



OFFICE *of the*  
RAIL REGULATOR

**RAILWAY GROUP STANDARDS**  
**CONSULTATION ON REVISED CODE**  
**PROPOSED BY RAILTRACK**

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# *Contents*

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|                                                                                                               |          |
|---------------------------------------------------------------------------------------------------------------|----------|
| <b>Regulator’s foreword .....</b>                                                                             | <b>1</b> |
| <b>1. Consultation on the Proposed Revised Code .....</b>                                                     | <b>3</b> |
| Introduction.....                                                                                             | 3        |
| Background to the proposed revised Code .....                                                                 | 4        |
| The proposed revised Code; key issues .....                                                                   | 5        |
| The Regulator's objectives for the Code .....                                                                 | 6        |
| Will the Code Decision Criteria enable the Purpose of the Code to be achieved? .....                          | 6        |
| Arrangements for industry involvement in the Railway Group Standards change<br>process and consultation ..... | 7        |
| Rules governing Safety and Standards Directorate's discretion .....                                           | 8        |
| Clarity and Enforceability of Rights and Obligations .....                                                    | 9        |
| Practicability .....                                                                                          | 10       |
| Other points.....                                                                                             | 10       |
| Next Steps .....                                                                                              | 10       |
| <b>Appendix 1 - Network Licence Condition 3.....</b>                                                          | <b>1</b> |



## *Regulator's foreword*

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In this consultation document, I am seeking the views of the railway industry, and of funders of railway services, on a proposal by Railtrack to revise its Railway Group Standards Code. Railtrack is obliged to prepare, and comply with, this Code under the terms of its Network Licence. The Code is vital for ensuring efficient and effective achievement of safety on the rail network, which is the overriding concern of all those involved in the provision and regulation of railway services, and which is regulated by the Health and Safety Executive. But it also underpins growth, investment and improvement in the railway, encouragement of which is one of my prime objectives. It is this aspect of Railtrack's proposed revisions to the Code on which I am seeking views.

The Group Standards Code authorises the existing Railway Group Standards and sets out the arrangements under which they can be changed. Ensuring the safe operation of Railtrack's network, and of trains and other assets used on it, is the primary purpose of these Standards. I am seeking the advice of the Health & Safety Executive, which has advised me throughout, on the sufficiency of Railtrack's proposals to ensure the Code's primary purpose continues to be satisfied.

Often, however, there will be choices as to the best means of achieving those standards of safety. Under the terms of its Network Licence, Railtrack's Safety & Standards Directorate is charged with ensuring that the way in which such choices are made is fair and reasonable and acts to promote the use and development of the rail network. The Safety & Standards Directorate must be independent of the line management of Railtrack, and must be seen to be so. It must operate openly and transparently.

Given the many changes that have taken place in the railway industry since the Code was originally promulgated in April 1994, I asked Railtrack to undertake a review, in consultation with the railway industry. That review has led Railtrack to propose these changes. Before deciding whether the proposed revised Code meets the requirements of Railtrack's Network Licence, I want to know whether those who are affected by the operation of the Code, and who are responsible both for safety and for the promotion of growth, investment and improvement of rail services, are satisfied that these proposed changes are the right step forward.

To assist me in assessing whether the proposed Code is consistent with Railtrack's obligations under its Licence, and that it does support innovation and growth, I am seeking views from the railway industry and funders of railway services. In particular I want to see commitment from the industry to play an active role in the Railway Group Standards process, advising Railtrack's Safety & Standards Directorate both on strategic matters and on specific issues, and participating in consultation and representation. I want to be satisfied that the proposed Code enables this to happen. I want to see the industry having an effective voice on these very important issues, thus leading to standards that better meet the needs of rail users and funders.

