



OFFICE *of the*
RAIL REGULATOR

**PROPOSED MODIFICATIONS
TO CONDITION 3 OF
RAILTRACK'S NETWORK LICENCE
AND TO OTHER OPERATOR LICENCES**

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1. Introduction

- 1.1 Following the tragic accident at Ladbroke Grove in October 1999, an inquiry by Lord Cullen is considering the causes of the accident and wider questions of safety management and the appropriateness of the current safety regulatory regime. At the same time as the Cullen inquiry was set up, a working group was established by the Department of the Environment, Transport and the Regions to consider the functions of Railtrack's Safety and Standards Directorate (SSD) and whether there were any improvements which should be made pending the conclusions of the Cullen inquiry.
- 1.2 The Rail Safety Policy Review (RSPR) reported in February 2000¹. The executive summary of its recommendations is attached at Annex 1. In essence, they involve transferring the functions of SSD to a new Railtrack subsidiary company in order to increase its independence and separate it from the commercial interests of Railtrack, and to provide a number of safeguards for that independence.
- 1.3 The implementation of the RSPR recommendations involves changes to the Railways (Safety Case) Regulations 1994 and also changes to Condition 3 of Railtrack's network licence, which concerns the role and functions of SSD. The Health and Safety Executive (HSE) issued a consultation document on proposed changes to the Railways (Safety Case) Regulations 1994 on 19 May 2000².
- 1.4 This document contains proposals to modify Railtrack's network licence having regard to those aspects of the RSPR conclusions which the Regulator considers it appropriate to be implemented by way of licence modification. The Regulator was represented on the RSPR Working Group along with the HSE, the Shadow Strategic Rail Authority, the Department of the Environment, Transport and the Regions, the Civil Aviation Authority and an independent member. He considers, for the reasons outlined in chapter 3, that the changes to the network licence to reflect the RSPR conclusions are consistent with his public interest duties.

¹ *Railtrack's Safety and Standards Directorate, Review of main functions and their location*, Department of the Environment, Transport and the Regions, London, February 2000. Full copies of the report can be obtained, quoting product code AR1011 from: DETR Free Literature, PO Box 236, Wetherby, LS23 7NB, telephone 0870 1226 236, fax 0870 122 237, textphone 0870 120 7405.

² *Proposals for the Railways (Safety Case) Regulations, CD160*, Health and Safety Executive, London, May 2000. This can be seen on HSE's website at www.hse.gov.uk/condocs/cd160.htm

- 1.5 The RSPR report also noted that the current licences held by train, station and depot operators and Railtrack, enforced by the Rail Regulator, require compliance with Railway Group Standards where relevant to the licensed activity. To the extent that Railway Group Standards are purely about safety, this overlaps with HSE's jurisdiction. RSPR noted that this possible confusion is undesirable, and the Regulator and the HSE would be considering whether this could be resolved by modifying the relevant licences to clarify the relevant jurisdictions. Chapter 4 of this document contains some initial proposals on this issue.
- 1.6 The RSPR considered improvements which could be delivered quickly and which address the concerns identified by the working group, but which would not restrict Lord Cullen's options nor pre-empt implementation of his recommendations in due course. Similarly the changes proposed in this consultation document should only be seen as interim measures pending the results of Lord Cullen's inquiry. However, given that Lord Cullen's inquiry will not report until 2001, and it is possible that legislation may be necessary to implement his recommendations, the Regulator considers he should propose these interim changes now.
- 1.7 The Regulator also notes that the European Commission is considering possible changes to the European Union directive on licensing for railway operators, which may affect the framework. Again he considers that what is proposed constitutes an interim measure pending any such changes.

Next Steps

- 1.8 This consultation document is the first stage in making the licence modifications. Following receipt of responses to this document, the Regulator expects to propose modifications to Railtrack's network licence and all train operating licences. If these modifications are not agreed, he will consider whether to refer the matter to the Competition Commission for it to report and make recommendations. His current proposed timescale is:
- 24 July 2000 Responses to this document;
 - August 2000 Publication of notice of licence modifications which have been agreed (or possible reference to Competition Commission if not agreed);

- October 2000 Subject to agreement and consultation process, implementation of licence modifications.

1.9 Responses to this consultation document should be sent to:

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- 1.10 The closing date for receipt of comments is 24 July 2000 although earlier responses will be appreciated. It is expected that copies of all submissions will be published on the ORR website and placed in the ORR library. In addition, the Regulator may quote from or publish extracts from the submissions.
- 1.11 If respondents wish to make submissions in confidence, these will be accepted but should be marked clearly as such. Where a submission is made in confidence, it should be accompanied by a statement which shows that a confidential submission has been made and the reasons for making such a submission. The statement should also include a summary of the submission, excluding the confidential information. This statement may be published on the ORR website and placed in the ORR library and the Regulator may quote or publish extracts from it. If respondents do not wish their names to be published, this should be stated in their responses.

