

Establishing a Rail Accident Investigation Branch: Government Response to Consultation

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Chapter 1: Introduction and background

1. On 18 July 2002 the Government issued a consultation document entitled 'Establishing a Rail Accident Investigation Branch (RAIB)' containing detailed proposals on the creation of an independent rail accident investigation body. Lord Cullen recommended the establishment of the RAIB in the second part of his report into the Ladbroke Grove train crash. The Government's proposals in the consultation document explained that it would:
 - Establish an independent rail accident investigation branch whose sole focus is to establish the causes of accident and promulgate safety lessons throughout the rail industry;
 - Provide for the working arrangements of RAIB and its interfaces with other investigators;
 - Detail the structure and governance of the RAIB; and
 - Provide a no-blame rail accident investigation service for all parts of Great Britain.
2. The consultation document was sent direct to over 165 organisations, a press notice was issued and the full text was placed on the Department's website. In total 58 organisations and individuals responded to the consultation paper. These covered a range of interests including the rail industry, passenger representative organisations, trade unions and other stakeholders. A full list of those who responded is at Annex A and a table summarising the individual responses is at Annex B.
3. There was substantial support for the main thrust of the proposals contained in the consultation paper. There was overwhelming support for the creation of an independent Rail Accident Investigation Branch and broad support for the detailed proposals. Many of those responding pressed the Government to ensure the early introduction of appropriate legislation. The Railways and Transport Safety Act 2003 (the Act), which received Royal Assent on 15 July 2003, provides specific powers and duties for the investigation of accidents and incidents on the railways. The Act provides for regulations to set out the framework for the operation of the RAIB and those who interface with its investigations. A consultation document on the regulations "Regulations for the Rail Accident Investigation Branch" is published alongside this response.
4. The Department also set up and chaired a Development Group to undertake preliminary work and consider issues emerging from the public consultation paper "Establishing a Rail Accident Investigation Branch" which had been published. The task of the Group was to identify the areas on which further work would be necessary, and to move such work forward, where possible, in advance of the appointment of a Chief Inspector of Rail Accidents. Membership of the Development Group included the Strategic Rail Authority (SRA), Health and Safety Executive (HSE), Office of the Rail Regulator (ORR), Trades Unions, Network Rail, National Contractors' Group (NRCG), Association of Train Operating Companies (ATOC), police (both Home Office and British Transport Police (BTP)), Rail Passengers Council (RPC) and the Coroners' Office.
5. Several organisations and individuals disagreed with aspects of the proposals, or suggested alternative ways forward. Others supported the proposals in general or had specific points to make on certain issues.

6. There remain some issues raised by the consultation that are still being considered and discussed, and which are the subject of the further consultation document . The Chief Inspector of Rail Accidents, Carolyn Griffiths, was appointed on 26 May 2003. The interim team she has appointed is currently taking forward a programme of meetings with key stakeholders including the police, HSE, Network Rail, London Underground, Coroners' Society, ATOC, the Rail Standards and Safety Board (RSSB), SRA, Northern Ireland Department for Regional Development, Northern Ireland Railways, Rail Freight Group, The Channel Tunnel Safety Authority (CTSA), Fire Service, Trades Unions, tramways operators, the Procurator Fiscal, passenger groups and suppliers to the railway (manufacturers and maintainers) to develop the operational framework for the RAIB and to inform the development of the RAIB regulations.
7. This response uses the same numbering and text of the proposals as in the original consultation document. Following each proposal it states in each case whether or not a change has been made to the proposals before going on to discuss the issues in more detail. Where a proposal is the subject of the further consultation, this is made clear.
8. This document may be photocopied. Additional hard copies of this document and the original consultation paper can be obtained from the address below and are available on the DfT website at www.railways.dft.gov.uk.
9. A hard copy of the individual responses has been placed in the library of the House of Commons and can be obtained from the address below:

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Chapter 2: Proposals

Proposal: General purpose of RAIB

3(a) it is made a specific statutory objective of the RAIB that its fundamental purpose should be to undertake investigations and inquiries which look for the root causes of accidents without apportioning blame or liability.

10. The Government made no changes to this proposal.
11. There was overwhelming support expressed by all respondents for the creation of an independent RAIB that will carry out investigations into accidents and incidents on the railways without apportioning blame or liability.
12. The proposal in the consultation document was in direct response to Lord Cullen's recommendations and follows the well-established precedents set by the Air and Marine Accident Investigation Branches. It is also consistent with the European Rail Safety Directive (the Directive).
13. The Health and Safety Commission (HSC) supported the proposals but stressed that the Government should recognise that a tension exists between the need for transparent, independent and fast investigations into root causes and a public expectation and demand that those responsible for causing death, injury and serious risk are held to proper account. The Government acknowledges that such a tension exists. However, we believe that the best way to prevent future accidents is for the RAIB to quickly identify the cause(s) and publish a report so that safety lessons can be shared with the industry in the shortest possible time. The RAIB will be the lead investigation body and have authority for the control of collection of evidence at the site. It will not prosecute. But it will still be possible for those responsible for causing death, injury and serious risk to be held to account because responsibility for prosecution will remain with the Health and Safety Executive (HSE) and BTP, as now. The BTP or Home Office police (with the Crown Prosecution Service (CPS)) may prosecute for breach of the general criminal law. The HSE will retain its existing powers to prosecute if it appears that an offence has been committed under the Health & Safety at Work etc Act 1974. The rail industry will still have a duty to comply with responsibilities under this Act. The HSE, as the Government's rail safety regulator, will take enforcement action where appropriate.
14. Alstom stated that identifying the root cause of an accident in an RAIB report should not in itself be proxy to apportion blame. The Government agrees. It will never be the purpose of an RAIB report to apportion blame. The Directive requires that an "investigation shall in no case be concerned with apportioning blame or liability" . Section 7 (5) of the Act states:
" In performing a function in relation to an accident or incident the Branch - shall not consider or determine blame or liability, but may determine and report on a cause of an accident or incident whether or not blame or liability is likely to be inferred from the determination or report."
15. RAIB reports will aim to identify the cause, draw conclusions and direct recommendations to industry, regulators and Government as appropriate.

Proposal: Jurisdiction - the extent of RAIB's remit

3(b) the RAIB be given the power to undertake an investigation on a railway (network, track or rolling stock), a tramway or a transport system, which uses another mode of guided transport but which is not a trolley vehicle system.

3(c)the RAIB should not be under a duty to investigate accidents in the Channel Tunnel or on or near the border with Northern Ireland, but it should have powers drawn widely enough to allow it to so.

