Foreword

This Safety Legislation Update has been compiled by RSSB following consideration by the Railway Safety Legislation Committee. Its aim is to identify emerging and revised health and safety legislation and supporting documents, which may affect the members of the railway industry. The update is not a definitive list of legislation and only represents the knowledge available at the time of going to print. The update is revised quarterly.

How to use this update

The Legislation implementation and update status table

This provides details on the proposed implementation dates of the updated/new legislation contained in this update together with a column showing whether the entry has been updated or is new to this issue.

Entries and updates

- New entries to the update are identified as such in their titles;
- Significant changes to entries since the previous issue have been identified with a 15% shading;
- Each entry is dated at the end with the month that the entry was last updated; and
- Entries in the update are deleted once they become law.

Railway Safety Legislation Update – Governance

The Data and Risk Strategy Group (DRSG) is the governance group for the Railway Safety Legislation Update. The DRSG will:

- Alert RSSB members to actual and potential changes to safety related legislation likely to impact on their operations or business;
- Seek to influence and respond in such a way as to ensure that RSSB member interests are recognised, promoted and protected;
- Disseminate early indications and subsequent information regarding legislative proposals concerning operational or occupational safety or the management/reporting thereof. This includes European, UK national and rail industry specific legislation;
- Identify and consider the implications of such proposals for the UK rail industry Inform and/or review RSSB activity in promoting/protecting its members’ interests in seeking to influence and/or responding to such proposals. This may include preparing and making available to members template responses to formal consultations;
- Where appropriate set up working parties or authorise the engagement of specialists to assist in meeting the above objectives; and
- Approve the text of the quarterly Safety Legislation Update.

1. The position adopted by RSSB will be in the interests of overall safety in the industry but should not be seen as necessarily representing the views of all individual members
Contents

Foreword 2

How to use this update
Railway Safety Legislation Update – Governance 2

Contents 3

Abbreviations and acronyms 4

Related websites 5

Legislation Implementation and update status 6

Consultation on Health and safety offences, corporate manslaughter and food safety and hygiene offences guidelines 6

Section 1. Railway Specific Legislation – 7

Common Safety Method on Risk Evaluation and Assessment 10
Common Safety Methods for Conformity Assessment, Monitoring and Supervision 12
The Fourth Railway Package 15
EC Regulation EU/445/2011 (The Entities in Charge of Maintenance Regulation) 18
Train Driving Licences and Certificates Regulations 2010 and changes to the Train Driving Licences Directive 20

Section 2. General Legislation 25

CD241 - Proposal to review HSE’s Approved Codes of Practice (ACOPs) 26
CD261 - Proposal to replace the Construction (Design and Management) Regulations 2007 and withdraw the associated ACOP L144 28
CD273 – Consultation on proposals to exempt certain self-employed persons from section 3(2) of the Health and Safety at Work etc Act 1974 except those undertaking activities on a prescribed list 29

Section 3. Other railway related consultations 30

Consultation on the proposal to withdraw the Railway Safety (Miscellaneous Provisions) Regulations 1997, Railway Safety Regulations 1999 and Railway Safety (Miscellaneous Amendments) Regulations 2001 30
Consultation on EC Regulation 1371/2007 Rail Passengers’ Rights and Obligations 31
Triennial review of the Industrial Injuries Advisory Council: Call for evidence NEW 32
Consultation on Health and safety offences, corporate manslaughter and food safety and hygiene offences guidelines - NEW 33

Section 4. News 34

News 34
Key Dates for impending Regulations 36
Court Cases 36
## Abbreviations and acronyms

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACOP</td>
<td>Approved Code of Practice</td>
</tr>
<tr>
<td>ACHS</td>
<td>Advisory Committee on Safety and Health at Work</td>
</tr>
<tr>
<td>ATOC</td>
<td>Association of Train Operating Companies</td>
</tr>
<tr>
<td>CER</td>
<td>Community of European Railways</td>
</tr>
<tr>
<td>CSI</td>
<td>Common Safety Indicator</td>
</tr>
<tr>
<td>CSM</td>
<td>Common Safety Method</td>
</tr>
<tr>
<td>CST</td>
<td>Common Safety Target</td>
</tr>
<tr>
<td>DfT</td>
<td>Department for Transport</td>
</tr>
<tr>
<td>DRSG</td>
<td>Data Risk Strategy Group</td>
</tr>
<tr>
<td>ECM</td>
<td>Entity in Charge of Maintenance</td>
</tr>
<tr>
<td>EMF</td>
<td>Electro-Magnetic Fields</td>
</tr>
<tr>
<td>ERA</td>
<td>European Railway Agency</td>
</tr>
<tr>
<td>HSE</td>
<td>Health and Safety Executive</td>
</tr>
<tr>
<td>HSWA</td>
<td>Health and Safety at Work Act</td>
</tr>
<tr>
<td>IAB</td>
<td>Impact Assessment Board</td>
</tr>
<tr>
<td>ICNIRP</td>
<td>International Commission on Non-Ionising Radiation Protection</td>
</tr>
<tr>
<td>IM</td>
<td>Infrastructure Manager</td>
</tr>
<tr>
<td>MoJ</td>
<td>Ministry of Justice</td>
</tr>
<tr>
<td>NSA</td>
<td>National Safety Authority</td>
</tr>
<tr>
<td>NSR</td>
<td>National Safety Rule</td>
</tr>
<tr>
<td>NRV</td>
<td>National Reference Value</td>
</tr>
<tr>
<td>NTR</td>
<td>National Technical Rule</td>
</tr>
<tr>
<td>ORR</td>
<td>Office of Rail Regulation</td>
</tr>
<tr>
<td>RE&amp;A</td>
<td>Risk Evaluation and Assessment</td>
</tr>
<tr>
<td>RIDDOR</td>
<td>Reporting of injuries, diseases and dangerous occurrences Regulations 1995</td>
</tr>
<tr>
<td>RISC</td>
<td>Railway Interoperability and Safety Committee</td>
</tr>
<tr>
<td>ROGS</td>
<td>Railways and Other Guided Transport Systems</td>
</tr>
<tr>
<td>RSD</td>
<td>Railway Safety Directive</td>
</tr>
<tr>
<td>RSSB</td>
<td>Rail Safety and Standards Board</td>
</tr>
<tr>
<td>RU</td>
<td>Railway Undertaking</td>
</tr>
<tr>
<td>SPWG</td>
<td>Safety Performance Working Group</td>
</tr>
<tr>
<td>SSRG</td>
<td>System Safety Risk Group</td>
</tr>
<tr>
<td>TSI</td>
<td>Technical Specification for Interoperability</td>
</tr>
</tbody>
</table>
Related websites

Association of Train Operating Companies (ATOC)  www.atoc.org

Business Innovation Skills (BIS)  https://www.gov.uk/government/organisations/departmen t-for-business-innovation-skills

Department for Communities and Local Government (DCLG)  https://www.gov.uk/government/organisations/departmen t-for-communities-and-local-government


Department for Transport (DfT)  https://www.gov.uk/government/organisations/departmen t-for-transport

EUR-Lex  http://eur-lex.europa.eu/


European Railway Agency (ERA)  www.era.europa.eu/Pages/Home.aspx

Government News Network  http://www.knowledgeview.co.uk/node/10

Health and Safety Executive (HSE)  www.hse.gov.uk


legislation.gov.uk, managed by The National Archives  http://www.legislation.gov.uk

Network Rail  www.networkrail.co.uk

Office of Rail Regulation (ORR)  www.orr.gov.uk

The Rail Accident Investigation Branch (RAIB)  www.raib.gov.uk

RSSB  www.rssb.co.uk

Scottish Law Commission  http://www.scotlawcom.gov.uk

International Union of Railways (UIC)  www.uic.org/

Ministry of Justice  https://consult.justice.gov.uk/
### Legislation Implementation and update status