2. *Current Arrangements*

- 2.1 The Rail Regulator is not the industry safety regulator. The HSE has that responsibility. The Railways Act 1993:
- (a) makes clear (section 151(7)) that nothing in the Railways Act 1993 nor anything done under it shall prejudice or affect the operation of the Health and Safety at Work etc. Act 1974 and subordinate legislation under it;
 - (b) requires (section 4(3)(a)) that the Regulator takes into account in the exercise of his functions the need to protect all persons from dangers arising from the operation of railways, taking into account, in particular, any advice given to him in that behalf by the Health and Safety Executive.
- 2.2 The Regulator does, however, enforce the conditions in the licences held by the operators of railway assets, including those relating to safety, both in Railtrack's network licence and in train, station and depot operating licences. Moreover all operating licences can be revoked on the grounds of a serious breach of the Railways (Safety Case) Regulations 1994 by the body which issued them (the Regulator for most licences, the Secretary of State for Railtrack, the British Railways Board, Direct Rail Services Ltd., Eurostar (U.K.) Ltd. (domestic licence), Gatwick Express Ltd., Heathrow Express Operating Company Ltd., London Underground Ltd).
- 2.3 Railtrack's network licence was issued by the Secretary of State for Transport in 1994 when Railtrack was first vested with the national rail infrastructure. It is, however, enforced by the Rail Regulator. It should be noted that the licence is held by Railtrack PLC, the main operating subsidiary of the holding company, Railtrack Group PLC, which is the company quoted on the Stock Exchange.

Condition 3 of Railtrack's network licence

- 2.4 Condition 3 of the existing network licence (Annex 2) requires Railtrack:
- (a) to establish and maintain a directorate, responsible for safety and standards, which shall not have any commercial functions or responsibilities other than for safety and standards; and

- (b) to ensure that the Directorate prepares a Railway Group Standards Code in consultation with affected railway operators, and to comply with the provisions of the Code and any Railway Group Standards authorised under it where they apply to its licensed activities.

Railway Group Standards are: (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.

2.5 Condition 3 of Railtrack's network licence also:

- (a) sets out the purpose of the Railway Group Standards Code. The purpose is to ensure the safe operation of Railtrack's network and railway assets used on or in connection with the network;
- (b) sets out the content of the Code. The Code must 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. The procedures must meet certain specified conditions;
- (c) provides for the publication of the Code as required by the Regulator and its distribution to every licence holder, the Franchising Director, the HSE and the Regulator;
- (d) requires Railtrack to maintain records of compliance with the Code;
- (e) requires Railtrack to operate sufficient procedures to provide participating railway operators with such information advice and assistance as they may require to determine the application of any Railway Group Standard to a railway asset which it proposes to operate;
- (f) enables derogations from the Code, with the Regulator's consent, for parts of Railtrack's network; and
- (g) requires Railtrack to comply with Railway Group Standards applicable to licensed activities.

Train and station operator licences

2.6 Condition 1 of most train, station and light maintenance depot operating licences requires the licence holder to comply with the Railway Group Standards applicable to licensed activities (Annex 4). The exceptions concern networks other than Railtrack's network and international licences (Annex 6).

Relationship between licence obligations and safety obligations

2.7 As noted above the Rail Regulator is not the safety regulator. He has however agreed a Memorandum of Understanding with the HSE, concerning the exercise of his functions and those of the HSE. The key provisions of the Memorandum of Understanding are:

- (a) a general undertaking to co-operate and exchange information;
- (b) the Regulator also undertakes:
 - in performing his functions, to consult or notify HSE on any matter which appears to have material implications for health and safety and to provide HSE with any information which he considers has material implications for health and safety on the railways;
 - to take account of advice from HSE which relates to the exercise of his functions;
 - to inform and consult the HSE on any information, proposals, reviews or enforcement actions with regard to Railway Group Standards and the Railway Group Standards Code;
- (c) the HSE also undertakes:
 - to consult the Regulator or provide the Regulator with information on any matters which appear to have material implications for or which are relevant to the Regulator's duties and functions;
 - to provide advice on health and safety matters;

- to notify the Regulator of actions relating to approval or refusal of safety cases or exemptions from the requirement to have one; and
- to advise the Regulator of the results of monitoring of Railway Group Standards, any material non-compliance with these standards and any serious breaches of safety cases.

2.8 It should further be noted that, in accordance with the Memorandum of Understanding, the Regulator does not issue a licence to an operator of a railway asset unless that operator has in place a valid safety case. Nor does he issue a licence exemption without the operator having a valid safety case or safety case exemption as the case may be.

International Dimension

2.9 A separate licensing regime involving the International Rail Regulator (IRR) exists for those operating certain types of international services, as set out in the Railways Regulations 1998. Eurostar (U.K.) Limited and English Welsh & Scottish Railway International Limited currently hold international licences. Compliance with Railway Group Standards is not an international licence condition. However, before being granted an international licence, a railway undertaking must demonstrate its professional competence, including requirements related to safety on which the IRR consults the HSE. In order to exercise its access rights, a railway undertaking must also be issued a safety certificate by the HSE.

2.10 For the present, the proposed changes to Railway Group Standards licence conditions will not therefore affect the international licences held by Eurostar (U.K.) Limited and English Welsh & Scottish Railway International Limited.

2.11 The European Commission has made proposals to extend the scope of the European licensing Directive and has also published a report on rail safety which could lead to a new Directive. The Regulator is monitoring these developments and he intends to review the arrangements outlined in this document in the light of any new European legislation.

