 'London TravelWatch' respectively).

130. Applicants should ensure they provide contact details of 'affected parties' to which they have either sent copies of their application or notified them of its issue, with details of a website where it can be accessed, as required by Regulation 17(3).

131. When issuing a safety certificate or safety authorisation, notice of amendment, or notice of refusal, and the reasons for its decision, ORR will copy the documents to the same affected parties, or inform them without delay that they have been issued and how they can be accessed on a website. The same provisions apply when ORR issue a direction under regulation 14 or a revocation notice under regulations 15(4) or 16(4). In the case of a notice that revocation is being considered, under regulations 15(3) or 16(3), the same provisions apply and in addition ORR will need to notify

affected parties of the time limit within which they can make representations (regulations 17(4) and (5).)

132. An affected party may make written representations, relevant to an application for a safety certificate, safety authorisation or amendment or to a notice that ORR is considering revocation, within 28 days of being informed. In making its decision ORR will consider any representations that have been received. (regulation 17(6)).

133. Applicants should also provide a statement of when and how they consulted their safety representatives and other employees, as required by Regulation 17(9).

REQUESTS FOR FURTHER INFORMATION BY ORR

134. Upon receipt of an application, ORR may request such further information as it may reasonably require, e.g. if some of the evidence required by Schedules 1 or 2 is absent or requires additional detail. Further requests may be made if necessary. Requests should be made as soon as reasonably possible and the applicant will also need to respond as soon as reasonably possible (regulation 17(5)).

TIMESCALES FOR CONSIDERATION OF APPLICATIONS BY ORR

135. The four month period allowed for ORR to consider applications will generally start to run when the 28 day period allowed for representations from affected parties ends, or when the last piece of further information required by ORR has been received, whichever is the later (regulation 17(7)(a) and (b)).

136. However:-

(a) if the applicant holds an accepted safety case under RSCR the four month period will not start to run until nine months before the deadline for obtaining a safety certificate or safety authorisation (regulation 17(7)(c) and (8)). The purpose is to ensure that ORR's work in assessing applications can be reasonably evenly spread and that it can adhere to the time limits. Please see also regulation 7(3) and Schedule 5 paragraph 5, and the related guidance.

(b) the four-month time limit will in no case start before 30th June 2006.

137. This ensures that ORR can manage the workflow on applications in the first six months, even if an application is made as early as 10th April 2006, the day the Regulations come into force.

138. If a new operator wishes to start operating before 10th April 2006 they can only do so by applying under RSCR. See Schedule 5 paragraph 3 and the related guidance about safety cases sent to ORR before 1st October 2006 and still in the pipeline at that date.

139. Applicants should allow a minimum of five months for processing an application unless a shorter period has been agreed with ORR e.g. where the scale of changes since the previous application is small.

CONSULTING SAFETY/EMPLOYEE REPRESENTATIVES

140. Transport operators should consult safety representatives when preparing an application for a safety certificate or a safety authorisation, or a notification of a major change under regulation 13 or a material revision under Schedule 5 paragraph 9. This requirement is separate to the requirement to notify safety representatives of an application under Regulation 17(3). If there are no safety representatives, or not all employees are represented by a safety representative, transport operators should consult the employee representatives they are required to consult on health and safety issues generally (regulation 17(9)).

REGULATION 18 - NOTIFICATION TO THE EUROPEAN RAILWAY AGENCY REGARDING SAFETY CERTIFICATES AND SAFETY AUTHORISATIONS RELATING TO THE MAINLINE RAILWAY

18. (1) *The Office of Rail Regulation shall notify the European Railway Agency of the issuing, amendment or revocation of—*

(a) Part A of a safety certificate; or

(b) a safety authorisation,

pursuant to these Regulations in relation to an operation on the mainline railway within one month of such issue, amendment or revocation.

(2) *A notice under paragraph (1) shall include the following information in relation to the safety certificate or safety authorisation—*

(a) the name and address of the holder;

(b) its date of issue and period of validity;

(c) the operation or infrastructure in relation to which it was issued; and

(d) where it relates to a revocation, the reasons for that decision.

141. Regulation 18 requires ORR to notify the European Rail Agency (ERA) within one month of issuing, amending or revoking Part A of a safety certificate or a safety authorisation for a mainline railway operation. The basic information specified in regulation 18(2) needs to be included in the notification.

PART 3 GENERAL DUTIES

REGULATION 19 - RISK ASSESSMENT

19(1) *A transport operator shall—*

(a) make a suitable and sufficient assessment of the risks to the safety of any persons for the purpose of identifying the measures he needs to take to ensure safe operation of the transport system in question insofar as this is affected by his operation; and

(b) implement the measures referred to in sub-paragraph (a).

(2) When carrying out an assessment or a review under paragraph (1) or (3), a transport operator shall apply the CSMs to the extent that the operation is carried out on the mainline railway.

(3) Any assessment under paragraph (1) shall be reviewed by the transport operator who made it if—

(a) there is a reason to suspect that it is no longer valid; or

(b) there has been a significant change in the matters to which it relates and where as a result of any such review changes to an assessment are required, the transport operator concerned shall make them, and implement any changes to the measures identified pursuant to paragraph (1) as a result of the review.

(4) The transport operator shall record in relation to any assessment or review under this regulation—

(a) the assessment process undertaken, the methods of any calculation used and any assumptions made; and

(b) the significant findings of the risk assessment including the measures in place and any further measures the transport operator intends to take to ensure safe operation of the transport system in relation to his operation.

(5) Every transport operator shall make and give effect to such arrangements as are appropriate, having regard to the nature of his activities and the extent of the undertaking, for the effective planning, organisation, control, monitoring and review of the measures identified pursuant to paragraph (1) or (3) and shall record such arrangements.

142. Regulation 19, which comes into force on 1st October 2006, requires transport operators to carry out a suitable and sufficient risk assessment in order to identify the safety measures they need to take 'to control risks arising from their operations', and implement those measures. The risk assessment should cover employees and others e.g. passengers, the public and contractors. A risk assessment is not required to be submitted as part of an application for a safety certificate or safety authorisation but will need to be available for inspection subsequent to issue of a safety certificate or safety authorisation.

143. For operations on the mainline railway, the transport operator should apply any relevant published CSMs when undertaking the assessment

(regulation 19(2)). The assessment should be reviewed if there is reason to suspect it is no longer valid (for example as a result of new technical information or new incident data) or following significant changes to the matters to which it relates (for example changes to plant, procedures or service patterns) (regulation 19(3)).

144. The transport operator should implement the measures identified as a result of the risk assessment. Any changes that are identified as necessary following such a review, should be implemented (regulation 19(1)(b) and (3)). In addition they should make and give effect to appropriate arrangements (having regard to the nature of the activities and the extent of the undertaking) for the effective planning, organisation, control, monitoring and review of the identified safety measures (regulation 19(5)).

145. Under regulations 19(4) and (5) and 21(4)(c)), records should be made and kept of:

- (a) the assessment process, calculation methods and assumptions made;
- (b) the significant findings of the risk assessment including the measures already in place and any further measures to be taken; and
- (c) the arrangements for planning, organising, controlling, monitoring and reviewing the identified safety measures.

146. The requirements in Regulation 19 overlap to some extent with those in regulations 3, 4 and 5 of the Management of Health and Safety at Work Regulations 1999 (the Management Regulations). However, the requirements to implement measures, to apply CSMs (in the case of a mainline operation), and the recording requirements in paragraph 145(a) above are additional to those in the Management Regulations. There are also a number of other differences:

- (a) The requirements of regulation 19 relate specifically to safety (not health) risks.
- (b) The recording requirements apply to all transport operators including those employing five or fewer employees.
- (c) The purpose of the risk assessment is to identify the measures the transport operator needs to take to ensure the 'safe operation of the transport system insofar as this is affected by his operation', which emphasises the importance of examining risks that arise at the interface between different operators.

147. The risk assessment will need to take account of not only the risks arising from the transport operators own activities, but also those arising from other sources and which may affect their operation. This is consistent with regulations 5(1)(e) and 6(1)(d) which concern risks resulting from other peoples activities. This requirement reinforces the need for effective co-

operation, it may be necessary for monitoring to extend beyond a company's immediate operation to achieve effective risk management. The duty of co-operation is described in paragraphs 156 – 164.

REGULATION 20 - ANNUAL SAFETY REPORTS

20 (1) *Subject to paragraph (2), any transport operator who is subject to the prohibition in regulation 3(1)(b), 3(2)(b), 4(1)(b) or 4(2)(b) shall send to the Office of Rail Regulation an annual safety report relating to the previous calendar year which shall contain—*

(a) information on how the transport operator's safety targets, referred to in paragraph 2(b) of Schedule 1, are met;

(b) the results achieved through putting the transport operator's safety plans, referred to in paragraph 2(b) of Schedule 1, into effect;

(c) statistics for the common safety indicators listed in Schedule 3 insofar as they are relevant to the operation in question except, to the extent the operation is carried out on a transport system other than the mainline railway, no statistics are required in relation to the indicators in paragraphs 1(1)(a)(vii), 1(1)(b)(v) and 3 of that Schedule;

(d) the findings of safety auditing carried out pursuant to the procedures referred to in paragraph 2(k) of Schedule 1; and

(e) comments on any deficiencies or malfunctions relating to the running of vehicles or the management of infrastructure relating to the operation in question that may be relevant to the safety of that transport system,

and where an operation is carried out in part on the mainline railway and in part on another transport system the report shall clearly indicate the information which relates to the part carried out on the mainline railway.

(2) The first annual report required under paragraph (1) shall be sent by 30th June 2007 and subsequent reports by 30th June in each subsequent calendar year.

(3) Subject to paragraph (4), the Office of Rail Regulation shall publish and send to the European Railway Agency an annual report relating to the previous calendar year which shall contain information on the following in relation to the mainline railway—

(a) the development of railway safety including an aggregation of all the statistics reported to the Office of Rail Regulation for the relevant calendar year pursuant to paragraph (1)(c) which relate to an operation or part of an operation which is carried out on the mainline railway;

(b) any important changes in relation to the regulation of railway safety;

*(c) the development of the system for safety certification and authorisation;
and*

(d) the results of and experience relating to the supervision of transport operators, in Great Britain.

(4) The first annual report required under paragraph (3) shall be sent to the European Railway Agency by 30th September 2007 and subsequent reports by 30th September in each subsequent calendar year.

(5) Where the Office of Rail Regulation discovers, after sending an annual report, that there were errors or omissions in it then it shall send a corrected report for that year to the European Railway Agency at the first convenient opportunity and in any event by no later than the time the next annual report is due to be sent.

148. Regulation 20 requires transport operators who need to have a safety certificate or safety authorisation to prepare and send to ORR by 30th June an annual safety report relating to the previous calendar year. The first report will need to be sent by 30th June 2007 relating to the year 2006 which will cover 9 months from 10th April 2006 to 31st December 2006. This applies both to transport operators who have already obtained a safety certificate or safety authorisation under the Regulations and to those still operating under a safety case within the transitional provisions of Schedule 5 (regulation 20(1) and (2)).

149. The information required to be included in the report is specified in Regulation 20(1)(a)-(e) and includes information on how safety targets are met, the results of safety plans, data for CSIs, and comments on observed deficiencies and malfunctions relevant to the safety of the transport system. Where an operation covers both the mainline railway and another transport system, the report will need to indicate which information applies to the mainline railway.

150. The targets referred to in Regulation 20(1)(a) are, in the first instance, the transport operator's own safety targets and are not explicitly CSTs, as the scope and application of CSTs are yet to be developed by ERA. CSIs, initially according to national definitions, are to be recorded for those items in Schedule 3. This information is already largely recorded on the RSSB's centrally managed Safety Management Information System (SMIS), which should be able to provide statistical reports for individual transport operators, as well as an aggregated report for the safety authority.

151. ORR will send to the European Rail Agency (ERA) by 30 September of each year, starting in 2007, an annual report containing specified information relating to the mainline railway in Great Britain. This will include information on the development of railway safety including aggregated data for CSIs provided in transport operators' own annual reports, important changes to the regulation of railway safety, the development of the system for safety certification and safety authorisation, and the results of and experience relating to ORR's oversight of transport operators. Any errors or omissions that are discovered will be corrected at the first convenient opportunity and in any case by the time the following year's report is due (regulation 20(3)-(5)).

REGULATION 21 - SENDING, ISSUING, AND KEEPING OF DOCUMENTS AND MAKING THEM AVAILABLE FOR PUBLIC INSPECTION

21—(1) *Any application, notice, report or any other information sent to the Office of Rail Regulation or records made pursuant to these Regulations shall be in writing and in English.*

(2) Any certificate, authorisation, notice, direction, request for information, statement or report issued by the Office of Rail Regulation pursuant to these Regulations shall be in writing.

(3) An applicant who makes an application in respect of a safety certificate or a safety authorisation pursuant to regulations 7, 9, 10 or 12 shall when sending the application, notify the Office of Rail Regulation of an address in Great Britain for the purposes of this regulation ("notified address").

(4) Subject to paragraphs (5) and (6), a transport operator shall keep at the notified address in relation to the operation in question—

(a) the safety certificate or safety authorisation issued in response to his application for such certificate or authorisation and the documentation referenced in that safety certificate or safety authorisation;

(b) any notice of amendment issued pursuant to Part 2 of these Regulations or any revision made pursuant to paragraph 8 of Schedule 5 in relation to his safety certificate or safety authorisation;

(c) any records he is required to make pursuant to regulation 19(4) and (5);

(d) any annual safety report sent to the Office of Rail Regulation under regulation 20(1);

(e) any notification of changes or of a revision notified to the Office of Rail Regulation under regulation 13 or paragraph 9 of Schedule 5; and

(f) a record of any findings of internal safety auditing carried out pursuant to the procedures referred to in paragraph 2(k) of Schedule 1 and of any action taken in consequence of such auditing,

or a hard or electronic copy of such documents.

(5) The documents referred to in paragraph (4) shall be kept as long as they—

(a) are or are a copy of the current safety certificate or safety authorisation or a notice of amendment thereof;

(b) are or are a copy of a notification of a major change or a revision which is relevant to the current operation of the transport undertaking;

(c) relate to the information on the basis of which the Office of Rail Regulation's acceptance referred to in regulation 7(4) or 10(3), as the case may be, was made in relation to a current safety certificate or safety authorisation; or

(d) relate to a risk assessment, as reviewed from time to time, carried out pursuant to regulation 19.

(6) The documents kept pursuant to paragraph (4)(d) or (4)(f) shall be kept for 5 years and the documents kept pursuant to sub-paragraphs (a), (b), (d) and (e) of paragraph (4) shall, subject to paragraph (7), be made available for public inspection at the notified address at reasonable times and on reasonable notice.

(7) Nothing in paragraph (6) shall require the disclosure of any information—

(a) relating to a named individual;

(b) which is commercially confidential; or

(c) which is detrimental to national security or to the security of the transport system in question.

(8) A person who has a notified address may subsequently notify the Office of Rail Regulation of a different address in Great Britain and in this case references in this regulation to the notified address shall be construed as a reference to the last address notified under this paragraph.