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Implementation date (where known)</th>
<th>Updated in this issue?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SECTION 1 - RAILWAY SPECIFIC LEGISLATION</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regulations on the Common Safety Methods – Conformity Assessment and Monitoring and Supervision</td>
<td>January 2011 and June 2013</td>
<td>Yes</td>
</tr>
<tr>
<td>The Fourth Railway Package</td>
<td>Unknown</td>
<td>Yes</td>
</tr>
<tr>
<td>EC Regulation EU/445/2011 (the Entities in Charge of Maintenance Regulation)</td>
<td>May 2011</td>
<td>Yes</td>
</tr>
<tr>
<td>Train Driving Licences and Certificates Regulations 2010 and changes to the Train Driving Licences Directive</td>
<td>October 2018</td>
<td>Yes</td>
</tr>
<tr>
<td>Scope Extension of the Technical Specification for Interoperability (TSIs)</td>
<td>July 2015</td>
<td>New</td>
</tr>
</tbody>
</table>

| **SECTION 2 – GENERAL LEGISLATION** | | |
| Electro-Magnetic Fields Directive | October 2013 | Yes |
| CD241 – Proposal to review HSE’s Approved Codes of Practice | By the end of 2013 | |
| CD261 – Proposal to replace the Construction (Design and Management) Regulations 2007 | April 2015 | Yes |
| CD273 – Proposal to exempt certain self-employed people from health and safety law | Unknown | Yes |

| **SECTION 3 - OTHER RAILWAY RELATED CONSULTATIONS** | | |
| Consultation on the proposal to withdraw the Railway Safety (Miscellaneous Provisions) Regulations 1997, Railway Safety Regulations 1999 and Railway Safety (Miscellaneous Amendments) Regulations 2001 | Unknown | Yes |
| Consultation on EC Regulation 1371/2007 Rail Passengers’ Rights and Obligations | Unknown | Yes |
| Consultation on Health and safety offences, corporate manslaughter and food safety and hygiene offences guidelines | Unknown | Yes |
Section 1. Railway Specific Legislation –


BACKGROUND

The Railway Safety Directive (2004/49/EC) requires that ERA sets Common Safety Targets (CSTs) for each member state. Member states are required to provide Common Safety Indicators (CSIs) data to ERA on an annual basis (as per Annex 1 of the Safety Directive).

MAIN PROVISIONS

- **Common Safety Indicators (CSIs)**
  
  These are designed to produce agreed methods to calculate safety levels in every member state so that safety can be monitored during the introduction of all other European safety measures. As with CSTs, the aim of CSIs is to make sure that levels of safety remain consistent, or improve during the changes that are being made.

  The agreed indicators are collected by the national safety authorities and delivered to the Agency, who publish them on their web site. This allows member states to show that they have achieved their CSTs.

  The CSIs are primarily used to assess performance against the CSTs and NRVs, although additional information is collected, for example on accident precursors and accident costs.

  The regulation implementing the CSI directive in the UK came into force on 26 August 2011.


- **Common Safety Targets (CSTs)**
  
  These are intended to ensure that safety performance is not reduced in any Member State, during the period in which changes required by other directives are being made. Given the considerable variation in safety performance across the EU at present single CSTs would not enable individual member states’ performance to be measured so National Reference Values (NRVs) were introduced. NRVs are set at individual member state level and member state safety performance will be assessed annually against them. In future the CSTs may be used to set pan-European targets so as to harmonise safety performance in order to support further market liberalisation.

  NRVs and CSTs are expressed in terms of fatalities and weighted serious injuries (FWSI) normalised by a measure of exposure, such as train km, and cover six areas: passengers, workforce, unauthorised persons, level crossing users, others, and whole society.

  ERA has published a draft proposal for the revision of the assessment method for CSTs with the purpose of addressing the weaknesses of the current method and of the general concept. The expected outcomes are:
- Obtain more reliable and robust results of the assessment early enough in the year
- Integrate the actions foreseen in the CSM with the other RSD requirements (NSA annual safety report, National safety plans, etc.)
- Introduce tangible safety targets linked with the national safety plans and other activities that are not subject to the enforcement regime for achieving at least the NRVs
- Motivate MSs to embrace the method and encourage them to apply it at the national level
- Include safety targets for the EU given the continuous development of the single European railway area.

**UNECE expert group on level crossing safety**

A new working group considering level crossing safety from both a rail and road perspective has been established under the umbrella of United Nations Economic Commission for Europe (UNECE). UIC, NSAs (including ORR) and the ERA are a part of the group. The group is preparing an action plan for improving level crossing safety uniting both road and rail infrastructure managers.

The work programme for the group will include:

- A review and analysis of the economic costs of level crossing accidents based on data provided by countries;
- An evaluation and analysis of the safety performance of types of level crossings in UNECE member states and in selected non-UNECE member states such as Australia, India, New Zealand and South Africa;
- A summary of best practices including education;
- A survey of prevailing national legislation and/or legal arrangement at level crossings;
- A survey of technology and technological solutions to improve safety at level crossings; and
- Identification of the key causes and possible solutions related to human factors contributing to unsafe conditions at level crossings.

**Common occurrence reporting**

ERA held a workshop on common occurrence reporting on 25 September 2014.

A common EU approach to occurrence reporting and analysis has been in place in both aviation and maritime for several years. ERA is exploring whether a similar system would be possible for railways. Occurrence reporting is seen as taking a system-wide and data-driven approach to accident prevention.

For aviation, the currently applicable legislation on occurrence reporting is 2003/42/EC, which calls for employees across the aviation sector to report abnormal events or other irregular circumstances which if not corrected may lead to an accident. Annex 1 of 2003/42/EC is an agreed list of common occurrences. The European Aviation Safety Agency (EASA) has a role in analysing the data, identifying trends and ensuring appropriate action is taken.

**CURRENT STATUS**

- **Common Safety Indicators**
ERA had originally wanted NSAs to use the new annex 1 for reporting 2014 CSI data. NSAs opposed this as it would be difficult to change reporting categories half way through the year. Instead, ERA has agreed to a voluntary approach for reporting 2014 CSIs using the new annex 1. NSAs will have to report 2015 CSI data using the new indicators. Therefore data will need to be collected from 1st Jan 2015 against the new categories.

- **Common occurrence reporting**
  ORR gave a presentation to the workshop on the UK NIR system.

- **ERA Railway Indicators**
  ERA is developing a series of metrics (Railway Indicators) that they will use to measure performance in delivering ERA-related activity. There will be approximately 20 railway indicators divided into 4 operational activity areas:
  - Harmonised safety framework
  - Removal of technical barriers
  - Single EU train control and communication system
  - Simplified access for customers
  ERA held a workshop on 4/5 December and invited attendees to present their own ideas for Railway Indicators to measure performance in the four operational activity areas.

- **Amendments to the Railways (Interoperability) Regulations 2011**
  Essentially the effect of the change is a clarification about how Annex III of the Railway Interoperability Directive, which deals with the essential requirements, covers environmental protection and refers to respecting the existing regulations on noise pollution. Previously it did not specify the regulations it referred to. Commission Directive 2014/38/EU therefore replaces the existing paragraph 1.4.4 of Annex III (relating to noise pollution) with a new paragraph which is intended to address this issue.

**RAILWAY INDUSTRY POSITION**

- 

**OTHER INFORMATION**

- 

**DATE UPDATED** January 2015
Common Safety Method on Risk Evaluation and Assessment

BACKGROUND

The Railway Safety Directive (2004/49/EC) requires that a series of Common Safety Methods (CSMs) are developed by the ERA to describe how safety levels, achievement of safety targets and compliance with other safety requirements are assessed in the different member states.

- Original Regulation
  The CSM on Risk Evaluation and Assessment (CSM RA) was developed according to Article 6(3) (a) of Directive 2004/49/EC (Safety Directive). The Regulation has applied since 1 July 2012 to all significant changes to the railway system – ‘technical’ (engineering), operational and organisational. The Regulation can be found here: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:108:0004:0019:EN:PDF

- Revised Regulation
  Following the work of the CSM RA working group and its task forces, in January 2013, a revised version of the Regulation was adopted by the Railway Interoperability and Safety Committee (RISC). The revised version was published in the Official Journal of the European Union on 3 May 2013 and will apply from 21 May 2015. The principal amendments relate to the recognition and accreditation of Assessment Bodies. The revised Regulation can be found here: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:121:0008:0025:EN:PDF ORR guidance will be amended in due course.

- Risk Acceptance Criteria for Technical Systems (RAC-TS)
  ERA held RAC-TS workshops in April and September 2014 with sector bodies and NSAs to try and reach agreement on RAC-TS. Some progress has been made in agreeing the definitions of functional failure rates.

  At the moment it is not clear whether the RAC will be guidance. RSSB has proposed making it more binding by making it a safety requirement of the LOC and PAS TSI. This is not universally supported by sector bodies.

  Following the September workshop in Lille between ERA, sector bodies and NSAs, ERA published a draft recommendation on the amendment of Regulation 402/2013. This recommendation represents the view of the majority of the stakeholders and experts who took part to the validation of the harmonised CSM-DT (former RAC-TS). This is now out for consultation, and the relevant documents can be found here: http://www.era.europa.eu/Document-Register/Pages/Test-consultation.aspx

  The closing date for the consultation was 31 December 2014. Sector bodies are currently working on a guidance document to be published at the same time as the regulation.