**JOHN SWIFT QC**  
**RAIL REGULATOR**

# ***1. Consultation on the Proposed Revised Code***

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## **Introduction**

1. In this consultation document the Rail Regulator is seeking views of train, station and depot operators, Railtrack Line, and the railway's manufacturers, suppliers and funders on a proposal by Railtrack's Safety and Standards Directorate for a revised Railway Group Standards Code (published by Railtrack<sup>1</sup>). This follows a request by the Regulator to Railtrack to review the existing Code.
2. Railway Group Standards are key technical standards and operating procedures for the railway. Compliance with them is a requirement of the Railway Safety Cases held by train and station operating companies and Railtrack. It is also a requirement of licences held by Railtrack and train, station and depot operators.
3. Under its Network Licence, Railtrack is required to set up a separate directorate responsible for safety and standards. A key requirement on the Directorate is to prepare and comply with the Railway Group Standards Code. Such a code must authorise existing Railway Group Standards, and set out arrangements whereby standards can be withdrawn, changed and reviewed in consultation with the industry. The relevant Network Licence condition is set out in full at Appendix 1 of this document.
4. The Network Licence sets out the purpose of the Railway Group Standards Code. The purpose is to ensure the safe operation of Railtrack's network and of trains and other railway assets used on it, having regard to the need:
  - (a) to promote the use and development of Railtrack's network;
  - (b) to promote efficiency and economy by Railtrack and other providers of railway services on its network;
  - (c) to promote competition in the provision of railway services;
  - (d) to impose on Railtrack and other providers of railway services on its network the minimum restrictions consistent with purpose; and

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<sup>1</sup> *The Railway Group Standards Code*. Railtrack Safety and Standards Directorate, January 1998.

- (e) to enable Railtrack and other providers of railway services on its network to plan the future of their businesses with a reasonable degree of assurance.
5. Therefore this consultation is not about the safety requirements on the railway, it is about how they are achieved. It is about the processes whereby Railway Group Standards are reviewed and changed, not about the Railway Group Standards themselves. Safety requirements on the railway are set, and compliance with them is ensured, by the application of railway safety legislation, enforced by the Health and Safety Executive.

### **Background to the proposed revised Code**

6. Railtrack's Safety and Standards Directorate produced the first Railway Group Standards Code in August 1994. This was a very short document largely relying for its detailed effect on a procedural Railway Group Standard.
7. Since the publication of this Code the industry has been restructured and privatised; and experience has been gained of the Railway Group Standards arrangements. The Regulator is concerned to establish whether the initial Code is still fit to meet the requirements of the Network Licence condition, and wants to ensure that the views of the industry are properly taken into account in any revision. The Regulator has asked Railtrack's Safety and Standards Directorate to review the Code.
8. Railtrack's Safety and Standards Directorate carried out consultation with the industry in a series of industry forums held in April/May 1997. Issues highlighted as a result of the industry forums were:
- (a) the need for better understanding of the procedures for Railway Group Standards change;
  - (b) the need for more effective industry engagement in the process and concerns as to the extent of representation in the process;
  - (c) the need for effective industry influence on the overall strategy for Railway Group Standards;
  - (d) the need for clear criteria to be used by Railtrack Safety and Standards Directorate, in making decisions;
  - (e) the Railway Group Standards change procedures were seen as burdensome; and

- (f) the need for effective review arrangements for standards.

