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SAFETY LEGISLATION UPDATE

Issue 54

January 2010

This Safety Legislation Update has been compiled by RSSB Ltd following consideration by the Railway Safety Legislation Committee. Its aim is to identify emerging health and safety legislation, 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. No representations are made as to the accuracy and completeness of the information provided.

*Note: Entries in the Update are deleted once they become law. Significant changes to entries since the previous issue are in **bold**. Each entry is dated with the month that the entry was last updated.*

Common abbreviations

ACOP	Approved code of practice
AOCL	Automatic open crossing, locally monitored
ATOC	Association of Train Operating Companies
CDM	Construction (Design and Management) Regulations 2007
CER	Community of European Railways
CSI	Common Safety Indicator
CSM	Common Safety Method
CST	Common Safety Target
DBERR	Department for Business, Enterprise and Regulatory Reform
DCLG	Department for Communities & Local Government
DEFRA	Department for Environment Food and Rural Affairs
DfT	Department for Transport
ERA	European Railway Agency
HASAW	Health and Safety at Work etc Act 1974
HSE	Health and Safety Executive
HMRI	Her Majesty's Railway Inspectorate
NRV	National Reference Value
ORR	Office of Rail Regulation
RAIB	Rail Accident Investigation Branch
RIDDOR	Reporting of Injuries, Diseases and dangerous Occurrences Regulations 1995
RSSB	Rail Safety and Standards Board
RVAR	Rail Vehicle Accessibility Regulations 1998
TSI	Technical Specification for Interoperability
UIC	International Union of Railways

Useful websites

ATOC	www.atoc.org
DBERR	http://www.berr.gov.uk/
DCLG	www.communities.gov.uk
DEFRA	www.defra.gov.uk
DfT	www.dft.gov.uk
European Commission	http://ec.europa.eu/index_en.htm
ERA	www.era.europa.eu
Government News Network	www.gnn.gov.uk
HSE	www.hse.gov.uk
Network Rail	www.networkrail.co.uk
ORR	www.rail-reg.gov.uk
RAIB	www.raib.gov.uk
RSSB	www.rssb.co.uk
UIC	http://www.uic.asso.fr/

Introduction

The Sentencing Guidelines Council has held a consultation on its proposals for sentencing in cases of corporate manslaughter and breaches of health and safety law that result in death. The key change from the original proposals put forward by the Sentencing Advisory Panel (whose role is to put forward recommendations to the Council) is that the fixed correlation between the fine and level of turnover and profit has been dropped (see page 16). This has been welcomed by employers' organisations but has alarmed trades unions who believe that the clear message behind corporate manslaughter legislation has been lost. In the meantime, the first case under the act comes to court on 23 February 2010 at Bristol.

Under railway specific legislation, the Train Driver Licensing and Certificates Regulations are expected to come into force in the spring. The ORR is currently working on Guidance to the Regulations (see page 23). Two important consultation exercises are likely to be held in 2010: the Law Commission is working towards a paper setting out their proposals for the reform of level crossing legislation (see page 24), and the ORR will consult on changes to the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGTS), commencing in February (see page 10).

Steve McKay, Senior Planning Advisor

Contents

Legislation	Implementation (Where Known)	Page
EUROPEAN LEGISLATION (GENERAL)		
Physical Agents (Electro-Magnetic Fields)	April 2012	7
Musculoskeletal Disorders	April 2012	9
EUROPEAN LEGISLATION (RAILWAYS)		
Railway Safety Directive	Adopted (UK regulations due July 2010)	10
Common Safety Indicators		11
Common Safety Targets		12
Common Safety Methods	July 2010 (in part for risk evaluation and assessment methods)	13/14
UK LEGISLATION (GENERAL)		
Corporate Manslaughter	In force	16
Supply of Machinery	In force	17
Road safety		18
Workers (Aggravated Offences) Scotland		19
Reforming the Medical Statement		20
Optical Radiation	April 2010	21
UK LEGISLATION (RAILWAYS)		
Train Driver Certification	Spring 2010	23
Level crossing legislation	2011	24
Light Rail Vehicle Accessibility	March/April 2010	25
Railway Interoperability		26
NEWS		28/30

Section 1

European Legislation (General)

Physical Agents (Electro-Magnetic Fields)

BACKGROUND

This represents the third of the suite of physical agents directives.

MAIN PROVISIONS

Provisions cover risk assessments; control of exposure (with laid down action values and limit values); health surveillance and information, instruction and training.

