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OFFICE OF **RAIL REGULATION**

29 October 2007

Tom Harris Esq MP  
Parliamentary Under-Secretary of State for Transport  
Department for Transport  
Great Minster House  
76 Marsham Street  
London

SW1P 4DR

*Dear Minister,*

### **The application of safety verification to heritage railways and tramways**

In March 2006 Derek Twigg wrote to the Heritage Railway Association (HRA) and UKTram about the safety verification requirements in the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS). The letters confirmed that there would be an extended transitional period for making approval applications and for final approvals under the Railways and Other Transport Systems Regulations 1994 (ROTS) for the heritage railway and tramway sectors. Both sectors had expressed concerns about the implications of ROGS for their activities, and argued strongly for the long-term retention of some of the requirements of ROTS, particularly approval by ORR of new vehicles and infrastructure. The period for making applications under ROTS for tramways and heritage railways was extended until 1 October 2008, with the period for closing out projects undergoing approval extended to 1 October 2010.

Since 2006 we have worked with representatives of the tramway and heritage sectors, the insurance industry and other interested parties, to address and resolve issues arising from implementing safety verification in the sectors.

After extended discussions with industry representatives, and putting considerable effort into understanding and responding to the concerns of both sectors, our firmly held view is that safety verification is the best way to ensure the initial integrity of new and/or altered vehicles and infrastructure. Therefore, we believe that the ROGS regulations should come fully into force in the heritage railway and tramway sectors in October 2008 as was intended when the regulations were written.





All sectors of the railway industry, apart from heritage and trams, have accepted the new way of working. The approach is consistent with that in other industrial sectors. It puts the onus on the operator of a new or altered piece of equipment to ensure it is safe, rather than relying on the regulator.

We do not believe the application of safety verification will impose unreasonable, unexpected or inappropriate costs upon the industry, especially as the need for formal safety verification is likely to be low. The regulations only require safety verification if an operator chooses to make a change that is both novel and introduces significant risk. We estimate the process would need to be applied perhaps 5 times a year in the tramway sector, and 20 times a year in the heritage railway sector and could therefore easily be factored into project planning.

Under ROTS the safety regulator was responsible for giving approval to projects that introduced new or altered rolling stock or infrastructure, which were capable of materially affecting the safe operation of a transport system. Under ROGS, when the transitional period ends, we will no longer approve changes made by duty holders. ROGS requires duty holders to have a system of safety verification in place if they are introducing something that is both novel and creates a significant new risk, or significantly increases an existing risk. If these criteria apply the duty holder has to appoint an independent competent person (ICP) to agree and oversee a programme of verification. ORR as safety regulator will of course check that operators do have appropriate systems in place, and that they do use them.

We know that our view will not be welcomed by the sectors, both of which would prefer to retain a ROTS-type approvals regime. However we believe that these sectors can and should become aligned with other parts of the rail and other industries and take responsibility for managing any risks arising from the introduction of new or altered equipment, with our role as safety regulator being to ensure that proper arrangements are in place and adhered to. The approach set out in ROGS is consistent with the way health and safety law is applied in the rest of the railway industry, and also in other industries where the underlying assumption is that those who create risk are best placed to manage it.

We will carry on our discussions with representative bodies of the two sectors to help them implement the safety verification requirements of ROGS.



I have written to representatives of the tramway and heritage railway sectors to inform them of our position. Copies of these letters are enclosed and all the letters will be published on our website. I understand that officials from ORR have met with colleagues in DfT Rail and are providing them with detailed briefing.

Yours sincerely

A handwritten signature in black ink that reads 'Chris Bolt'. The signature is written in a cursive style with a small underline under the 't'.

**Chris Bolt**