152. Regulation 21 requires transport operators to keep certain documents at a notified address in Great Britain: safety certificates and safety authorisations and any amendments, the information (evidence) referenced in them, safety case revisions (needed to cover the audit trail for revisions to accepted safety cases that are being used as deemed safety certificates), records relating to risk assessments, written safety verification schemes, annual safety reports and related data, notifications of major changes and records of internal safety audit findings including any consequential action (regulation 21(3) and (4)). The address at which the documents are to be kept will need to be notified to ORR at the time of the application, but can be changed provided ORR is notified (regulation 21(3)(4) and (8)). The documents may be kept in hard or electronic copy (regulation 21(4)), and will need to be kept for as long as they remain relevant or valid, or in the case of the annual safety report and audit records for five years (regulation 21(5) and (6)).

153. Safety certificates and safety authorisations and any amendments, the information referenced in them, safety case revisions (needed to cover the audit trail for revisions to accepted safety cases that are being used as deemed safety certificates), annual safety reports, and notifications of major changes should be made available for public inspection at the notified address at reasonable times and on reasonable notice. Certain material may be excluded from the publicly available copy provided that it genuinely falls within one of the exceptions specified in regulation 21(7) covering, for example, material which is commercially confidential or which, if disclosed, would be detrimental to national security or the security of the transport system. ORR would not expect wide use to be made of these exceptions, which are as noted intended to apply only where there are genuine reasons for non-disclosure.

154. Any document sent to or issued by ORR under the Regulations may be sent electronically (see definition of 'writing' in regulation 2(1)). Documents sent to ORR must be in English (regulation 21(1)).

APPLICATIONS ORIGINATING FROM OTHER EU MEMBER STATES

155. All applications and supporting documentation originating from other EU Member States should be made in English and the documentation should be kept at a notified address (Regulation 21(1) and 21(4) (a-f)). ORR will return applications where the English is not readily comprehensible with a request for an improved version.

REGULATION 22 - CO-OPERATION

22—(1) *Every person to whom this paragraph applies shall co-operate as far as is necessary with a transport operator to enable him to comply with the provisions of these Regulations.*

(2) *Paragraph (1) applies to—*

(a) any transport operator whose operations may affect or may be affected by operations carried out by the duty holder; and

(b) an employer of persons or a self-employed person carrying out work on or in relation to premises or plant owned or controlled by the duty holder.

(3) *Every transport operator shall co-operate, insofar as is reasonable, with any other transport operator who operates on the same transport system where that other transport operator is taking action to achieve the safe operation of that transport system.*

(4) *In paragraph (2) “duty holder” means a transport operator referred to in paragraph (1).*

156. Regulation 22(1) sets a wide-ranging duty of co-operation between transport operators whose activities affect, or are affected by, each other and contractors carrying out work on a transport operators’ premises or plant.

157. A significant proportion of risk occurs at the interfaces between operators, such as those between wheel and rail or train and signal. The control of risk on the mainline railway therefore depends upon co-operation between transport operators.

158. The duty on the transport operator or contractor is to co-operate as far as is necessary to enable the transport operator seeking co-operation to comply with the Regulations, for example with their SMS duties in Part 2 or with their risk assessment and control duties in Regulation 19. Co-operation may be required between transport operators and their contractors, between infrastructure managers and transport undertakings and between transport operators using the same or adjoining infrastructure. This extends to co-operation for the purpose of enabling other transport operators to comply with the duty on risk assessment and risk control measures.

159. In addition, under regulation 22(3) transport operators should co-operate with, insofar as is reasonable, any other transport operator on the same transport system whose operations may affect or maybe affected by that transport operator. This reflects the aims of the risk assessment duty in regulation 19 of achieving the safe operation of the transport system. The duty extends to employers or self employed people whose work/operations may be affected by the operations of the transport operator.

160. In practice there is considerable overlap between what is required under the two different co-operation duties. However, the duty in regulation 22(3) is potentially wider in scope, being concerned with the safety of the transport system rather than on compliance with specific requirements. There may be different ways of achieving a safe transport system, which may

involve allocating responsibilities and expense in different ways between the parties. For this reason the duty in regulation 22(3) is qualified by 'insofar as is reasonable'. The SMS of a transport operator holding a safety certificate or safety authorisation will need to describe how it co-operates with others on the transport system.

161. For existing transport operators there are already in existence established processes for achieving co-operation. Such co-operation usually includes:

- compliance with relevant Standards e.g. Railway Group Standards and Company Standards;
- where relevant, participation in national schemes intended to reduce system risk (e.g. route crime initiatives, Signals Passed at Danger (SPAD) reduction programmes and confidential reporting schemes);
- participation in relevant industry standards processes;
- participation in activities associated with emergency planning;
- arrangements for the prompt sharing of safety critical information;
- participation in industry safety improvement planning;
- participation in industry research and development;
- permitting access to premises and rolling stock in order to facilitate other transport operators' compliance with their own duties concerning risk assessment and risk control measures.

These are examples only and by no means an exhaustive list. Co-operation, in order to comply with regulation 22, will take many forms and will largely depend on the measures transport operators identify as appropriate in order to comply with their own health and safety duties.

162. Given the clear duty to co-operate each person seeking a safety certificate or safety authorisation should have in place processes to make and respond to reasonable requests. Parties should seek to resolve any differences through liaison and discussion, where health and safety concerns remain they can formally be raised with ORR.

163. The RSCR will not be revoked until 1st October 2006. During the transitional period from 10th April 2006 – 1st October 2006 as part of their duty to co-operate transport undertakings who hold a safety certificate will need to recognise the duty under Regulations 12 and 13 of RSCR and co-operate with the infrastructure manager to enable them to discharge their duty.

164. The duty in regulation 22(3) comes into force on 10th April 2006 and requires every transport operator to co-operate as far as is reasonable with any other transport operator who is taking action to ensure the safe operation on the same transport system.

PART 4 SAFETY CRITICAL WORK

165. The requirements in this part of the regulations come into force on 1st October 2006 and apply to all safety critical work including such work carried out in sidings (see definition of “transport system” in Regulation 2).

REGULATION 23 – INTERPRETATION AND APPLICATION OF PART 4

23. *In this Part–*

“assessor” means any person who is competent to make an objective assessment of another person’s competence or fitness to carry out safety critical work, and related expressions shall be construed accordingly;

“controller of safety critical work” means any person controlling the carrying out of safety critical work on a transport system or in relation to a vehicle used on a transport system;

“fitness” means physical and mental fitness, and related expressions shall be construed accordingly;

“installation” includes the installation, examination or testing of components;

“maintenance” includes repair work, reconditioning, examination, testing or alteration;

“operator” means any person carrying on an undertaking which includes a transport system or any part of it or the provision of transport services on such a system;

“safety critical task” means–

(a) in relation to a vehicle used on a transport system–

(i) driving, dispatching or any other activity which is capable of controlling or affecting the movement of that vehicle;

(ii) signalling, and signalling operations, the operation of level crossing equipment, receiving and relaying of communications or any other activity which is capable of controlling or affecting the movement of that vehicle;

(iii) coupling or uncoupling;

(iv) installation of components; other than where the installation of those components is subject to supervision and checking by a safety critical worker or a controller of safety critical work;

(v) maintenance, other than where the carrying out of that maintenance is subject to supervision and checking by a safety critical worker or a controller of safety critical work; or

(vi) checking that a vehicle is working properly and, where carrying goods, is correctly loaded before being used;

(b) in relation to a transport system–

(i) installation or maintenance of any part of it or of the telecommunications system relating to it or used in connection with it, or of the means of supplying electricity directly to that transport system or to any vehicles using it or to the telecommunications system other than where the carrying out of that task is subject to supervision and checking by a safety critical worker or a controller of safety critical work;

166. This is intended to cover the provision of emergency telephones and is limited to the extent that work is carried out on the systems within the transport operator's control. It does not include work on telecommunication systems which are not within the control of the transport operator e.g. mobile phone masts or public payphones.

(ii) controlling the supply of electricity directly to it or to any vehicles used on it;

(iii) receiving and relaying of communications; or

167. Typically this refers to communications between controllers and drivers.

(iv) any person ensuring the safety of any persons working on or near to the track, whether or not the persons working on or near to the track are carrying out safety critical work;

(c) in relation to training, any practical training or the supervision of any such training in any of the tasks set out in sub-paragraphs (a) to (b),

which could significantly affect the health or safety of persons on a transport system;

168. When considering whether any task is safety critical it is important to consider whether any failing in the task could significantly affect the health or safety of people on the transport system. In some cases equipment is designed to reduce or remove the risk of human error. Where equipment has been designed so that it cannot be fitted incorrectly or where it has an integral diagnostic system that would identify faults before exposure to risk can occur, then work in fitting such equipment is unlikely to meet the definition of 'safety critical task although duty holders will need to give consideration to this as that may not always be the case.

169. Where reliance is made on supervision or checking work so that the person carrying out the actual work does not have to meet the full requirements of Part 4 the transport operators need to ensure that their processes for supervising and checking are adequate. In such cases the supervision or checking would then be considered a safety critical task. During the manufacture and assembly of components there should be adequate processes for checking the product, such checking could fulfil the requirements of Regulation 23(a)(iv) and (v) and (b)(i).

"safety critical work" means any safety critical task carried out by any person in the course of their work or voluntary work on or in relation to a transport system and related expressions shall be construed accordingly; and

"telecommunications system" means any telecommunications system provided by a transport operator or its associated equipment, which is capable

of controlling or affecting the movement of a vehicle, or which is provided for purposes which include calling the emergency services.

(2) Any reference in this Part to a safety critical worker or a controller of safety critical work supervising and checking the work of another person is to a safety critical worker or a controller of safety critical work who has been assessed as competent in the tasks to which that supervision and checking relates.

(3) Any reference in this Part to a person controlling the carrying out of safety critical work is a reference to a person managing, supervising or controlling that work in connection with the carrying on by him of a trade, business or other undertaking (whether or not for profit).

(4) This Part shall not apply to or in relation to—

(a) the police, ambulance or fire service when they are carrying out their emergency functions on or in relation to a transport system; and

(b) any voluntary worker for a period of twelve months from the date of the coming into force of this Part.

REGULATION 24 – COMPETENCE AND FITNESS

24. *(1) Every controller of safety critical work shall, so far as is reasonably practicable, ensure that a person under his management, supervision or control, with the exception of where that person is receiving practical training in a safety critical task, only carries out safety critical work where—*

(a) that person has been assessed as being competent and fit to carry out that work following an assessment by an assessor;

(b) there is an accurate and up to date record in writing of that person's competence and fitness which references any criteria for determining competence and fitness against which that assessment of competence was made;

(c) the record, or an accurate summary of the record referred to in subparagraph (b) is available for inspection, on reasonable request, by any other controller of safety critical work or any operator who may be affected by any safety critical work carried out or to be carried out by that person, for the purposes of establishing that person's competence and fitness to carry out safety critical work; and

(d) there are in place arrangements for monitoring the competence and fitness of that person.

(2) Every controller of safety critical work shall without unreasonable delay review any person's competence or fitness assessment where—

(a) they have reason to doubt the competence or fitness of a person to carry out that safety critical work; or

(b) there has been a significant change in the matters to which the assessment relates,

and where, as a result of any such review a reassessment of competence or fitness is required, that reassessment of competence or fitness shall be carried out to ensure that the requirements of paragraph (1) are met.

(3) Where a reassessment of competence or fitness under paragraph (2) is required, the controller of safety critical work shall, so far as is reasonably practicable ensure that, as a result, the health and safety of persons on a transport system is not prejudiced.

170. Guidance on competence entitled “Railway Safety Principles and Guidance – Part 3 Section A - Developing and maintaining staff competence” is available from HSE Books (ISBN 0-7176-1732-7)

REGULATION 25 – FATIGUE

25. (1) Every controller of safety critical work shall have in place arrangements to ensure, so far as is reasonably practicable, that a safety critical worker under his management, supervision or control does not carry out safety critical work in circumstances where he is so fatigued or where he would be liable to become so fatigued that his health or safety or the health or safety of other persons on a transport system could be significantly affected.

(2) The arrangements in paragraph (1) shall be reviewed by the controller of safety critical work where he has reason to doubt the effectiveness of those arrangements.

171. Guidance on ‘Managing Fatigue in Safety Critical Work’ will be available on ORR’s website by the time Part 4 of these regulations comes into force i.e. 1st October 2006.

REGULATION 26 – CO-OPERATION REQUIREMENTS FOR SAFETY CRITICAL WORK

26. (1) Every controller of safety critical work to whom this Part applies shall co-operate as far as is necessary with any other controller of safety critical work or any operator to enable that other controller of safety critical work to comply with the provisions of this Part.

(2) Every person carrying out safety critical work shall, as regards any requirement imposed on any controller of safety critical work under this Part, co-operate with that controller of safety critical work so far as is necessary to enable that requirement to be performed or complied with.

172. Regulation 26 involves duties of co-operation between controllers of safety critical work and operators whose activities could affect, or are affected by, each other. The duty on the controller of safety critical work or the operator is to co-operate as far as is necessary to enable the other controller of safety critical work or the other operator to comply with these Regulations.

173. Controllers of safety critical work or operators may need co-operation from another controller of safety critical work or another operator to enable

them to carry out their work. Such co-operation may involve the provision or exchange of information, or the co-ordination of procedures.

174. This regulation overlaps, but is not inconsistent, with the requirements of the Management of Health and Safety at Work Regulations 1999, which require employers and the self employed who share a workplace to co-operate with each other and to co-ordinate their safety measures.

PART 5 MISCELLANEOUS

REGULATION 27 – APPEALS

27 (1) *A person who is aggrieved by a–*

(a) decision of the Office of Rail Regulation to refuse his application for–

(i) a safety certificate or safety authorisation;

(ii) an amended safety certificate or safety authorisation;

(b) direction of the Office of Rail Regulation to make an application to amend his safety certificate or safety authorisation; or

(c) decision of the Office of Rail Regulation to revoke his–

(i) safety certificate or part of it; or

(ii) safety authorisation,

may appeal to the Secretary of State.

(2) For the purposes of paragraph (1), the Secretary of State may, in such cases as he considers it appropriate to do so, having regard to the nature of the questions which appear to him to arise, direct that an appeal under that paragraph shall be determined on his behalf by a person appointed by him for that purpose.

(3) Before the determination of an appeal the Secretary of State shall ask the appellant and the Office of Rail regulation whether they wish to appear and be heard on the appeal and–

(a) The appeal may be determined without a hearing of the parties if both of them express a wish not to appear and be heard as aforesaid;

(b) The Secretary of State shall, if either of the parties expresses a wish to appear and be heard, afford to both of them an opportunity of doing so.

(4) The Tribunals and Inquiries Act 1992 shall apply to a hearing held by a person appointed in pursuance of paragraph (2) to determine an appeal as it applies to a statutory inquiry held by the Secretary of State, but as if in section 10(1) of that Act (statement of reasons for decisions) the reference to any decision taken by the Secretary of State included a reference to a decision taken on his behalf by that person.

(5) A person who determines an appeal under this regulation on behalf of the Secretary of State and the Secretary of State, if he determines such an appeal, may give such directions as he considers appropriate to give effect to his determination.

(6) The Secretary of State may pay to any person appointed to hear or determine an appeal under paragraph (2) on his behalf such remuneration and allowances as the Secretary of State may with the approval of the Minister for the Civil Service determine.

(7) For the purposes of paragraph (1)(a), a failure by the Office of Rail Regulation to make a decision on whether or not to issue or amend a safety certificate or safety authorisation within the four month period for making a

decision calculated in accordance with regulation 17(7) shall be treated as a refusal of the application.