16. The Government made no changes to these proposals.
17. The Government recognises the importance of setting out a clear remit for RAIB investigations in the forthcoming legislation. The interpretation of what constitutes a railway may be drawn very widely so that it encompasses modes of transport such as guided buses or trolley vehicles. Railway Safety suggested that RAIB's jurisdiction should apply to any railed transport system and other respondents thought that the RAIB should be given power to investigate accidents involving all guided systems including guided busways and monorails.
18. The Government is not attracted by these suggestions. The RAIB will comprise accident investigators who are experts in railways. The primary aim of the RAIB is to investigate railway accidents so that the cause(s) can be sought, and so that safety lessons for the railway industry may be promulgated quickly, thereby fostering safer railways. Whilst an accident on a guided bus or trolley vehicle could in itself be serious, and perhaps hold safety lessons about the design of the bus or the operational systems in place, these lessons would be applicable to similar operators not the railway industry.
19. Railway Safety thought that it would be impractical to exclude stretches of railway or tramway which occupy shared space with roads. This view was not shared by the Confederation of Passenger Transport (CPT) who thought that the RAIB should investigate off-street accidents involving trams and that the police should investigate those accidents involving trams on streets. Although they conceded that detailed consideration would need to be given to what constituted an accident on or off street. Tramtrack Croydon thought that it was reasonable that the RAIB should investigate accident and incidents involving trams, but that the fundamental differences in tram operation should be recognised. Trams operate in an environment in which the public, both pedestrian and road users have free access.
20. The Government does not accept the suggestion that all accidents and incidents affecting tramways should fall within the remit of the RAIB. This is because there will be occasions when it is more appropriate for the police to investigate an accident affecting a road-running part of a tramway and which is a road traffic accident. The Government accepts that decisions will need to be taken as to whether a tramway accident is a road traffic accident or a railway accident, but we believe that such a decision is best taken on a case by case basis by the police and RAIB. Therefore, the Chief Inspector of Rail Accidents will be given the discretion over whether or not to investigate tramway accidents.
21. The Government has taken particular note of the many consultation responses which stressed the need for a clear definition of a railway, including tramway. We believe that this will be included in the Regulations. As proposed in the consultation document, the definition of a railway, which will include tramways in certain circumstances, will be drawn from the Transport & Works Act 1992 and the Railways Act 1993. These are as follows:
 - "railway" means a system of transport employing parallel rails which- provide support and guidance for vehicles carried on flanged wheels, and form a track which either is of a gauge of at least 350 millimetres or crosses a carriageway (whether or not on the same level), but does not include a tramway."
 - "tramway" means a system of transport used wholly or mainly for the carriage of passengers and employing parallel rails which -
provide support and guidance for vehicles carried on flanged wheels, and
are laid wholly or mainly along a street or in any other place to which the public has access (including a place to which the public has access only on making a payment);

22. CPT suggested that the definition of tramway used in the Transport and Works Act was flawed and that it should be changed. However, the current definition is used in a great many pieces of primary and secondary legislation and the Government does not propose to create confusion by changing it in relation to the RAIB.
23. The Government noted the Eurotunnel view that RAIB should have the power to investigate in the Channel Tunnel so that it may be co-opted to assist with an investigation, as is provided for under Article 11(6) of the Treaty of Canterbury. There is already an international body, the Channel Tunnel Intergovernmental Commission, established by the Treaty of Canterbury 1986 to oversee all matters relating to the operation of the Channel Tunnel on behalf of both Governments. In addition, the Channel Tunnel Safety Authority (CTSA), which was also established by the Treaty of Canterbury 1986, advises the Intergovernmental Commission on all matters relating to safety of the Channel Tunnel. Its functions include making any investigations into incidents affecting safety in the Channel Tunnel, which by its very nature may often require specialist expertise. The Treaty empowers both bodies to invoke the assistance of any body or expert of their choice, for the purpose of carrying out their functions
24. The creation of an independent rail accident investigator is a requirement of the Directive. For this reason the RAIB will have the power, if needed, to investigate in the Tunnel, including the French section, subject to France's agreement. This could be jointly with the independent rail accident investigator in France. The Directive includes provisions on co-operation between accident investigation bodies in different Member States.
25. The Government maintains its view that the RAIB should have the ability to investigate in another country if invited to do so and that such an investigation may be subject to a charge. None of those responding to the consultation dissented from this view.
26. However, the Government would expect the Chief Inspector of Rail Accidents to use her own judgement, management skills and knowledge of the RAIB to decide when it would be appropriate for assistance to be offered or given. Such assistance would be likely to be offered or given because a particular accident or incident was thought to hold useful safety lessons for the UK railway industry.

Proposal: Categories of accidents and incidents

- 3(d) "Accidents", defined as any unplanned, uncontrolled and uninitiated event on the railway involving train movement (or which might affect train movement) which results in the derailment of rolling stock or the loss of human life, multiple serious injuries or extensive damage to rolling stock, the railway infrastructure or the environment.**
 - 3(e) "Incidents", which under different circumstances may have resulted in such an accident, or any series of unplanned or uncontrolled events which under different circumstances may have resulted in such an accident, including near misses and/or precursors which may have wider implications for safety on the railways.**
 - 3(f) such other unplanned, uncontrolled and unintended events on the railways as the Chief Inspector of Rail Accidents or the Secretary of State may determine.**
27. All of the responses to the consultation stressed the importance of getting the definitions right so that the RAIB and industry know when an RAIB investigation must take place. There was overwhelming support for the definitions to follow the Directive.

28. The HSC suggested that RAIB should not investigate accidents involving people on railway premises not connected with the movement of trains. Other respondents, including NRCG and the Parliamentary Advisory Committee on Transport Safety (PACTS) thought that the RAIB should investigate all accidents and incidents and not be limited to accidents involving train movement. PACTS suggested that RAIB should have maximum discretion to investigate accidents or incidents on all parts of the railway infrastructure if passenger safety was being compromised, and they proposed that RAIB should have the remit to investigate accidents and incidents involving track workers and level crossing users.
29. The Government agrees that there may be benefit in RAIB having the ability to investigate accidents or incidents on the railways that may, at first sight, seem not to be related to train movement activity. For example, a fire at sub-ground level station, or the death of a track worker, may hold lessons about the systemic approaches used on the railways that may need to be changed to avoid similar occurrences in the future.
30. It is because there are so many possible considerations that the RAIB has continued to discuss with the industry and stakeholders the refinement of the definitions. The Government is minded to give the RAIB maximum flexibility to investigate but this must be workable and in accordance with the forthcoming European legislation.
31. The consultation document "Regulations for the Rail Accident Investigation Branch" published alongside this response contains further proposals on these definitions.