3. Proposed modifications to Condition 3 of Railtrack's network licence to improve separation and accountability of Safety and Standards Directorate

3.1 The Regulator has considered the report of the RSPR and concluded that Railtrack's network licence should be modified to:

- strengthen, in parallel with the HSE's proposed modifications to the Railways (Safety Case) Regulations 1994, the arrangements which ensure that the commercial interests of Railtrack do not impinge on the safety responsibilities of the Safety and Standards Directorate;
- ensure that, having primary regard to safety requirements, the Safety and Standards Directorate treats all industry parties in a fair and even-handed way; and
- make much clearer the arrangements for separation of the Safety and Standards Directorate from other functions of Railtrack PLC and Railtrack Group PLC.

3.2 The Regulator is seeking views from consultees as to whether these are the appropriate objectives he should be pursuing at present, recognising that following the report of the Cullen inquiry, alternative proposals may be developed.

3.3 The Regulator considers that these objectives are consistent with those set out in section 4 of the Railways Act 1993, and in particular the duties:

- to take into account the need to protect all persons from dangers arising from the operation of railways, taking into account, in particular, advice from the Health and Safety Executive;
- to protect the interests of users of railway services; and

- to promote the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of that railway network.

3.4 In order to achieve these objectives the Regulator has prepared a draft of a proposed revised Condition 3 of Railtrack's network licence (Annex 3). Key elements of this compared to the existing Condition 3 are:

- (a) a wider definition of the role of Independent Rail Safety Activity (IRSA) than is given to SSD in the current condition. This involves provision of advice to the HSE, the Regulator, Railtrack and stakeholders on safety matters, the maintenance of safety databases, and the promotion of research and development, training and the provision of information on safety matters. This is in addition to meeting any other statutory obligations, obligations concerning the Railway Group Standards Code, and anything else the Regulator may specify after consulting the HSE, the new subsidiary (established under (b) below) and Railtrack;
- (b) a requirement to separate IRSA into a new subsidiary company. This compares with the current arrangements whereby SSD is a directorate within Railtrack PLC, albeit one whose director reports direct to the Chairman of the company;
- (c) requirements to ensure IRSA is properly financed and staffed and has no commercial functions except to the extent necessary to meet its other functions (and subject to regulatory approval);
- (d) arrangements covering the directors of IRSA and shareholdings/remuneration of its staff;
- (e) access for the chairman and chief executive of IRSA to the Board of Railtrack PLC and Railtrack Group PLC; and
- (f) a requirement on IRSA to produce an annual report on its activities and wider safety developments.

3.5 The Regulator is seeking views on whether the approach he has proposed is likely to meet the objectives he has set out. He is also seeking views on specific points:

- **the location of the new IRSA subsidiary;**
- **arrangements for appointment of directors;**
- **staff shareholdings;**
- **funding of IRSA;**
- **relationship with obligations under the Railways (Safety Case) Regulations 1994 and the proposed Railways (Safety Case) Regulations 2000;**
- **Railway Group Safety Plan; and**
- **the right of appeal to the Regulator under the Railway Group Standards Code.**

Location of the new IRSA subsidiary

3.6 The Regulator has considered whether the new company should be:

- (a) outside Railtrack Group;
- (b) a subsidiary of Railtrack Group PLC; or
- (c) a subsidiary of Railtrack PLC.

3.7 He considers that, in line with the RSPR recommendations, it is not appropriate for the company to be outside Railtrack Group. He considers that such a radical change in the arrangements which is likely to need primary legislation is a matter for Lord Cullen to consider. The Regulator has further considered whether IRSA should be established as a subsidiary of Railtrack PLC (the licence holder) or Railtrack Group PLC (the holding company, of which Railtrack PLC is a wholly owned subsidiary). If IRSA were a Railtrack PLC subsidiary, this would give a more direct enforcement route for the Regulator. However it would mean that, in order to secure compliance, Railtrack PLC would be obliged to use its shareholding in IRSA to control IRSA's activities. The effect would be that Railtrack PLC's relationship with IRSA would be more intrusive, thus reducing the degree of independence in practice.

3.8 If, on the other hand, IRSA were established as a Railtrack Group subsidiary, there would be greater separation from Railtrack PLC, the operating subsidiary. It would, however, require arrangements between Railtrack PLC and Railtrack Group covering the setting up of the subsidiary, and to enable Railtrack PLC to require IRSA to take action to ensure Railtrack PLC was in compliance with its licence obligations, since the Regulator would only be able to take action directly against Railtrack PLC, the licence holder. IRSA itself cannot, under current legislation hold a licence, since it is not an operator of railway assets.

3.9 The draft licence condition is based on the assumption that IRSA is a Railtrack Group PLC subsidiary rather than a Railtrack PLC subsidiary. It specifies obligations to be met by IRSA, and a requirement on Railtrack PLC to enter into a contract with Railtrack Group PLC and IRSA to perform these obligations and to enforce that contract when required by the Railtrack Group and Regulator. The Regulator seeks views from consultees on:

- (a) whether, on balance, IRSA should be a Railtrack Group PLC subsidiary or a Railtrack PLC subsidiary, and
- (b) whether the arrangements to secure compliance in the case of it being a Railtrack Group PLC subsidiary are appropriate.