CURRENT STATUS

- Risk Acceptance Criteria
  ERA has started the consultation on the proposed changes to the CSM risk assessment. CER, UIC and EIM are preparing a joint response to the consultation, strongly supporting the inclusion of design targets in the RAC-TS. The sector bodies are also working together to draft guidance for the RAC-TS, to be available when it is published. The RAC has now been renamed as Design Target, and will be split off from CSM RA to form CSM DT.
• **Article 12 - Assessment Bodies for domestic only changes.**
  Consultation is underway by ERA and NSAs regarding the potential use of this article where changes do not require mutual acceptance, the change is purely domestic and would have no impact on the wider EU market. The UK position is that we would wish to retain the option of using internal independent competent assessment bodies recognised by ORR under our SMS as laid out under safety certification or authorisation.

• **RAC for transport of dangerous goods**
  The Commission held another workshop (the second of 11 planned workshops) on 28-30 October 2014 which ORR attended. The workshops cover the transport of dangerous goods by road, rail, inland waterways and pipelines.

  **Revised DV29bis**
  The draft document referred to as DV29bis has now been published as [Commission Recommendation 2014/897/EU](http://eur-lex.europa.eu) which concerns the authorisation of structural subsystems and vehicles under the Railway Interoperability Directive (2008/57/EC). This document essentially ties up the interoperability management of change requirements with CSM RA requirements.

• **Revised Railway Interoperability Directive Annexes V and VI**
  Directive 2014/106/EU replaces Annexes V and VI of the Railway Interoperability Directive (2008/57/EC) dealing with the verification of subsystems by notified and designated bodies and ties in with the updated CSM RA.

**RAILWAY INDUSTRY POSITION**

- 

**OTHER INFORMATION**

ORR is revising its guidance on the CSM RA, which will be published in the spring.

**DATE UPDATED** January 2015
Common Safety Methods for Conformity Assessment, Monitoring and Supervision

BACKGROUND

The Railway Safety Directive (2004/49/EC) requires that a series of Common Safety Methods (CSMs) are developed by the ERA to describe how safety levels, achievement of safety targets and compliance with other safety requirements are assessed in the different member states.

- **Conformity Assessment**

  The CSMs on Conformity Assessment was developed according to Article 6(3) (b) of the Safety Directive 2004/49/EC.


- **Monitoring and Supervision**

  CSMs on Monitoring and Supervision have been developed according to Article 6(3) (c) of the Safety Directive 2004/49/EC. The Regulations have applied since 7 June 2013.


MAIN PROVISIONS

- **Conformity Assessment**

  The CSMs on conformity assessment sets out the criteria that National Safety Authorities (NSAs) will use to assess railway undertakings (RUs) and infrastructure managers (IMs) safety management systems (SMS) and network specific requirements. In order to operate, a RU and IM must hold a safety certificate or authorisation respectively. The package will contain the following elements:

  - Safety Certification Part A – SMS Assessment Criteria and Procedures;  
  
  This is a standard European Certificate – designed to be transferable between member states.

  - Safety Certification Part B – Harmonised Requirements, Assessment Criteria and Procedures; and

  This is a network-specific certificate to be issued to cover the particular requirements of a member state’s network.


  This is guidance and criteria for the assessment of safety authorisations for infrastructure managers.

- **Monitoring and Supervision**
These CSMs define, as far as they are not yet covered by TSIs, methods to check that the structural subsystems are operated and maintained in accordance with the essential requirements.

**Monitoring** - refers to tasks undertaken by Transport Operators to ensure compliance with their SMS.

**Supervision** - refers to activities by NSAs to check Transport Operators.

**CURRENT STATUS**

- **Revision of the CSMs for Conformity Assessment and Supervision**

  The EC has issued a mandate to ERA for the revision of the CSM for conformity assessment and CSM for supervision with the aim of further harmonising approaches among Member States. The revision of the CSMs for conformity assessment shall be considered in relation to the introduction of ECMs for freight wagons, CSIs, CSTs, other common safety methods, technical specifications for interoperability (TSIs) as well as existing European standards. The revision will also take account of the proposed move to a single safety certificate.

  A report and final recommendation to the Commission are expected by July 2016, this means that any revision is unlikely to be in force at the earliest in 2017.

  ERA does not envisage a fundamental recast of the CSMs, rather an ‘enhancement’ which would link conformity assessment more closely to a duty holder’s SMS. They also see it as an opportunity to deal with some practical issues about conformity assessment which were not harmonised or were unresolved. The project has been structured around 4 themes:

  - Safety certification/ authorisation;
  - Supervision;
  - Decision making; and
  - Competence management.

  The first working party meeting was on 12 November 2014.

  ERA held a workshop on 9 December 2014 (to coincide with NSA Network) to address issues around safety certification when an RU subcontracts traction and staff from another RU.

  ERA has a legal view from the EC, that in such circumstances it is not acceptable for the RU to operate under the safety certificate of the incumbent RU and it needs to have a safety certificate itself. A number of NSAs have objected to this view as they claim that it would have a serious impact on railway operations in their country and would not benefit safety.

- **CSM for Supervision**

  ORR is exploring how to meet the provisions of article 9 for the supervision of RUs operating between the UK and other member states, namely France, Belgium and the Netherlands.

- **CSM for monitoring**

The guide covers monitoring activities, strategy, priorities and plan(s) that need to be adapted to the specific activities of every actor who is concerned by the regulations.

RSSB has published safety assurance guidance for industry and this covers the requirements of the CSM for monitoring:
http://www.rssb.co.uk/NP/Documents/CSM%20Regulation%20A4%20Leaflet.pdf

**RAILWAY INDUSTRY POSITION**

- **Revision of the CSMs for Conformity Assessment and Supervision**
  
  UK industry has expressed the view that ERA's proposed revision of the CSMs for Conformity Assessment and Supervision, means that it, the ERA, may need to deal with the problem of NSAs having different enforcement powers.

**OTHER INFORMATION**

- 

**DATE UPDATED** January 2015
The Fourth Railway Package

BACKGROUND

The European Commission (EC) published proposals for the ‘Fourth Railway Package’ on 31 January 2013. The package is a complex series of proposals, summarised at: http://ec.europa.eu/commission_2010-2014/kallas/headlines/news/2013/01/fourth-railway-package_en.htm. There are three main components to the technical pillar of the package, where new proposals for safety legislation are put forward:

- **Interoperability Directive:**

- **Safety Directive:**

- **Agency Regulation:**

MAIN PROVISIONS

The proposals in the Fourth Railway Package focus on four key areas, summarised by the Vice-President of the EC in charge of transport as:

- **Standards and approvals that work:**
  The EC wants to cut the administrative costs of rail companies and facilitate the entrance of new operators into the market. Under the new proposals, ERA will become a “one stop shop”, issuing EU wide vehicle authorisations for placing on the market as well as EU wide safety certificates for operators. Currently vehicle authorisations and safety certificates are issued by each Member State. The stated expectation is that these proposed measures would allow a 20% reduction in the time to market for new railway undertakings and a 20% reduction in the cost and duration of the authorisation of rolling stock, leading overall, to a saving for companies of €500 million by 2025.

- **Better quality and more choice through allowing new players to run rail services:**
  To encourage innovation, efficiency and better value for money, the EC is proposing that domestic passenger railways should be opened up to new entrants and services from December 2019. Companies will be able to offer domestic rail passenger services across the EU: either by offering competing commercial services or through bidding for public service rail contracts, which account for a majority (over 90%) of EU rail journeys and will become subject to mandatory tendering. The stated expectation is that these proposals would bring clear benefits to passengers in terms of improved services, increasing choice that, combined with structural reforms, could by 2035 produce more than €40 billion of financial benefits for citizens and companies involved and would allow provision of up to an estimated 16 billion additional passenger-km.

- **A structure that delivers:**
  To maximise operational efficiencies, the EC is proposing to strengthen infrastructure managers so that they control all the functions at the heart of the rail network; including infrastructure investment planning, day-to-day operations, maintenance and timetabling. Faced with numerous complaints from users, the EC considers that infrastructure managers must have operational and financial independence from any other transport operator. This is essential to remove potential conflicts of interest and give all companies access to tracks in a non-discriminatory way. It is stated that, as a
A general rule, the proposal confirms institutional separation as the simplest and most transparent way to achieve this. Rail undertakings independent of infrastructure managers will have immediate access to the internal passenger market in 2019. However, the EC can accept that a vertically integrated or “holding structure” may also deliver the necessary independence, with strict firewalls to ensure the necessary, legal, financial and operational separation.