Proposal: Evidence gathering and site access & protecting witnesses from self incrimination

- 4(a) a duty be placed on any relevant person, including any contractor or agent, to preserve evidence.**
- 4(b) the RAIB have an unfettered right of access to accident sites but be under a duty to protect the chain of evidence.**
- 4(c) certain categories of information or data, such as medical or private information or opinions expressed in the analysis of information or data, may not be disclosed without the order of the court.**
- 4(d) no statement made by any witness in connection with an RAIB investigation may be disclosed to the police or the HSE save by the order of a judge unless the witness concerned agrees, and that a judge would need to consider whether the wider public interest outweighed any impact that disclosure might have on the investigation.**
- 4(e) the RAIB release details of those who have given evidence in the course of an RAIB investigation.**

32. The Act provides that RAIB is in charge at the site of any accident or incident that it decides to investigate. It has also provided for regulations that will specify what an organisation or individual should do to preserve evidence and on whether and how information held by the RAIB may be disclosed to third parties.
33. The Government maintains that there is a need to establish clear lines of control to the Chief Inspector of Rail Accidents at the site of an accident so that evidence can be preserved and gathered. This control and co-ordination should ensure that evidence is not destroyed unwittingly and that it is collected in an efficient manner. RAIB will establish processes that ensure the HSE, the police and the duty holders can identify what evidence they need. RAIB will provide periodic progress updates on the investigation, and as far as possible, involve the HSE and police in analysis and testing of evidence.

34. The responses from the Association of Chief Police Officers (ACPO), BTP and the HSC stated that it would be crucial that the RAIB recognise the duties of the other investigators and their need to gather evidence so that criminal investigations could be pursued. The Government recognises this but considers that it should not obstruct or delay an RAIB investigation.
35. There is a need to ensure that all of those involved in investigating an accident work closely together. However, it is essential that one person is clearly in charge. That person will be the Chief Inspector of Rail Accidents. She will decide when, how and who will collect evidence. The Chief inspector will draw up working protocols with the other investigators to ensure that there is clarity about the procedures to be followed in the event of an accident.
36. ATOC and individual train operators wanted to be sure that RAIB and other investigators balance the time reasonably required to gather evidence against the need to restore train services. They were keen to ensure that the period of time that an accident site needs to be sealed off is kept to a minimum to enable rail services to resume as soon as possible.
37. The Government agrees that this is important and this is why a clear line of control must be established to the Chief Inspector of Rail Accidents. This will be taken into account when drawing up the working protocols with the other investigators.
38. The Government maintains that witness statements given to the RAIB will not be disclosed to any other investigator by the RAIB. BTP, the CPS and the HSC all suggested that non-disclosure of witness statements could hinder any criminal or health and safety investigation. The Government is of the view that preventing rail accidents in the first place is of primary importance. The RAIB investigation will be carried out in a blame-free environment. Witnesses must be confident that whatever they tell an RAIB inspector cannot be used against them in a prosecution by the police or HSE. The employers' and trades unions' responses to the consultation both made clear that they would fully co-operate with an RAIB investigations in which the statement made by the witness was kept confidential to the RAIB investigation.
39. RAIB will not seek to frustrate any prosecution, but witnesses must know that they can speak freely and frankly, even in the highly stressful circumstances of the immediate aftermath of a crash, without having to worry that something they say may be used against them or others. Other evidence, such as testing or technical data, and hard evidence gathered on site will be disclosed or available to other investigators. This regime operates well for both the Air and Marine Accident Investigation Branches.
40. The Government was not therefore, persuaded that the RAIB should share witness statements. If the HSE or BTP do not wish to take another statement or consider it vital that they obtain a copy of the statement, they will have to seek a court order for such disclosure. The court will then decide whether disclosure will be in the public interest, taking account of any other relevant legislation or considerations, and whether the interests of justice would outweigh any adverse impact which such disclosure might have on the investigation by the Branch, or upon any future investigation into a railway accident or incident undertaken by the Branch, as well as any impact of public safety.
41. The consultation document "Regulations for the Rail Accident Investigation Branch" published alongside this paper contains further proposals.

Proposal: Openness of investigations and inquiries

4(f) duty be placed on the Chief Inspector of Rail Accidents to ensure that infrastructure managers, railway undertakings, safety authority (HSE), bereaved and injured, emergency services, representatives of staff and users, owners of damaged property, and manufacturers are, as far as possible, kept informed about the progress of an investigation. In addition, when appropriate, arrangements should be made to provide a private briefing to those in a crash and to the next of kin and close family of fatalities before an RAIB Investigation report is published.

4(g) no statutory provision is made in respect of inquiries, but the Chief Inspector should in due course develop the circumstances and means whereby observers might attend RAIB inquiries.

42. The Government considers that the RAIB should, as far as possible, keep a wide range of bodies informed about the progress of an investigation but believes that this decision should be left to the discretion of the Chief Inspector. The consultation document "Regulations for the Rail Accident Investigation Branch" published alongside this paper contains further proposals on conduct of RAIB investigations.
43. There was overwhelming support from those responding to the consultation for the requirement to keep as wide a range of bodies and individuals as possible informed about the progress of an RAIB investigation. CPT strongly supported the proposal and thought that in addition to those listed in the consultation document, the relevant operators' trade association, such as the CPT, ATOC, and the Heritage Railway Association (HRA), should be kept informed. The RPC suggested that tighter definition of rail users might be needed as such rights of notification could be sought by numerous groups. An example of an instance where the Chief Inspector might decide to keep ATOC informed might be if an accident held certain lessons about the safe evacuation of passengers that needed to be widely promulgated and learnt quickly.
44. Keeping the next of kin informed about the progress of an investigation was also considered essential by those responding to the consultation. ACPO drew particular attention to the expertise of the Police Family Liaison Strategy and suggested that the RAIB inspectors should work closely with the specially trained family liaison officers. The CPS advocated caution on private briefings with the bereaved and injured suggesting that individuals might end up giving evidence in criminal proceedings. They also suggested that briefings should be recorded and that careful thought be given to who the records can be disclosed.
45. The Government notes these views, but maintains that where appropriate, there is a need to ensure that RAIB inspectors pass information on the progress of the investigation to those involved as quickly as possible where this will improve safety. The aim of the RAIB is to establish the cause of an accident and pass on safety lessons to the industry openly and transparently. The industry and public need to have confidence in the RAIB investigation.
46. The Government has noted the views of respondents that care should be taken if observers are allowed to attend any part of an RAIB investigation. The Chief Inspector will consider how and when it might be appropriate for an observer to attend any part of an investigation but there should be no presumption of attendance because investigations will not normally be held in public and will follow the practice of AAIB and MAIB.