### **The proposed revised Code; key issues**

9. Following the industry forums, Railtrack's Safety and Standards Directorate prepared a revised Railway Group Standards Code, and the Regulator is now considering whether the revised Code meets the requirements of the Network Licence. Key changes in the proposed Code compared with the existing arrangements are:
  - (a) it now sets out explicitly the key requirements for the Railway Group Standards change and review processes. This makes it a much longer document, but seeks to ensure that all the key principles, rights and obligations can be found in one document;
  - (b) Code Decision Criteria based on the public interest requirements of the Network Licence are now explicitly incorporated. This provides consistent and an objective basis for decisions and, ultimately, for appeals;
  - (c) rights of industry parties to make a proposal for change, and the requirements of the Directorate to facilitate this are explicitly set out;
  - (d) the role of Subject Committees and Drafting Groups in advising the Directorate on decisions is clarified, and a new strategic advisory body (Railway Industry Strategic Safety Committee, RISSC) is introduced with explicit recognition that often a range of options needs to be considered;
  - (e) arrangements for consultation with industry parties are set out in the Code itself, including criteria as to who should be consulted and a requirement to set out options considered and reasons for rejection;
  - (f) requirements on the Safety and Standards Directorate regarding decision making, taking account of the Code Decision Criteria, are set out;
  - (g) procedures are set out governing appeals to the Safety and Standards Directorate, and in the case of operators who hold or have applied for a licence, to the Regulator;
  - (h) a rapid response procedure, and the criteria and procedures for Safety and Standards Directorate's own review of Railway Group Standards, are set out;

- (i) rules governing the recovery of the Directorate's costs of decisions regarding Railway Group Standards are set out; and
- (j) a change and review procedure for the Code itself is explicitly incorporated.

Certain detailed arrangements governing the operation of the procedures are left to be incorporated in separate Railway Group Standards, but the intention is that the key principles of these are embodied in the proposed Code itself.

### **The Regulator's objectives for the Code**

10. The Regulator wishes to be satisfied that the proposed Railway Group Standards Code meets the requirements of the Licence Condition in the newly restructured railway industry. He has identified a number of specific issues on which he is seeking industry views:
- (a) whether the Code Decision Criteria will enable the purpose of the Code to be achieved; and whether they can be effectively applied by a range of industry parties;
  - (b) effectiveness of arrangements for industry involvement in the Railway Group Standards change process and consultation;
  - (c) fairness and transparency of the rules governing Railtrack's Safety & Standards Directorate's discretion;
  - (d) clarity and enforceability of rights and obligations; and
  - (e) practicability of the proposed arrangements, and the expectations of the role that must be played by industry parties.

The following paragraphs set out these issues in more detail and highlight the questions on which the Regulator would particularly welcome the views of consultees.

### **Will the Code Decision Criteria enable the Purpose of the Code to be achieved?**

11. The Purpose of the Code is set out in the Network Licence and in paragraph 4 of the consultation paper. The Regulator considers that decisions made under the Code should be such as to further this purpose. Under the proposal, decisions on Railway Group Standards change, and also the process of review of Railway Group Standards by the Directorate, are to be taken on the basis of Code Decision Criteria, which are

based on the Purpose of the Code. The Code Decision Criteria are set out in Part 4 of the proposed Code.

12. The prime criterion is ensuring that risks arising from the operation of Railtrack's network, and of trains and other railway assets used on it, are as low as reasonably practicable in accordance with the criteria set down in Railtrack's Railway Safety Case. This emphasises that safety obligations take priority. Railtrack's proposed methodology for testing whether options are reasonably practicable in this context is set out in Attachment C of the Railtrack document.
13. Without prejudice to the prime criterion, other wider public interest objectives derived from the Purpose of the Code come into the decision making and are explicitly set out in the Code Decision Criteria (Supplementary Criteria). To clarify the interpretation of the Supplementary Criteria in the context of the Code various factors relating to these objectives are set out for consideration (paragraph 4.3 of the proposed code).
14. A further key difference compared with the current arrangements is the clear requirement that the industry advisory bodies, (RISSC, the Subject Committees and the Drafting Groups), and the industry parties will take into account the Code Decision Criteria in making proposals for change.
15. **Consultees are asked to comment as to whether the Code Decision Criteria are such as to support the achievement of the Purpose of the Code as set out in the Network Licence; whether the factors relating to the Supplementary Criteria are helpful and appropriate in support of the licence requirements; whether the Code Decision Criteria are capable of being applied by a wide range of industry parties in the ways described in the Code, and to suggest any improvements.**

#### **Arrangements for industry involvement in the Railway Group Standards change process and consultation**

16. The Network Licence requires that the Code should provide for a fair and balanced representation and participation in the procedures for Railway Group Standards change by experienced and competent persons from all classes of Participating Railway Operators (defined in the Network Licence as licence holders and applicants for licences). Moreover it requires that all proposals for change be fully and fairly considered. The Regulator considers that in order to achieve these requirements, a wide range of affected industry parties should be able to propose change; there should be arrangements for advice from the industry to the Safety and Standards Directorate

on both strategic and specific issues; and there should be consultation with a full range of industry parties on proposed changes.