(8)The Health and Safety Licensing Appeals (Hearing Procedure) Rules 1974, as respects England and Wales, and the Health and Safety Licensing Appeals (Hearing Procedure)(Scotland) Rules 1974, as respects Scotland, shall apply to an appeal under paragraph (1) as they apply to an appeal under sub-section (1) of the said section 44, but with the modification that references to a licensing authority are to be read as references to the Office of Rail Regulation.

(9)Where an appeal is made under paragraphs (1)(a) or (1)(c), the decision in question shall be suspended pending the final determination of the appeal.

175. Regulation 27 sets out the circumstances for a right of appeal. A transport operator may appeal to the Secretary of State (SoS) if ORR:

- (a) refuses to grant them a safety certificate or safety authorisation;
- (b) fails to decide their application for a safety certificate or safety authorisation within 4 months, calculated in accordance with regulation 17(7);
- (c) directs them to apply for an amendment under regulation 14; or
- (d) decides to revoke their safety certificate or safety authorisation.

176. In England and Wales appeals are dealt with under the provisions of section 44 of HSWA and the Health and Safety Licensing Appeals (Hearing Procedure) Rules 1974. Under section 44(2) the SoS may appoint a person to determine the appeal on his/her behalf, where he considers it appropriate to do so (regulation 27(2)). The Tribunals and Inquiries Act 1992 applies to a hearing held by a person appointed by the SoS, that person will also have the power to make a decision on behalf of the SoS (regulation 27(4) and (5)). Appeals in Scotland are dealt with under the provisions of the Health and Safety Licensing Appeals (Hearing Procedure)(Scotland) rules 1974.

177. Before deciding on an appeal the Secretary of State will ask both the aggrieved person and ORR if they wish to appear at the appeal hearing. If either party decides to appear the opportunity will also be offered to the other party. The appeal can go ahead without a hearing of the parties if both parties decide not to appear (regulation 27(3)).

178. In the first instance transport operators are encouraged to write to HM Chief Inspector of Railways at The Office of Rail Regulation, 1 Kemble Street, London WC2B 4AN or to request a meeting.

REGULATION 28 - OFFENCES

28. *A failure to discharge a duty placed on the Office of Rail Regulation by these Regulations shall not be an offence under section 33(1)(c) of the Health and Safety at Work etc. Act 1974.*

179. The Regulations place certain duties on ORR, for example to decide applications for safety certificates and/or safety authorisations within a specified period. Failure to meet that duty will not be an offence. However, in the example just given there is a right of appeal to the Secretary of State (see regulation 27).

REGULATION 29 – TRANSITIONAL PROVISIONS AND SAVINGS

29(1) *Any competence and fitness assessments made pursuant to regulation 3 of the Railways (Safety Critical Work) Regulations 1994 shall have effect as if they were made under Part 4, provided that the assessment would, at the time it was made, have met the requirements for impartiality and objectivity in that Part.*

(2) Notwithstanding the revocation of ROTS pursuant to regulation 34, and subject to paragraph (6) ROTS shall, up to and including 1st October 2008, continue in force as they had effect on 30th September 2006 for the purposes of—

- (a) determining applications for approval made;*
- (b) issuing a written consent for the purposes set out in regulation 4(4)(b) of ROTS in relation to new or altered works, plant or equipment for which an application for approval has been made;*
- (c) making notices dispensing with or requiring compliance with certain provisions of ROTS under regulation 10(1)(a) or 11(1)(a) of ROTS in relation to new or altered works, plant or equipment, for which an application for approval has been made,*

to the Office of Rail Regulation in relation to a relevant transport system before 1st October 2006.

(3) *Where an approval is issued by the Office of Rail Regulation in response to an application for approval made in relation to a transport system—*

- (a) before 1st October 2006 but where the new or altered works, plant or equipment are placed in service within the meaning of regulation 5(6) and 6(5) on or after that date; or*

- (b) on or before 1st October 2008 pursuant to paragraph 2,*

in relation to new or altered works, plant or equipment that is relevant infrastructure or a vehicle then such works, plant or equipment shall be deemed to satisfy the requirements of regulations 5(4) and 6(4).

(4) *Where a written consent is issued by the Office of Rail Regulation in relation to new or altered works, plant or equipment which is relevant infrastructure or a vehicle in relation to a transport system—*

- (a) under regulation 4(4)(b)(i) of ROTS on or before 1st October 2008 pursuant to paragraph (2) then such relevant infrastructure or vehicle shall be deemed to satisfy the requirements of regulations 5(4) and 6(4); or*

- (b) under regulation 4(4)(b)(ii) of ROTS on or before 1st October 2008 pursuant to paragraph (2) then no regard shall be taken of the use of such relevant infrastructure or vehicle for the purposes for which the written*

consent relates when determining whether the relevant infrastructure or vehicle has been placed in service in accordance with regulations 5(6) and 6(5).

(5) In this regulation—

(a) “application for approval” means an application for approval made under regulation 5, 6 or 7 of ROTS;

(b) “altered works, plant or equipment” shall have the meaning in regulation 2(a) of ROTS; and

(c) “relevant transport system” shall have the meaning in regulation 2(a) of ROTS.

(6) For the purposes of heritage railways and tramways, all references in this regulation to 1st October 2006 shall be read as if those references were in each case to 1st October 2008, and all references to 1st October 2008 shall be read as if those references were in each case to 1st October 2010.

(7) Schedule 5 shall have effect.

180. Regulation 29 deals with the transitional provisions and savings as a result of the Regulations.

181. The transitional provisions and savings in regulation 29(1) relate to Part 4 (safety critical work).

182. Regulation 29(7) gives effect to the transitional provisions in Schedule 5, relating to Part 2 (safety management, certificates and authorisations). Guidance on these provisions is given immediately after Schedule 5.

183. Regulations 29(1) to (7) come into force on 1st October 2006.

REGULATION 30 – EXEMPTIONS

30. (1) *Subject to paragraphs (2) and (3) the Office of Rail Regulation may, by certificate in writing, exempt any person or class of persons or any transport system or part of a transport system from any requirement or prohibition imposed by these Regulations.*

(2) The Office of Rail Regulation shall not grant any such exemption in relation to any requirement or prohibition imposed by Part 2 or 3 in relation to an operation carried out on the mainline railway other than an exemption to an operator of last resort from the requirement to copy the documents referred to in regulation 17(3)(a)(i) and (ii) to an affected party or to notify an affected party as the case may be.

(3) The Office of Rail Regulation shall not grant any such exemption unless, having regard to the circumstances of the case, and in particular to—

(a) the conditions, if any, which it proposes to attach to the exemption; and

(b) any other requirements imposed by or under any enactment which applies to the case,

it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it.

(4) The Secretary of State for Defence may, in the interests of national security, by a certificate in writing exempt any person or class of persons from any requirement or prohibition imposed by these Regulations.

(5) An exemption granted pursuant to paragraph (1), (2) or (4) may be granted subject to conditions and to a limit of time.

(6) An exemption granted pursuant to—

(a) paragraph (1) or (2) may be revoked by the Office of Rail Regulation; and

(b) paragraph (4) may be revoked by the Secretary of State for Defence, at any time by a further certificate in writing.

184. Under Regulation 30 ORR may exempt a transport operator, or person, from any or all of these Regulations. However, ORR will not grant an exemption in relation to Parts 2 & 3 for an operation carried out on a mainline railway. The only exception is that an exemption could be granted to an operator of last resort from the requirement to copy an application for a safety certificate or safety authorisation (or amended certificates or authorisations) to an affected party or to notify that affected party, as the case may be.

185. The onus is on the transport operator who requires an exemption, to apply for one. All exemptions are given by 'certificate in writing'. Transport operators should not, therefore, assume that an exemption has been granted without having received an exemption certificate (or ensuring that an appropriate class exemption exists) and having fully satisfied all the conditions in it. Transport operators are advised to contact ORR if in doubt, or for advice.

186. ORR will need to be satisfied that an exemption will not prejudice health and safety before granting one (regulation 30(3)). This is likely to involve an examination of the transport operators existing and proposed health and safety controls. ORR may ask for improvements to be put into place before granting an exemption. ORR may also wish to consult safety representatives or other employee representatives and affected parties.

187. Exemptions may be subject to conditions and a time limit. An exemption issued to an individual transport operator will normally be for a fixed time period to ensure that a review of the arrangements covered by the exemption is undertaken. An exemption may also be subject to conditions, for example that specified improvements are made or that additional controls are introduced. If a transport operator fails to comply with any of the conditions that form part of the exemption, the exemption certificate will specify that the exemption will lapse. ORR may also revoke an exemption.

188. An exemption in no way absolves a transport operator from their wider duties under the HSWA and other legislation. Every transport operator remains subject to inspections by ORR. Inspectors will need to be satisfied that (among other things) any conditions attached to an exemption are complied with.

189. Further advice on applying for exemptions and ORR's policy and processes in relation to exemptions is provided in the HMRI's "Safety Certificate and Authorisation Assessment Manual" on ORR's website at <http://www.rail-reg.gov.uk/upload/pdf/284.pdf>.

REGULATION 31 – DEFENCE OF DUE DILIGENCE

31(1) Subject to the following provisions of this regulation, in any proceedings against any person for an offence under regulation 5(4) or 6(4) it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against any person for such an offence the defence provided in paragraph (1) involves an allegation that the commission of the offence was due to–

- (a) the act or default of another; or*
- (b) reliance on information given by another,*

that person shall not, without the leave of the court, be entitled to rely on the defence unless, within a period ending seven clear days before the hearing of the proceedings (or in Scotland, the trial diet), he has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying, or assisting in the identification of, the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) A person shall not be entitled to rely on the defence provided by paragraph (1) by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied upon the information, having regard in particular–

- (a) to the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and*
- (b) to whether he had any reason to disbelieve the information.*

190. Regulation 31 provides a defence against criminal proceedings in the circumstances set out in that regulation.

REGULATION 32 – AMENDMENT OF ROTS

32. *In regulation 4 of ROTS–*

(a) for paragraph (2A) substitute–

“(2A) Approval shall not be required in relation to any interoperability constituent or any subsystem to the extent that the interoperability constituent or subsystem, as the case may be, has been authorised before 10th April 2006 under regulation 14 of the Railways (Interoperability)(High Speed) Regulations 2002 or is subject to the requirement for authorisation under regulation 4(1)(a) of the Railways Interoperability Regulations 2006”.

(b) for paragraph (5) substitute–

“(5) In this regulation, “interoperability constituent” and “subsystem” have the same meaning as in the Railways (Interoperability) Regulations 2006”.

REGULATION 33 – CONSEQUENTIAL AMENDMENTS

33. *The Regulations referred to in Schedule 6 shall be amended as set out in that Schedule.*

191. Regulation 33 comes into force on 1st October 2006 and provides for consequential amendments to other health and safety regulations and to some other provisions (e.g. the Railways Safety (Miscellaneous Provisions) Regulations 1997 and the Railways Safety Regulations 1999), as set out in Schedule 6. In the main, they are minor amendments the purpose of which is to bring other regulations into line with these regulations in relation to scope and definitions and to remove redundant references in those regulations following the coming into force of the regulations.

REGULATION 34 – REVOCATION

34. *The Regulations referred to in column (1) of Schedule 7 are revoked to the extent specified in column (3) of that Schedule.*

SCHEDULE 1

Regulations 5(1)(c) and 6(1)(b)

SAFETY MANAGEMENT SYSTEM

(This Schedule substantially reproduces the provisions of Annex III to the Directive)

Requirements on the safety management system

(1) *The safety management system shall—*

- (a) describe the distribution of responsibilities, within the operation, for the safety management system;*
- (b) show how control of the safety management system by the management on different levels is secured;*
- (c) show how persons carrying out work or voluntary work directly in relation to the operation and their representatives on all levels are involved with the safety management system; and*
- (d) show how continuous improvement of the safety management system is ensured.*

Basic elements of the safety management system

(2) *The basic elements of a safety management system are—*

- (a) a statement of the safety policy which has been approved by the chief executive and communicated to all persons carrying out work or voluntary work directly in relation to the operation;*
- (b) qualitative and quantitative targets for the maintenance and enhancement of safety and plans and procedures for reaching those targets;*
- (c) procedures to meet relevant technical and operational standards or other requirements as set out in—
 - (i) TSIs;*
 - (ii) national safety rules;*
 - (iii) other relevant safety requirements; and*
 - (iv) decisions of the Office of Rail Regulation addressed to the transport operator in question,*and procedures to ensure compliance with the requirements listed in this paragraph throughout the life-cycle of any relevant equipment or operation which is subject to the requirement in question.*
- (d) procedures and methods for carrying out risk evaluation and implementing risk control measures when—
 - (i) there is a change in the way in which the operation in question is carried out; or*
 - (ii) new material is used in the operation in question,*which gives rise to new risks in relation to any infrastructure or the operation being carried out;*

(e) provision of programmes for training of persons carrying out work or voluntary work directly in relation to the operation and systems to ensure that the competence of such persons is maintained and that they carry out tasks accordingly;

(f) arrangements for the provision of sufficient information relevant to safety—

(i) within the operation in question; and

(ii) between the operator in question and any other transport operator or an applicant for a safety certificate or a safety authorisation who carries out or who intends to carry out operations on the same infrastructure;

(g) procedures and formats for the documentation of safety information;

(h) procedures to control the lay out of, and changes to, vital safety information;

(i) procedures to ensure that accidents, incidents, near misses and other dangerous occurrences are reported, investigated and analysed and that necessary preventative measures are taken;

(j) provision of plans for action, alerts and information in the case of an emergency which are to be agreed with any public body, including the emergency services, that may be involved in such an emergency; and

(k) provisions for recurrent internal auditing of the safety management system

192. The achievement of safety targets is now part of the overall European rail safety regime which will in the future be realised through Common Safety Targets (CST's) for the mainline railway as referred to in Regulation 5(a). One of the purposes of the Safety Management System (SMS) will be to deliver the CSTs, therefore some targets may eventually be stretching however, the SMS should evolve to deliver the targets, starting from qualitative and quantitative targets that the transport operator uses to back up safety plans. Such evolution together with internal auditing, as required by paragraph 2(k) should contribute towards continuous improvement of the SMS.

193. Paragraph 1 of the Schedule lays down the main requirements of a transport operator's SMS in order to demonstrate that it is adequate. It should include:

- an explanation of the safety policy;
- organisation and high level arrangements of the SMS, which will need to include arrangements regarding employee involvement, management accountability and continuous improvement.

All of this will help provide a framework within which the other, more specific aspects of the SMS required by the Regulations can be applied. The approach adopted in relation to the SMS should be adapted to the character and extent of the operation in question. For example, Heritage railway systems would not be expected to adopt the quantitative targets described below.

194. Paragraph 2 sets out the basic elements of the SMS which are:

(a) **a statement of the safety policy** – this will need to be approved by the Chief Executive and communicated to all employees, including those carrying out voluntary work;

(b) **'qualitative and quantitative targets'** (paragraph 2(b)) extend the requirements to areas not yet covered by the scope of CSTs including non-mainline railways and other transport systems. The targets in the latter case will be the transport operator's own targets or those set by their representative bodies.

(c) **standards** - have a central role in the safety of a railway operation. Paragraph 2(c) requires that the SMS includes the procedures to implement, monitor and maintain standards. For transport systems other than the mainline railway a comprehensive system of standards does not exist and this part of the schedule, via regulation 6, refers more generally to procedures to meet relevant technical specifications and relating to operations or maintenance.