Risk assessments will be required to address:

- Level, frequency, spectrum, duration and type of exposure
- Exposure limits and action values
- Effects on workers at particular risk
- Indirect effects (eg interference with cardiac pacemakers)
- Existence of replacement equipment designed to reduce levels of exposure
- Appropriate information obtained from health surveillance
- Multiple sources of exposure
- Simultaneous exposure to multiple frequency fields

CURRENT STATUS

Although the Directive came into force in April 2004, it was subsequently found that some medical procedures involving MRI scanners exposed workers to exposure levels above the limit values. As a result, a new Directive, which has now been adopted by the European Parliament and the Council, postpones the implementation deadline from April 2008 to 30 April 2012. It is intended that a draft proposal will be considered by the Advisory Committee on Safety and Health in spring 2010. **The Commission has gone through the social dialogue process, consulting employer and employee organisations;** the rail industry contributed to this process through the CER, broadly stating that the Directive should be revised incorporating limits that are more pragmatic and easily measurable but still considered to be safe. **The Commission is currently considering the responses and a second round of social dialogue will take place in February/March 2010. A new EMF proposal, however, is not expected before summer 2010.**

RAILWAY INDUSTRY POSITION

Notwithstanding the above, railway industry research into the effects of the Directive will continue. An RSSB report into these is available at:

http://www.rssb.co.uk/Proj_popup.asp?TNumber=515&Parent=876&Ord= .

OTHER INFORMATION

For more information see

<http://www.hse.gov.uk/aboutus/europe/euronews/dossiers/emf.htm>

DATE UPDATED **January 2010**

Musculoskeletal Disorders

BACKGROUND

Following consultation exercises in 2004 and 2007 into the best way to provide increased protection against musculoskeletal disorders (MSDs), the European Commission has proposed a new directive which, it is intended, will be easier to apply, less burdensome and more effective. The proposed directive would merge the existing manual handling and display screen equipment directives.

MAIN PROVISIONS

The current proposal requires all tasks with a physical component to be assessed using four risk factors: repetitive motion, awkward postures, force and contact stress – although these are likely to be added to. Vibration is not included, however, as this is covered by the physical agents' directive. More workplaces are likely to be covered than hitherto (eg. train driving cabs).

CURRENT STATUS

In November 2008 the EC's Advisory Committee on Safety and Health at Work (ACSH) established a working party including UK employers' representatives to prepare an opinion on the development of further legislative initiatives on MSDs. **The Commission has now released a second draft of the Directive which has been considered by the ACSH. The EC College of Commissioners is expected to adopt the Directive in April 2010. Potential new regulations in the UK are at least two years away.**

UK POSITION

The HSE is currently monitoring developments and has taken the view that a thorough review of the operation of existing legislation should be undertaken before new legislation is considered.

RAILWAY INDUSTRY POSITION

Inclusion of train driving cabs is potentially significant to the industry, particularly with older rolling stock. **See also news item, page 28.**

OTHER INFORMATION

For more information see:

<http://www.hse.gov.uk/aboutus/europe/euronews/dossiers/msd.htm> .

DATE UPDATED January 2010

Section 2

EU Legislation (Railways)

Additional entries have been added to keep readers abreast of the principal developments currently taking place to implement the requirements of the Railway Safety Directive and the impact these will have on the rail industry in Great Britain.

Railway Safety Directive

BACKGROUND

As the result of a review of the operation of the second railway package, (which incorporates the Railway Safety Directive, the Interoperability Directives and a Regulation establishing the European Railway Agency(ERA)), the European Commission proposed a number of amendments to the Railway Safety Directive and the ERA Regulation principally in order to improve cross-acceptance of rolling stock between member states.

MAIN PROVISIONS

The principal amendments to the Safety Directive are:

- A voluntary maintenance certification scheme
- A new definition of a 'keeper' of wagons and vehicles
- A tidying up of the requirements for national safety rules
- Updates in the light of experience

ERA Regulation – there are new tasks for the ERA in the mutual recognition of locomotives: development of a reference document which cross references all the national rules applied by member states for putting rolling stock into service, encourage the National Safety Authorities (NSA) to gradually reduce the number of national rules and to identify those that can be deemed to be equivalent, produce technical opinions if requested by the NSAs or the Commission. There are also changes proposed regarding ERA's role in the development and specification of ERTMS.

CURRENT STATUS

On 3 March 2008, the Council adopted its common position, taking account of amendments adopted by the European Parliament. There was agreement to transfer the content of Articles 14 and 14a of the Railway Safety Directive to the new Interoperability Directive in order to bring together all procedures relating to bringing railway vehicles into service.

Certification will now be applied to freight wagons only and should be adopted no longer than two years after the Directive comes into force. Railway Undertakings in the passenger sector would be able to achieve compliance through their Safety Management System (SMS). However, an evaluation regarding the extension of the scheme to locomotives and passenger cars is still proposed within three years.