17. Under the proposed revised Code industry parties including train, station and depot operators, funding bodies, manufacturers and suppliers, as well as Railtrack itself, may propose changes to Railway Group Standards. The Safety and Standards Directorate is required to manage the process by which the proposals are considered. However, recognising the Directorate's unique position, the Directorate also has obligations to carry out its own continuing review of standards in accordance with the Code Decision Criteria, and develop proposals for change accordingly.
18. The effectiveness of the proposed revised Code depends heavily on the Code's arrangements for the Safety and Standards Directorate to obtain industry advice - from the Railway Industry Safety Strategy Committee (RISSC) on strategic issues and priorities and from Subject Committees and Drafting Groups. The Code contains the principles which should determine the constitution and operation of these various groups. It also gives details of Railtrack's proposals for representation on Subject Committees and RISSC (Attachments A and B to the Railtrack document); these will in due course form the basis of proposals for new Railway Group Standards setting out detailed procedures. The Regulator draws particular attention to the creation of RISSC as a body to advise on strategic issues and the selection of options for Railway Group Standards and to the proposed constitution of the Subject Committees.
19. Before a decision is made on a proposed Group Standard change, the Safety and Standards Directorate's must consult industry parties who may be materially affected, by means of a draft Standard. The process is set out in paragraph 5.8 of Railtrack's proposals; the criteria as to who should be consulted are in paragraph 5.3.2.
- 20. Consultees are asked to comment as to whether the proposed arrangements for industry involvement are likely to be effective in enabling the licence requirements for full and fair consideration of proposals to be met or whether there are improvements which could be made.**

#### **Rules governing Safety and Standards Directorate's discretion**

21. In performing its obligations under the Railway Group Standards Code, Railtrack's Safety and Standards Directorate is carrying out a public interest and a regulatory function. It is reflected in the Network Licence requirement that the Directorate should be a separate division of Railtrack with no commercial functions. The implications of carrying out such a regulatory function is that the Directorate's

arrangements for doing so, as set out in the Code, must be fair between Railtrack and other affected parties, and must be transparently so. The Directorate has discretion in the process, but the exercise of this discretion is governed by rules.

22. These rules are the explicit procedural arrangements and criteria for the responsibilities of the Directorate set out in the Code. The decision on whether to make a Railway Group Standards change lies with the Directorate which must take into account the Code Decision Criteria and the results of advice and consultation. However, such decisions are subject to appeal, both in terms of review by the Directorate (by persons not included in the original decision) and appeal to the Regulator. The proposed Code goes beyond the Licence Condition requirement in allowing appeal to the Directorate by anyone who could or should have been consulted; because of the terms of the Licence Condition the right to appeal to the Regulator is restricted to only Participating Railway Operators <sup>2</sup>.
23. The Code also contains specific arrangements under which the Directorate may recover an element of the costs of a determination, with the ability to go to arbitration if this cannot be agreed specifically. Recovery of costs from Participating Railway Operators is provided for by Condition 3 of the Network Licence.
24. Reflecting the fact that in some cases urgent changes to Railway Group Standards may be required for safety reasons, the proposed Code incorporates reference to a rapid response procedure to enable interim decisions to be put into immediate effect prior to consideration through the full process. This is set out in paragraph 5.11 of Railtrack's proposed Code.
25. Consultees are asked whether the rules governing Safety and Standards Directorate's discretion (including the rapid response procedure) supported by the arrangements in respect of appeals and cost allocation provide sufficient assurance that Safety and Standards Directorate's discretion will be exercised in a way which is fair and transparently so, and to suggest any possible improvements.