(i) **TSIs** - standards for the mainline railway will increasingly be administered via TSIs. However, TSIs do not cover all aspects of safety, where they do not Railway Group Standards (RGSs) may exist which, in the context of this Schedule are regarded as being part of 'other relevant safety requirements'.

(ii) **national safety rules** – this term also applies to railway legislation including other parts and clauses of the Regulations, and procedures should also address these. They include general duties under the HSWA and other regulations made under it – the Level Crossings Act 1983 and provisions of the Transport and Works Act about directions on speed and weight.

(iii) **other relevant safety requirements** - as well as encompassing RGS this term also extends to wider applicable health and safety legislation (i.e. not specifically railway related) and transport operators will need to have a process in place to identify what is relevant and to implement.

(iv) **decisions of the Office of Rail Regulation** - are interpreted in the context of British law, as meaning enforcement notices issued under HSWA. This is of most relevance to actions required by ORR following an official accident or incident investigation.

(d) **risk evaluation and risk control** - paragraph 2(d)(i-ii) recognises that transport operators will need to be able to identify and respond to new risks which may arise in their operation. The SMS will need to include procedures for evaluating those risks and implementing new risk control measures where identified. These should demonstrate compliance with the relevant risk assessment duties arising from regulation 19 and the Management of Health and Safety at Work Regulations 1999. All types – changes in equipment, procedures, organisation, staffing or interfaces –

and levels of change should be catered for – major and minor, permanent and temporary, immediate and long term. Some transport operators will already have a formal change management process which will help them fulfil this requirement. It is very important to maintain risk control systems eg monitoring or measuring performance, the levels of supervision required etc. For further information please refer to HSG 65.

(e) **training and competence** - paragraph 2(e) requires that the SMS should have adequate arrangements for managing competence and ensuring that it is properly resourced. This should extend to front line staff, support staff (including contractors, consultants and suppliers of health and safety related services) and management personnel.

(f-h) **management of safety information** - paragraph 2(f-h) requires the adequate management of safety information internally and the exchange of such information between transport undertakings and infrastructure managers. This is an essential part of the control of safety risks. Addressing paragraphs 2(f-h) will ensure that a proper system is in place.

(i) **investigation of accidents, incidents and near misses** - arrangements for investigating and learning from accidents, incidents, near misses and other dangerous occurrences that could lead to harm are a central part of an effective health and safety management system. The accident and incident investigation procedures referred to in this paragraph need to be sufficiently thorough and comprehensive to ensure that the deep-rooted underlying causes are clearly identified and that actions to rectify problems are implemented effectively. For near misses, the collection and analysis of data can provide real value in helping to prevent accidents and incidents.

For investigation arrangements to be adequate, it is essential that incidents, which have a potential to endanger people, be examined effectively and those that could lead to more serious consequences should be treated with a similar rigour to accidents that actually do cause harm. Transport operators also need to be aware of their statutory responsibilities for reporting accidents and incidents and should have appropriate procedures for doing so.

(j) **emergency planning** - robust systems for emergency planning are essential for transport operators. They should cover plans, roles and responsibilities, training and arrangements to maintain competence, and the arrangements for effective communications. The plan should also cover the information which needs to be supplied to emergency services to enable them to draw up their plans for responding to a major incident on the railway.

(k) **internal auditing** - is an important tool to inform management how well its safety systems are working and where and how improvements can be made. Paragraph 2(k) requires that the SMS incorporates the facility for auditing regularly. External auditing is not precluded but the requirement relates to internal auditing only.

SCHEDULE 2

Regulation 7(1)(b)

APPLICATION FOR A SAFETY CERTIFICATE PART 1

INFORMATION TO BE INCLUDED FOR A MAINLINE APPLICATION

1. *The following information shall be included in relation to Part A of a safety certificate—*

(a) particulars of the type and extent of the operation in respect of which the application is made; and

(b) either—

(i) a copy of a current certificate issued to the applicant by the Office of Rail Regulation, other than a deemed safety certificate, or a safety authority in another member State or in Northern Ireland under provisions giving effect to article 10(2)(a) of the Directive which relates to an equivalent railway operation; or

(ii) particulars of how the safety management system of the applicant meets the requirements set out in regulation 5(1) to (4).

2. *The following information shall be included in relation to Part B of a safety certificate—*

(a) information on the TSIs, national safety rules and other safety requirements relevant to the applicant's operation including those relevant to persons carrying out work in relation to the operation and the applicant's vehicles and an explanation of how compliance with these requirements is ensured by the safety management system;

(b) information on the different types of work being carried out by persons directly in relation to the operation including evidence of how the applicant ensures that when such persons are carrying out such work that they are doing so in accordance with the requirements of any relevant TSIs and national safety rules; and

(c) information on the different types of rolling stock used for the operation in question including evidence that they meet any relevant TSIs and national safety rules,

and where information is submitted concerning an interoperability constituent or a subsystem which is subject to and complies with the requirements of the Railways(Interoperability)(High-Speed)Regulations 2002 ("2002 Regulations") then only brief details need be supplied concerning compliance of such constituents or subsystems with relevant TSIs and other requirements of those Regulations and in this paragraph "interoperability constituent" and "subsystem" shall have the same meaning as in the 2002 Regulations.

195. Schedule 2 of the Regulations provides details on the information required for safety certificates for mainline and non-mainline applications. The regulations state that operators will need to have a SMS which meets certain requirements. Applications for safety certificates and safety authorisations will need to include evidence on how these are met.

196. A safety certificate for both mainline and non-mainline railways certifies ORR's acceptance that the holder has produced:

- sufficient written evidence that their SMS satisfies the requirements in the Regulations (Part A of a mainline certificate), and
- sufficient written evidence of the provisions adopted to meet the requirements necessary to ensure safe operation (Part B of a mainline certificate).

197. An application should be concise and self-contained with all relevant information provided within it. Other documents should only be referenced; they may be requested for examination after the issue of the safety certificate or safety authorisation during subsequent inspection. An application may reproduce extracts from the relevant documents within the body of its text. Applicants should not make excessive use of cross-referencing to either supplementary documents or appended information, if they do so they may be asked by ORR to re-submit the application in a more acceptable format.

198. An application is sufficient when it meets the [assessment criteria](#), therefore only material that is relevant to the assessment criteria will be assessed and will form the basis on which issue of a safety certificate or safety authorisation is made.

MAINLINE SAFETY CERTIFICATE, PARTS A AND B

199. The application for first and further safety certificates on the mainline should be made in two parts ie Part A and Part B.

- Part A is a high level certificate transferable between EU member states;
- Part B relates to an operation on specific national infrastructure and is not transferable.

200. An application for a certificate should include details of the type and extent of the operation AND either include

- a completely new Part A application, which shows how the SMS of the applicant meets the requirements set out in regulation 5(1) to (3) and (4) if applicable (see the [HMRI Assessment Criteria, Mainline Certificate Part A](#)) or
- a current Part A certificate previously issued either by HMRI or by the safety authority of another EU member state or Northern Ireland.

201. The application should reference information on both Part A and Part B and state what the Part A application comprises.

202. For a new Part A application the following information should be included:

- details of the company for which the application is being made, including its full registered legal name, and if the company for which the Part B application is being made is different, its relationship to that company. Whatever the relationship, the application will need to demonstrate that the SMS of both are linked in organisational and operational terms;
- a clear indication of which parts of the evidence in the application relate to Part A and which to Part B.

203. Where a current Part A certificate is submitted it should include:

- details of the safety authority which issued it;
- details of the company for which the certificate was issued, including its full registered legal name and relationship to the company for which the Part B application is being made. Whatever the relationship, the application will need to demonstrate that the SMS of both are linked in organisational and operational terms;
- the period of its validity;
- a reference to the evidence on which its issue was based ie a statement on how it is identified (title, reference no. etc) and where and how it is documented;
- whether there have been any changes notified to the relevant safety authority since its original issue and a summary of what those changes were;
- details of the type and extent of the;
 - a. existing operation for which the Part A or amended Part A was issued; and
 - b. proposed, new operation for which the Part B application is being made.

The format of a Part A application is to be harmonised across Europe and work is ongoing on this. When a harmonised application format has been developed, this will need to be used.

204. Part B of the application should include (see the [HMRI Assessment Criteria, Mainline Certificate Part B](#)):

- information on the TSIs;
- information on the national safety rules;

- information on other safety requirements that are relevant to the operation;
- an explanation of how the SMS will ensure compliance with these;
- information on the different types of work carried out and evidence of how the applicant ensures that the work is carried out in accordance with any relevant TSIs and national safety rules, and
- information on the different types of rolling stock used and evidence that they meet any relevant TSIs and national safety rules.

205. If any of the above information is missing HMRI will be unable to properly begin the assessment. In such cases HMRI will contact the applicant who should then ensure that any missing information is provided as quickly as possible because any significant delay in doing so could delay the final decision overall and, therefore the applicants ability to run operations from any specific date.

PART 2

INFORMATION TO BE INCLUDED FOR A NON-MAINLINE APPLICATION

3 Particulars of the type and extent of the operation in respect of which the application is made.

4 Particulars of how the safety management system of the applicant meets the requirements set out in regulation 6.

5 Information on the—

(a) relevant statutory provisions which make provision in relation to safety which are applicable to the operation; and

(b) technical specifications and procedures relating to operations and maintenance that are relevant to the safety of the transport system which the applicant proposes to follow,

and an explanation of how compliance with these requirements is ensured by the safety management system.

(6) Information on the different types of work or voluntary work being carried out by persons directly in relation to the operation including evidence of how the applicant ensures that when such persons are carrying out work or voluntary work in relation to the operation that they are doing so in accordance with relevant requirements of the relevant statutory provisions referred to in paragraph 5(a).

(7) Information on the different types of rolling stock used for the operation including evidence that they meet relevant requirements of the relevant statutory provisions referred to in paragraph 5(a).

Non-Mainline Safety Certificate

206. The safety certificate for a non-mainline railway will not have Parts A and B as there is no transferability between networks, they will instead have a single certificate. Applications made by a non-mainline railway for a safety certificate will need to include the following:

- information on the health and safety legislation relevant to the operation;
- information on the technical specifications and procedures relating to operations and maintenance relevant to safety;

together with an explanation of how the SMS will ensure compliance with these;

- particulars of the type and extent of the operation which the application relates to;
- details of how the SMS of the applicant meets the requirements of Regulation 6.
- information on the different types of work carried out and evidence of how the applicant ensures that the work is carried out in accordance with health and safety legislation, and
- information on the different types of rolling stock used and evidence that they meet health and safety legislation.

207. The [HMRI Assessment Criteria](#), 'non-mainline railway', 'transport undertaking' show how this information should be presented.

208. For a vertically integrated operation the application will also need to include information according to Regulation 6 with regard to the infrastructure.

SCHEDULE 3

Regulation 20(1)(c)

COMMON SAFETY INDICATORS

(This Schedule substantially reproduces the provisions of Annex I to the Directive)

Indicators relating to accidents

1. (1) *Total and relative, to vehicle kilometres, number of—*

(a) accidents and a break-down of the following types of accidents—

(i) collisions of vehicles, including collisions with obstacles within the loading gauge;

(ii) derailments of vehicles;

(iii) level-crossing accidents which shall include accidents involving persons at level-crossings;

(iv) accidents to persons caused by vehicles in motion except for suicides;

(v) suicides;

(vi) fires in vehicles; and

(vii) any other types of accidents,

and each such accident shall be reported under the heading of the primary accident even where the consequences of any secondary accident are more severe such as where a fire follows a derailment.

(b) persons seriously injured or killed by type of accident divided into the following categories—

(i) passengers;

(ii) persons carrying out work or voluntary work directly in relation to the operation;

(iii) level crossing users;

(iv) unauthorised persons on premises of the transport system; and

(v) any other types of person,

and the number of passengers seriously injured or killed shall also be indicated in relation to the total number of passenger kilometres.

(2) The provisions of Regulation 91/2003 of the European Parliament and the Council on rail transport statistics shall be applied to any information provided under this paragraph.

Indicators relating to incidents and near-misses

2. *Total and relative, to vehicle kilometres, number of—*

(a) broken rails;

(b) buckled rails;

(c) wrong-side signalling failures;

(d) signals passed at danger; and

(e) broken wheels and axles on vehicles in service.

Indicators relating to consequences of accidents

3.(1) *Total and relative—*

(a) to train kilometres, cost in Euros of all accidents, which shall include, where it is possible to provide such figures, the cost of the following—

- (i) deaths and injuries of persons;*
- (ii) compensation for loss of or damage to the property of passengers, persons carrying out work directly in relation to the operation or to third parties including damage caused to the environment;*
- (iii) replacement or repair of damaged rolling stock and railway installations; and*
- (iv) delays, disturbances and re-routing of traffic including any additional costs to persons carrying out work directly in relation to the operation and the loss of future revenue.*

(b) to number of hours worked, number of working hours of persons carrying out work directly in relation to the operation which have been lost as a consequence of accidents.

(2) In calculating the costs under sub-paragraph (1)(a), the amount of any indemnity or compensation recovered or expected to be recovered from third parties shall be deducted except for any relevant compensation recovered under insurance policies held by transport operators.

Indicators relating to technical safety of infrastructure and its implementation

4. *The—*

- (a) percentage of tracks with a train protection system, within the meaning of regulation 2(1) of the Railway Safety Regulations 1999, in operation;*
- (b) percentage of train kilometres with a train protection system falling within paragraph (a) in operation;*
- (c) number of level crossings (total and total per kilometre of line); and*
- (d) percentage of level crossings with automatic or manual protection.*

Indicators relating to the management of safety

5. *Internal audits carried out by transport operators pursuant to the procedures referred to in paragraph 2(k) of Schedule 1 and the number of such audits which have been carried out and that number expressed as a percentage of the audits which were planned for that year.*

209. Statistics for Common Safety Indicators (CSIs) should be included in the annual safety reports sent to ORR by transport operators on the mainline (Regulation 20 (1)(c)).

SCHEDULE 4

Regulations 5(4)(a) and 6(4)(a)

WRITTEN SAFETY VERIFICATION SCHEME REQUIREMENTS

INFORMATION TO BE INCLUDED IN A SAFETY VERIFICATION SCHEME

1. (1) *The arrangements for the selection, appointment and retention of the competent person, which arrangements should at least provide for:*

(a) *the appointment of the competent person at an early stage in the design selection process;*

(b) *the involvement of the competent person in the establishing of the criteria to be applied in the verification process and the design selection process;*

(c) *the communication to the competent person of information necessary for the proper implementation, or revision, of the verification scheme and which information is necessary in order for the competent person to undertake the verification.*

(2) *The arrangements for the examination and testing of new or altered vehicles or infrastructure, which arrangements should at least provide for:*

(a) *the means of controlling risks that arise during the carrying out of any testing or trials prior to placing into service; and*

(b) *the standards and criteria to be applied in the verification process.*

(3) *The arrangements for the review and revision of the verification scheme.*

(4) *The arrangements for the making and preservation of records showing –*

a) *the examination and testing carried out to the new or altered vehicles or infrastructure prior to its being placed into service;*

b) *the findings of that examination and testing;*

c) *any remedial action recommended as a result of that examination and testing; and*

d) *any remedial action performed.*

(5) *The arrangements for communicating the matters contained in sub-paragraphs (1) to (4) of the Schedule to an appropriate level in the management system of the transport operator or responsible person as the case may be.*

210. The foundation of a safety verification scheme is the timely appointment of an independent competent person. The transport operator or responsible person should draw up the scheme taking into consideration the advice of the competent person. Clearly failure to appoint a competent person early on in the process will make this difficult and undermine the effectiveness and suitability of the scheme. The competent person should be

involved in the establishment of the verification criteria. In this case a competent person could be an individual or a corporate body.