The amendments to the Railway Safety Directive and the ERA Regulation have now been adopted by the Transport Council without debate. **The ORR's consultation on proposed changes to the Railways and Other Guided Transport Systems (Safety) Regulations 2006 is due to start on 12 February 2010. The Regulations will be introduced in two phases: the first part in July 2010 setting out what to do and the second part, later in the year will set out the criteria to be used.**

UK POSITION

OTHER INFORMATION

DATE UPDATED January 2010

Common Safety Indicators

BACKGROUND

The Railway Safety Directive introduces common safety indicators (CSI) that will be collected by the national safety authorities and delivered to the European Rail Agency (ERA). They will, in aggregated form, be published on the ERA website and will amongst other things, serve to facilitate the assessment of the achievement of the common safety targets (CSTs). They will also provide for the monitoring of the general development of railway safety by the ERA.

MAIN PROVISIONS

Each member state is required by the Safety Directive to report to the ERA by September each year, the number of incidents in each category of CSI as detailed by Annex 1 of the Directive. To facilitate this each railway operator must report their incidents for each CSI for the previous year to the ORR by June.

CURRENT STATUS

An ERA working group has reviewed the list of CSIs in Annex 1 of the Safety Directive and the necessary revision to the Safety Directive is now being considered by the Council and Parliament. The European Rail interoperability and Safety Committee (RISC) has amended the definition of a SPAD where ATP is fitted (so that no SPAD is recorded unless the train enters a danger area).

RAILWAY INDUSTRY POSITION

The ERA working group is made up of member state representatives only, so the GB rail industry is kept informed of developments and inputs its view via the ORR's representative. In GB, RSSB collates the CSI data on behalf of the operators and makes it available to them for use in their annual safety reports (ASRs) to the ORR. The ORR has issued guidance to duty holders on completing their ASRs, available at: <http://www.rail-reg.gov.uk/server/show/nav.1099>. RSSB also reports the aggregated mainline railway data to the ORR in July.

OTHER INFORMATION

Further information on the process for collection and distribution of the CSI data please contact Marcus Dacre at RSSB, marcus.dacre@rssb.co.uk.

DATE UPDATED October 2009

Common Safety Targets

BACKGROUND

The Railway Safety Directive requires that a series of Common Safety Targets (CSTs) are set by the ERA on each member state. The first set of targets was introduced in April 2009.

MAIN PROVISIONS

The Safety Directive required CSTs to be set from April 2009 for:

- (a) individual risks relating to passengers, staff including the staff of contractors, level crossing users and others, and, without prejudice to existing national and international liability rules, individual risks relating to unauthorised persons on railway premises;
- (b) societal risks.

The Safety Directive indicates that a second set of CSTs **should** be introduced from April 2011 based on the experiences gained from the first set of CSTs and their implementation.

CURRENT STATUS

The first set of CSTs have taken the form of National Reference Values (NRV), which will represent the 'current' level of safety performance measured for the period 2004 to 2007. The NRVs **were** introduced in April 2009. The requirement **is** for each member state to at least maintain the safety levels defined by the NRVs in future years. **No work has yet started on the second set of CSTs and it is therefore unlikely that they will be introduced in 2011.**

RAILWAY INDUSTRY POSITION

The railway industry, via RSSB, is responsible for providing the CSIs to the ORR by the end of June each year and the ORR has to submit the data to the ERA by the end of September. The ERA will then, using a predefined methodology, assess progress against the NRVs. Should performance fail to meet the NRVs, the responsibility for initiating corrective actions will rest with the member state (DfT and ORR) although this will inevitably cascade down to the industry.

OTHER INFORMATION

Details of the NRVs that will apply to the UK have been provided in the 2008 Annual Safety Performance Report which is available at www.rssb.co.uk/safety/spr/spreports.asp . For further information contact Colin Dennis at RSSB on 020 3142 5462.

DATE UPDATED **January 2010**

Common Safety Methods

BACKGROUND

The Railway Safety Directive 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.

MAIN PROVISIONS

The Safety Directive requires that a first set of Common Safety Methods (CSM) covering risk evaluation and assessment methods be adopted by the Commission. The CSM has been developed by the ERA based on an examination of existing methods in the Member States.

The methods developed by the ERA (with the support of the CSM working group) are predictive methods to be applied in order to assess the safety of any significant changes brought to the railway system. The CSM applies to the whole rail system and covers the assessment of the following changes:

- Construction of new lines or significant changes of existing lines.
- Introduction of new and substantially modified technical systems/sub-systems/ equipment.
- Operational changes (such as new or substantially modified operational rules and maintenance procedures).
- Significant changes within RU/IM organisations.

The overall process for the CSM relies on hazard identification followed by an assessment of acceptability via a demonstration that the identified hazards are controlled by:

a) The application of codes of practice (TSIs, NTRs, recognised standards, etc).

b) Comparison with similar reference systems (cross-acceptance),

and if neither a) or b) apply,

c) The application of explicit risk assessment and comparison with risk-acceptance criteria.