Proposal: Report publication

4(h) reports should be made publicly available normally within 12 months of the date of the accident or incident, or in the shortest possible time, in the manner that the Chief Inspector of Rail Accidents thinks fit.

4(i) reports should not be made public until any person or organisation whose reputation may be adversely affected by the report is informed by notice and has been given the opportunity to make representations.

4(j) the Inspector is required to consider any representations made prior to publication of the report.

4(k) a copy of the report is sent to any person on whom notice has been served (as set out in (i) above), those injured or bereaved in an accident/incident, those persons or bodies to whom recommendations have been made and to the Secretary of State.

4(l) interim reports promulgating urgent safety lessons are published when necessary.

47. The consultation document "Regulations for the Rail Accident Investigation Branch" published alongside this paper contains further proposals on report publication.
48. The majority of those responding to the consultation wanted reports into accidents and incidents on the railways to be published more quickly than is the current practice. The HSC suggested that RAIB should ensure that their reports do not prejudice potential prosecutions or HSE enforcement action. The Chief Inspector of Rail Accidents will put in place protocols governing the working arrangements with other investigators that will ensure that the police and HSE are aware of when an RAIB report is to be published.
49. However, the Government believes that the RAIB must be free to publish its conclusions even though legal proceedings are likely or in progress. Due regard will still be had to the law of contempt of court and to any other enactment. RAIB's concern must be to get the facts of the accident into the public domain and to ensure that lessons are promulgated and learned as rapidly as possible.

Proposal: Public Inquiries

4(m) the power to hold public inquiries into rail crashes remains with the Health and Safety Commission and subject to the consent of the Secretary of State.

50. The Government has varied this proposal slightly. Although the power under section 14 of the Health and Safety at Work etc 1974 Act will not be amended, when considering whether or not it would be appropriate to convene a public inquiry, the Secretary of State will additionally take into account the views of the Chief Inspector of Rail Accidents and the investigation of the RAIB.
51. Respondents to the consultation thought that the creation of RAIB should mean that a public inquiry would very rarely be needed. However, the majority of respondents suggested that the RAIB rather than the HSC should recommend to the Secretary of State whether a public inquiry should be held.
52. ATOC suggested that since the HSC could be subject to investigation or criticism by a public inquiry, it should not be HSC who recommends a public inquiry in to a railway accident. This view was shared by Freightliner and Railway Safety who suggested that since a key requirement of the Directive is that safety investigation should be independent of the safety regulator/authority, it was not appropriate for the power to remain with the HSC.
53. Network Rail thought that it would be acceptable for the power to recommend a public inquiry to remain with HSC but that it should be the RAIB who propose to HSC that a public inquiry may need to be considered. The RPC was of the view that if RAIB was undertaking open and transparent investigations then the need for HSC to convene a public inquiry should seldom, if ever, arise.
54. The HSC agreed with the Government proposal but thought that an RAIB investigation and its ability to direct wide-ranging recommendations should very much reduce the need for public inquiries. The Royal Academy of Engineering agreed with the proposal but thought that there should be no undermining of the RAIB and further suggested that the HSC should treat rail accidents and the RAIB in the same way that it treats the AAIB and MAIB. The AAIB and MAIB can continue their investigation even if a public inquiry has begun.
55. A number of respondents thought that the Tribunals & Inquiries Act 1992 ("the 1992 Act") could be used to set up a public inquiry after a rail accident. However the Government does not consider this Act appropriate. The 1992 Act established the Council on Tribunals, which has functions in relation to certain matters connected with tribunals (e.g. the Social Security Tribunal) and inquiries (e.g. planning inquiries). The 1992 Act does not however make provision for establishing a public inquiry.

56. However, the power to order a public inquiry into railway matters is not restricted to the Health and Safety at Work etc. Act 1974. The Secretary of State may, under prerogative powers, set up a public inquiry in to any matter. Additionally, the Secretary of State may appoint a tribunal to inquire in to a matter of urgent public importance, and endow it with powers under the Tribunals of Inquiry (Evidence) Act 1921. A public inquiry established by means of the prerogative or the 1921 Act may therefore be preferable in respect of major issues relating to rail accidents in future. Such matters would have to be considered as and when such issues arose. We would not expect an RAIB report to recommend a public inquiry, because the aim of the report is to try to uncover the cause(s) of a specific accident. The decision on whether or not to set up a public inquiry would rest with the Secretary of State, although in reaching his decision he might want to take in to account the views of the Chief Inspector of Rail Accidents.
57. The power under section 14 of the Health and Safety at Work etc 1974 Act has not be amended, as there may still be occasions where the HSC considers it appropriate to recommend to the Secretary of State that a public inquiry be held into an issue on the railways which is not related to an accident. However, when considering whether or not it would be appropriate to convene a public inquiry the Secretary of State will additionally take into account the views and investigation of the Chief Inspector of Rail Accidents.

Proposal: Supervisory function & Examination of formal industry investigation reports by the RAIB

5(a) all accidents be reported to the RAIB at the same time as they are reported to the HSE and the BTP.

5(b) the RAIB would have the right to obtain HSE and industry reports and analysis.

5(c) the RAIB should issue guidance to the industry in regard to good practice on formal inquiries and accident investigations and that it should monitor the working of the co-ordinated arrangements in the industry.

5(d) the RAIB should be empowered to examine reports of industry investigations and that the Chief Inspector of Rail Accidents have the power to require industry to provide necessary material to enable the RAIB to look for trends and lessons in near misses or precursors and to provide periodic short reports of any investigation recommendations to bring matters of local or national importance to the attention of the industry.

58. The Government is still considering these proposals. The consultation document "working Methods of the Rail Accident Investigation Branch" published alongside this paper contains further proposals on the directions and guidance issued by the RAIB and on any supervisory function.

59. All of those responding to the consultation thought that it was essential that there was clear and common definition of what should be reported to the RAIB. There was overwhelming support for anything that would be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) to the HSE to be reported to the RAIB at the same time. The CPT thought this would place an administrative burden on the industry and that the requirement should be to make a report under RIDDOR to HSE, who would notify RAIB and the relevant police force as appropriate. The HSC suggested that only reports of accidents and incidents relevant to RAIB's role need to be reported to them. Network Rail thought that it was essential that RAIB be informed at the time an accident occurs. The Railway Forum thought that the reporting requirement should reflect the demands of the Directive so that it would ultimately be for safety regulator to enforce standards and RAIB to investigate all accidents or incidents.