Compliance Verification Clause: To safeguard this independence, in view of the full passenger market opening in 2019, rail undertakings forming part of a vertically integrated structure could be prevented from operating in other Member States if they have not first satisfied the EC that all safeguards are in place to ensure a level playing field in practice, and that fair competition exists in their home market.

- **A skilled workforce:**
  A vibrant rail sector depends on a skilled and motivated workforce. Over the next 10 years, rail will face the combined challenges of attracting new staff to replace the third of its workforce which will retire, while responding to a new and more competitive environment. Under the EU regulatory framework, Member States will have the possibility to protect workers by requiring new contractors to take them on when public service contracts are transferred, going beyond the general EU requirements on transfers of undertakings.

**CURRENT STATUS**

- **Fourth package considerations**
  Member States have considered the amendments to the Railway Safety Directive, the Interoperability Directive and the ERA Regulation in a Council working group. They have reached ‘political agreement’ on the texts for these measures.

  A debate between the European Commission, European Council and European Parliament has started but is only in a preliminary phase. The Latvian presidency is hoping to agree the technical pillar by the end of June.

  DfT, who represent UK in the working group, believe that positive changes are being made, in line with comments provided by ATOC and members. Discussions on the market opening measures of the 4th package are continuing in a Council working group. On the main proposals in the technical pillar, the political agreement texts require ERA to issue safety certificates for cross-border operators and vehicle authorisations for cross-border services. Applicants for safety certificates or vehicle authorisations which concern only one country have a choice of applying to ERA or to their domestic NSA.

  The Commission task force on single safety certificates started work on 10 June 2014. The ERA work programme is aiming to have the necessary requirements in place for the single safety certificate by 2017 (the earliest date this could happened under 4th package proposals).

- **Standards and approvals that work:**
  ERA submitted a recommendation to the EC seeking to increase the transparency of the process for notification of NSRs in different Member States. The recommendation included a proposal to establish a taskforce to support this work and prepare good practice guidance. The main recommendations in the report were:
  - Merge NSRs and NTRs into ‘national rules’;
- Streamline requirements for notification in NOTIF-IT and publication;
- Remaining rules apply to ‘exceptions’ in European law; and
- NSRs (in current definition) will be: same operating rules, as allowed by OPE TSI and RID; risk acceptance criteria; and criteria for significant change.

The EC see NSRs as a barrier to entry into the market. Extension of EU legislation (eg, train driver certification, the CSMs for Conformity Assessment and Risk Assessment, and the TSI OPE) has closed many gaps, therefore making many NSRs and types of NSRs redundant. The NSR task force developed a draft rule management tool (RMT) to help Member States/NSAs work through the significant task of updating, reclassifying and withdrawing NSRs to reflect these developments. The RMT will be further developed/ applied by the new ERA taskforce. ERA would like NSAs (or other competent authorities) to apply the RMT as soon as possible to clean up the rules, and then on an annual basis.

This is an opportunity for UK railway (ORR, DfT and RSSB) to examine the GB NSRs to ensure they are transparent and that the right rules appear on the NOTIF-IT database.

ERA held a meeting with NSAs on 22 October 2014 to discuss the latest regulatory developments with NSRs/ NNTRs, updates to NOTIF-IT and cooperation between NSAs and ERA (no update available yet).

- ERA CSM on rule management

ERA has proposed developing a CSM for rule management. The purpose of the CSM would be to establish a legal basis for an improvement of the procedures for developing national safety rules and an update of the Rules Management Tool (RMT). ERA want to address the problem they see with MS/NSAs apply different procedures for the establishment and assessment of their safety regulatory framework. ERA think the establishment of a CSM will overcome the problem of applicants having to face different procedures in MS for the application of their safety regulatory framework.

While accepting the need for EC/ ERA action on national rules, some NSAs have questioned the legal basis for a new CSM. Instead it has been suggested that an EC recommendation, or a re-establishment of the RISC task force on national rules, may be more appropriate

- NSRs for dangerous goods

ERA are co-coordinating a group of experts from road, rail, inland waterways and pipelines to develop a risk evaluation tool that can be used across Europe for the Transport of Dangerous Goods. This does not have any impact on the duties to comply with ADR/RID which governs the Regulations for the International Carriage of Dangerous Goods by Rail/Road. The second of a planned 11 workshops, was held on 28-30 October 2014.

RAILWAY INDUSTRY POSITION

The industry has expressed views to the EC, particularly on the avoidance of duplication of approvals processes and increased costs.

OTHER INFORMATION

- 

DATE UPDATED January 2015
EC Regulation EU/445/2011 (The Entities in Charge of Maintenance Regulation)

BACKGROUND
The Entities in Charge of Maintenance Regulation (ECM) was published in the Official Journal of the European Union on 11 May 2011. As a result, certifying bodies have offered certification since May 2012 and freight ECMs will be required to be certified by 2013.

The first amendment to ROGS, which includes the requirement for all vehicles registered in the NVR to be assigned to an ECM came into force on 26 August 2011. The second amendment came into force on 21 May 2013 and sets out the requirements for the certification of freight ECMs, and enables the supervision by ORR.

MAIN PROVISIONS
An Entity in Charge of Maintenance has to be assigned to all vehicles and registered as such in the national vehicle register (NVR). For domestic vehicles, this was done by 9 November 2010. (All international vehicles should have been entered on the NVR by 9 November 2009). The certification scheme currently only applies to freight wagons.

The EC has proposed extending certification to cover all rail vehicles as part the 4th Railway Package to an earlier timetable than envisaged in the current directive, possibly by the end of 2016. The draft also currently includes proposals for mandatory certification of maintenance workshops.

Following an internal review ORR will continue as a certifying body for ECMs for freight wagons. This position will be reviewed again in 2016. We are expecting UKAS to set up an accreditation scheme so other certifying bodies can be accredited.

CURRENT STATUS
According to ERA, as of June 2014, of 659,988 registered wagons in the EU, only 2% have no allocated ECM and 0.25% have an uncertified ECM.

There are 290 ECMs across the EU, and so far none has had a certificate revoked due to non-compliance. ERA has conducted a survey of the 210 Certification Bodies in the EU on implementation of the ECM regulations, results were due at the end of August 2014. The main conclusions of the survey were:

The main strengths of ECM certification
- Harmonisation of processes.
- Clearer definition of responsibilities.
- Common language between RUs and their partners/suppliers
- Reduction of efforts for supplier evaluation
- Support risk management.

The main weaknesses of ECM certification
- No common interpretation of the ECM legal framework between MS
- No procedures related to the management of relations between ECMs and manufacturers (return on experience).
- Additional administrative burden.

Likely that on long term benefits covers costs
128 respondents in favour against 30
Prompted by the incidents as Viareggio and Bressanone, ERA has established a task force to look at the management of contractors which will report back to the cooperation of certifying bodies’ task force.

Noting that some NSA’s have already started advising their non-wagon vehicle maintainers/operators to start to adopt the principles of ECM in anticipation of the 4th Rail Package, ERA are planning to begin discussions with ECMs and the industry in 2015 on the possible extension of scope.

UK has stressed that ERA need to demonstrate the benefits of any extension of scope to other vehicles. Any changes must also be supported by a proper impact assessment. This point was accepted by ERA at RISC on 6 November.

ERA has put together a group of NSAs (as a sub-group of NSA Network) to consider the Article 9 requirements for ECMs. The meeting was held on 8 October. A common procedure is required for implementing Art 9 but it is recognised NSAs have different legal bases following transposition of revisions to the Safety Directive Art 14 and implementation of the ECM regulation 445/2011. Some NSAs have no powers to take measures against ECMs and only have powers against RUs and IMs. Others can act against ECMs directly and/or will contact Keepers.

If a defect is spotted in a marshalling yard or in a workshop and there is no RU, this could present difficulties for those NSAs who cannot place requirements on ECMs.

ORR has responded to an ERA ex-post evaluation questionnaire regarding the implementation of the ECM legislation. ERA circulated the questionnaire widely to many different stakeholders including NSAs, certifying bodies, ECMs, keepers and manufacturers. An overview of responses was given at RISC on 6 November 2014.

RAILWAY INDUSTRY POSITION

UK Railway Industry has stressed that ERA need to demonstrate the benefits of any extension of scope to all rail vehicles. Any changes must also be supported by a proper impact assessment.