211. It is important that those carrying out the verification work have appropriate levels of impartiality and independence from pressures, especially of a financial or operational nature, which could affect sound judgement. They should not verify their own work, and their management lines should be separate from those people whose work they are checking. For instance, it is acceptable in principle for a transport operator's in-house team to check work done elsewhere in the same organisation. However, it would influence objectivity if that team's management chain included the manager responsible for meeting targets that might be adversely affected by the outcome of the verification process.

212. In many cases the testing process itself has the potential to introduce risk onto the transport system. It is important that the verification scheme takes account of such risks and ensures that controls are in place to mitigate them.

213. The actual standards and criteria utilised in the verification process should be agreed and recorded to give transparency to the process and provide an audit trail.

214. The governance arrangements for making changes to the verification scheme should be recorded and where any changes are made they too should be recorded.

215. The retention of a written record of the verification undertaken is an essential part of the process. The records should be retained for the life of the subject of the verification scheme.

216. To ensure effective governance of the safety verification process the key information should be communicated to the appropriate management level. An appropriate level is that with sufficient authority to ensure that any action required in relation to the safety verification is taken.

217. For further guidance see <http://www.rail-reg.gov.uk/upload/pdf/284.pdf>.

SCHEDULE 5

Regulation 29(6)

TRANSITIONAL PROVISIONS AND SAVINGS – SAFETY CERTIFICATES AND SAFETY AUTHORISATIONS

1. *Subject to the following paragraphs of this Schedule–*

(a) a notification of acceptance by the Office of Rail Regulation of a safety case in relation to the operation of trains pursuant to regulation 5(7)(a) of the 2000 Regulations in relation to a safety case–

(i) which is current immediately before 1st October 2006; or

(ii) which is issued pursuant to paragraph 3,

shall be deemed to be a safety certificate for that operation;

(b) a notification of acceptance by the Office of Rail Regulation of a safety case in relation to the use of railway infrastructure pursuant to regulation 4(4), or the operation of a station pursuant to regulation 5(7)(a), of the 2000 Regulations in relation to a safety case–

(i) which is current immediately before 1st October 2006; or

(ii) which is issued pursuant to paragraph 3,

shall be deemed to be a safety authorisation for the infrastructure in question,

and the holder of a deemed safety certificate shall also be deemed to have met the applicable requirements of regulations 3(1)(a) and 4(1)(a) and the holder of a deemed safety authorisation shall also be deemed to have met the applicable requirements of regulations 3(2)(a) and 4(2)(a).

2. *In paragraph 1 a notification of acceptance shall be construed as including the original notification referred to in paragraph 1(a) or 1(b) together with any notification of acceptance of a revision of the safety case in question by the Office of Rail Regulation pursuant to regulation 7(7) of the 2000 Regulations or that regulation as saved by paragraph 3 in relation to the operation in question.*

3. *Notwithstanding their revocation the 2000 Regulations shall continue in force as they had effect on 30th September 2006 for the purposes of–*

(a) the consideration, acceptance or refusal of acceptance of safety cases and revisions to safety cases submitted to the Office of Rail Regulation for acceptance before 1st October 2006 under regulations 4, 5, 7 or 8 of the 2000 Regulations;

(b) the making and determination of appeals under regulation 15 of the 2000 Regulations in relation to–

(i) the determination of any such appeals made before but not determined on 30th September 2006; and

(ii) the making and determination of any such appeals in relation to decisions on submissions falling within paragraph (a).

4.A deemed safety certificate or safety authorisation shall—

(a) in the case of a deemed safety certificate or safety authorisation falling within paragraph 1(a)(i) or 1(b)(i), be deemed to be issued on 1st October 2006;

(b) in the case of a deemed safety certificate or safety authorisation falling within paragraph 1(a)(ii) or 1(b)(ii), be deemed to be issued on the date of the notification of acceptance in question; and

(c) be deemed to be held by the person to whom the notification of acceptance in question was addressed or, in the case of a deemed safety certificate or authorisation falling within paragraph 1(a)(i) or 1(b)(i), the person who is a successor of that person or a previous successor pursuant to regulation 2(7) of the 2000 Regulations on 1st October 2006.

5.A deemed safety certificate or safety authorisation shall be valid until—

(a) in the case of a deemed—

(i) safety certificate, the holder has applied for a safety certificate under regulation 7 for the operation in question and the Office of Rail Regulation has issued a safety certificate in response to that application; or

(ii) safety authorisation, the holder has applied for a safety authorisation for the operation in question under regulation 10 and the Office of Rail Regulation has issued a safety authorisation in response to that application;

(b) subject to paragraph 6, the date by which the periodic review of the safety case to which the deemed safety certificate or deemed safety authorisation relates would have been required under regulation 6 of the 2000 Regulations had it still been in force; or

(c) 1st October 2008,

whichever is the first to occur.

6. *Where the date of the periodic review referred to in paragraph 5(b) would fall on or before 1st April 2007 then a deemed safety certificate or safety authorisation shall be valid up to and including 1st April 2007.*

7. *Where a transport operator—*

(a) holds a deemed safety certificate or deemed safety authorisation; and

(b) the control of the operation in question is transferred to another person after 1st October 2006 so that regulation 2(7) of the 2000 Regulations would have operated to treat that other person as a successor had it still been in force,

then that other person may rely upon the deemed safety certificate or safety authorisation and if he does so rely shall comply with the provisions of these Regulations as though he were the holder of that deemed safety certificate or safety authorisation for a period of 6 months from the date he becomes a successor and may do so notwithstanding the prior expiry of such a certificate or authorisation in accordance with paragraph 5.

8. *The holder of a deemed safety certificate or safety authorisation shall revise the contents of the safety case to which the deemed safety certificate or safety authorisation relates whenever it is appropriate to do so.*

9. *Where the revision referred to in paragraph 8 renders the safety case materially different from that accepted in the deemed safety certificate or safety authorisation then the holder of the deemed safety certificate or authorisation shall, without delay, notify the Office of Rail Regulation of such revision.*

10. *Where a holder of a deemed safety certificate or safety authorisation proposes a change to the operation to which a deemed safety certificate or safety authorisation relates which would have been a change falling within regulation 8(1) or 11(1) if those regulations had applied, then he shall not make such a change until he has applied for and the Office of Rail Regulation has issued a new safety certificate or safety authorisation for that operation pursuant to regulation 7 or 10 as the case may be.*

11. *Where a person—*

(a) was granted an exemption, which has not been revoked, from the prohibition relating to the holding of an accepted safety case in regulation 4(1) or 5(1) of the 2000 Regulations; or

(b) was not subject to the requirements of the 2000 Regulations immediately before 1st October 2006 by virtue of their operation falling wholly within sub-paragraphs (a) to (c) of the definition of “railway” in the 2000 Regulations or because they were carrying out an operation on a transport system other than a railway,

then notwithstanding the revocation of the 2000 Regulations, that person shall not be required to comply with the provisions of Part 2 of these Regulations until April 2007.

12. *The 2000 Regulations shall apply in relation to—*

(a) a deemed safety certificate as if regulations 8, 9 and 15 did not apply; and

(b) a deemed safety authorisation as if regulation 11, 12 and 16 did not apply;

(c) a deemed safety certificate or a deemed safety authorisation as if—

(i) regulations 13, 14 and 18 did not apply;

(ii) sub-paragraphs (a) and (b) of regulation 20(1) did not apply;

(iii) regulation 20(1)(d) referred to “the findings of an audit carried out pursuant to the arrangements referred to in paragraph 5(d) of Schedule 1 to the 2000 Regulations;” and

(iv) regulation 21(4)(a) and 21(5)(a) referred to a deemed safety certificate or a deemed safety authorisation and the safety case to which it relates and as if the notified address referred to in regulation 21(3) were that notified in relation to the safety case in question under regulation 14 of the 2000 Regulations.

13. *Notwithstanding the revocation of the 2000 Regulations, regulation 10 of the 2000 Regulations shall continue in effect in relation to the safety case to which a deemed safety certificate or deemed safety authorisation relates as it had effect on 30th September 2006 except that for the purposes of this Schedule the references in that regulation to—*

(a) “any revision” shall be construed to include a revision pursuant to paragraph 8; and

(b) regulations 7 and 11 shall be construed as a reference to paragraph 8 of this Schedule and regulation 22(1) respectively.

14. *For the purposes of this Schedule “the 2000 Regulations” means the Railways (Safety Case) Regulations 2000.*

REVISIONS AND CHANGES

218. Schedule 5 comes into force on 1st October 2006 and contains transitional provisions which give existing safety case holders, and certain others (e.g. those who hold an exemption, or did not need a certificate under RSCR) additional time to comply with Part 2 of the Regulations. The additional time is between 6 and 18 months after the deadline specified in regulations 3 and 4 for new operators, and will vary for each safety case holder, depending on when their next three-year review under RSCR is due. Heritage and Tramway operators have lengthier transitional periods. This means that notwithstanding the revocation of ROTS, Regulation 29(6) provides that they can continue to submit schemes under ROTS until 1st October 2008 provided that those schemes will be complete by 1st October 2010.

219. Between April 2006 and October 2008 all transport operators who are required to have a safety certificate and/or safety authorisation should have applied for and obtained them. The detail of exactly when each transport operator will be required to obtain a full safety certificate/safety authorisation is contained in the following paragraphs.

TIMESCALES

Table 3 – Dates when ‘full’ certificates/authorisations will be needed,

220. The following table gives the dates by which ‘full’ safety certificates or safety authorisations will be needed for various RSC periodic review dates unless HMRI has agreed an alternative date with a transport operator prior to 1st October 2006.

| <i>Date next RSCR periodic review would have fallen due</i> | <i>“Deemed” cert/auth expires and full cert/auth is required by</i> | <i>Recommended date by which to submit application to HMRI</i> |
|--|--|---|
| Between 10th April 2006 and 1 st Oct 2006 | October 2008 | April 2008 |

| | | |
|---|--|--|
| Between 1 st Oct 2006 and 1 st April 2007 | April 2007 | Oct 2006 |
| Between 1 st April 2007 and 1 st Oct 2008 | Date RSC periodic review would have fallen due | 6 months before RSCR periodic review would have fallen due |
| After 1 st Oct 2008 | Oct 2008 | April 2008 |

221. As the deadlines in the Regulations relate to *obtaining* (not applying for) a safety certificate or safety authorisation, it is important that safety case holders prepare and submit their application several months before the deadline on the dates indicated in the third column of the table (generally 6 months before one is required, please see paragraphs 134 – 138 ‘**Timescales for consideration of applications by HMRI**’).

222. However, if an application is made too far in advance of the deadline ORR will not guarantee to start assessing it at once. Regulation 17(7)(c) provides that the time allowed for ORR to make a decision will not start to run until nine months before the holder’s deadline for obtaining a certificate and/or authorisation. For example, if the deadline is 31st December 2006 the time allowed to ORR may not start to run until 31st March 2006 even if the applicant applies earlier than that. The purpose of this provision is to help ensure that applications are spread out and that ORR can handle them within the time allowed.

223. ORR will be required to make a decision on an application for a safety certificate or safety authorisation within four months after the end of the 28 day period allowed for “affected parties” to make representations, but this four month period can be extended if ORR requires additional information (regulations 7(3), 10(2) and 17(6)-(7)). Safety case holders should therefore begin preparing their applications so that they are in a position to submit their applications in good time.

EXISTING SAFETY CASE HOLDERS - DEEMED SAFETY CERTIFICATES/SAFETY AUTHORISATIONS

224. When Schedule 5 comes into force, existing safety case holders will automatically be deemed to hold a safety certificate and/or safety authorisation and to meet the SMS requirements of regulations 3(1)(a) and 4(1)(a) (Schedule 5 paragraph 1). This will remain the position until the holder obtains a safety certificate and/or a safety authorisation upon application under regulations 7 and/or 10, or until the specified deadline for doing so, whichever is sooner (Schedule 5 paragraph 5).

225. By that date the transport operator will also need to have established a documented SMS, which meets the requirements of Part 2. The deadlines are specified in Schedule 5 paragraph 5 and illustrated in Table 2 below. Existing safety case holders will at all times be required to comply with their safety case and, as with other operators, they will be required to comply with Parts 2 & 3 of the Regulations.

226. A deemed safety certificate/safety authorisation means that existing safety case holders are:

- deemed to have met the requirement to have a safety certificate and/or safety authorisation;
- deemed to be complying with the SMS requirements of regulations 5 & 6; and
- required to comply with their safety case.

227. All transport operators will be required to comply with the requirements of Parts 2 & 3 of the Regulations from the date when they come into force on 1st October 2006.

EXISTING SAFETY CASE HOLDERS WITH DEEMED CERTIFICATES/AUTHORISATIONS NEEDING TO MAKE CHANGES

228. Transport operators with deemed safety certificates/safety authorisations may wish to make changes which, under RSCR, would have required ORR's prior acceptance of a material revision. Whether prior "acceptance" will still be needed will depend on whether the change proposed involves a substantial alteration to either the type or extent of a train operation, or in the case of infrastructure managers, to the infrastructure or energy supply or the way these are operated or maintained.

229. The deemed certificate/authorisation *cannot* be amended therefore if the change is expected to be substantial, the transport operator will need to apply for and obtain a completely new safety certificate and/or safety authorisation providing all relevant information required by regulations 7 (certificates) or 10 (authorisations) before making the change (Schedule 5, paragraph 10). Transport operators anticipating such a change should contact their local HMRI inspector at an early stage to discuss how long may be needed for assessing the application – for complex changes around 6 months may be recommended, see paragraph 197.

230. If on the other hand the change would not involve substantial alterations of the kind described, the transport operator should revise the safety case and without delay notify the revision to ORR and other affected parties – in this case no prior ORR acceptance will be needed (Schedule 5, paragraph 9).

EXISTING SAFETY CASE HOLDERS' DUTIES

231. Paragraph 12 of Schedule 5 has the effect of applying the RSCR in place of certain Regulations as set out in the paragraph. The effect is that, as from 1st October 2006 the holder of a deemed safety certificate or safety authorisation (safety case holder) will need to:

- (a) revise the safety case whenever it is appropriate to do so (Schedule 5 paragraph 8);

- (b) notify ORR without delay any material revision which does not constitute a substantial change (ie a revision that makes the safety case “materially different” from how it was before) (Schedule 5 paragraph 9). The holder should also consult safety representatives or other employee representatives when preparing the notification (regulation 17(9)) and send a copy to “affected parties” (regulation 17(3) and (10)). However, they will no longer be required to obtain ORR acceptance of a material revision;
- (c) follow the procedures and arrangements in the safety case, including any revisions (Schedule 5 paragraph 13);
- (d) make no substantial changes of a type specified in regulation 8 or 11 without first applying for and obtaining a safety certificate or authorisation (Schedule 5 paragraph 10) (see paragraphs 205 – 208).
- (e) keep the safety case and any revisions, audit report findings, records of audit follow-up action, and risk assessment records at the notified address (regulation 21(4));
- (f) make the safety case and any revisions available for public inspection (regulation 21(6));

232. Safety case holders will also be required to comply with other requirements in Part 3 of the Regulations concerning risk assessment, annual reports and co-operation (regulations 19, 20 and 22). Schedule 5 paragraph 12(c)(ii) adjusts the annual report requirements of regulation 20 to exclude requirements for information on safety targets and plans.