CURRENT STATUS

The ERA recommendation has now been accepted as an EC regulation for implementation in 2010. A guidance document has been issued by the ERA to accompany the regulation, and a series of workshops is being held to explain to member states how the recommendation should be applied. The guidance will be reviewed and updated periodically to ensure it remains fit for purpose. **The first phase will be implemented on 19 July 2010, applying to significant technical changes affecting vehicles and all significant**

Common Safety Methods - Continued

changes concerning structural subsystems. The regulation in its entirety shall apply from 1 July 2012. The ORR will publish guidance prior to the implementation date (which will supplement the ERA guidance).

RAILWAY INDUSTRY POSITION

A key element of the regulation is that a duty holder must use a consistent approach when assessing and introducing a 'significant' change. Guidance will be issued but it will be left for the duty holder will determine what is 'significant' and therefore when the processes will apply. When introducing a new technical system, where its failure has the direct potential to lead to a multiple fatality accident, a risk acceptance criteria of 10^{-9} failures per operating hour has been introduced. The main advantage of this is to equipment manufacturers as they will know the risk criteria to which a system can be built for it to be accepted in all member states.

OTHER INFORMATION

Other Common Safety Methods will apply to:

Conformity Assessment: This is due to be published in the Official Journal of the European Journal. The ORR will the assess if existing regulations need to be updated.

Monitoring: This is still at an early stage. A working group is currently scoping the work.

DATE UPDATED January 2010

Section 3

UK Legislation (General)

Corporate Manslaughter

BACKGROUND

Following a period of intensive lobbying for a revision of the law, the Government published a draft corporate manslaughter bill in March 2005.

MAIN PROVISIONS

- The new offence is linked to the standards required under existing health and safety legislation.
- The bill targets corporate, not individual liability. Offences therefore carry a penalty of an unlimited fine, rather than a custodial sentence. A publicity order can also be made under which convicted companies are required to publicise the fact of their conviction as well as the particulars of the offence and the amount of the fine.
- The bill uses the term 'senior manager'. For an offence to be committed there has to be a management failure by an organisation's senior managers. This means that the new offence is targeted at failings in strategic management, although the definition of 'senior manager' will depend on the size of the organisation.
- The new offence will require a 'gross failure' that causes death. Gross failure is defined in terms of conduct that falls far below that which can reasonably be expected in the circumstances.
- There is no general crown immunity.

CURRENT STATUS

The Corporate Manslaughter and Corporate Homicide Bill received royal assent on 26 July 2007, and was implemented on 6 April 2008. Guidance is available at:

<http://www.justice.gov.uk/guidance/manslaughteractguidance.htm> .

In an unusual move, the Sentencing Guidelines Council decided to conduct a second detailed consultation on sentencing for corporate manslaughter and breaches of health and safety law that result in death. This proposal differ in some key respects from those of the Sentencing Advisory Panel (consulted on in early 2008), notably there is now no fixed correlation between the fine and level of turnover and profit, and neither is there a minimum level of fine. The consultation exercise closed on 5 January 2010, and the consultation document is available at: http://www.sentencing-guidelines.gov.uk/docs/corporate_manslaughter/letter_consultees_corporate_manslaughter.pdf

RAILWAY INDUSTRY POSITION

The CBI and Network Rail have met with the Sentencing Advisory Panel in connection with this Act and the Health and Safety (Offences) Act 2008. The opportunity was taken to emphasise the need to establish causality in any prosecution.

OTHER INFORMATION

DATE UPDATED

January 2010

Supply of Machinery (Safety) Regulations

BACKGROUND

The Machinery Directive (98/37/EEC) was implemented in the UK by the Supply of Machinery (Safety) Regulations 1992 and the Supply of Machinery (Amendment) Regulations 1994. They require suppliers to certify that the equipment meets essential health and safety requirements set out in a schedule to the Regulations. Initially it was intended to amend the original directive to ensure free movement of machinery within the internal market. However, the proposal subsequently evolved into a separate directive.

MAIN PROVISIONS

The directive is designed to ensure free movement of machinery within the internal market and to harmonise health, safety and consumer protection requirements. The main effect is to tidy up acknowledged flaws in the old Directive and addressing some of the difficulties making it work in practice.

CURRENT STATUS

The Directive has been approved and was published in the Official Journal on 9 June 2006. Member states had two years to transpose the Directive into domestic legislation. The Regulations were laid before Parliament in June 2008 and **came** into force on 29 December 2009.

RAILWAY INDUSTRY POSITION

It is not anticipated that this legislation will have a major effect on the UK railway industry.

OTHER INFORMATION

DATE UPDATED **January 2010**

Road Safety

BACKGROUND

The Government has proposed new measures aimed at improving compliance levels with road safety law. The Government's target is to reduce deaths and serious injuries by 40% by 2010 from a 1994/98 baseline.