OTHER INFORMATION

DATE UPDATED January 2015
Train Driving Licences and Certificates Regulations 2010 and changes to the Train Driving Licences Directive

BACKGROUND


MAIN PROVISIONS

Any new driver must have a train driver licence and certificate to drive on the mainline railway.

Existing drivers will need a train driver licence and certificate to drive by 29 October 2018.

Doctors, psychometric assessors and training and examination centres who assess new train drivers must be recognised by ORR.

CURRENT STATUS

- Extending requirements

  As part of the 4th Railway Package the EC is looking into extending measures to cover train crews performing safety-critical tasks. The EC is proposing to ask ERA to identify common safety-critical tasks for other train crew and consider in its analysis of NSR’s a specific chapter on the national binding rules, related to other crew members and to what extent they go beyond their scope. The EC believes that its proposals will reinforce the safety performance as well as supporting the mobility of its workers.

  The proposed changes to the TDL directive regarding general professional knowledge, medical and licence requirements at the January 2014 RISC were accepted. The new section 8 paragraph 2 final sentence in Annex VI has been amended to read: ‘Drivers must be able to communicate orally and in writing according to level B1 of the Common European Framework of Reference for Languages (CEFR) established by the Council of Europe’. The requirement for written communication is additional to the existing requirements. The amendments were published by the Commission on 24 June 2014. The proposed date for compliance is 1 July 2015 with changes coming into effect by 1 January 2016.

- ORR and the DfT will be carrying out a targeted consultation of stakeholders in February 2015 lasting around 4-6 weeks. The aim is to have the regulations laid before Parliament by late March 2015.

- ERA Report on the Introduction of Smartcards

  The feasibility and cost benefits for the introduction of “smartcards” as part of driver licensing have been investigated in this ERA sponsored research. The conclusion is that there are potential benefits if the cards have wider use than just recording the licence and certification, however, at present the costs of developing an EU wide system outweigh the benefits. The report may be downloaded from:

• **Driver registers**

A working group is considering the potential interoperability of registers between Member States. UK (and other NSA) has pressed ERA for a clear business case before any Europe-wide database is proposed. ERA has recommended adoption of the EC internal market information system (IMI). The IMI is a multilingual system designed to facilitate communication between national and local government organisations. It is being used by NSAs to exchange a predefined set of information on train drivers in a secure way that would automatically be translated into the appropriate language. It can also create alerts, a tracking process and set deadlines for responses. It has also been suggested that information on Doctors and other assessors could be exchanged through the system.

It is expected ERA will deliver a recommendation for further changes to the Directive and supporting legislation by the end of 2015. Any changes to the Directive are unlikely before 2017. ERA is establishing a Task Force to discuss and agree the proposed changes and the first meeting took place on 3 December 2014. The EC mandate to ERA has asked them to prepare proposals in the following areas:

- **Article 3:** Definitions. Some terms (ie historical trains, cross border drivers and native language) are not properly defined. Different terms were also used for the same process (eg examinations, checks and assessments) and which may need to just one term.

- **Article 4:** Community certification model. Article 4(2) does not cover all cases where an exemption would be needed and uses unconventional terminology about a second driver. The need to inform the infrastructure manager where a second driver was needed for route knowledge was not appropriate. 4(3) (a) does not clearly define operations covered under category A of the certificate and might better to do this than refer to rolling stock.

- **Article 11(1):** Education requirements were seen by most NSA as unhelpful - clarification or deletion will be considered by ERA. For Article 11(2) and (3) most participants want common criteria to be developed for the recognition of doctors and psychologists.

- **Article 16:** The need for periodic checks for psychometric assessments was unclear as no timescales were included and it is not apparent who should do this check. This might be deleted altogether by ERA or else further clarified.

- **Article 17:** It was not clear why it was necessary to inform the NSA when a driver ceases work as the licence can remain valid.

- **Article 23(5):** Recognition of language schools. Most NSA felt they did not have the expertise to do this and should not be required to do so.

- **Annex II: Medical requirements.** ORR raised concerns over vision requirements and there may be some changes made. The working group discussed ERA needing expert advice to enable to keep up to date with changes in medical practice. ERA made a proposal to the EC for changes in a paper at the January RISC meeting, which were accepted.

- **Annex IV: General professional knowledge.** Seen as too vague and needs to be replaced by something more precise.

- **Train driver certificate.** Not clear what terms to use for rolling stock and infrastructure on the certificate and this needed to be clarified in the EC decision.
17/2010. The EC Regulation on the format of the certificate was too prescriptive and out-dated requiring to be a paper copy.

- National Licence Register. The EC decision needed clarification on how medical assessment information is provided to NSAs and what information should be stored by the employer (particularly if more than one employer is involved) should the NSA want to check what the driver is doing for whom.

RAILWAY INDUSTRY POSITION

- OTHER INFORMATION

- DATE UPDATED January 2015

BACKGROUND

The Railway Interoperability Directive (2008/57/EC) requires the production of a suite of Technical Specifications for Interoperability (TSIs). A TSI is an Annex to a Decision or Regulation made by the European Commission (EC) and will come into force six months after the Decision or Regulation is made.

Decisions and Regulations are published in the Official Journal of the European Union, which can be found here - http://eur-lex.europa.eu/homepage.html?locale=en

Alternatively DfT produce a catalogue detailing the current status of all TSI applicable in GB – https://www.gov.uk/government/publications/rail-interoperability-tsi-catalogue

TSIs define the mandatory, technical and operational standards and expected performance levels which must be met in order to satisfy the ‘essential requirements’ defined in the Directive and to ensure the ‘interoperability’ of the European railway system. The ‘Essential requirements’ can be summarised as safety, technical compatibility, reliability, health, environmental protection and accessibility.

The Railway (Interoperability) Regulations 2011 which transposed the Railway Interoperability Directive, mandate compliance with TSIs and relevant National Technical Rules (NTRs) on organisations (Project Entities) involved in the GB Mainline railway system. For the GB mainline railway system, the NTRs to be applied are the contained in Railway Group Standards (RGSs) which are developed by the GB Rail Industry with the support of RSSB.

You must comply with TSIs and relevant NTRs if you are building new railway sub-systems or carrying out a major upgrade or renewal of an existing railway sub-system. Replacement of parts of a sub-system on a like-for-like basis, for example replacing track with track of a similar specification, does not trigger a legal obligation to comply with TSIs. Advice about whether a specific project must comply with TSIs and NTRs can be obtained from the DfT.

MAIN PROVISIONS

• Original Scope

TSIs only applied to subsystems on the “Trans-European network” (TEN), and in some cases the TSIs were further split to cover either High Speed or Conventional Speed systems.

For the parts of the railway system not part of TEN (the majority of the European Railway network) NTRs applied.

• Revised Scope

From 1 January 2015 (1 July 2015 for the Control Command and Signalling TSI) the scope of TSIs has been extended to cover the entire European Railway System (not just TEN) that fall under the scope of the Railway Interoperability Directive (2008/57/EC) and Railway Safety Directive (2004/49/EC). This means the TSIs apply to whole of the GB mainline railway system. The scope of mainline railway system can be found here - https://www.gov.uk/government/publications/scope-of-rail-interoperability/--539035

This means that the only NTRs which fulfil the following conditions should be mandated on projects completed after these dates -

- Specific Cases – Outlined in Chapter 7 of each TSI
- Open Points (where A TSI is not sufficient) – An NTR can provide a solution
- To ensure technical compatibility with the legacy rail system where it is not designed and built to TSIs

CURRENT STATUS

• National Technical Rules
Where NTRs do not fall in the defined cases above, they should no longer be mandatory for new projects under the scope of the Railway Interoperability Directive and should subsequently be withdrawn as mandatory rules for new projects. The Chapter 7 of the TSIs defines the implementation of the new TSIs. In general the TSIs are not retrospectively applied and therefore do not apply to subsystems already authorised or projects already underway prior to 2015.

- **New TSIs**

On January 1 2015, seven TSIs came into force, they are -

- **Infrastructure TSI** - European Commission Regulation (EU) No 1299/2014

- **Persons with Reduced Mobility TSI** - European Commission Regulation (EU) No 1300/2014


- **Locomotives and passenger rolling stock TSI** - European Commission Regulation (EU) No 1302/2014

- **Safety in railway tunnels TSI** - European Commission Regulation (EU) No 1303/2014

- **Noise TSI** - European Commission Regulation (EU) No 1304/2014

- **Telematics applications for freight TSI** - European Commission Regulation (EU) No 1305/2014

Note that the abovementioned TSIs are now published as regulations, and not (as previously) decisions, therefore they do not require transposition into UK law and are directly applicable.