Appointment of Directors

3.10 The draft licence condition requires that the Regulator and industry stakeholders be consulted before a person is appointed to be a director of IRSA. It requires that there shall not be more than 9 directors of whom a majority shall be non-executive directors. The non-executive directors are to be persons with experience of the business of train operators and others involved in the rail industry. The chairman should be independent but have appropriate safety related knowledge or experience, and not have been an employee of a railway industry company within the last two years. The chief executive should have extensive relevant experience and knowledge, and not be a Director of Railtrack PLC or Railtrack Group PLC.

3.11 The Regulator seeks views on whether this proposal is adequate to secure the necessary independence of the company.

Controls on shareholdings of IRSA staff

3.12 The Regulator considers that in principle it is not appropriate for any element of the remuneration of IRSA staff to be related to the commercial, financial or stock market performance of a railway company. The proposed licence condition therefore does not allow shareholding in railway companies other than with the Regulator's approval. However, the Regulator recognises that it is vital for the effective operation of IRSA that it must be able to attract staff of sufficient calibre and expertise, and offer attractive remuneration arrangements to achieve this, which should be linked to safety performance not commercial performance. He also understands however that in the case of staff on secondment from other railway industry organisations (including Railtrack PLC) current tax legislation may not permit a ban on participating in employee share schemes.

3.13 The Regulator seeks views on the approach set out above.

Relationship with the Railways (Safety Case) Regulations 1994, proposed 2000 regulations and Railway Group Safety Plan

3.14 Irrespective of its licence obligations, Railtrack PLC will still be bound by its obligations under the Railways (Safety Case) Regulations 1994. Moreover, under the proposals for the Railways (Safety Case) Regulations 2000, it is proposed that changes should be made to the existing regulations which will require all safety cases, both of infrastructure controllers and of train and station operators, and material changes to safety cases, to be accepted by the HSE. In addition, there will be a specific obligation on Railtrack PLC to procure that IRSA provides advice on the safety case and material changes to it both of Railtrack PLC, each train operator using its network and each operator of stations related to its network.. It must also procure that IRSA carries out annual audits of each of those safety cases. The proposals also seek views on whether the obligations should be imposed directly on IRSA rather than that Railtrack be required to procure their fulfilment. The proposals also seek views as to whether the arrangements to establish IRSA set out in the draft Condition 3 might be included in the regulations.

3.15 Currently SSD prepares a safety plan for Railtrack and holders of safety cases for operation on Railtrack's network (the Railway Group). Although not an express requirement of the Railways (Safety Case) Regulations 1994, Railtrack at present undertakes such an obligation in its safety case, with the work of preparation being

carried out by SSD. The draft licence condition does not at present include an obligation in this respect.

3.16 The Regulator seeks views on whether:

- (a) any of the obligations proposed in the draft licence condition would more appropriately be included in the regulations; and
- (b) performance of the safety plan obligation should become an obligation of IRSA and, if so, whether it should be included in the regulations or the licence condition.

Funding of IRSA

3.17 The draft licence condition requires Railtrack PLC to ensure that at all times IRSA has funds which are sufficient for the proper carrying out of its functions. As noted above, these are somewhat wider than the existing SSD functions, and include the promotion of research into matters of railway safety.

3.18 The implication of the licence condition as drafted is that Railtrack PLC will be funded under access charges to finance the activities of IRSA. The Regulator would expect to make provision for this as part of the periodic review of the access charging regime currently under way.

3.19 The Regulator seeks views on the proposed arrangements for funding of IRSA, and whether and what provision should be made for alternative funding arrangements.

Appeals to the Regulator under the Railway Group Standards Code

3.20 The current licence condition requires that the Railway Group Standards Code contains provisions whereby determinations by the Safety and Standards Directorate on new or amended Railway Group Standards may be appealed to the Regulator by "participating railway operators". "participating railway operators" are defined as holders of licences or applicants for licences. When the Regulator consulted the industry on the revised Railway Group Standards Code in January 1998, a number of key industry suppliers suggested that this appeal right should be extended to other

industry stakeholders. This was not a point explicitly covered by the RSPR, but the Regulator considers that this change is consistent with RSPR conclusions.

3.21 The proposed licence condition therefore includes a provision allowing appeals by other key stakeholders who are materially aggrieved by a decision. The stakeholder definition encompasses three categories:

- (a) any person having a safety case for operation on or in connection with the Railtrack network;
- (b) any funder (as defined in Condition 7 of Railtrack's network licence)³; and
- (c) any person whose business activities or goods which he manufactures must comply with Railway Group Standards.

3.22 The Regulator seeks views on the principle of this change and the proposed definition of key stakeholders.

³ Condition 7 of Railtrack's network licence defines 'funder' as the Franchising Director, each Passenger Transport Executive and any local, national or supra-national authority or agency (whether of the United Kingdom or the European Union) or other person who provides money by way of grant or loan with the primary purpose of securing the provision of railway services.