TRANSFER OF AN OPERATION

233. If an operation is transferred to a different transport operator, the new operator may adopt the deemed safety certificate for up to 6 months. This will apply even if the holder’s deadline for obtaining a safety certificate and/or safety authorisation is less than 6 months away at the time of transfer. During this period the new holder will be subject to the same requirements (for example to comply with the deemed safety certificate) as the previous holder. The purpose is to give the new transport operator 6 months to apply for and obtain a safety certificate or safety authorisation. (Schedule 5 paragraph 7.)

234. A deemed certificate may be transferred to an operator taking over that same operation, for example when a franchise changes hands, for a period of six months – (Schedule 5, para graph 7).

HOLDERS OF EXEMPTIONS UNDER RSCR

235. There will be a number of transport operators who were not required to hold a safety case under RSCR but who will be subject to some or all of the requirements of Part 2 of these Regulations, in most cases just the requirement to have an SMS under regulation 4(1)(a) and/or 4(2)a. These are mainly heritage or minor railway operators holding an ORR exemption under RSCR.

236. Most will not require a safety certificate and/or a safety authorisation provided their maximum permitted operating speed is 40 kph or less. Tram operators will also come into scope of the SMS requirements but will not require a safety certificate or safety authorisation. Whatever the requirements, Schedule 5 paragraph 11 gives these operators extra time to comply, until 1st April 2007. Some exemption holders will fall out of scope completely e.g. cliff top railways which come under the definition of cableway, and will not be subject to these regulations after this date.

237. Until 1st April 2007 exemption holders should operate in accordance with their exemption conditions. However, where there is an increased risk in their operation before that date, transport operators will need to re-apply for an exemption.

238. For a proposed new operation which might be subject to exemption under RSCR but will not come under the Railways and Other Guided Transport (Safety) Regulations, the transport operator may be advised to defer the start of the operation until after 1st October 2006. If this is not feasible, the transport operator will need to apply for an exemption under RSCR.

239. After 1st October 2006 transport operators (which may have been exempt from RSCR) will need to decide which course of action to take, ie apply for a safety certificate and/or safety authorisation, apply for an exemption from a safety certificate/safety authorisation under ROGS, establish a SMS according to Regulations 4(1)(a) and/or 4(2)(a) or if the ROGS Regulations do not apply to their operation, do nothing.

240. Exemption holders who do require a safety certificate/safety authorisation should submit their application six months in advance of 1st April 2007 ie October 2006.

SAFETY CASES IN THE 'PIPELINE' ON 10TH APRIL 2006

241. On 1st October 2006 the RSCR will be revoked. On 10th April 2006 there may be safety cases still "in the pipeline" - sent to ORR for acceptance but not yet determined. Schedule 5 paragraph 3 provides that ORR may continue to assess and determine these applications up until 1st October 2006. The holder of a safety case that is accepted in this way will be the holder of a "deemed" safety certificate or safety authorisation valid until 1st October 2008 (Schedule 5 paragraphs 1(a)(ii) and 5 (c)). They would be expected to make a decision on whether to apply for an actual safety certificate/safety authorisation before submitting a revised safety case.

242. Schedule 5 paragraph 3 also allows ORR to continue to assess and determine any material revisions to safety cases under RSCR that are in the pipeline between 10th April 2006 and 1st October 2006.

SCHEDULE 6

Regulation 33

CONSEQUENTIAL AMENDMENTS

Amendment to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995

1 (1) The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 shall be amended as follows.

In regulation 2(1) (interpretation)–

(a) after the definition of “factory” insert–

““guided bus system” has the meaning assigned to it by regulation 2(1) of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;”;

(b) for the definition of “guided transport system” substitute–

““guided transport” has the meaning assigned to it by regulation 2(1) of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;”;

(c) for the definition of “railway” substitute–

““railway” has the meaning assigned to it by regulation 2(1) of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;”;

(d) for the definition of “relevant transport system” substitute–

““relevant transport system” means a railway, a tramway, a trolley vehicle system or any other system using guided transport but does not include a guided bus system or a trolley vehicle system when it operates on a road;” and

(e) for the definition of “tramway” substitute–

““tramway” has the meaning assigned to it by regulation 2(1) of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;”.

Amendment to the Railway Safety (Miscellaneous Provisions) Regulations 1997

2 (1) The Railway Safety (Miscellaneous Provisions) Regulations 1997 shall be amended as follows.

(2) *In regulation 2(1) (interpretation)–*

(a) after the definition of “factory” insert–

““guided bus system” and “guided transport” have the meanings assigned to them by regulation 2(1) of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;”;

(b) omit the definition of “prescribed system of guided transport”;

(c) for the definition of “tramway” substitute–

“tramway” has the meaning assigned to it by regulation 2(1) of the Railways and Other Guided Transport (Safety) Systems Regulations 2006;” and

(d) in the definition of “transport system” for the words before subparagraph (a) substitute-

“transport system” means a railway, a tramway, a trolley vehicle system or any other system using guided transport except that it does not include a guided bus system or any part of any of those systems which-;” and

(e) after the definition of “transport system” insert-

“trolley vehicle system” has the meaning assigned to it by regulation 2(1) of Railways and Other Guided Transport (Safety) Systems Regulations 2006;”.

Amendment to the Railways Safety Regulations 1999

3. (1) *The Railway Safety Regulations 1999 shall be amended as follows.*

(2) In regulation 2 (interpretation)-

(a) in paragraph (1)-

(i) for the definition of “infrastructure controller” substitute-

““infrastructure controller” means a person who controls railway infrastructure;”;

(ii) after the definition of “railway” insert-

““railway infrastructure” means fixed assets used for the operation of a railway including its permanent way and plant used for signalling or exclusively for supplying electricity for operational purposes to the railway, but it does not include a station;”;

(iii) after the definition of “speed restriction” insert-

““station” means a railway passenger station or terminal, but does not include any permanent way or plant used for signalling or exclusively for supplying electricity for operational purposes to the railway;” and

(b) after paragraph (4) add-

“(4A) Any reference in these Regulations to a person who controls railway infrastructure is a reference to a person who-

(a) in the course of a business or other undertaking carried on by him (whether for profit or not);

(b) is in operational control of that infrastructure,

except that where such control is for the time being exercised by a person undertaking maintenance, repair or alteration work on the infrastructure, it is a reference to a person who would be in operational control of the infrastructure if such work were not being undertaken.”.

(3) In paragraph 2 to the Schedule (meaning of railway), for the definition of “tramway” substitute-

““tramway” means a system of transport used wholly or mainly for the carriage of passengers-

- (a) *which employs parallel rails which—*
- (i) *provide support and guidance for vehicles carried on flanged wheels; and*
 - (ii) *are laid wholly or partly along a road or in any other place to which the public has access (including a place to which the public only has access on making payment); and*
- (b) *on any part of which the permitted speed is such as to enable the driver to stop a vehicle in the distance he can see to be clear ahead;”.*

Amendment to the Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003

4. (1) *The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003 shall be amended as follows.*

(2) *In Schedule 4 (subordinate legislation specified for the purposes of section 241(3) (statutory functions) of the Enterprise Act 2002)—*

SCHEDULE 7

Regulation 34

REVOCATION

| <i>(1) Regulations revoked</i> | <i>(2) References</i> | <i>(3) Extent of revocation</i> |
|--|---------------------------|---|
| ROTS | S.I. 1994/157 | The whole Regulations |
| The Railways (Safety Critical Work) Regulations 1994 | S.I. 1994/299 | The whole Regulations |
| The Railways (Safety Case) Regulations 2000 | S.I. 2000/2688 | The whole Regulations |
| The Railway Safety (Miscellaneous Amendments) Regulations 2001 | S.I. 2001/3291 | Regulations 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 |
| The Railways (Safety case) (Amendment) Regulations 2003 | S.I. 2003/579 | The whole Regulations |
| The Cableway Installations Regulations 2004 | S.I. 2004/129 | Regulation 31 |

ANNEX 1

QUESTIONS AND ANSWERS FOR EXISTING SAFETY CASE HOLDERS ON THE TRANSITION ARRANGEMENTS TO THE REGULATIONS

1. I have a safety case under the RSC Regulations – how will this change under the new Regulations?

In general you will need to obtain a safety certificate or safety authorisation by a specified deadline.

However the following are exempted:

- Infrastructure managers and transport undertakings on railways with a maximum line speed of 40 kph or less;
- Transport undertakings where they operate only within an engineering possession;
- Tramways.

From 1st October 2006 the above operators will no longer have to have a safety case. However, they will have other important duties under the Regulations.

Every safety case holder should have received a letter from ORR about the new requirements. This can also be found on ORR's website.

2. How long do I have to obtain a safety certificate or authorisation?

The deadline is different for each transport operator. Generally it is the date on which the next three-year review under RSCR (after 10th April 2006) would have fallen due, or 1st October 2008, whichever is the earlier. However, if the next three-year review would have fallen due before 2nd April 2007 the deadline is 2nd April 2007. Please see the guidance to Schedule 5 for further information.

The deadline for obtaining a safety certificate or safety authorisation is stated in ORR's letter, which was sent to every safety case holder. Understandings should then have been reached about when ORR can expect to receive an application from each safety case holder. If this has not happened in your case, or you are unclear about anything, please contact ORR. Without a safety certificate or safety authorisation, you cannot legally operate after the deadline.

3. Whilst I still have a safety case does anything change?

As in the RSCR, you will still be required to revise the safety case when appropriate, and follow the procedures and arrangements in it. As before, the

safety case should be made available to the public, on request, at a notified address. However, from 1st October 2006 there will be some changes:

- in general, after 1st October 2006 you will no longer be able to obtain ORR agreement to material revisions, or to carry out a three-year review;
- you will need to notify ORR of certain ‘major changes’ to the safety case without delay;
- you should consult safety representatives or other employee representatives when preparing a notice of major changes, and also send a copy to other ‘affected parties’;
- you should not make certain ‘substantial changes’ without first obtaining a safety certificate or safety authorisation under the Regulations.

4. What is a safety certificate?

A safety certificate is held by a transport undertaking (a train or vehicle operator). It is a document issued by ORR, valid for up to 5 years, that permits the transport undertaking to carry out a specified operation or operations. The certificate is divided into Parts A and B. It describes the type and/or extent of the operation and references the evidence on the basis of which it is issued. It certifies ORR’s acceptance that the holder has produced:

- sufficient written evidence that their SMS satisfies the requirements of the Regulations (Part A of the certificate), and
- sufficient written evidence of the provisions adopted to meet the requirements necessary to ensure safe operation (Part B of the certificate).

5. How do I apply?

The transport undertaking will need to send to ORR –

- for Part A of the certificate:
 - a. particulars of the type and extent of the operation;
 - b. particulars of how the safety management system meets the requirements of the Regulations¹.

¹ Alternatively the applicant may submit a copy in English of a safety certificate or authorisation which he already obtained for an “equivalent operation” under the Regulations or equivalent national provisions in another member state. This only applies if the applicant company is exactly the same as the company holding the other Part A; it is not sufficient to be a related company, for example a different subsidiary company within the same Group.

- for Part B of the certificate:
 - a. for mainline applications, information on the TSIs, national safety rules and other safety requirements that are relevant to the operation, and an explanation of how the SMS will ensure compliance with these;
 - b. for non-mainline operations, information on the health and safety legislation relevant to the operation and on the technical specifications and procedures relating to operations and maintenance relevant to safety, and an explanation of how the SMS will ensure compliance with these;
 - c. information on the different types of work carried out and evidence of how the applicant ensures that the work is carried out in accordance with any relevant TSIs and national safety rules (or for non-mainline applications, with health and safety legislation);
 - d. information on the different types of rolling stock used and evidence that they meet any relevant TSIs and national safety rules (or for non-mainline applications, that they meet health and safety legislation).

In the case of an application from a transport undertaking seeking to operate on the **mainline railway**, the application should make clear which evidence applies to Part A and which to Part B. This is because, for a transport undertaking operating on the mainline railway, Part A of the certificate is valid throughout the EU for equivalent operations.

Further information is available in the HMRI Application Guidance Document.

6. What is a safety authorisation?

A safety authorisation is the equivalent of the safety certificate, for infrastructure managers (including station operators). It is a document issued by ORR, valid for up to 5 years, that permits an infrastructure manager to carry on a specified operation or operations. The authorisation specifies the infrastructure (including any stations) to which it relates and references the evidence on the basis of which it is issued. It accepts that the holder has produced:

- sufficient evidence that their SMS satisfies the requirements of the Regulations, and
- sufficient evidence of the provisions adopted to meet the requirements necessary for the safe design, maintenance and operation of the infrastructure.

7. How do I apply?

The infrastructure manager will need to send to ORR particulars of –

- the infrastructure in question;
- how the SMS meets the requirements of the Regulations;
- how the applicant's provisions for meeting the requirements necessary for safe design, maintenance and operation of the infrastructure.

Further information is available in the HMRI Application Guidance Document.

ANNEX 2

THE RAILWAY SAFETY DIRECTIVE

1 In addition to its provisions on safety management, certification and authorisation, which have been implemented by The Railways and Other Guided Transport Systems (Safety) Regulations 2006 Part 2, the Railway Safety Directive (RSD) contains a number of provisions on the future harmonisation of railway safety regulation throughout the EU.

2 Articles 5-7 put in place mechanisms for the EC to develop, with the technical assistance of the ERA -

- Common Safety Indicators (CSIs), on such subjects as signals passed at danger and broken rails;
- Common Safety Methods (CSMs), for example those methods used for risk assessment and evaluation; and
- Common Safety Targets (CSTs) which will “define the safety levels that must be reached by different parts of the railway system and by the system as a whole in each Member State”, expressed in terms of risk acceptance criteria for both individual and societal risk (Article 7.4). Member states will have to make any necessary amendments to national safety rules to achieve the CSTs (Article 7.6).

3 Data for CSIs is to be provided by each safety authority (in the case of the UK, ORR) in annual reports to the ERA, on the basis of reports from transport operators. The reports will be based on a calendar year with the first report due from transport operators by 30th June 2007 (covering the period from 10th April 2006 – 31st December 2006. ORR will then provide aggregated data to ERA. The common safety indicators are in Annex 1 of RSD, and are reproduced in Schedule 3 of the Regulations. National definitions of the indicators and cost calculation methods may be used (RSD Annex I paragraph (6)). By 2009 the CSIs will have been revised to include common definitions and cost calculation methods applicable throughout the EU. The relevant provisions in RSD are Articles 5, 9.4 and Annex 1.

4 RSD provides for the introduction of an initial set of CSMs by 2007, covering common risk evaluation and assessment methods. A revised set, to be introduced by 2009, will also cover methods for assessing conformity with the requirements of safety certificates and safety authorisations and methods for checking compliance with the essential safety requirements of interoperability Directives where no relevant TSIs are in force (Article 6).

5 CSTs will also be introduced in two stages: an initial set in 2008 (which will be based on an examination of existing national targets and will ensure that the current safety performance of the railway system is not reduced in any Member State) followed by a second set by 2010 which will reflect priority

areas. The RSD requires Member States to make necessary amendments to 'national safety rules' (see below) to achieve at least the CSTs, but requires them to at least maintain existing safety standards. They may introduce rules requiring safety levels that exceed the CSTs provided there is no disguised market restriction and certain notification and consultation requirements are followed. Operators' safety management systems must ensure that the CSTs can be achieved and that relevant parts of CSMs are applied (Article 7 and 9.1).