The Government undertook further consultation with the industry and stakeholders, through the Development Group described in paragraph 1.4, to identify what reporting arrangements could be sensibly put in place to ensure that RAIB received notification of all accidents and incidents on the railways without increasing the administrative burden on the industry. The consensus was that statute should require all incidents and accidents reportable under RIDDOR, and relevant to RAIB's role, should be reported to the RAIB and HSE in parallel.

60. The Government has been persuaded by the response to the consultation that the RAIB should be able to look at the report of any industry inquiry. ATOC suggested that the RAIB should have power to call in any incident or accident for investigation or delegate the investigation to the industry. Section 10 of the Act has provided RAIB with the power to look at any industry investigation report. RAIB will also be able to issue directions to the industry specifying the manner in which their investigations are to be carried out. These directions may apply generally or to specific circumstances and can make different provisions for different circumstances.

Proposal: Investigations by other bodies; & protocols between them and RAIB

5(e) the undertaking of investigations by the RAIB should not affect the responsibility of the industry, HSE, or BTP to undertake their own investigations, or in the case of the BTP for the Coroner, as required.

5(f) the RAIB and the HSE, BTP, the police service, Railway Safety (or its successor) and CPS should enter into non-statutory protocols for joint working.

5(g) comments are particularly welcome on statutory provisions that might be appropriate to achieve these ends.

61. The Government has made no changes to these proposals.

62. The various bodies who would be subject to the protocols supported the proposal that protocols be developed, although they had different views on whether or not such protocols should be statutory. ACPO thought statutory measures should identify RAIB as the owner and co-ordinator of protocols for joint investigation. They suggested that joint protocols would be essential if the RAIB system for investigating rail crashes is to work effectively and thought that such protocols should be subject to regular review. They were keen to ensure that the police service's responsibility to conduct both criminal and coronial enquiries should not be affected by RAIB investigation. However, neither the HSC nor the CPS thought there should be statutory protocols, which could be inflexible.

63. The Government has taken note of these views and maintains that statutory provision for the protocols is unnecessary. The relationships between the different investigators will be worked through and clear roles and responsibilities developed for the gathering of evidence and control of site. The Chief Inspector of Rail Accidents is taking forward this work. Non-statutory protocols will be drafted between the RAIB, the emergency services, the police (BTP, Home Office forces in England & Wales, Scottish Forces and the Police Service of Northern Ireland and HSE that set out the arrangements.

Proposal: Monitoring the implementation of recommendations

5(h) the Rail Industry Safety Body should maintain records on the state of progress towards implementation of all recommendations arising from RAIB investigations or inquiries and industry formal inquiries (as described in para 5.16 of Consultation paper) and that this not be set out in statute.

64. The consultation document "Regulations for the Rail Accident Investigation Branch" published alongside this paper contains further proposals on the monitoring of implementation of recommendations.
65. ATOC thought that the tracking of the implementation of recommendations should be for RAIB. The Government agrees that the RAIB needs to be aware of the progress being made towards the implementation of recommendations, but the industry itself must also be responsible for the implementation of safety recommendations made by RAIB.
66. RAIB will want to see that the safety recommendations that it makes are being acted upon and that lessons are being learnt. The Directive also reflects this desire, requiring that the investigating body shall publish an annual report accounting for the investigations carried out in the preceding year, the safety recommendations that were issued, and actions taken according to recommendations issued previously. The Directive must be implemented by Member States, including the UK, no later than two years after its adoption (ie April 2006).
67. Therefore, RAIB will be required to publish an Annual Report so that the state of industry progress towards implementation of safety recommendations made by RAIB can be checked. The RAIB's aim is to find out the cause of accidents and promulgate safety lessons to the industry so that safer railways can be fostered. There is not an enforcement role. If enforcement action is necessary to ensure that the industry pursue a particular course of action, then that will remain the responsibility of the HSE.
68. A number of respondents, including Network Rail, thought that duplication of record keeping should be avoided. The consultation document "Regulations for the Rail Accident Investigation Branch" sets out proposals for handling recommendations.

Proposal: Structure & Governance

6(a) the structure and governance of the RAIB should broadly follow the AAIB and MAIB models.

6(b) a non-statutory secondment programme of appointments to the RAIB from the rail industry should be encouraged.

69. The Government made no change to these proposals.
70. Respondents to the consultation overwhelmingly agreed that the structure and governance of the RAIB should broadly follow the AAIB and MAIB models. The Act implemented this.

71. Many of those responding also agreed that a programme of secondments into RAIB could be beneficial for the industry, although they stressed that the RAIB must be, and be seen to be, independent. The Railway Forum stated that the RAIB must inspire public and industry confidence. Railway Safety stated that the key to success depends on industry parties recognising benefits of secondments and independence of the secondee being seen as such. The SRA suggested that the RAIB should draw on the skills of people already in the industry to support investigations and PACTS wanted to see a programme of secondments encouraged from other transport sectors including research and university fields as well as the railway industry. The Government accepts that careful consideration must be given to maintaining the independence of the RAIB but considers that the Chief Inspector of Rail Accidents should be free to consider the detailed staffing structure of the RAIB and whether or not secondments will be made. The Chief Inspector will maintain close oversight of any secondees and expects that these will be limited due to the fact that it would be difficult to invest a full training package in a non-permanent inspector.
72. The Royal Academy of Engineering was concerned that the RAIB would be a branch of the Department for Transport. It highlighted the need for the RAIB to be independent, not just from the rail industry and regulatory bodies, including the HSE, but from Government. The Government agrees: RAIB will be free to draw its own conclusions and direct recommendations to the Government - as well as the industry and regulators. The RAIB will be a branch of the Department for Transport, but nevertheless it will have clear statutory duties and functions. This is in line with the Air and Marine Accident Investigation Branches, which are both highly respected independent accident investigating bodies within their own industries.

Proposal: Funding & Resourcing

7(a) whether the provision of funding to the RAIB be made through grant in aid.

7(b) the extent to which industry would be prepared to provide assistance and access to specialist equipment either free of charge or at nominal cost.

73. The Government has taken careful note of the responses to the consultation on the question of funding. RAIB will be part of the Department for Transport and will be funded through the departmental budget.
74. There was overwhelming support for this. ACPO and the HSE both suggested that any additional funding received from the industry would require careful management so that the independence of RAIB could not be called into question. The Government agrees. If provision of expert assistance or access to specialist equipment is provided to the RAIB by the rail industry free of charge, or at a nominal charge, careful management of such assistance will be undertaken by the Chief Inspector to ensure that RAIB independence is not compromised.