The amended Control Command and Signalling TSI Decision was published on 5 January 2015, and will **enter into force on 1 July 2015** -

- **Control Command and Signalling TSI** - European Commission Decision (EU) 2015/14

**RAILWAY INDUSTRY POSITION**

The GB rail industry and RSSB, together with the ORR and Department for Transport, are working together to clarify which requirements/NTRs in RGSs should remain; which should be updated to reflect the new TSIs; and where requirements should be withdrawn as they now superseded by the TSIs.

More information on TSI can be found here - [http://www.rssb.co.uk/standards-and-the-rail-industry/technical-specifications-for-interoperability](http://www.rssb.co.uk/standards-and-the-rail-industry/technical-specifications-for-interoperability)

More information on NTRs can be found here - [http://www.rssb.co.uk/standards-and-the-rail-industry/technical-specifications-for-interoperability/national-technical-rules](http://www.rssb.co.uk/standards-and-the-rail-industry/technical-specifications-for-interoperability/national-technical-rules)

For more information you can contact Vaibhav.Puri@rssb.co.uk

**DATE UPDATED** January 2015
Section 2. General Legislation


BACKGROUND
The third Directive in the suite of physical agents’ Directives, 2013/35/EU on the minimum health and safety requirements, regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) is available here: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:179:0001:0021:EN:PDF.

MAIN PROVISIONS
Provisions cover risk assessments; control of exposure (with laid down action values and exposure limit values); health surveillance and information, instruction and training. The Directive addresses the protection of workers exposed to electromagnetic fields and the carrying out of effective and efficient risk assessments, proportional to the situation encountered at the workplace.

It also defines a protection system that graduates the level of risk in a simple and easily understandable way, and commits the European Commission to produce practical guidelines to assist employers in meeting their obligations under the Directive. The Directive contains technical annexes setting out the exposure limit values. Member States have the option of maintaining or adopting more favourable provisions for the protection of workers, in particular the fixing of lower values for the “action levels” or the “exposure limit values” for electromagnetic fields.

CURRENT STATUS
Member states have been given until 1 July 2016 to transpose the Directive into national law, although no program is currently available from HSE for UK implementation. A significant number of requirements could be seen as already incorporated into UK law through the Management of Health and Safety at Work Regulations 1999, the final structure of any new legislation is still being determined.

The EU will publish a Practical Guide early in 2016, written under contract by Public Health England, and HSE are working with stakeholders to develop some practical guidance to support UK implementation.

RAILWAY INDUSTRY POSITION
RSSB and TfL representatives will continue to participate in the transposition process, development of UK guidance and attend industry meetings to put the railway’s position that the legislation should be proportionate to the risk.

The Vehicle Train Energy System Interface Committee has commissioned research Project T1051 – Investigation into the effects of applying the Physical Agents (EMF) Directive in the UK railway system. Reporting in December, a key recommendation was the development of rail specific guidance.

For further information please contact the project technical lead – David Knights: david.knights@rssb.co.uk.

OTHER INFORMATION
An RSSB report into the implications of the original Directive is available here: http://www.rssb.co.uk/SiteCollectionDocuments/pdf/reports/research/T515_rpt_final.pdf.

DATE UPDATED January 2015
CD241 - Proposal to review HSE’s Approved Codes of Practice (ACOPs)

BACKGROUND
On 28 November 2011 Professor Ragnar Löfstedt published his independent review of health and safety legislation ‘Reclaiming health and safety for all’. The review reported that overall a wide range of stakeholders supported the principles of ACOPs; however, it was felt by many that there was room for improvement.

In his report Professor Löfstedt made the following recommendation: “HSE should review all its ACOPs”. The Government accepted this recommendation and asked HSE to review its 52 ACOPs.

MAIN PROVISIONS
ACOPs are not law but do hold a special legal status (quasi-legal). By adhering to the advice in ACOPs material in relevant circumstances duty holders can be confident they are complying with the law.

HSE is currently reviewing its guidance and presenting it to users in increasing levels of detail and specificity. These levels of guidance are arranged as follows:

- Level 1 – *Health and Safety Made Simple* and the revised *Essentials of Health and Safety*.
- Level 2 – The ‘*brief guide to*...’ hazard based leaflets which explain risks in more detail and provide information on effective control.
- Level 3 – Guidance which goes into more detail and often includes case studies. This includes:
  a) Industry Guidance (INDGs) which are industry or topic based guidance leaflets aimed at employers and workers.
  b) Health and Safety Guidance (HSGs) which provide more comprehensive, detailed advice often including case studies and can be either topic or sector based.
- Level 4 – Legal series guidance which present Regulations, ACOP advice and guidance.

This review aims to make sure that HSE’s portfolio of guidance is useful and balanced; making it easier for employers to understand and therefore meet their legal responsibilities.

CURRENT STATUS
HSE has conducted an initial review of all of its 52 ACOPs. Progress on those dealt with during the last six months of 2014 are recorded over the page:
Only the ACOPs relevant to the rail industry are listed in the following tables:

### Section 1 – Proposals to revise, consolidate or withdraw ACOPs; to be delivered by end-2013

All completed.

### Section 2 – Proposals to make minor revisions or no changes – to be delivered by end-2014

The initial review identified 15 ACOPs where HSE proposes to make minor revisions or no changes. Subject to the outcome of the consultation, these changes will be taken forward separately to the review for delivery by end-2014. All are CD241 unless stated.


<table>
<thead>
<tr>
<th>Consultation</th>
<th>Proposal and HSE consultation page</th>
<th>Consultation Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lifting equipment</td>
<td>CD275 - Consultation CD275 closed. Details of the proposal can be found here - <a href="http://www.hse.gov.uk/consult/condocs/cd275.htm">http://www.hse.gov.uk/consult/condocs/cd275.htm</a></td>
<td>Consultation ended on 14/10/2014</td>
</tr>
<tr>
<td>Safe use of lifting equipment</td>
<td>CD274 - Consultation CD274 closed. Details of the proposal can be found here - <a href="http://www.hse.gov.uk/consult/condocs/cd274.htm">http://www.hse.gov.uk/consult/condocs/cd274.htm</a></td>
<td>Consultation ended on 30/09/2014</td>
</tr>
<tr>
<td>Confined spaces</td>
<td>CD270 - Consultation CD270 closed. Details of the proposal can be found here - <a href="http://www.hse.gov.uk/consult/condocs/cd270.htm">http://www.hse.gov.uk/consult/condocs/cd270.htm</a></td>
<td>Consultation ended on 13/10/2014</td>
</tr>
<tr>
<td>Safe work in confined spaces</td>
<td>L101</td>
<td></td>
</tr>
<tr>
<td>Pressure systems</td>
<td>CD270 - Consultation CD270 closed. Details of the proposal can be found here - <a href="http://www.hse.gov.uk/consult/condocs/cd270.htm">http://www.hse.gov.uk/consult/condocs/cd270.htm</a></td>
<td>Consultation ended on 13/10/2014</td>
</tr>
<tr>
<td>Safety of pressure systems</td>
<td>CD241 - An updated version of the ACOP relating to the application of Safety Representatives and Safety Committees Regulations 1977 (as amended) and Health and Safety (Consultation with Employees) Regulations 1996 (as amended) has just been published, describing how both sets of Regulations are applied and interface with each other. The amendments mainly relate to changes to reference legislation and publications which have changed since 2012. It may be downloaded from: <a href="http://www.hse.gov.uk/pubns/priced/l146.pdf">http://www.hse.gov.uk/pubns/priced/l146.pdf</a></td>
<td>Completed</td>
</tr>
<tr>
<td>Worker involvement</td>
<td>L146 Consulting workers on health and safety</td>
<td></td>
</tr>
</tbody>
</table>

### Annex 2 – ACOPs not reviewed under CD241 due to ongoing sector specific consolidations of legislation or other regulatory amendments, but reviewed in the course of the delivery of those processes.