6 Article 8 contains provisions on 'national safety rules', defined in Article 3 as all rules containing railway safety requirements imposed at member state level and applicable to more than one undertaking. National safety rules are seen as a potential barrier to access to the European railway system. Member states were required to notify their existing national safety rules to the EC by 29 April 2005. Examples of the rules that are required to be notified are listed in Annex II to RSD and include common operating rules that are not yet covered by TSIs. The UK has notified the current national safety rules in Britain². Article 8 also requires member states to notify any new or amended national safety rules. To help prevent new barriers and in a drive to achieve standardisation, the EC has been given the task of monitoring the introduction of new national safety rules. Provision is made for the EC to take action if a draft new rule is incompatible with CSMs or with achieving the CSTs, or is a disguised restriction on rail transport operations between member states.

7 RSD also puts in place a process for achieving further harmonisation. The ERA will make recommendations to the EC for migrating towards a common EU-wide safety certificate within five years (Article 10.7), and also recommendations on common harmonised requirements and a common format for application guidance documents (Article 15.2). The EC is to make decisions on common harmonised requirements for the Part B certificate within five years (Article 15.1).

8 The RSD also covers a number of other issues, including access to training facilities (Article 13) and cross-border acceptance of rolling stock not covered by TSIs (Article 14). Article 13 is implemented by 'The Railways (Access to Training Facilities) Regulations 2006' also due to come into force on 10th April 2006. The implementation of Article 14 is still under discussion within the EC. Provisions on establishing independent accident investigation bodies have already been implemented in the UK by The Railways (Accident Investigation and Reporting) Regulations 2005.

9 Articles 16 and 17 specify the tasks of the safety authority, including its supervision and monitoring functions; and decision-making principles including that it needs to act in an open, non-discriminatory way, allow all parties to be heard and give reasons for its decisions.

Links to interoperability directives

² <http://www.rail-reg.gov.uk>

10 RSD is linked to EU Interoperability Directives³, which were implemented in the UK on 2nd April 2006. They are primarily ‘single market’ as well as safety directives. They provide for the introduction of TSIs, agreed at European level, with which the different “subsystems” of the interoperable railway - infrastructure, rolling stock, signalling, etc – will need to comply.

11 The need for separate safety provisions for the interoperable railway is recognised in Recital 7 to RSD:

“Requirements on safety of the subsystems of the trans-European rail networks are laid down in Directive 96/48/EC and Directive 2001/16/EC. However, those Directives do not define common requirements at system level and do not deal in detail with the regulation, management and supervision of safety. When minimum safety levels of the subsystems are defined by technical specifications for interoperability (TSIs) it will be increasingly important to establish safety targets at the system level as well”.

Accordingly, RSD was introduced in order to address the safety of the interoperable railway system as a whole, and its management and operation (Article 2.1).

12 The interoperable railway is wide in scope. Under Article 2.2 of the amending Interoperability Directive 2004/50/EC, interoperability provisions will be progressively extended to all railways except for “infrastructure and rolling stock reserved for a strictly local, historical or touristic use or infrastructure which is functionally isolated from the rest of the rail system”. Similarly, Article 2 of RSD makes clear that member states may exclude the following from its implementing measures:

- metros, tramways and other light rail systems;
- networks that are functionally separate from the rest of the railway system, as well as transport undertakings operating solely on these networks; and
- privately owned railway infrastructure that exists solely for use by the infrastructure owner for its own freight operations.

13 The definition of ‘mainline railway’ in the Regulations is consistent with the wide scope of the Interoperability Regulations.

³ High Speed Directive (96/48/EC), the Conventional Directive (2001/16/EC) and the ‘amendment’ Directive 2004/50/EC) which made changes to the High Speed and Conventional Directives.

ANNEX 3

COMPETENCE AND SAFETY VERIFICATION GUIDELINES

Competent Person

1. A Competent Person is responsible for undertaking the safety verification on behalf of the transport operator (known as the 'responsible person').

2. A competent person is defined as:

"a person with sufficient practical and theoretical knowledge as well as experience of the particular task, plant, machine, procedure, equipment (etc) involved to enable them to thoroughly examine and identify any defects or weaknesses during examinations, and to assess their importance in relation to the safety, function and continued use of the plant, machine, procedure, (etc again) and to be aware of their own particular limitations with regard to the task to be undertaken."

Competence

3. A competent person should have:

- Demonstrable auditable qualifications, for example, BSc/ Chartered Engineer;
- Experience in industry in the type of work and workplace where they are to be deemed competent;
- Knowledge of, for example, the vehicle acceptance process (rolling stock) or participation in system renewal panels (signalling);
- Knowledge of applying regulatory process –
 - a. standards compliance;
 - b. what evidence is required to be presented;
- Knowledge of up to date best practice;
- An awareness of their limitations.

Independence

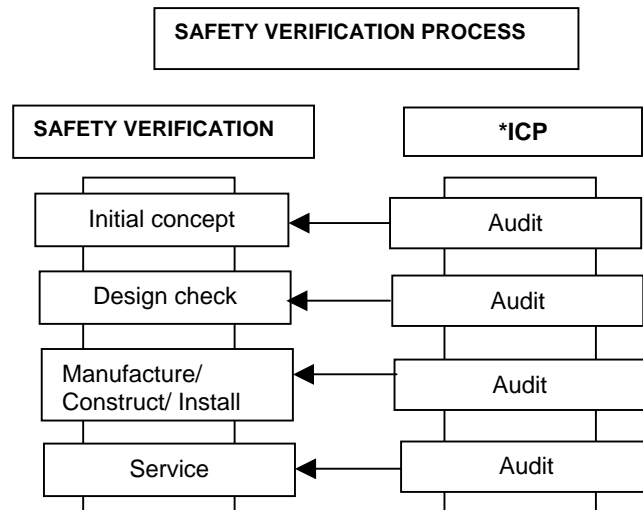
4. To be independent a competent person should have;

- No conflict of interest;

- The ability to demonstrate impartiality e.g. if an independent competent person is 'in house' (second party), they are not part of the design team and they report only to senior management.

5. It is essential that the competent person is sufficiently independent and impartial to allow objective decisions to be made. This does not mean that competent persons need to be employed from an external company (third party). If employers and others within their own company have the necessary competence they can use it. However, if they do, they will need to ensure that their 'in house' or second party examiners have the genuine authority and independence to ensure that examinations are properly carried out and that the necessary recommendations arising from them are made without 'fear or favour'.

The diagram below outlines the process for safety verification.



* Independent Competent Person

ANNEX 4

EXAMPLES OF SIGNIFICANT RISK PROJECTS

1. Significant risk projects are likely to have one or more combinations of the following parameters:

- Technically complex or novel systems
- Where the technology is to be used at its operational limits.
- Areas where standards are inadequate, incomplete or silent.
- Interfaces with other systems
- Location and environment (e.g. a signal located in an area of difficult visibility)

2. Other issues to take into account when considering significant risk include:

- Compliance with standards and their interpretation (particularly those that are goal setting)
- Non compliance and deviations from standards

Note these examples are guidelines only; just because a new or upgraded project is not included this does not mean that it will not require safety verification. The duty holders risk identification criteria will need to establish this.

Examples of significant risk signalling projects

- Remodelling/renewal schemes that have the potential to cause a serious derailment or head on collision and the likelihood of that occurring.
- Line speed enhancements, which will considerably increase capacity.
- Remodelling/renewal schemes that include a substantial number and different type of junctions and cross-overs.
- Projects on bi-directional lines.
- Projects on lines with SPAD risks particularly on those lines with no TPWS.
- Electrification blockades.

Examples of significant risk station projects

3. All large station projects that have any of the following parameters:

- More than two platform faces.
- Buildings have more than one level.
- Sub surface or high-level platforms.
- Installation of Automatic Ticket Gates (ATGs) where passenger flows exceed 750 per 5 minute period.
- Significant changes in signalling arrangements/layout.
- New Selective Door Opening (SDO) use.

Examples of significant risk energy projects

- Line electrification enhancement, which would lead to an increase in capacity.
- New Overhead Line Equipment (OLE) fitment to replace an existing third rail.
- Major upgrade to OLE works, plant or equipment.
- Major upgrade to the nature or extent of conductor rail installations where the public has access.

Examples of significant risk infrastructure projects

4. All bridge projects that have the following parameters:

- More than 3 spans.
 - Over 70 metres.
 - Of novel construction
- Renewal/upgrade of track, which includes a number and type of junctions and cross-overs.
 - New design of points.
 - Track realignments near tunnels or crossings.
 - Plain line and crossover renewals using novel track fixings and supports.

Examples of significant risk rolling stock projects

- Tilting trains i.e. pendolino – unproven technology in this country.
- SDO - controlling train and door systems using established commercial satellite technology when used in a novel way.
- Use of new materials in fixtures and fittings or body structure.

Other significant risk matters

- Crashworthiness - structural zones e.g. passengers travelling in lead vehicles when speed over 100mph.
- Systems integration i.e. where safety critical functions are controlled by equipment from more than one manufacturer.
- Brakes.
- Evacuation strategy.

ANNEX 5

GENERAL NOTICES

Initial General Notice

Approval will not be required for maintenance and repair of existing works, plant or equipment. The replacement of components with approved components of a similar or higher specification than those being replaced with no change in operating characteristics of the system shall constitute maintenance and will not require Approval. No maintenance or repair work should infringe upon standards of safety. The Secretary of State gave general notice, the text of which is set out below, that certain works, plant and equipment would not be required to be submitted for Approval.

General Notice

The Secretary of State, pursuant to Regulation 10(1)(b) of the above mentioned Regulations, hereby gives general notice that he has determined that the requirement to comply with regulation 4 of the Regulations (obligation to obtain Approval to the bringing into use of new or altered works, plant or equipment) may be dispensed with in respect of the works, plant and equipment described in the first column of the Schedule hereto subject to the conditions (if any) respectively appearing opposite each such description in the second column thereof.

This notice is to come into effect on 5 April 1994.

Signed

J DENNING

Assistant Secretary, Department of Transport

SCHEDULE

| (1) | (2) |
|--|---|
| <i>Description of works, plant and Equipment</i> | <i>Conditions to which made subject</i> |
| <i>General</i> 1 Works, plant and equipment located away from the path of vehicles using the relevant transport system concerned, but excluding signalling or other control works, plant or equipment necessary for the safe operation of the system, irrespective of location. | The intended location of the works, plant or equipment is to be sufficiently distant from such paths as to ensure that their installation and presence thereafter does not jeopardise the safe operation of the system. |
| 2 Private sidings and other lines not used for the conveyance of passengers within the curtilage of premises other than those forming part of the undertaking of the relevant transport system concerned, but excluding those crossed by a public right of way (whether or not on the same level). | |

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- 3 Minor improvements to works, plant or equipment (other than vehicles), including-
- Improved lineside fencing; improved station lighting; and station concourse or platform resurfacing.
- 4 Removal or discontinuance of any works, plant or equipment.
- 5 Temporary track, signalling or bridge works not in place for more than 6 months and excluding any which are extensive or novel in character.
- Permanent way*
- 6 Minor trackwork schemes designed to facilitate improved running, including –
Installation of trailing connections; and
relocation of facing crossovers,
other than those laid in a street.
- 7 Track realignments not requiring specific statutory authority, but excluding any located at or near to a bridge, tunnel, level crossing or station.
- 8 Alterations to works, plant or equipment to enable the speed of operation of vehicles using any section of railway to be increased by not more than one third of the permitted line speed for that section at the date on which this notice comes into effect, except –
where the section passes through a station or tunnel or crosses a public level crossing;
or
where the existing line speed for the section is the subject of a relevant operational limitation.
- 9 Works to stabilise embankments and cuttings.
- Signalling*
- 10 The repositioning of any signal to facilitate improved sighting.
- 11 Minor track alterations.
- 12 The erection of additional signal supporting structures.
- The work when carried out is not to result in any reduction of standards of safety.
- The work when carried out is not to result in any change in the method of using or operating any remaining works, plant or equipment.
- The work when carried out is not to result in any alteration to signalling controls.
- The work when carried out is to continue to meet safety standards in respect of any existing cess or safe walking route.
- Where the speed of operation is increased on more than one occasion, the aggregate of all such increases is not to exceed one third of the permitted line speed at the date referred to in column (1). The speed of operation is in no circumstances to exceed 125 miles per hour.
- The work when carried out is not to result in any reduction of structure gauge or in the width of any existing cess or safe walking route.
- The work when carried out is not to result in any alteration to signalling controls or give rise to need to vary safe braking distances or overlaps.
- The work when carried out is not to result in any alteration to the signalling arrangements and full clearances are to be provided.

The Railways and Other Guided Transport Systems (Safety) Regulations 2006 -
Guidance on Regulations

13 Replacement of any existing signalling equipment with equipment of a different type.

The new equipment must have received type Approval or be of a type which is in general use and which can be demonstrated to be no less safe in operation: provided in either case that no change of operating characteristics is to be involved.

Stations and other stopping places

14 The erection of simple shelters at stations and other stopping places.

15 The provision of station furniture, including seats, ticket machines and similar equipment on platforms or equivalent equipment at other stopping places.

The furniture must not materially prevent or impede the movement of persons.

16 The heating, lighting or ventilation of stations, except where such systems are essential for emergency evacuation or to support life.

17 The provision of temporary means of access or egress (including by means of a footbridge) and the erection of temporary barriers.

The work is not materially to impair existing safety standards at the location concerned.

Bridges

18 Minor reconstruction of any part of a bridge, but excluding any reconstruction of a station footbridge.

The work is not to involve any significant change of design or any reduction of structure gauge. All reconstructed parts (including parapets) are to comply with safety standards laid down by any of the bodies specified in regulation 8(1)(a) or (b) of the above-mentioned Regulations and current at the time that the work is carried out.

Level crossings

19 Alterations the subject of a statutory order to any level crossing.

The work is not to involve any consequential alterations to track or signalling.

20 Level crossings for the sole use of employees of the relevant transport system.

Electrical

21 Power and transmission plant and equipment.

The plant or equipment is to comply with safety standards laid down by any of the bodies specified in regulation 8(1)(a) or (b) of the abovementioned Regulations and current at the time that the work is carried out.

22 The erection of additional overhead line supporting structures.

The work when carried out is not to result in any alteration to the electricity supply arrangements and full clearances are to be provided.

23 Minor alterations to overhead electrical line works, plant or equipment.

24 Minor alterations to the nature or extent of conductor rail installations but excluding such alterations at locations to which the public has access.

The Railways and Other Guided Transport Systems (Safety) Regulations 2006 -
Guidance on Regulations

Rail-mounted vehicles

25 Production models of a vehicle for which type Approval of its prototype has been given.

The vehicles are to conform in all significant respects with the prototype and with any relevant operational limitation to which Approval of the prototype has been made subject.

26 Vehicles which do not operate at a time when the relevant transport system concerned is open to normal traffic.

The vehicles are not to operate on any part of a relevant system which is installed along a street.

27 Alterations to vehicles of the following character –
decorative changes, other than external front-end colour where this has been made a specific requirement;

changes to panelling, upholstery or other materials;

The new panelling or material is to be of a standard no less safe than that which it is to replace.

changes to interior lighting or to public address equipment; and

The work when carried out is not to result in any reduction of standards of safety.

other minor modifications which do not materially affect safety.