Proposal: Scotland, Wales and Northern Ireland

8(a) the RAIB would operate in Scotland and Wales on the same basis as the MAIB and AAIB.

8(b) that Government provide a power to enable the RAIB to provide services in Northern Ireland if requested.

75. The Government has changed these proposals.
76. The main change is that the RAIB will operate on the same basis in Northern Ireland, England, Wales, and Scotland. The Northern Ireland Assembly and a number of other respondents thought that it would be difficult to create an RAIB just for Northern Ireland which would have sufficient expertise to investigate. It is also a requirement of the Directive that Northern Ireland has its own independent accident investigator. The Northern Ireland Assembly has persuaded the Government that the RAIB should operate consistently on a UK-wide basis and the Act implements this.

77. The other change is that RAIB will not investigate tramway accidents in Scotland. This is because responsibility for tramways has been devolved to the Scottish Parliament. The Scottish Executive is therefore able to take measures so that legislation is in place for its own accident investigation body to cover tramways or find some other way of investigating tramway accidents. The RAIB may assist the Scottish Authorities with the investigation of an accident or incident affecting a Scottish tramway if asked to but RAIB inspectors would not have any of their powers, they would merely be experts assisting in an investigation. It is for the Scottish Executive to decide whether they will provide a full range of powers for RAIB inspectors. If such a range of powers was created then the RAIB could take control of the investigation of tramway accidents and incidents rather than offering assistance to investigators from the Scottish Executive. The RAIB is under no mandate to enter into an agreement with the Scottish Executive and at the moment there are no tramways operating in Scotland.

Annex A: List of respondents to the consultation paper

Passenger train operating companies

- 78. Association of Train Operating Companies (ATOC) (on behalf of passenger TOCs)
- 79. First Group (on behalf of First's TOCs and light rail)

Freight train operating companies

- 80. EWS (on behalf of EWS Rail, EWS Rail International, and RES)
- 81. Freightliner

Rail industry

- 82. AEA Technology (AEA)
- 83. Alstom Transport (Alstom)
- 84. Amec Rail (NRCG)
- 85. Amey Rail (NRCG)
- 86. Angel Trains
- 87. Carillion Rail (NRCG)
- 88. Confederation of Passenger Transport (CPT)
- 89. Dean & Dyball Construction (NCRG)
- 90. Eurotunnel
- 91. Geoffrey Osborne (NCRG)GrantRail (NCRG)
- 92. Heritage Railway Association (HRA)
- 93. HSBC Rail (HSBC)
- 94. London Underground (LUL)
- 95. National Rail Contractors Group (NCRG)
- 96. Porterbrook
- 97. Railtrack plc/Network Rail (Railtrack)
- 98. Railway Forum
- 99. Railway Safety
- 100. Serco Rail HQ (NCRG)
- 101. Serco Rail - Derby
- 102. Strategic Rail Authority (SRA)
- 103. Westinghouse Rail Systems (Westinghouse)

Passenger Transport Executives

- 104. Merseyside PTE (Mersey Travel)

Light rail operators

- 105. Tramtrack Croydon (TCL)
- 106. Docklands Light Rail (DLR)

Trades Unions

- 107. Associated Society of Locomotive Engineers and Firemen (ASLEF)
- 108. Trades Union Congress (TUC)

Interested groups

- 109. Parliamentary Advisory Committee for Transport Safety (PACTS)
- 110. Rail Passengers' Committee Wales (RPC Wales)
- 111. Rail Passengers' Council (sent on their behalf by the London Transport Users Committee) (RPC)
- 112. Railway Reform Group (RRG)
- 113. The Suzy Lamplugh Trust

Other

- 114. Association of Chief Police Officers (ACPO)
- 115. British Transport Police (BTP)
- 116. Coroners' Society of England and Wales
- 117. Coroners' Officers Association (COA)
- 118. Crown Prosecution Service (CPS)
- 119. Health and Safety Commission (HSC)

General

- 120. Association of Personal Injury Lawyers (APIL)
- 121. Brian Finney
- 122. Don Foster MP
- 123. Institute of Occupational Safety & Health (IOSH)
- 124. John Tilly
- 125. Martin Dover
- 126. Mike Martino
- 127. Pre Metro Operations (Pre Metro)
- 128. Ross Middleton
- 129. Royal Academy of Engineering (RAeng)
- 130. Safety Cases Ltd
- 131. Stanley Hall
- 132. Stephen Firth

133. Tony Thompson

Annex B: Summary of responses to consultation questions

What will RAIB do?	
3 (a) it is made a specific statutory objective of the RAIB that its fundamental purpose should be to undertake investigations and inquiries which look for the root causes of accidents without apportioning blame or liability.	
Agree	ACPO, AEA, Alstom, Angel Trains, APIL, ASLEF, ATOC, CPT, DLR, EWS, First Group, Freightliner, HSBC, HSC, IOSH, John Tilly, LUL, Merseytravel, Mike Martino, NRCG, PACTSPre Metro, RAeng, Network Rail, Railway Forum, Railway Safety, RPC, RPC Wales, Stanley Hall, Steve Firth, SRA, Tony Thompson, TUC, Westinghouse
Disagree	None
Summary of issues raised	<p>ACPO - vital that proposal recognises that incidents resulting in death or serious injury police have duty to carry out thorough investigation. This is essential for Coroner's inquest and deciding whether to refer to CPS for potential criminal proceedings.</p> <p>AEA - investigations focusing on identifying causes and not apportioning blame is welcomed.</p> <p>Alstom - strongly agree, but tracing a root cause to an organisation is frequently seen as proxy to allocating blame.</p> <p>APIL - welcomes the proposal to establish an independent rail accident investigation branch - vital that Government, rail regulators and the rail industry can understand why accidents happen so they can be prevented in the future. But proposals do not go far enough - concerned that the Government's approach to safety and responding to major disasters will remain fragmented, APIL therefore proposes the creation of a Director of National Safety to whom the heads of RAIB, AAIB, MAIB and HSE would report. The Govt has still not addressed the need for co-ordination of the various legal proceedings that usually follow a major disaster.</p> <p>CPT - strongly agree that RAIB investigation should be to determine the root causes of an accident, not to apportion blame.</p> <p>DLR - concept of RAIB to investigate all rail accidents is a strong one, particularly with the desire to discover the root causes, with no blame attached.</p> <p>PACTS - a no-blame culture should be developed. Unless RAIB is taking over functions relating to public inquiries statutory objective should be limited to investigations and inquiries should be deleted. Reg 4 of Civil Air Accident Investigation Regs should be used as basis for RAIB's work.</p> <p>Pre Metro - fundamental purpose of RAIB should also be to provide an independent source and guidance on issues relating to railway safety. Good practice currently adopted by HMRI in this field should be a feature of the new body.</p> <p>RAeng - search for root cause rather than apportioning blame at heart of new arrangements. RAIB should have power to see evidence as quickly as possible.</p> <p>Network Rail - this is essential and absolutely core.</p> <p>Railway Forum - also require RAIB to include role of safety regulator within its investigations and inquiries. Vital for RAIB to uncover root causes of accidents and</p>