MAIN PROVISIONS

The main proposals concern: speeding (introduction of graduated fixed penalties); drink driving (development of targeted checkpoint enforcement and introduction of evidential breath-testing equipment, removing the option for a blood or urine test); drug driving (a new offence to enable the police to deal with offenders more effectively); and careless driving (making careless driving a fixed penalty offence).

CURRENT STATUS

The DfT issued a consultation document, *A Safer Way* seeking views on the vision, targets and measures for improving road safety in Great Britain beyond 2010, which closed on 14 July 2009. **The views received will influence DfT's next road safety strategy, which has yet to be published but a statement by Paul Clark, Under Secretary of State for Transport, outlined the results of the consultation exercise and specifically an initiative to examine the current law with respect to drink and drugs driving. It is available at:**

<http://www.dft.gov.uk/press/speechesstatements/statements/drinkdriving>

RAILWAY INDUSTRY POSITION

RSSB responded noting that there is no reference to road-rail interface issues, especially level crossings.

OTHER INFORMATION

The European Commission has issued a consultation on the European Road Safety Action Programme 2011-2020 which **closed** on 20 November 2009. Again, there is no mention of level crossings. However, the European Level Crossing Forum has submitted a preliminary position paper saying that it has serious concerns that many key interested parties in road safety do not consider level crossing issues. The consultation document is available at:

http://ec.europa.eu/transport/road_safety/consultations/2009_11_20_ersap_2011_20_20_en.htm . Contact Alan Davies (alan.davies@rssb.co.uk) for more information.

Two further items are of interest: a review of UK domestic road drivers' hours has proposed an extension of the domestic rules to cover vehicles not exceeding 3.5 tonnes (ie most vans). The consultation closed on 13 October 2009. Minor amendments to road signage affecting low bridges and level crossings are proposed in a consultation that **closed** on 24 December 2009. The documents are available at: <http://www.dft.gov.uk/consultations/> .

DATE UPDATED January 2010

Workers (Aggravated Offences) (Scotland)

BACKGROUND

Hugh Henry, MSP for Paisley South, has lodged a private members bill into the Scottish Parliament to create a specific offence of attacking a worker who in the course of his or her work has face to face contact with the public. This is specifically intended to include public transport workers. As a Scottish Bill, if it becomes law it will of course only apply in Scotland.

MAIN PROVISIONS

The intention of the bill is to extend the level of protection from violent physical assault afforded to emergency workers under the Emergency Workers (Scotland) Act 2005 to workers who provide a service to the public and in doing so come into face to face contact with the public. Under that Act it is a specific offence to assault, obstruct or hinder someone providing an emergency service, with a maximum penalty of nine months in jail or a fine of £5,000 or both. The new bill applies to both public and private sector workers.

CURRENT STATUS

Under the Scottish Parliament procedure members wishing to introduce a non-executive bill can elect to run a consultation exercise prior to lodging a firm proposal. In this case, a consultation was run, with a closing date of 14 September 2009. Details are available at:

<http://www.scottish.parliament.uk/s3/bills/MembersBills/documents/20090622-FinalConsultationdocument.pdf> .

An analysis of responses to the consultation exercise has now been published at:

<http://www.scottish.parliament.uk/s3/bills/membersbills/documents/Consultationresponses-WorkersBill-HughHenryMSPFinal.pdf> . **Over 90% of respondents expressed support for the bill.**

RAILWAY INDUSTRY POSITION

RSSB replied to the consultation exercise expressing support for the bill and supplying statistical evidence to support the case – noting, incidentally, that assaults on staff have shown a disproportionate fall over the last 12 months in Scotland compared with Great Britain as a whole.

OTHER INFORMATION

In England and Wales the crown Prosecution Service has previously agreed that railway workers should be classed as public service workers and that prosecutions will always be progressed in the event of assault.

DATE UPDATED January 2010

Reforming the Medical Statement

BACKGROUND

Following Dame Carol Black's report *Working for a healthier tomorrow: Review of the health of Britain's working age population*, the Government has put forward proposals to replace the current medical statement (or 'sick note') with a 'fit note'. The intention is to help people stay in work rather than drift into long-term sickness; the evidence is that, in general, work has a positive effect on health whereas inactivity can worsen physical and mental well-being. Medical statements are prescribed in regulations, so this will mean a change in the law.

MAIN PROVISIONS

The Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) Amendment Regulations 2010 will make the following key changes:

- Change the format of the medical statement to include a new option to allow a doctor to indicate where a person 'may be fit for some work now'.
- Update the rules relating to completing medical statements.
- Rationalise the current set of medical statements.
- Permit GPs to issue computer-printed statements.