4. Enforcement of Railway Group Standards

- 4.1 As stated in paragraph 1.5 above, the RSPR noted the possible confusion between the current obligation in the licences of operators of railway assets to comply with Railway Group Standards, and the HSE's safety jurisdiction. In essence this confusion arises because, although the Railways (Safety Case) Regulations 1994 do not refer explicitly to Railway Group Standards, they do require operators to include, in their safety cases, "particulars of any technical specifications and procedures or arrangements relating to operations or maintenance". Railway Group Standards are the means by which Railtrack satisfies this requirement. In turn, the train operators using, and station operators whose stations are linked to, Railtrack's network commit themselves in their safety cases to comply with relevant Railway Group Standards.
- 4.2 Thus, the safety aspects of Railway Group Standards are enforceable by the HSE. The Regulator is concerned that the present respective roles of the Regulator and the HSE could lead to confusion. Section 151(7) of the Railways Act 1993 makes clear that actions of the Regulator should not affect the operation of the Health and Safety at Work Act or the Railway (Safety Case) Regulations 1994.
- 4.3 The Regulator's original Memorandum of Understanding with the HSE was modified in March 1998. The provisions of the present Memorandum of Understanding include undertakings to co-operate and exchange information relating to the Regulator's functions with respect to changes to Railway Group Standards and the preparation of the Railway Group Standards Code (through Railtrack's licence) and also to the HSE's statutory duties with regard to the enforcement of railway safety cases.
- 4.4 However, under section 68 of the Railways Act 1993 the Regulator still has an obligation to investigate alleged breaches of licence obligations, and thus of Railway Group Standards, and under section 55 to take enforcement action in the event of a continuing or prospective breach (unless the public interest requires a different course of action or remedial action is under way). Since the main purpose of Railway Group Standards is to address safety matters, the Regulator believes that the licence obligation should be amended so that HSE has the primary role in enforcing compliance with Railway Group Standards.

- 4.5 The Regulator does not, however, consider it appropriate to delete all licence provisions requiring compliance with Railway Group Standards. Certain aspects of Railway Group Standards refer to matters which are not primarily safety related and therefore not directly of concern to the HSE as the safety regulator. For instance Railway Group Standards contain procedural and information obligations which are properly matters for the Rail Regulator as economic regulator. An example could be the requirements in Railway Group Standard 3750 covering availability of information about the network to facilitate the route acceptance of vehicles.
- 4.6 The Regulator therefore proposes that all licences which require compliance with Railway Group Standards be modified to require the licence holder to comply with such Railway Group Standards or parts of standards as may be specified in a notice issued by the Regulator to the licence holder after consulting the licence holder and the HSE. The Regulator would expect, following agreement to the licence modifications, to carry out a consultation as to which elements of Railway Group Standards should be specified for enforcement by him. The general principle would be that he would not expect to enforce substantive safety obligations, but provisions concerning matters appropriate for the economic regulator to enforce (for example protection from abuse of a dominant position) should be subject to the Regulator's enforcement.
- 4.7 Proposed modifications to Railtrack's network licence are included in the revised Condition 3 at Annex 3; to other licences in Annex 5. A list of licences which do not contain the Railway Group Standards conditions is at Annex 6.
- 4.8 The Regulator is seeking views on the proposals set out in this chapter, and in particular as to the Railway Group Standards (or parts of such standards) which it would be appropriate for him to specify that he should enforce.**

Annex 1 – Rail Safety Policy Review recommendations

Executive Summary

Background

1. The Rail Safety Policy Review was established following the Ladbroke Grove train disaster to consider the functions of the Safety and Standards Directorate (SSD) of Railtrack.
2. The current system of safety regulation was adopted in 1994 in accordance with advice from the Health and Safety Commission. Central to it is a 'cascade' system of safety cases prepared by railway operators, which assess the risks of their operations and arrangements for managing those risks. The network controller (Railtrack) plays a pivotal role in ensuring that risk is not imported onto the railway network by operators. While Railtrack has responsibility for validating and 'accepting' the safety cases of operators, Railtrack's own safety case is 'accepted' by the Health and Safety Executive. Many important safety activities are carried out by SSD, but responsibility for safety of operations rests with Railtrack Line (the operational side of Railtrack).

Analysis

3. While we were impressed with the expertise and commitment of the safety professionals involved in the management of safety on the railway, we were concerned that the current arrangements did not have sufficient clarity to provide assurance about the management of safety. In particular there needed to be clarity about the accountability of industry parties. Specifically our concerns were:
 - a) SSD currently has responsibility both internally to Railtrack as part of the company's safety management system and to the industry as a whole (for example in setting safety standards). The line between these responsibilities was not clear. Nor could strict separation of Railtrack's commercial interests from SSD be demonstrated. This did not give the necessary public confidence and it has inhibited SSD from taking an intra-industry safety leadership role;

- b) The safety assurance procedure for ensuring corrective action arising out of incident investigation and audit needed improvement. The means available to Railtrack for enforcing compliance with safety cases and Group Standards, short of completely stopping a train operators' activities, were neither clear nor well understood within the industry. There was also a need for an increased role for HSE – as the independent safety regulator – in oversight of these arrangements.