What will RAIB do?	
	<p>may require explicit amendment to RAIB's remit to include the wider safety structure.</p> <p>RPC - all investigations and inquiries should be undertaken by RAIB. Will also be mandatory under proposed EU Rail Safety Directive.</p> <p>RPC Wales - also necessary provision and scope to conform with EU proposals with which alignment and compliance should be anticipated and secured now.</p> <p>RRG - same objectives and process needs to be considered for tramways.</p> <p>SRA - vitally important that RAIB undertakes inquiries that quickly establish the root causes without apportioning blame.</p> <p>Tony Thompson - highly desirable that the root causes of accidents are identified as soon as possible and that lessons learned are speedily promulgated. Must equally be a means for parallel investigations to identify liability and blame. Will always be a need to achieve accountability - corporate and individually - following a rail crash.</p> <p>TUC - agrees with this approach which borrows from the regimes in maritime and aviation transport which are reported by the unions to be running well.</p> <p>Westinghouse - under HSAW Act every organisation has duty to investigate accidents/incidents - RAIB can not take away this responsibility or interfere with it.</p>
3 (b) the RAIB be given the power to undertake an investigation on a railway (network, track or rolling stock), a tramway or a transport system, which uses another mode of guided transport but which is not a trolley vehicle system.	
Agree	ACPO, Alstom, ASLEF, ATOC, CPT, First Group, Freightliner, HSBC, HSC, IOSH, John Tilly, LUL, Merseytravel, Mike Martino, NRCG, Network Rail, Railway Safety, RPC, RPC Wales, Ross Middleton, Stanley Hall, Steve Firth, TCL, Tony Thompson, TUC, Westinghouse
Disagree	None
Summary of issues raised	<p>ACPO - necessary for consistency in investigations across rail network.</p> <p>Alstom - should be consistency of application between different statutory instruments - RIDDOR, RSCR, RSCR, 1993 Railways Act and European Directives. Existing regulations or statutes may need modifying.</p> <p>Angel Trains - need for a clear definition of RAIB role and division of responsibilities.</p> <p>ATOC - RAIB should have the power to investigate accidents from a non-rail source - RAIB remit should enable it to investigate any event that may raise rail safety issues.</p> <p>CPT - agree with principle that RAIB investigate off-street accidents and the police on-street ones, but more careful thought required on what classed as on and off street. Guided transport systems should be those prescribed under the Transport and Works Act 1992. RAIB should cover the Docklands Light Railway, transit lines at airports and some aerial cableways. A trolley vehicle system is not a mode of guided transport.</p> <p>First Group - support proposed extent of remit with the exclusion of tramways - police lead investigations which appear to work well.</p>

What will RAIB do?

HRA - suggest RAIB be notified of all reportable accidents - can then liaise and agree procedure with police or other organisations. Why exclusion of trolley vehicles - not guided system of transport - guided by driver and no different from normal bus.

IOSH - want RAIB to participate in investigations concerning other modes eg road /rail accidents (Selby).

John Tilly - CI RAIB should have power to decide what constitutes a railway.

Mike Martino - "inclusive will be the London Underground and other transit properties".

Pre Metro - RAIB should be given power to investigate accidents involving all guided systems. Guided busways, monorails, etc should be included and the system proposed for Cardiff.

RAeng - sensible to have a cut-off in system complexity so unnecessary for RAIB to be involved in accident investigation.

Network Rail - essential for RAIB to have a clear remit. Railway Group Standard GO/RT3473 has a matrix identifying types of accident RAIB would be expected to investigate. What is not within RAIB's scope must also be clearly defined - would RAIB cover accidents in railway maintenance facilities. Use of terms 'investigations' and 'inquiries' is inconsistent - definitions required to provide clarity. RAIB should have clearly defined jurisdiction - restricted to railway activities.

Ross Middleton - concern over definition of tramway and suggestion that police continue to investigate accidents on road running sections. Definition of street running section needs to be more clearly defined. A definition of what is a road accident which would be investigated by the police is required. RAIB should be given the power to investigate any tramway accident even if it is a road traffic accident. RAIB could then determine whether or not a design or operating deficiency of the tramway had any bearing on the accident.

RPC - trolley vehicle system term requires definition - as sometimes used to refer to cable-hauled railways which should come within RAIB's remit. RAIB's jurisdiction should apply to any railed transport system. Do not believe it is practicable to exclude stretches of railway or tramway which occupy shared space with roads.

RPC Wales - would be prudent to allocate powers now for additional inclusions which technological developments, transport accidents and societal concerns may justify in the future.

RRG - criteria for RAIB is to assume its investigative powers. How will these powers interface or affect the organisation holding railway safety case responsibility.

Steve Firth - exclusion of trolley vehicle systems should be limited to vehicles which are not otherwise guided. A tram on road running section is not a straightforward issue as division of responsibility between RAIB and police road traffic investigators is unlikely to be so clearly defined.