CURRENT STATUS

The Department for Work and Pensions has undertaken a consultation exercise which closed on Wednesday 19 August 2009. The consultation document is available at: www.dwp.gov.uk/consultations/2009. The intention is that the new electronic medical statement will be available for implementation by April 2010. **It is also expected that guidance for employers will be available in early 2010.**

RAILWAY INDUSTRY POSITION

ATOC responded to the consultation noting that TOCs are yet to be convinced that the scheme will result in an overall benefit, both due to the real and practical consequences of the proposal and the fact that some of the underpinning assumptions do not always apply in TOCs. Further details are available from Jack Wheale at jack.wheale@atoc.org.

OTHER INFORMATION

DATE UPDATED January 2010

Optical Radiation

BACKGROUND

The proposed Control of Artificial optical Radiation at Work Regulations will implement the Physical Agents (Artificial Optical Radiation) Directive (2006/25/EC) which represents the last of the suite of four physical agents directives. It covers electromagnetic radiation in the wavelength range 100nm to 1mm, including ultraviolet, visible and infrared radiations and lasers. *It should be noted that the proposed regulations will not apply to common sources of light such as office lights, photocopiers and computers.*

MAIN PROVISIONS

The Directive followed a similar format to the physical agents directives, including:

- Limit values
- Risk assessment
- Exposure reduction
- PPE
- Information and training
- Health surveillance

Exposure limits are based on guidelines published by the International Commission on Non-Ionising Radiation Protection.

CURRENT STATUS

The HSE is currently consulting on the draft regulations with a closing date of 5 February 2010. The consultation document can be found at <http://www.hse.gov.uk/consult/condocs/cd227.htm> . The HSE aims to introduce the new regulations by 27 April 2010.

RAILWAY INDUSTRY POSITION

The impact of this on the railway industry is expected to be minimal.

OTHER INFORMATION

DATE UPDATED January 2010

Section 4

UK Legislation (Railways)

Train Driver Certification

BACKGROUND

The Train Driver Certification Directive is designed to underpin interoperability by developing a licence for train drivers which will be recognised by all railway undertakings to enable cross border operation of trains and freedom of movement for drivers from one employer to another.

MAIN PROVISIONS

- A licence and a certificate, issued to drivers, covering physical and mental fitness, identification of the driver, general professional competence, category of traction he or she is licensed to drive, rolling stock and route knowledge.
- The licence will be recognised throughout the EU but it will be supplemented by a railway undertaking specific certificate for traction and rolling stock knowledge and route knowledge.
- Basic health requirements and competencies will be specified, specifically a language competency for drivers of cross border services.
- Licences will be issued by a competent authority; certificates by the employer.
- 'Domestic' drivers can be excluded from the provisions subject to a negative cost-benefit analysis being conducted by the ERA for a period of 10 years.
- The European Commission shall consider bringing forward legislation for a certification system for other safety-critical crew members.

CURRENT STATUS

The Directive was adopted in September 2007 and was published in the EU Journal on 3 December 2007. The current timescale for UK implementation is:

- **Late March/Early April 2010: The Train Driver Licences and Certificates Regulations to come into force.**
- End 2010: Setting up of registers. Obligatory for drivers on international services.
- Before 2012: Applications for a derogation for domestic drivers to be made by member states supported by a cost-benefit analysis showing disproportionate costs to benefits. RSSB is facilitating the preparation of this through the R&D programme.
- End 2012: Obligatory for all new drivers.
- End 2017: Obligatory for all domestic drivers (unless there is a derogation).

The ORR is currently working on Guidance to the Regulations.

OTHER INFORMATION

The DfT will make a final decision on whether to apply for a derogation for 'domestic' drivers, which would be submitted to the Commission via the ERA, after the regulations have been made.

DATE UPDATED January 2010

Level crossing legislation

BACKGROUND

Following a joint submission by the ORR and the DfT, the Law Commission, together with the Scottish Law Commission, have announced a review of the law governing level crossings. The Law Commission is a statutory independent body whose role is to keep the law under review and recommend reform where needed.

MAIN PROVISIONS

Any legislation proposals emerging from this process will depend on the outcome of the Commission's work. The Commission will, however, be working closely with industry stakeholders and will consider the current antiquated and fragmented law governing the use, safety requirements, closure and other aspects of railway level crossings. The objective should be a single modern public statute or regulatory reform order governing level crossings. The Railway Principles and Guidance part 2 Section E, which covers level crossings, is included in the review.

CURRENT STATUS

It is unlikely that any firm legislative proposals will appear before 2011. However, the industry's Road Rail Interface Safety Group has formulated a submission to the Law Commission Advisory Group setting out what the industry wishes to see from new legislation. A meeting of the Advisory Group **was** held in mid-December 2009 to discuss the broad approach to reform of the law that the Commission will be provisionally proposing. **An early draft of the Law Commission's consultation paper is expected in spring 2010.**

RAILWAY INDUSTRY POSITION

The industry strongly welcomes this review and the opportunity to simplify and rationalise this area of legislation.