- c) Lord Cullen is considering safety management and safety culture on the railways. A re-organisation of the systems, perhaps involving a new Rail Safety Regulator, is a possibility and has some advocates. However, decisions on this are beyond the scope of our review and would pre-empt Lord Cullen's Inquiry. In addition, change of arrangements in itself risks disrupting the management and assurance of safety. We were thus led to consider improvements which could be delivered quickly and which addressed the concerns identified.

Recommendations

- 4. The main recommendations are outlined below. They can be implemented without primary legislation.

- 5. To increase the independence of SSD's activities and to separate it from the commercial interests of Railtrack, we recommend the establishment of SSD as a Railtrack subsidiary company with a board comprising a range of industry representatives and independents. This company, which in this report we call Railway Safety Limited (RSL), should not have any responsibility for either operational safety or safety management within Railtrack Line. Both of these functions should fall solely to Railtrack Line. Railtrack Line should prepare the safety case for Railtrack (at present it is done jointly with SSD).

- 6. We recommend that RSL's activities should be ring-fenced from Railtrack Line so that its costs are explicitly identified and the Rail Regulator should consider whether the current arrangements for charging might be changed.

- 7. We recommend that RSL should thus become the independent focus for rail industry safety: it should retain its current responsibility for the setting of Group Standards (including standards for new equipment) and for developing the intra-industry system

of safety assurance. In particular there should be a more formal structure of safety audit by RSL (see paragraph 14 below). RSL should prepare an annual report on its own activities and should publish the Railway Group Safety Plan after consulting the industry. This plan should include a programme for safety-related research.

8. The Chief Executive of RSL should be selected by the RSL board. He should not be a director of Railtrack and his remuneration should not be linked to the commercial success of Railtrack. But he must have the right to attend relevant Railtrack Boards and have access to Board papers. He should have a right of direct access to the Chairmen and Chief Executives of Railtrack and of all other Railway Group members.
9. Acceptance of new equipment should be carried out by Railtrack Line, but there should be a right of appeal to RSL, if Railtrack Line rejects equipment meeting Group Standards.
10. The Safety Advisory Board, a group drawn from across the industry which advises the Director of SSD on strategic issue, should continue to be consulted as necessary by RSL and by other railway group members. The Railway Industry Safety Strategy Committee should continue to advise on the setting and development of Group Standards.
11. It is important that all parties should be clear about who is responsible for enforcement of safety standards, including audit and regular testing. We recommend that Railtrack Line should continue to have the right to apply a range of sanctions (restricting access to a part of the network or to a class of operations for example) to require safety compliance by operators, but operators should have a right of appeal to RSL. RSL will need to be kept informed by Railtrack Line of its activities in this area.
12. In addition to retaining its current rail responsibilities and activities, we recommend that HSE should take over from Railtrack responsibility for accepting Train Operator safety cases, on the advisory recommendation from RSL that it is fully satisfied that the safety case holder would not import undue risk onto the network. Railtrack Line will continue to have a duty (under the Health and Safety at Work Act) to ensure that any risks imported onto the network are as low as reasonably practicable.
13. There is a need for a more formal structure of audit and assurance that any appropriate action arising from either audit or incident/accident investigation has been taken. We

recommend that RSL should formally audit each operator and Railtrack Line annually in addition to topic or case specific audits in response to concerns raised by Group members.

14. HSE should receive the annual formal audits of safety case holders by RSL and investigation reports and will need to consider whether appropriate follow up action is being taken. These annual audits should assist in demonstrating beyond the railway industry that safety is being properly managed. In addition consideration should be given to the process for ensuring that safety cases are kept up to date and providing assurance that this is the case.

Annex 2 - Existing 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 procedure referred to in sub-paragraph (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.

Interpretation

In this Condition:

"Directorate"	means the directorate responsible for safety and standards established pursuant to paragraph 1;
"participating railway operator"	means a person: <ul style="list-style-type: none">(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: <ul style="list-style-type: none">(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.

Annex 3 - Draft Condition 3: Safety and Standards

The Safety Activity

For the purposes of this Condition, Independent Railway Safety Activity means:

- (i) the provision of advice to the Health and Safety Executive, the Regulator, the licence holder and stakeholders in respect of matters relating to safety of the operation and use of the licence holder's network;
- (ii) the activities in relation to the Railway Group Standards Code specified in this Condition;
- (iii) the discharge of any statutory obligation in relation to safety imposed on or in respect of any person carrying on the Independent Railway Safety Activity by or under the relevant statutory provisions or any Community obligation;
- (iv) the maintenance of any records including databases previously maintained by the Safety and Standards Directorate of the licence holder in respect of safety information relevant to the operation and use of the licence holder's network; and
- (v) the promotion of research and development, of training and of the provision of information in each case in relation to all aspects of safety relevant to the provision of railway services on or relating to the licence holder's network, and such other safety related activities as the Regulator may, after consulting the licence holder, IRSA (as hereinafter defined) and the Health and Safety Executive, specify by notice.

IRSA

2. The licence holder shall procure that:

- (a) Railtrack Group PLC ('the holding company') shall prior to the effective date establish and maintain a wholly owned subsidiary limited by guarantee (such

subsidiary being referred to in this condition as 'IRSA') for the purpose of carrying on the Independent Railway Safety Activity;

- (b) IRSA shall at all times comply with the requirements of paragraphs 4 and 5;
- (c) the licence holder can ensure that the holding company complies with the provisions of sub-paragraphs (a) and (b).