28 Changes to components or subassemblies forming part of the equipment of a vehicle.

The components or sub-assemblies are to comply with the standards of any of the bodies specified in regulation 8(1)(a) or (b) of the abovementioned Regulations current at the time that the work is carried out and are not to reduce the standard of safety of the system of which the components or sub-assemblies form part.

Other plant and equipment

29 Production models of plant or equipment for which type Approval of its prototype has been given.

The plant or equipment is to conform in all significant respects with the prototype and with any relevant operational limitation to which Approval of the prototype has been made subject.

30 Non-rail-mounted plant or equipment for use in the maintenance of a relevant transport system.

31 Telecommunications plant or equipment not essential to the safe operation of the relevant transport system concerned.

32 Components and subassemblies for plant and equipment

The components or sub-assemblies are to comply with the standards of any of the bodies specified in regulation 8(1)(a) or (b) of the abovementioned Regulations and current at the time that the work is carried out.

APPENDIX 1B – SUPPLEMENTARY GENERAL NOTICE
EFFECTIVE DATE 1 JUNE 2000

The Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994

General notice

1 The Health and Safety Executive, pursuant to regulation 10(1)(b) of the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994,^(a) (as amended) ('the Regulations'), hereby gives general notice that it has determined that the requirement to comply with regulation 4 of the Regulations (obligation to obtain Approval to the bringing into use of new or altered works, plant or equipment) may be dispensed with in respect of the works, referred to in paragraph 2 and subject to the conditions set out in paragraph 3.

2 The works referred to in paragraph 1 are:

Works, plant and equipment installed for the purpose of bringing into service a train protection system required by the Railway Safety Regulations 1999.^(b)

3 The conditions referred to in paragraph 1 are:

I. The works shall be implemented in accordance with a programme approved by the Health and Safety Executive pursuant to regulation 3(2) of the Railway Safety Regulations 1999.

II. Each part of the system which has been brought into service under the programme referred to in sub-paragraph (i) is maintained in service.

III. Any equipment forming part of the train protection system referred to in sub-paragraph (i) shall be of a type approved by the Health and Safety Executive under regulation 6 (type Approval of plant and equipment) of the Regulations.

IV. With regard to rolling stock, a Certificate of Compliance in accordance with Appendix 3 of the Regulations is to be submitted to the Health and Safety Executive for each vehicle type fitted. A Certificate of Completion for each vehicle type shall also be submitted in due course.

4 The notice shall come into effect on the date of signature.

Signed David Sawyer Date 1 June 2000

A person authorised by
the Health and Safety Executive
to act on its behalf.

(a) S.I. 1994/157; amended by S.I. 1997/553

(b) S.I. 1999/2244

**APPENDIX 1C – SUPPLEMENTARY GENERAL NOTICE
EFFECTIVE DATE 22 DECEMBER 2003**

The Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994

The Health and Safety Executive has given a general notice, the text of which is set out below, that certain works, plant and equipment would not be required to be submitted for Approval.

General notice

The Health and Safety Executive, pursuant to regulation 10(1)(b) of the above mentioned Regulations, hereby gives general notice that they have determined that the requirement to comply with regulation 4 of the Regulations (obligation to obtain Approval to the bringing into use of new or altered works, plant or equipment) may be dispensed with in respect of the works, plant and equipment described in the first column of the Schedule hereto subject to the conditions (if any) respectively appearing opposite each such description in the second column thereof.

This notice is to be read in conjunction with the general notice issued by the Secretary of State on 10 February 1994.

This notice is to come into effect on 22 December 2003.

Signed SAC Williams Date 12 December 2003

A person authorised by
the Health and Safety Executive
to act on its behalf.

SCHEDULE

| (1) | (2) |
|--|---|
| <i>Description of works, plant and equipment</i> | <i>Conditions to which made subject</i> |
| <i>Stations and other stopping places</i> 1 The lengthening of platforms at an existing station. | The work is not to involve any change in signal sighting, location or controls or give rise to the need to vary safe braking distances or overlaps. |
| 2 New or altered lifts or escalators providing access to or within a station. | The work is not to involve lifts or escalators at a station that would be covered by regulation 12 of the Fire Precautions (Sub Surface Railway Stations) Regulations 1989. |
| 3 The provision of equipment for the dissemination of passenger information, or the installation of closed circuit television (CCTV) systems or equipment. | The location of equipment must not cause an obstruction (which could adversely affect safety) either in its own right or as a result of predictable passenger queuing to obtain the information. The works are not to include systems that are used for the dissemination of emergency or safety information to staff or passengers, this includes CCTV systems used for train dispatch or station safety. |

The Railways and Other Guided Transport Systems (Safety) Regulations 2006 -
Guidance on Regulations

4 The installation of automatic ticket gate equipment.

The work is not to involve:

- any equipment not previously approved or agreed with the Inspectorate;
- any scheme where total bi-directional peak passenger flows for the station exceed 750 per 5 minute period;
- any installation at a station covered by regulation 12 of the Fire Precautions (Sub Surface Railway Stations) Regulations 1989; and
- proposals for any form of remotely monitored or unstaffed gateline operation.

The work is to conform to relevant national or international standards.

Bridges

5 Minor reconstruction of any part of a footbridge, at a station or elsewhere, excluding those constructed over railways electrified with overhead line equipment.

The work is not to involve any significant change of design or any reduction of structure gauge. All reconstructed parts (including parapets) are to comply with safety standards laid down by any of the bodies specified in regulation 8(1)(a) or (b) of the above-mentioned Regulations and current at the time that the work is carried out.

6 Installation of train data recorders or on-train maintenance recorders to existing vehicles.

- The OTMR must not compromise any vital train control system.
- The installation must not directly or indirectly affect vehicle integrity.
- The equipment must not cause distraction to the driver.

APPENDIX 1D – SUPPLEMENTARY GENERAL NOTICE
EFFECTIVE DATE 2 DECEMBER 2003

The Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994 (SI 1994/157 amended by SI 1997/553)

General notice

1. The Health and Safety Executive ('the Executive'), pursuant to regulation 10(1)(b) of the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994 ('ROTS'), hereby gives general notice that subject to paragraph 5 it has determined that the requirement to comply with regulation 4 of ROTs may be dispensed with in respect of the works described in paragraph 4 subject to the conditions set out in paragraph 6.

2. This notice should be read in conjunction with the General Notice given by the Executive on 1 June 2000 pursuant to regulation 10(1)(b) of ROTs in respect of works, plant and equipment installed for the purpose of bringing into service a train protection system required by the Safety Regulations ('the 2000 General Notice').

3. In this general notice –

'fitted rolling stock' means rolling stock in which has been installed works, plant and equipment for the purpose of bringing into service TPWS or TPWS+;

'the HSI Regulations' means the Railways (Interoperability)(High-Speed) Regulations 2002 (SI 2002/1166);

'Network Rail' means Network Rail Infrastructure Limited whose registered office is at 40 Melton Street London NW1 2EE;

'overspeed sensor' means an arming loop followed by a trigger loop fitted to the track at a set distance before a signal according to speed and gradient;

'railway' has the meaning it has in the Schedule to the Safety Regulations;

'the Safety Regulations' means the Railway Safety Regulations 1999 (SI 1999/2244);

'stop signal' has the same meaning as it has in the Safety Regulations;

'TPWS' means a train protection and warning system;

'TPWS+' means a train protection and warning system which has been enhanced to provide protection for trains operating at higher speeds by the fitment of additional overspeed sensors;

'train' has the meaning it has in s83(1) of the Railways Act 1993;

'train protection and warning system' means equipment which causes the brakes of a train to apply automatically if the train:

- (a) passes without authority a stop signal such passing of which could cause the train to collide with another train, or
- (b) travels at such speed as could cause the train to collide with another train or derail from track which forms part of a railway.

4. Subject to paragraph 5, the works referred to in paragraph 1 are:

- (a) the works, plant and equipment installed for the purpose of bringing into service TPWS; and
- (b) the works, plant and equipment installed for the purpose of bringing into service TPWS+.

5. The works, plant and equipment described in paragraph 4 shall not include the works, plant and equipment referred to in paragraph 1 of the 2000 General Notice.

6. The conditions referred to in paragraph 1 are:

The Railways and Other Guided Transport Systems (Safety) Regulations 2006 -
Guidance on Regulations

the works, plant and equipment referred to in paragraph 4(b) shall be installed in accordance with technical principles proposed by Network Rail and accepted in writing by the Executive;

either:

- (a) the works, plant and equipment referred to in paragraph 4 shall be of a type approved by the Executive under regulation 6 of ROTS; or
- (b) the works, plant and equipment referred to in paragraph 4 are subject to the requirements of regulations 11 to 17 of the HSI Regulations;

in respect of fitted rolling stock, and before such fitted rolling stock is brought into use, there shall be submitted to the Executive either:

- (a) a certificate of conformity in the form set out in Schedule 3 to ROTS given by the manufacturer of the fitted rolling stock in question pursuant to regulation 7(2) of ROTS; or
- (b) where the rolling stock is the first of rolling stock of the same standards and specifications to be so fitted and placed in service, a technical file within the meaning of the HSI Regulations.

7. This notice shall come into effect on the date of signature.

Signed SAC Williams Date 2 December 2003

A person authorised by the Executive to act on its behalf.

APPENDIX 1E – SUPPLEMENTARY GENERAL NOTICE
EFFECTIVE DATE AS AT THE DATE OF SIGNATURE

Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994 (“ROTS”)

The Health and Safety Executive (“the Executive”) has given general notice, the text of which is set out below, that certain works, plant and equipment will not be required to be submitted for approval.

General Notice

The Executive, pursuant to regulation 10(1)(b) of ROTs, hereby gives general notice that it has determined that the requirement to comply with Regulation 4 of ROTs (obligation to obtain approval prior to the bringing into use of new or altered works, plant or equipment) may be dispensed with in respect of the works, plant and equipment described in the first column of the Schedule hereto subject to the conditions (if any) respectively appearing opposite each such description in the second column thereof.

This notice is to be read in conjunction with the general notice issued by the Secretary of State on 10 February 1994, and the general notices issued by the Executive on 1 June 2000, 2 December 2003 and 12 December 2003.

This notice is to come into effect on the date of signature.

Signed D Hill Date: 28 February 2005

A person authorised by the Executive
to act on its behalf.

SCHEDULE

| <i>Description of works, plant and equipment</i> (1) | <i>Conditions to which made subject</i> (2) |
|---|---|
| General | |
| 1. All altered works that can be classed as renewals, to include like for like or replacement with a functionally equivalent alternative (not including altered works specifically covered by the following paragraphs) | There must be no change in the safe operation of the works, plant or equipment, or any change to the interface with other systems and/or equipment. |
| <i>Infrastructure (including Permanent Way and Bridges)</i> | |
| 2. All minor alterations to track layout, other than the replacement of a double junction with a single-lead junction, or the removal of trap points or reduction of flank protection. | |
| 3. All plain line and crossover renewals that do not use novel track fixings and supports. | The works when carried out should not result in the reduction of current clearances. See 12 for signalling conditions. |
| 4. Reconstruction and stabilisation of coastal, sea, river and estuarial defences. | |
| (1) | (2) |
| 5. All line side fencing. | |

The Railways and Other Guided Transport Systems (Safety) Regulations 2006 -
Guidance on Regulations

6. Installation and renewal of trackside walkways. Structure gauge clearances must be maintained.

7. All new and altered bridges of 70m or less in total length and/or less than 4 spans, and/or those not of novel design.

8. Undertrack crossings having a diameter of less than one metre (any crossing more than one metre will be considered a bridge).

9. All drainage schemes.

10. Line side signage works except those associated with other works, plant or equipment for which approval is required.

Signalling (including Telecommunications)

11. Any signalling work associated with paragraph 2 above.

12. All signalling alterations associated with renewal/repositioning of Switches & Crossings (S&C), but excluding any signalling project which involves remodelling.

Provided there are no material changes to the signalling controls or overrun distance.

13. Provision of Automatic Warning System (AWS).

14. All SPAD mitigation works.

Provided that no additional signalling works are being carried out at the same time.

Stations /Other stopping places

15. Construction of new stations of no more than two platform faces, with single storey buildings, no adjacent level crossings and, where overhead line equipment (OLE) is present, no canopy or footbridge. Excluding sub surface stations or stations with elevated platforms. Does not include works that permanently affect signal sighting or train door operation.

Clearances on footbridges must be maintained or improved. All works on existing stations including the renewal of footbridges, re-gauging or alignment of platforms to meet current boarding and alighting requirements.

Energy (including Electrical)

16. All new power distribution works including sub stations, feeder stations, switching stations and track paralleling huts.

17. All asset replacement of oil-filled switchgear (Air Insulated Switchgear (AIS) or Gas Insulated Switchgear (GIS)) with SF6, vacuum interrupters, or modern equivalent form.

Rolling Stock (including Rail-mounted Vehicles)

The Railways and Other Guided Transport Systems (Safety) Regulations 2006 -
Guidance on Regulations

- | | |
|--|---|
| 18. All renewals and upgrades of vehicle subsystems provided that the interfaces, functionality, and transfer functions of control systems remain the same. | Performance of the subsystem must not be reduced. Performance of the vehicle must not be materially altered and equivalent levels of safety must be maintained. |
| 19. All internal cosmetic vehicle refurbishments using modern equivalent materials. | All materials must be to the latest fire specifications. |
| 20. Any freight vehicles that are registered by International Union of Railways (U.I.C.) or Regulations governing the exchange of International Railway Wagons (R.I.V.) standards. | The vehicles must not have been modified since being registered to these standards. |

SUPPLEMENTARY GENERAL NOTICE

EFFECTIVE DATE AS AT THE DATE OF SIGNATURE

Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994 (“the Regulations”)

The Health and Safety Executive (“the Executive”) has given general notice, the text of which is set out below, that certain works, plant and equipment will not be required to be submitted for approval.

General Notice

The Executive, pursuant to regulation 10(1)(b) of the Regulations, hereby gives general notice that it has determined that the requirement to comply with Regulation 4 of the Regulations (requirement for approval prior to the bringing into use of new or altered works, plant or equipment) may be dispensed with in respect of the works, plant and equipment described in the Schedule hereto.

This notice is to be read in conjunction with the general notice issued by the Secretary of State on 10 February 1994, and the general notices issued by the Executive on 1 June 2000, 2 December 2003, 12 December 2003 and 28 February 2005.

This notice is to come into effect on the date of signature.

Signed David Morris

Date: 27 January 2006

A person authorised by the Executive to act on its behalf.

SCHEDULE

Description of works, plant and equipment

Guided Transport

1. All systems of road based guided transport which are -
road-based with cable guidance;
road-based with rail guidance; or
road-based with side guidance.

“road-based with cable guidance” means a mode in which the vehicles are –
a) capable of operating on a road; and
b) guided wholly or mainly by means of a cable, wire or other device which is not in direct physical contact with the vehicles;

“road-based with rail guidance” means a mode in which the vehicles are –
a) capable of operating on a road; and
b) guided wholly or mainly by means of a single rail or slot;

“road-based with side guidance” means a mode in which the vehicles are –
a) capable of operating on a road; and
b) guided wholly or mainly by means of wheels bearing outwards against fixed apparatus.

2. References to “mode” are to be construed as a mode of guided transport which employs vehicles used wholly or mainly for the carriage of passengers and “road” has the same meaning as in the Road Traffic Regulation Act 1984^(a)

(a) 1984 c.27.