

ROLLING STOCK ACCEPTANCE PROCESSES CONCLUSIONS OF THE REGULATOR'S INVESTIGATION

1. Following expressions of concern by Train Operators and others, the Regulator has investigated the sufficiency of existing - and proposed changes to - Railtrack's Rolling Stock Acceptance Processes. This Statement sets out the conclusions of this investigation, both on the issues and on the action which the Regulator now expects Railtrack to take.

The need for review

2. It is timely to review Rolling Stock Acceptance Processes. Existing arrangements under Railway Group Standard GO/RT 3270 and under Track Access Condition F have proved to be slow, to lack clarity and to offer those proposing change - and Railtrack - insufficient certainty as to the rights and obligations of all concerned.

3. Passenger and Freight Operators - and Rolling Stock manufacturers and leasing companies - are now making active plans to invest in new rolling stock. These moves are especially welcome. It is, therefore critical that acceptance arrangements do not represent an unreasonable obstacle to the bringing of benefits to passengers and freight operators. This requirement for review - and for speedy, reasonable and efficient acceptance arrangements - must, however, be seen against the primacy of the need to meet safety requirements.

Railtrack's existing proposals

4. We recognise that Railtrack has taken an initiative to revise existing arrangements. This was launched at its seminar on 10 March 1997 and these steps represent progress. Railtrack has stated that it is committed to overcoming the problems in the current process. We welcome this commitment. Railtrack has stressed to the Regulator the importance it attaches to having new arrangements which:

- (a) allow it to be better informed by its customers at an earlier stage in their planning in order to facilitate the timely introduction of new rolling stock; and
- (b) achieve much greater clarity on what must be demonstrated to introduce new rolling stock and to determine between Railtrack, the Train Operator and others precisely who is responsible for what.
- (c) recognise that many of parameters which influence Rolling Stock Acceptance are set at the time of the design.

5. To that end the new arrangements Railtrack proposes focus strongly on setting out clear procedures and on the establishment of what Railtrack describes as bilateral commercial agreements defining the tasks Railtrack and other relevant parties will undertake, the risks each party will bear and the financial arrangements.

Concerns which have been expressed

6. Although we understand that Railtrack's initiative in this area has broadly been welcomed by industry parties and although the points in paragraph 4, whose importance Railtrack has stressed seem to us to be unarguably right, a number of important concerns have been expressed:

- (a) that the proposed new procedures are not clearly understood and have not been formally documented;

- (b) that they are being "imposed" by Railtrack which has not systematically consulted all of those affected and explicitly addressed responses;
- (c) that the procedures ought to be reflected within the relevant Group Standard (and not just be consistent with it) and establish clear responsibilities in delivering safety through the process; and
- (d) that use of a proposed "bilateral commercial agreement" to define important rights and obligations leaves train operators and others dependent on Railtrack, and the assurances it is prepared to offer, with no ultimate rights of a arbitration or regulatory protection.

The Regulator's view

7. We agree that change is needed and that the steps which have been taken mark an important start. Nevertheless we believe that the concerns which have been raised need to be addressed and have concluded that further change is needed.

8. There appear to be two fairly basic issues at the heart of this question:

- (a) The need for clear - and well documented - arrangements between Railtrack and those progressing new rolling stock plans - particularly on who is responsible for what; and
- (b) The need to have clear (and ultimately enforceable) - and well documented - understandings as to rights and obligations covering such matters as allocation of resources, timeliness, prioritisation, route information, etc.

9. Lying behind these issues are not only the relevance and adequacy of the existing provisions of Group Standards and the Track Access Conditions, but also responsibilities for bringing about change to these.

10. In addition those issues also highlight important questions about the position and responsibilities of Railtrack. These go both to:

- (a) the need for clear rules governing Railtrack's behaviour as controller of much of the information and associated processes relevant to rolling stock acceptance; and
- (b) the positive contribution Railtrack should be expected to make to promoting the introduction of new services on the network.

11. To address these issues, we have concluded that the following additional steps should now be actively investigated and progressed by *Railtrack* as a matter of urgency:

- (a) *A Revision to Group Standard GO/RT 3270*: the purpose of such a revision should be to provide a framework under which there are clear arrangements for setting out the appropriate procedures, covering essentially safety matters (for example risks to be scoped, technical requirements for acceptance, exchange of information, levels of safety (ALARP), safety acceptance criteria, process arrangements).
- (b) *A modification to Track Access Condition F*: the purpose of such a revision should be to define the arrangements which will apply in the development phase of a proposal (i.e. before the existing arrangements set out in Condition F take effect). This would essentially represent the framework within which Railtrack's proposed "bilateral contract" would be entered into. It would set

out the key principles of such a contract covering such matters as purpose, charging, risk and benefit sharing, information requirements, timescales, dispute resolution arrangements. It could provide for rights of dispute resolution and ultimate regulatory appeal on the terms of the contract itself, although our present view is that there should be no regulatory locus in dispute resolution once the development contract was entered into until the remainder of Condition F came into play. It would remain open to parties to reach an agreement outside the scope of Access Condition F. The train operator remains free to pass on to the equipment manufacturer the responsibility for route acceptance by Railtrack prior to the Access Condition F submission by the train operator.

12. Although our present view is that these changes are both necessary and desirable they are ultimately matters for the industry. It is clearly necessary, therefore, that the need for, and precise scope of, these changes should be subject to consultation with the industry. Existing arrangements in respect of changes to Group Standards and to the Track Access Conditions provide for this consultation. It seems clear that the two changes should be managed together to ensure that together they fully address the necessary changes. We believe that Railtrack should take active steps to establish relevant industry views and involve the industry in finalising its specific proposed changes.

13. Although these changes would not fully and directly provide regulatory protection for manufacturers and others who are not party to the Track Access Conditions, we believe that there are options available to address this issue. These could include partnership arrangements with Train Operators or the application of the provisions of Condition 6 of Railtrack's Network Licence (Non-Discrimination).

Implementing these changes

14. Railtrack have now agreed to put forward proposals for change to the Group Standard and to Access Condition F in parallel with publishing their proposed interim procedures pending finalisation of these changes. They have agreed to draft proposed changes by end-September 1997 and to consult under existing arrangements thereafter.

15. Railtrack is hosting a seminar with the rail industry on 25 September at which we expect it to set out its proposals in more detail.

Office of the Rail Regulator

SEPTEMBER 1997