3. The licence holder shall:

- (a) on the effective date transfer or make available to IRSA all assets previously held or used by the licence holder's Safety and Standards Directorate which are necessary or expedient to enable IRSA to perform the Independent Rail Safety Activity from that date; and
- (b) at all times ensure that IRSA shall have funds which are sufficient for the proper carrying out of its functions.

4. The requirements of this paragraph are that:

- (a) IRSA shall have no commercial functions or responsibilities except to the extent that they are necessary for the performance of any activity specified in paragraph 1 and have been approved by the Regulator;
- (b) IRSA shall be provided with sufficient suitably qualified and experienced personnel to enable it to perform its functions;
- (c) except with the written approval of the Regulator and in accordance with the conditions of that approval, no employee of IRSA shall have a disqualifying interest;
- (d) the chairman and chief executive of IRSA shall be timeously provided with copies of relevant papers provided to the board of directors of the licence holder and of the holding company which are relevant to the functions of IRSA save that the entitlement shall not extend to such documents or parts of documents which the licence holder and the holding company could not be compelled to produce or give in evidence in civil proceedings in any court;

- (e) the chairman and chief executive of IRSA or (in either case) a duly appointed nominee shall be given due notice of and have the right to attend and speak at any meeting of the board of directors of the licence holder or of the holding company which considers any safety matter, within the Independent Railway Safety Activity (save in relation to matters within paragraph 6(d)).

Directors of IRSA

5. The requirements of this paragraph are that:
- (a) before any person is appointed to be a director of IRSA, the Regulator and bodies which are representative of train operators and other stakeholders are consulted and, in relation to the directors on the effective date, have been consulted prior to the effective date in relation to their appointment;
 - (b) there shall be not more than nine directors at any time of IRSA of whom the majority shall be non-executive directors and not more than one non-executive director shall be a person who has at any time within 2 years prior to the date of appointment as a director been an employee of any member of Railtrack Group provided that, during any period in, or at any meeting at, which there shall not be such a majority of non-executive directors, there shall be allocated to the chairman such additional votes as shall be necessary to enable the aggregate of the votes of the non-executive directors to constitute a majority;
 - (c) persons who are appointed to be non-executive directors of IRSA shall so far as is reasonably practicable be persons who have appropriate practical experience in relation to the functions of IRSA including experience of the business of any one or more of passenger train operation, freight train operation, rolling stock leasing, rolling stock manufacturing, infrastructure maintenance and repair and other relevant railway activities of stakeholders and persons having extensive current experience of the management of safety;
 - (d) the person appointed to be chairman of IRSA has extensive current knowledge or experience of the management of safety and has not within 2 years prior to the date of appointment as chairman been an employee of any of any member of Railtrack Group, a licence holder, a franchisee, a rolling stock leasing company, a rolling stock manufacturer or an infrastructure maintenance or

repair company carrying on business in Great Britain or providing goods for use on the licence holder's network.

- (e) the person appointed to be chief executive of IRSA has extensive current experience of the management of safety and current knowledge of the operation of railways and shall not, for such period as he shall be chief executive, be a director of the licence holder or of the holding company;
- (f) each director shall be appointed as director for a fixed term not exceeding 3 years but shall be capable of being reappointed.

Agreement with IRSA

6. The licence holder shall:

- (a) procure that before IRSA starts to carry out any functions, IRSA and the holding company enter into a legally binding agreement ("the agreement"), approved by the Regulator, with the licence holder, respectively to comply and secure compliance by IRSA with paragraphs 6-13 of this Condition;
- (b) promptly notify the Regulator of any breach of any obligation under the agreement;
- (c) not waive any right of the licence holder under the agreement without and in accordance with any conditions contained in the prior written consent of the Regulator;
- (d) enforce the obligations of IRSA and the holding Company under the agreement whenever so directed by the Regulator by notice, and in accordance with the terms of the direction.

Railway Group Standards Code

IRSA shall :

- (a) exercise the rights and perform the obligations which were, before the effective date, exercised and performed by the Safety and Standards

Directorate under the Railway Group Standards Code so far as comprising the Independent Railway Safety Activity;

- (b) cause the Railway Group Standards Code to be amended to reflect the effect of sub-paragraph (a);
- (c) comply with the provisions of that Code as revised from time to time with the approval of the Regulator; and
- (d) from time to time or when so directed by the Regulator and in consultation with representatives of stakeholders review the provisions of that Code and its implementation and propose for the approval of the Regulator any revision thereto which may be necessary or appropriate having regard to the provisions of paragraph 8.

Purposes

- 8. The Railways Group Standards Code shall be a code whose purpose is to establish standards (and the procedures for modifying those standards) compliance with which will contribute significantly to 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 services relating to railways on or in connection with the licence holder's network;
 - (c) to promote competition in the provision of such services for the benefit of users of railway services;
 - (d) to impose on the licence holder and other persons providing such services restrictions which are proportionate to the achievement of 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.