OTHER INFORMATION

Further information is available at www.lawcom.gov.uk/programmes.htm and at <http://www.rail-reg.gov.uk/server/show/nav.1566> . In the meantime, the ORR has now published chapter 1 of its revised *Managing Level Crossings: A Guide for Users, Designers and Operators* for consultation with the industry; this is intended for launch on 12 March 2010. The ORR is currently in correspondence with Network Rail concerning AOCLs, and it will also press the Sentencing Guidelines Council to increase the suggested penalties for level crossing misuse by motorists.

See also page 18.

DATE UPDATED **January 2010**

Light Rail Vehicle Accessibility

BACKGROUND

In July 2008 rail vehicles subject to the new European standards (TSI) were removed from the scope of the Rail Vehicle Accessibility Regulations 1998 (RVAR) (to avoid dual regulation by domestic and European requirements), leaving the regulations applying to light rail vehicles only. The opportunity is now being taken to revise the regulations to make them more suitable for the needs of light rail vehicles.

MAIN PROVISIONS

It is proposed to revoke the RVAR 98 regulations and replace them with the Rail Vehicle Accessibility (Non-Interoperable Rail Systems) Regulations, which will reflect their future focus on light rail services only. In addition the Revised Rail Vehicle Accessibility (Application for Exemption Order) Regulations will set out the arrangements for applying for an exemption order.

The proposals cover the following areas:

- Setting an end date by when all light rail vehicles must be accessible
- Changes to technical accessibility requirements
- Applying accessibility requirements to refurbished vehicles
- A compliance certification regime
- Amendments to the administration of the exemption regime
- Future enforcement

CURRENT STATUS

The DfT has published a consultation document available at: <http://www.dft.gov.uk/consultations/open/rvarconsul/> . The closing date was 3 July 2009. **The new regulations are due to come into force in March or April 2010.**

RAILWAY INDUSTRY POSITION

Although this legislation will not affect heavy rail vehicles, there are potential implications for future tram-train trial operations.

OTHER INFORMATION

The ORR is currently preparing to take on enforcement responsibilities for the Railway Vehicle Accessibility Regulations. **The enforcement mechanism will be via the Rail Inspector Contact Officers and the ORR is currently liaising with the Disabled Persons Transport Advisory Committee (DPTAC).**

DATE UPDATED January 2010

Railway Interoperability

BACKGROUND

As the result of a review of the operation of the second railway package, (which incorporates the Railway Safety Directive, the Interoperability Directives and a Regulation establishing the European Railway Agency(ERA)), the European Commission proposed a new interoperability directive in order to improve cross-acceptance of rolling stock between member states.

MAIN PROVISIONS

- The High Speed and Conventional Interoperability Directives were recast and incorporated into a single Directive.
- Extension of the scope of interoperability to the whole network rather than just the TENS routes
- A revised process for cross-acceptance of locomotives and rolling stock.

CURRENT STATUS

The Interoperability Directive was adopted on 18 June 2008. Member states have two years to implement it following publication in the European Journal.

The DfT has consulted on implementation proposals for the Interoperability Directive, leading to a final consultation on the draft amendments early 2010 and is available at: <http://www.dft.gov.uk/consultations/closed/interoperability/> together with a summary of responses.

RAILWAY INDUSTRY POSITION

The rail industry generally supports the DfT's proposals to develop implementation plans for individual TSIs supporting the application of interoperability to upgrades and renewals, particularly for existing railway infrastructure.

OTHER INFORMATION

DATE UPDATED October 2009

Section 5

News

Rail Industry Court Cases

Criminal cases

The judge in the case at Stafford Crown Court, in which Network Rail and Carillion were found guilty of offences under the Health and Safety at Work Act following an incident at Hednesford, Staffordshire in September 2004 in which two men were killed when they were hit by a road rail vehicle, has now determined the fines imposed on each company. Network Rail was fined £666,667 with £50,000 costs for endangering non-employees contrary to section 3(1) of the Act. Carillion was fined £444,444 with £50,000 costs for breaching sections 2(1) and 3(1) of the Act for putting employees and non-employees at risk. The two machine operators and Carillion's senior supervisor were fined £750 each and £3,000 respectively for breaching section 7 of the Act.

A 17 year old youth who threw a shopping trolley in the path of a train was found guilty of malicious obstruction of the railway and jailed for 18 months at Chelmsford Crown Court. The Liverpool Street to Clacton service struck the trolley at speed in the Chelmsford area and came to a halt 20 seconds later. None of the 250 passengers on board were injured but the incident caused significant delays. The perpetrator was arrested a month later following a local newspaper appeal.