<table>
<thead>
<tr>
<th>Consultation</th>
<th>Proposal and HSE Consultation page</th>
<th>Consultation status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction</td>
<td>Consultation CD261 closed. Details of the proposal can be found here: <a href="http://consultations.hse.gov.uk/gf2.ti/f/19170/525317.1/PDF/-cd261r.pdf">http://consultations.hse.gov.uk/gf2.ti/f/19170/525317.1/PDF/-cd261r.pdf</a> More detailed information can be found later in this update</td>
<td>Consultation ended on 06/06/2014</td>
</tr>
<tr>
<td>Managing health and safety in construction</td>
<td>L144</td>
<td></td>
</tr>
</tbody>
</table>

### OTHER INFORMATION

The ACOP review process is quite a large fluid one with updates and consultations being issued regularly. We will continue to update the RSLU on the changes made, but as the RSLU is only published quarterly readers may wish to subscribe to the HSE update service: [http://press.hse.gov.uk/subscribe/](http://press.hse.gov.uk/subscribe/) for up-to-date developments.

**DATE UPDATED** January 2015
CD261 - Proposal to replace the Construction (Design and Management) Regulations 2007 and withdraw the associated ACOP L144

BACKGROUND

CURRENT STATUS
Subject to Parliamentary approval, new Construction (Design and Management) Regulations 2015 (CDM 2015) will come into force on 6 April 2015. HSE has recently published draft guidance on the new regulations which includes the full text of the draft CDM 2015. The guidance can be found here: http://www.hse.gov.uk/pubns/priced/draft-l153.pdf.

The key changes of relevance to the railway industry are:

- **Principal designer.** The replacement of the CDM co-ordinator role (under CDM 2007) by principal designer. This means that the responsibility for coordination of the pre-construction phase will rest with an existing member of the design team.
- **Client.** The new Regulations recognise the influence and importance of the client as the head of the supply chain and they are best placed to set standards throughout a project.
- **Competence.** This will be split into its component parts of skills, knowledge, training and experience, and - if it relates to an organisation - organisational capability. This will provide clarity and help the industry to both assess and demonstrate that construction project teams have the right attributes to deliver a healthy and safe project.

The technical standards set out in Part 4 of the new Regulations will remain essentially unchanged from those in guidance related to CDM 2007.

A series of draft industry guides have also been published recently for the five dutyholders under CDM 2015: Clients, Contractors, Designers, principal Contractors and Principal Designers, and one for workers. These are available before the Regulations come into force and may be subject to change. They set out, in practical terms, what actions are required to deliver a safe and healthy construction project. These have been written by the Construction Industry Advisory Committee (CONIAC) with small businesses in mind.

RAILWAY INDUSTRY POSITION

OTHER INFORMATION
The publication date might be revised as the general election is set for 7 May and Parliament will be dissolved on Monday 30 March 2015.

DATE UPDATED January 2015
CD273 – Consultation on proposals to exempt certain self-employed persons from section 3(2) of the Health and Safety at Work etc Act 1974 except those undertaking activities on a prescribed list

BACKGROUND

The Health and Safety Executive (HSE) has consulted on the clarity of the proposed definitions relied upon in draft regulations, of those, self-employed persons, who will continue to have duties under health and safety law. The proposal to exempt certain self-employed persons from some health and safety law is derived from a recommendation made by Professor Löfstedt in his report ‘Reclaiming health and safety for all: an independent review of health and safety legislation.’

The general proposal to exempt certain self-employed persons was consulted on by HSE in 2012. A clause to amend current duties on self-employed persons is included in the Deregulation Bill at clause 1.

MAIN PROVISIONS

The clause in the Deregulation Bill has the effect of limiting the scope of section 3(2) of HSWA to those self-employed carrying out specified activities, working in certain industry sectors or with hazards of a prescribed description. All others will be exempt. The amendment gives the Secretary of State power to make regulations for the purposes of prescribing those self-employed persons who still have duties.

HSE has sought views on the clarity of the definitions relied upon in the draft regulations and is preparing guidance on the definitions.

CURRENT STATUS

This consultation began on 6 July and ended on 31 August 2014. The consultation document is available online at: www.hse.gov.uk/consult/condocs/cd273.htm.

We are now awaiting the outcome of HSE’s analysis of the responses to consultation.

RAILWAY INDUSTRY POSITION

-

OTHER INFORMATION

ORR contributed to the draft Consultation Document to ensure that the definition for railways was consistent with that used to allocate health and safety enforcement functions to ORR.

DATE UPDATED January 2015
Section 3. Other railway related consultations


BACKGROUND
ORR has consulted on reviewing existing railway safety regulations. This review is part of the Government’s ‘Red Tape Challenge’ to reduce secondary legislation.

MAIN PROVISIONS
The regulations being reviewed are the Railway Safety (Miscellaneous Provisions) Regulations 1997, Railway Safety Regulations 1999 and Railway Safety (Miscellaneous Amendments) Regulations 2001. ORR is proposing to replace them with new regulations, which would:

- Retain the prohibition on the operation of trains on a railway without a train protection system for that train and railway;
- Introduce a new requirement to have a management system for the train protection system to ensure safe performance;
- Retain the prohibition on the operation of Mark 1 rolling stock unless certain modifications have been made to improve crashworthiness;
- Retain the obligation to provide passengers with a means of communication with the train driver or conductor for use in an emergency; and
- Remove duties or prohibitions that are either covered by other more recent regulations, have been superseded, or are out of date.

ORR also consulted on a proposal to introduce flexibility to the current arrangements for the allocation of health and safety functions for railways.


CURRENT STATUS
Consultation closed on Tuesday 2 September 2014. ORR received 37 responses.

ORR is considering the responses and the issues raised and intends to publish a response to the industry in early 2015.

RAILWAY INDUSTRY POSITION

OTHER INFORMATION

DATE UPDATED January 2015
Consultation on EC Regulation 1371/2007 Rail Passengers' Rights and Obligations

BACKGROUND

On 14 October 2014 the Government began a consultation process to consider the future of exemptions from the EC Regulation 1371/2007 Passengers' Rights.

The Regulation sets out a number of obligations which the rail sector must comply with in full by 2024. The Regulation is aimed at enhancing and strengthening the rights of rail passengers particularly in the areas of information and ticketing provision, compensation and assistance, and provides rights for disabled persons and persons with reduced mobility. It also contains provision for the enforcement of those rights. More information can be found in the Department of Transport Guidance note: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/2368/guidance-note.pdf

MAIN PROVISIONS

The Regulation covers both GB international and most domestic passenger services – although currently, not all parts of it apply to domestic services and there are some exceptions.

A full list of railway services which are licensed under 95/18/EC and are therefore ‘in scope’ can be found here: http://www.rail-reg.gov.uk/server/show/nav.1857

The UK Government has decided that the non-core elements of the Regulation will not apply to GB domestic services. This exemption was activated by a Statutory Instrument (SI 2009/2970) and will run for five years up to 3 December 2014. It could then be extended for two further periods of five years should the UK Government decide to exercise this right.

CURRENT STATUS

The aim of the consultation is to gather evidence to enable the government to gain a better understanding of where the rail industry is already meeting or exceeding the regulation, helping them identify where they may be able to bring certain provisions into force earlier than the 2024 deadline required by the regulations.

The consultation started on 14 October 2014 and will end on 23 December 2014 and more information can be found here: https://www.gov.uk/government/consultations/rail-passengers-rights-and-obligations.

Any additional questions or correspondence on this consultation should be directed to the following email address: RailPROconsultation@DfT.Gsi.Gov.Uk

The DfT is currently analysing the consultation responses.

RAILWAY INDUSTRY POSITION

- 

OTHER INFORMATION

- 

DATE UPDATED October 2014
Triennial review of the Industrial Injuries Advisory Council: Call for evidence NEW

BACKGROUND

The purpose of the triennial review of the Industrial Injuries Advisory Council (IIAC) is to challenge the continuing need for the body, for its function and for its provision by government.

MAIN PROVISIONS

This call for evidence seeks evidence and information to inform the triennial review of the Industrial Injuries Advisory Council.

The Department for Work and Pensions is keen to hear views and gather evidence from all parties with an interest in the work of IIAC, such as:

- claimants’ representatives
- occupational medical and health institutions
- trade unions
- employer organisations
- any other individuals or organisations with an interest in IIAC’s work

All non-departmental public bodies (NDPBs) undergo a substantive review at least once every 3 years. The report can be found here: 2012 IIAC triennial review.

CURRENT STATUS

[This consultation closed on 30 January 2015]
Email to: ppsd.triennialreviews@dwp.gsi.gov.uk

RAILWAY INDUSTRY POSITION

-

OTHER INFORMATION

-

DATE UPDATED  January 2015
Consultation on Health and safety offences, corporate manslaughter and food safety and hygiene offences guidelines - NEW

BACKGROUND

This consultation is open to everyone including members of the judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice or the offence areas covered by the draft guideline.