Contents

9. The Railway Group Standards Code shall be a Code approved by the Regulator which shall:
- (a) authorise the Railway Group Standards in force from time to time;
 - (b) establish a set of procedures for the grant or refusal of relevant authorisations which:
 - (i) provide for a fair and balanced representation and participation in such procedures by experienced and competent persons from all classes of stakeholders 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 an accelerated procedure for the grant of relevant authorisations in specified circumstances;
 - (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 stakeholder which has proposed such authorisation, whether or not the proposal in question shall have been successful; and
 - (v) provide for any stakeholder aggrieved in any material respect by a decision of IRSA to have the matter reconsidered by the board of directors of IRSA 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;
 - (c) require IRSA, where there are reasonable grounds for considering that a relevant authorisation is necessary or expedient, to propose such action and pursue it in accordance with the procedures referred to in sub-paragraph (b)
 - (d) provided that the Railway Group Standards Code issued by the licence holder and in force prior to the modification of this condition shall have effect for the

purpose of this Condition until approved (whether or not after amendment) by the Regulator.

Publication

10. IRSA 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; and
- (d) provide a copy of the Railway Group Standards Code and any Railway Group Standard or proposed Railway Group Standard and of the catalogue referred to in sub-paragraph (c) to any person requesting a copy. IRSA may charge for the provision of copies under this sub-paragraph provided that such charge shall not exceed any amount the Regulator may specify.

Assistance for stakeholders

11. IRSA shall establish, maintain and operate such procedures as shall be sufficient to ensure that any stakeholder which has applied to IRSA 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 stakeholder or to railway assets of which it is or proposes to be the operator or which it provides or proposes to provide for use on or in connection with the licence holder's network. IRSA may charge a fee for any such information, advice or assistance. Any such fee shall not exceed an amount which, in the opinion of the Regulator, is reasonable.

Annual Report

12. IRSA shall, as soon as practicable after the end of each period of 12 months ending on 31 March, make to the Regulator and the Health and Safety Executive and publish a

report on its activities during that period, including a general survey of developments during that period in relation to safety on and in connection with the operation of the licence holder's network and the stations and depots served by that network.

Information

13. IRSA shall provide to the Regulator such information relating to its activities as the Regulator may require.

Records of compliance

14. The licence holder shall maintain such records concerning compliance with its obligations under this Condition as the Regulator may require.

Railway Group Standards

15. The licence holder shall comply with such Railway Group Standards or parts of such standards which are applicable to licensed activities and specified in a notice issued by the Regulator to the licence holder after consulting the licence holder and the Health and Safety Executive.

Interpretation

16. In this Condition:

benefit includes any payment, profit, gain or advantage however expressed, established, given or made;

disqualifying interest means an interest in:

- (a) any benefit which concerns or is determined by reference to the commercial activities or affairs of any person engaged in or likely to be engaged in the provision of services relating to railways; or
- (b) any person with an interest in any such person or its activities or affairs;

effective date	means [] 2000;
employee	in relation to a company includes any officer or other person otherwise engaged in the activities of the company;
relevant infrastructure controller and safety case	have the meanings given to them by the Railways (Safety Case) Regulations [2000]; interest in relation to a benefit, includes the possession, receipt or expectation of or entitlement to an interest;
member of the Railtrack Group	has the meaning given in Condition 11;
Railway Group Standards	means <ul style="list-style-type: none"> (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, authorised under the Railway Group Standards Code;
relevant authorisation	means authorisation of a new Railway Group Standard or the modification or abolition of an existing Railway Group Standard;
relevant statutory provisions	has the meaning given by Part I of the Health and Safety at Work etc Act 1974;
services relating to railways	has the meaning given by [clause 230 of the Transport Bill as introduced in the House of Lords]; and

stakeholder

means:

- (i) any person having a safety case in respect of which the licence holder is the relevant infrastructure controller;
- (ii) any funder (having the meaning given in Condition 7 of this licence); and
- (iii) any person whose business activities or any goods which he manufactures must comply with Railway Group Standards.

“subsidiary”

has the meaning given to it in section 736 of the Companies Act 1985.

Annex 4 - Passenger, non-passenger, station and light maintenance depot licences

Condition 1: Railway Group Standards

1. The licence holder shall comply with the Railway Group Standards applicable to licensed activities:
2. In this Condition

"Railway Group Standards"

means:

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

in each case as authorised pursuant to the Railway Group Standards Code prepared pursuant to the network licence held by Railtrack PLC.

Annex 5 - Proposed modification to paragraph 1 of Condition 1 of passenger, non-passenger, station and light maintenance depot licences

1. The licence holder shall comply with such Railway Group Standards or parts of such standards which are applicable to licensed activities and specified in a notice issued by the Regulator to the licence holder after consulting the licence holder and the Health and Safety Executive.

Annex 6 - Licences that do not contain a Railway Group Standards condition

Passenger licences

Island Line Ltd

London Underground Ltd

Station licences

Island Line Ltd

London Underground Ltd

Light maintenance depot licences

Island Line Ltd

Network licences

British Railways Board⁴

Island Line Ltd

London Underground Ltd

International licences (granted by the International Rail Regulator)

Eurostar (U.K.) Limited

English Welsh & Scottish Railway International Limited

⁴ Two different licences: 'network licence (Isle of Wight)' and 'network licence (sidings)'