### **Clarity and Enforceability of Rights and Obligations**

26. The Code creates a set of obligations on Safety and Standards Directorate and rights for other industry parties. It is important that these obligations and rights are clearly defined because the requirements of the Code must be capable of being enforced, if necessary, by the Regulator under Railtrack's Network Licence.

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<sup>2</sup> Participating Railway Operators as defined in the Network Licence Condition 3 (Appendix 1)

- 27. Consultees are asked to comment as to whether the proposed Railway Group Standards Code creates clear, and potentially enforceable, obligations on Railtrack's Safety and Standards Directorate, and rights for other industry parties; and whether there are any specific improvements which could be made to the clarity of the document.**

### **Practicability**

28. It is important that the Railway Group Standards Code should be capable of working effectively in practice. It should not create an unnecessary burden on the industry, recognising the wide range of interests involved. It should also be sufficiently responsive to enable changes to be effected within a reasonable time.
29. It is recognised that the Code may need to change over time, and arrangements are incorporated to enable this, in consultation with the industry. The industry or Railtrack may propose changes. Railtrack's Safety and Standards Directorate, in any case, is required by the proposed Code to review the Code for fitness for purpose at intervals of not more than five years.
- 30. Consultees are asked to comment as to whether the proposed Code is likely to work effectively in practice, (including whether the procedures will be able to effect Railway Group Standards change in sufficient time). Consultees are also asked for comments as to whether any process simplifications could be made.**

### **Other points**

- 31. Consultees are asked whether there are any further representations they wish to make as to the compliance of the proposed Code with the requirements of Railtrack's Network Licence.**

### **Next Steps**

32. Following this consultation exercise, the Regulator will decide whether he is satisfied the proposed Code complies with the requirements of the Network Licence, or whether he will require changes to the proposal. The Regulator will publish his conclusions and the reasons for them to parties who have been consulted.

33. Responses to this document are sought by 27 February 1998 and should be sent to:

Mark Rose  
Assistant Executive, Railtrack Regulation  
Office of the Rail Regulator  
1 Waterhouse Square  
138-142 Holborn  
London  
EC1N 2ST

34. Unless it is indicated that responses are confidential to the Regulator, it is our intention copies will be sent to Railtrack, Safety & Standards Directorate, and the HSE, and placed in the ORR Library, and may be published. Submissions made in confidence should be clearly marked as such and be accompanied by a statement (which will be placed in the ORR Library) that a confidential submission has been made, with reasons, and with a summary submission, excluding the confidential information.

**OFFICE OF THE RAIL REGULATOR**  
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# ***Appendix 1 - Network Licence Condition 3***

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## **Condition 3: Railway Group Standards**

### 1. Directorate of Safety and Standards

The licence holder shall establish and maintain within its organisation a directorate to be responsible for safety and standards. The Directorate shall have no commercial functions or responsibilities other than those relating to safety and standards and its head shall be responsible and report directly to the chairman of the board of directors of the licence holder. The licence holder shall ensure that at all times the Directorate shall have funds which are sufficient for the proper carrying out of its functions.

### 2. Railway Group Standards Code

The licence holder shall:

- (a) procure that the Directorate in consultation with participating railway operators likely to be materially affected shall prepare a Railway Group Standards Code in accordance with this Condition;
- (b) subject to paragraph 8, comply with the provisions of the Railway Group Standards Code; and
- (c) comply with any Railway Group Standards authorised under the Code so far as applicable to licensed activities.