The Sentencing Council is consulting on the draft guidelines for sentencing health and safety, corporate manslaughter and food safety offences. The Council is not consulting on the legislation that establishes these offences, which is a matter for Parliament.

Equally, issues that are the responsibility of the relevant regulatory bodies, such as wider enforcement policy or the decision to bring a prosecution, are outside of the scope of this consultation.

MAIN PROVISIONS

The Council is keen to seek as many views as possible from people and organisations interested in its proposals. In particular the Council is seeking views on:

- the scope of each guideline;
- the overall approach proposed to sentencing organisations and individuals for these offences;
- factors that make these offences more or less serious;
- the principles of sentencing in this area;
- the sentences that should be passed for health and safety, corporate manslaughter and food safety offences; and
- anything else that you think should be considered.

The Council recognises that some respondents may only have an interest in one of the areas covered by the draft guidelines. Such respondents should feel free to address only those matters of interest to them. The structure of the consultation is as follows:

- Section 1: Overarching issues: this section contains information and questions relating to issues that cut across all five of the draft guidelines; most respondents will therefore wish to consider this section.
- Section 2: Health and Safety offences: guidelines for individuals and organisations.
- Section 3: Corporate manslaughter guideline.
- Section 4: Food Safety offences: guidelines for individuals and organisations.
- Section 5: Questions relating to victims and equality and diversity matters across all guidelines.

Enquiries and consultation: https://consult.justice.gov.uk/sentencing-council/health-and-safety-offences-guidelines and info@sentencingcouncil.gsi.gov.uk

CURRENT STATUS

Consultation closes on 18 February 2015
Section 4. News

News

Statutory review of ROGS

Regulation 34A of the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended) (ROGS) require that by 26 August 2016 the Secretary of State

- carries out a review of ROGS;
- set out the conclusions of the review in a report; and
- publish the report.

ORR will carry out the review on behalf of the Secretary of State and make recommendations.

In spring 2015 ORR will be asking stakeholders to complete a survey so that it can:

- determine the extent to which the objectives of ROGS are achieved; and
- assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

In carrying out the review ORR will also, so far as is reasonable, have regard to how Directive 2004/49/EC is implemented in other EU Member States.

At the end of the review ORR will make recommendations to the Secretary of State on whether ROGS

- remain as they are;
- remain but implementation is revised or improved; or
- are removed without replacement.

ORR Report on Network Rail performance data and analysis April-October 2014

Network Rail has made good progress in reducing safety risk at level crossings, mainly through a programme of closures but also through more effective risk assessment and the implementation of new technology and better systems.

Consulting workers on health and safety L146

An updated version of the ACOP relating to the application of Safety Representatives and Safety Committees Regulations 1977 (as amended) and Health and Safety (Consultation with Employees) Regulations 1996 (as amended) was published in November; it describes how both sets of Regulations are applied and interface with each other. The amendments mainly relate to changes to reference legislation and publications which have changed since 2012. It may be downloaded from:

http://www.hse.gov.uk/pubns/priced/l146.pdf

HSE asbestos safety campaign

The HSE has launched a safety campaign here: http://www.beware-asbestos.info/?ebul=gd-woodworking&cr=6/Oct14 that will help identify asbestos risk, based on statistics indicating that an average of 20 trades people die every week from asbestos-related diseases. In addition, 200,000 asbestos safety kits will also be distributed via B&Q TradePoint stores. More information about the campaign can be found on an HSE press release: http://press.hse.gov.uk/2014/1-3-million-tradespeople-at-risk-from-dangers-of-asbestos/?ebul=gd-woodworking&cr=7/Oct14.
Risk assessment leaflet revised
A new and further revised version of ‘The five steps to risk assessment’ has been published by the HSE. It may be downloaded from here: http://www.hse.gov.uk/pubns/indg163.htm?ebul=gd-rubplas&cr=3/Oct14

This Approved Code of Practice and guidance has been revised and is aimed at employers, dutyholders and anyone who has responsibility for the safe use of work equipment, such as managers and supervisors. It sets out what is needed to comply with the Provision and Use of Work Equipment Regulations 1998. The Regulations, commonly known as PUWER, place duties on people and companies who own, operate or have control over work equipment. PUWER also places responsibilities on businesses and organisations whose employees use work equipment, whether owned by them or not. A free copy of the ACOP may be downloaded from: http://www.hse.gov.uk/pubns/priced/l22.pdf

Two items which may be of help to train maintainers are:-

'Badairday' Website – The Welding Fume Team
The Welding Fume Team is a partnership group brought together by HSE, with the aim of promoting awareness and highlighting the potential risks to respiratory health from exposure to welding and thermal cutting fume. The members have launched a website called “badairday” which will serve as a resource for information and guidance for all those who weld, including employers and employees, suppliers and manufacturers. For more information, and to learn more about the activities of the Welding Fume Team visit http://www.badairday.info/home.asp

Concerns about blower-driven air to remove dust
The Institute of LEV Engineers (ILEVE) and others have expressed concerns about the use of blower-driven air for removing dust, fibres, grit etc from clothing and hard surfaces. This is because of the danger of redistributing dust into a person's breathing zone. The air is usually at a pressure of about 2 psi and systems have been around since at least 2010. Units may be wall-mounted, portable or booth stations. Compressed air lines are also often used to remove dust from clothing and surfaces. Excessive dust on clothing indicates a failure of control. Control of the dust at its source should be addressed first and this will reduce the contamination of workers and surfaces. Information about dust and LEV can be found on http://www.hse.gov.uk/lev/?ebul=gd-moltenmetals&cr=4/Dec14

UK railway safety statistics 2001-2014
DfT have published their annual updates, on a financial year basis (in a series of excel spreadsheets). They may be obtained from: https://www.gov.uk/government/statistical-data-sets/rai05-rail-accidents-and-safety

EU Biocides Regulation 528/2012.
Members should note that from 1st September 2015 biocides may only be placed on the market if the substance or product supplier is included in the “Article 95” list for the product type to which the product belongs. Suppliers must be able to provide evidence to the HSE that their suppliers are included in the list. In order to ensure continuity of supply it is suggested that confirmation of compliance is obtained from companies providing you with such products eg sodium hypochlorite or other bleaches. The current list may be obtained from: http://echa.europa.eu/information-on-chemicals/active-substance-suppliers if you are interested.
RR999 - Evaluation of the use of the pushing and pulling operations risk assessment tool by dutyholders

This research report describes the usability testing of a prototype tool for assessing the manual handling risks associated with tasks involving pushing or pulling of loads which was introduced last year. It builds on earlier work by HSL to develop Pushing and Pulling Operations Assessment Charts (PPAC). Feedback on the assessment of typical operations in the field indicated that the risk factors included in the tool are relevant, useful, relatively easy to identify and that they covered most of the conditions found in workplaces. Duty holders who took part in the study were able to differentiate between categories of risk for most of the factors, they were also able to argue and justify their choices. The findings indicate that the tool is sufficiently usable and reliable, and it is useful for increasing duty holder confidence in assessing pushing and pulling operations. The report may be found at: http://www.hse.gov.uk/research/rrpdf/rr999.pdf

The HSE publish new edition of “A guide to workplace transport safety”

The new edition has been updated and simplified to take account of new advice on workplace transport safety and also to reflect changes to relevant legislation and associated guidance. It is relevant to station car parks, forecourts and maintenance depots. It may be downloaded from:- http://www.hse.gov.uk/pubns/priced/hsg136.pdf

Key Dates for impending Regulations

<table>
<thead>
<tr>
<th>Date</th>
<th>Item</th>
</tr>
</thead>
</table>

Court Cases

Train driver receives prison sentence for ignoring safety systems

A former First Capital Connect train driver received a three-month custodial sentence, suspended for twelve months, and was ordered to pay costs of £500, after he ignored warnings and safety systems on the Cambridge to London train he was driving. On 7 November, the driver pleaded guilty at Stevenage Magistrates Court following a prosecution brought by the Office of Rail Regulation (ORR) for a breach of section 7(a) of the Health and Safety at Work etc. Act 1974 in October 2013.

On 8 October 2013, the 20:40 Cambridge to London Kings Cross passed a red signal at Hitchin station. The train’s warning safety system applied automatic brakes but the driver deliberately reset the system and continued without seeking the required authorisation. Prior to leaving Cambridge he had also failed to set up his Cab Secure Radio, which prevented any direct contact from the signaller. As a result of these actions the train ran "out of control" putting the driver, passengers and train staff at risk of a serious incident.