Civil cases

In a case at Swansea Crown Court three train drivers employed by Arriva Trains Wales who contracted carpal tunnel syndrome (CTS) have been awarded more than £22,000 in compensation. CTS can be caused by pressure on a nerve in the wrist and it was argued in court that the drivers' condition was caused by repetitive work, adopting awkward wrist postures and operating brake and power controls in cramped conditions. The company said in a statement that it was considering the best action to take with its health and safety advisors, and the industry as a whole through RSSB is considering the broader implications.

A 34-year old fitter working for First Great Western has been awarded £8,500 compensation for having to wait three months for the results of blood tests after he received an injury from a needle in his knee while gaining access to an electrical panel in a coach at Paddington station. He was eventually found to be free of any blood borne diseases, but was so affected that he was forced to take six months off work. Staff engaged in this type of work are now issued with kneepads.

Coroner's Court

The Portsmouth and south east Hampshire Coroner recorded a verdict of death from an industrial disease on a 56-year old former railway ticket inspector who had contracted pigeon fancier's disease – an allergic condition affecting the lungs. The ticket inspector, who had taken ill-health retirement, had been exposed to dust from pigeon feathers and droppings while working at stations in the Portsmouth area. He became housebound and needed oxygen and round-the-clock care for a year before succumbing to heart failure caused by the illness.

HSE workplace temperature review

Following a request from the former Secretary of State for Work and pensions, James Purnell, The HSE is undertaking a review of the current approach to workplace temperatures and has commissioned a report from Professor Ray Kemp, particularly examining the question of whether there should be a maximum specified workplace temperature in addition to the minimum levels already specified in the ACOP. The finding of the report was that the current legislation remains valid but that the associated guidance has not kept pace with changing stakeholder expectations. The HSE are therefore now considering five options:

- No change – retain the current approach
- Amend the ACOP to include an upper temperature limit
- Engage with stakeholders and amend guidance
- Amend the ACOP to include an upper temperature action level or levels
- Amend the ACOP to refer to an acceptable zone of thermal comfort

Full details, including a copy of the report, are available at:

<http://www.hse.gov.uk/aboutus/meetings/hseboard/2009/230909/psepb0987.pdf> .

Inclusive Risk Assessments

The European Agency for Safety and Health at Work has issued a report discussing ways of ensuring that risk assessments are inclusive. The report is aimed at those responsible for carrying out assessments, or who are involved in the process. Part of the report presents the main issues concerning six categories of workers considered to be at increased risk: migrant workers, disabled workers, young and old workers, women (gender issues) and temporary workers. The report also gives examples of good practice and initiatives to better assess or manage the risks faced by the different categories of workers.

The report is available at:

<http://osha.europa.eu/en/publications/reports/TE7809894ENC/view> .

Guidance on preventing workplace harassment and violence

New guidance has been published that aims to give practical help and support to firms and their employees on preventing harassment and violence in the workplace. This follows a Europe-wide agreement between employers' organisations and trades unions and the guidance has the support of the CBI, the Partnership of Public Employers, the TUC, the HSE, the Advisory, Conciliation and Arbitration Service (ACAS) and the Department for Business, Innovation and Skills. Copies of the document are available at: <http://www.workplaceharassment.org.uk/> .

Use of Work Equipment at Work Directive (2009/104/EC)

A new EU Directive has replaced the Use of Work Equipment at Work Directive (89/655/EC), the Amending Directive (95/63/EC) and the Work at Height Directive (2001/45/EC). The new codified directive, adopted on 16 September 2009, consolidates the three older directives and does not introduce any new requirements.

Sustainability news

EU-wide CO2 tax proposal

At a meeting in October 2009, the European Commission floated the idea of imposing a carbon tax on sectors currently outside the emissions trading scheme, which would include transport. It is reported that the proposal was given a cautious but positive welcome from finance ministers. The proposal would require unanimity amongst all 27 member states. Any new legislation is likely to be proposed during 2010. For more information see: <http://euractiv.com/en/climate-change/ministers-cautious-eu-wide-co2-tax-proposal/article-186073> .

Recast of the WEEE and ROHS directives

In December 2008, the European Commission proposed a recast of the Waste Electrical and Electronic Equipment (WEEE) and the Restriction of the use of certain Hazardous Substances in electrical and electronic equipment (ROHS) directives. The BERR issued in a consultation document in April 2009 seeking views of stakeholders on the proposals. Amongst the proposals, aimed mainly at increasing the proportion of materials that are recovered or reused/recycled, is one to include monitoring and control instruments within the scope of WEEE (they have hitherto been excluded), which has potential implications for the rail industry. The draft recast is currently passing through the EU's co-decision process and it is unlikely that any agreement will be reached before the end of 2010. Further information is available at: <http://www.berr.gov.uk/files/file50817.pdf> .