### 3. Purposes

The Railways Group Standards Code shall be a code prepared by the Directorate whose purpose is to ensure the safe operation of the licence holder's network and railway assets used or to be used on or in connection with the licence holder's network ("the Purpose") having due regard to the need:

- (a) to promote the use and development of the licence holder's network;
- (b) to promote efficiency and economy on the part of the licence holder and other persons providing railway services on or in connection with the licence holder's network;

- (c) to promote competition in the provision of such railway services;
- (d) to impose on the licence holder and other persons providing such railway services the minimum restrictions which are consistent with the Purpose; and
- (e) to enable the licence holder and such other persons to plan the future of their businesses with a reasonable degree of assurance.

#### 4. Contents

The Railways Group Standards Code shall:

- (a) authorise the Railway Group Standards in force on 31 March 1994;
- (b) establish a set of procedures for the grant or refusal of authorisations of new Railway Group Standards or the amendment or abolition of existing Railway Group Standards which:
  - (i) provide for a fair and balanced representation and participation in such procedures by experienced and competent persons from all classes of participating railway operators likely to be materially affected;
  - (ii) provide for proposals for relevant authorisations to be fully and fairly considered (other than any which are trivial or vexatious), and for full and proper consultation with the Health and Safety Executive;
  - (iii) provide for any participating railway operator aggrieved in any material respect by a decision of the Directorate to have the matter reconsidered by the Directorate, and thereafter, if dissatisfied with the results of such reconsideration, to have the matter referred to the Regulator for determination after consultation with the Health and Safety Executive;
  - (iv) provide for the recovery of a fair proportion of the costs of any determination whether or not to grant a relevant authorisation from any participating railway operator which has proposed such authorisation, whether or not the proposal in question shall have been successful; and
- (c) require the Directorate, where it has reasonable grounds for considering that any revision of a Railway Group Standard is required, to propose such a revision and pursue it in accordance with the procedures referred to in subparagraph (b).

5. Publication

The licence holder shall:

- (a) publish the Railway Group Standards Code and any modifications thereto in such form or manner and with such frequency as the Regulator may require;
- (b) provide a copy of the Railway Group Standards Code and any modification thereto to every licence holder, the Franchising Director, the Health and Safety Executive and the Regulator;
- (c) publish a catalogue of current Railway Group Standards authorised under the Railway Group Standards Code;
- (d) provide a copy of the Railway Group Standards Code and any Railway Group Standard authorised or proposed to be authorised under the Railway Group Standards Code and of the catalogue referred to in sub-paragraph (c) to any person requesting a copy. The licence holder may charge for the provision of copies under this sub-paragraph provided that such charge shall not exceed any amount the Regulator may specify.

6. Records of compliance

The licence holder shall maintain such records concerning its compliance with the Railway Group Standards Code as the Regulator may reasonably require.

7. Assistance for Participating Railway Operators

The licence holder shall procure that the Directorate shall establish, maintain and operate such procedures as shall be sufficient to ensure that any participating railway operator which has applied to the Directorate for the purposes of this paragraph shall be provided with such information, advice and assistance (excluding training) as may reasonably be required to determine the application of any Railway Group Standard to that operator or to railway assets of which it is or proposes to be the operator. The licence holder may charge a fee for any such information, advice or assistance. Any such fee shall not exceed an amount which is, in the opinion of the Regulator, reasonable.



8. Derogations

The licence holder may, in so far as the Regulator consents, be relieved of its obligation to comply with the Railway Group Standards Code in respect of parts of the licence holder's network.

9. Interpretation

In this Condition:

"Directorate" means the directorate responsible for safety and standards established pursuant to paragraph 1;

"participating railway operator" means a person:

- (i) who is a licence holder; or
- (ii) who has applied to be a licence holder and whose application has not been withdrawn or rejected;

"Railway Group Standards" means:

- (i) technical standards with which railway assets or equipment used on or as part of railway assets must conform; and
- (ii) operating procedures with which the operators of railway assets must comply; and

"relevant authorisation" means authorisation of a new Railway Group Standard or the modification or abolition of an existing Railway Group Standard.