TCL - are fundamental differences in the way railway and tramway systems are operated. Essential that differences are recognised and that recommendations arising from main line railway accidents are not imposed on tramway systems without due consideration being given to the operating differences. Need to ensure that boundaries of responsibility are drawn to ensure there is no distinction between incidents on road-running sections and any occurring at intersections between the

What will RAIB do?	
	tramway and highways. There is no difference between a guided bus and a tram. Westinghouse - what about preserved/heritage/miniature rail
3 (c) the RAIB should not be under a duty to investigate accidents in the Channel Tunnel or on or near the border with Northern Ireland, but it should have powers drawn widely enough to allow it to so	
Agree	AEA, ASLEF, Angel Trains, ATOC, CPS, Eurotunnel, EWS, HSC, IOSH, LUL, Mike Martino, PACTS, Stanley Hall, Tony Thompson, TUC
Disagree	John Tilly, NRCG, Railway Safety, RPC
Summary of issues raised	<p>AEA - border with Northern Ireland should be Ireland.</p> <p>Alstom - Channel Tunnel is an anomaly - hope it will be rationalised when EU Safety Directive is brought into force.</p> <p>Angel Trains - Channel Tunnel and implications of EU Rail Safety Directive need to be considered.</p> <p>ATOC- support as long as compatible with final European Rail Safety Directive or can be readily up-dated to be so.</p> <p>CPS - agree with move to legislate for future contingencies.</p> <p>Eurotunnel - any new investigating body must be supported by suitably qualified professionals with appropriate experience - if to have responsibility for Channel Tunnel should have specific appropriate expertise in long rail tunnels. Because of bi-national nature of tunnel highly unlikely RAIB permitted to carry out investigation in French half or require French nationals to give evidence. Must be right that RAIB not given a duty to investigate tunnel accidents - though may be case for RAIB experts to be co-opted to assist with investigation under Article 11(6) of Treaty.</p> <p>EWS - support if compatible with European Safety Directive.</p> <p>First Group - have no view on this issue.</p> <p>Freightliner - no comments.</p> <p>HSBC - powers for Northern Ireland should be same as for AAIB and MAIB. Concerned that body of experience and expertise (RAIB) unlikely to be present in Northern Ireland.</p> <p>HSC - RAIB should have the power to investigate accidents and to choose what it investigates. Should not be under a duty to investigate all or any particular category of accidents.</p> <p>John Tilly - RAIB should have identical powers in Northern Ireland. NI is part of the UK so why should it be treated differently. Similarly the Channel Tunnel.</p> <p>LUL - would give RAIB flexibility to leave investigation to another investigation body, to collaborate or investigate itself</p> <p>Merseytravel - RAIB should be under a duty to co-operate with investigations by authorities responsible for accident investigation in the Channel Tunnel and the Irish Republic.</p> <p>Mike Martino - inclusive will be the ability to draw upon any and all information of</p>

What will RAIB do?	
	<p>accidents/incidents in either area for trend and system analysis.</p> <p>NRCG - should be consistent system across whole of UK which is also consistent with European Rail Safety Directive.</p> <p>PACTS - RAIB should not be denied the ability to investigate incidents in the Tunnel. Should have similar powers to AAIB under which it is able to investigate accidents on UK soil and accidents involving UK citizens in other parts of the world. European Rail Safety Directive will cover Northern Ireland. Powers should be drawn as widely as possible to ensure maximum coverage.</p> <p>Network Rail - gives impression that elsewhere RAIB do have a duty to investigate - but should be right rather than duty. Not Northern Ireland but border with Republic of Ireland.</p> <p>Railway safety - exclusion of areas within a member state of EC seems incompatible with scope of forthcoming European Rail Safety Directive.</p> <p>RPC - no reason to exclude any railway in Britain from RAIB's jurisdiction - nothing in proposed EU Rail Safety Directive which would permit this. Border should be with the Irish Republic.</p> <p>RPC Wales - providing defined geographical limits is endorsed as practical and necessary, but lack of clarity not endorsed, especially in relation to the Channel Tunnel. Suggest more effective to have three clearly distinct zones - UK-side of tunnel portal, 100% RAIB; between portals, 50% RAIB as of right and French-side of tunnel portal, 100% RAIB de France. A mutually agreed protocol should be the minimum requirement.</p> <p>RRG - who will decide the powers and under what conditions will they be exercised in respect of Northern Ireland and the Channel Tunnel? The major freight shuttle fire in the Channel Tunnel may have had implications for fires in UK rail tunnels, but is not aware how or if these were they considered by UK rail industry and closed out.</p> <p>Tony Thompson - illogical for RAIB not to have powers to investigate accidents in the Channel Tunnel. Proposal is sound. Proposed European Safety Directive must have provision for RAIB involvement - for HM Govt to seek appropriate provision before the Directive is finalised.</p> <p>Westinghouse - RAIB should have a duty to assist (or at least co-operate with) the investigation of such accidents.</p>
<p>3 (d) "Accidents", defined as any unplanned, uncontrolled and uninitiated event on the railway involving train movement (or which might affect train movement) which results in the derailment of rolling stock or the loss of human life, multiple serious injuries or extensive damage to rolling stock, the railway infrastructure or the environment.</p>	
Agree	Angel Trains, ATOC, HSBC, John Tilly, Merseytravel, Stanley Hall, Tony Thompson
Disagree	LUL
Summary of issues raised	<p>ACPO - police moving away from using accident, as can be inappropriate description, and is now using the term collision.</p> <p>AEA - should consider a definition for serious so that investigations are instigated to a common standard. RAIB should follow any precedent set by the AAIB.</p>

What will RAIB do?

Alstom - definition should align with whatever is in the final EU Safety Directive. RIDDOR may need bringing into line.

ASLEF - RAIB should investigate not just major accidents.

ATOC - as long as compatible with definitions in final European Rail Safety Directive.

BTP - propose that definition should either specifically exclude accidents caused by a criminal act or direct RAIB to cease an investigation when becomes clear cause is criminal.

CPS - priority should be given to loss of life, then followed by multiple serious injuries, then derailment or extensive damage to rolling stock.

EWS - should have same definitions as European Safety Directive.

First Group - would like to see broader scope to include areas not directly associated with train operation - at stations, accidents such as structural collapse or major fire should fall within RAIB's remit. Need further clarity on injury or damage from acts of terrorism and the link of any RAIB investigation with security organisations.

Freightliner - supports Railway Safety response - careful consideration should be given to the European Safety Directive definitions. Clarification required to define precise scope of accidents investigated by RAIB - does this include death of track worker struck by train, death of track worker driving an on track machine and accidents in yards/depots and sidings?

HRA - suggest definitions set out in RIDDOR and insert serious before accidents and incidents. Are derailments in sidings to be included?

HSC - RAIB should not investigate accidents involving people on railway premises not connected with the movement of trains. HSE should investigate such accidents.

IOSH - want better definition of extensive damage and collision, fires and derailments should be included.

John Tilly - should not include suicides, those falling from platforms and possibly pedestrian fatalities at level crossings.

LUL want RAIB remit to investigate any serious incident or accident on the railway.

Mike Martino - add 'collisions' before derailments - can have a collision and no derailment and still be a catastrophic event. Grade crossings and trespasser strikes should also be included.

NRGC - RAIB should also look at precursor events as well as actual accidents. RAIB should investigate all accidents and incidents as defined in Railway Group Standard GO/RT 3473 which is not limited to accidents involving train movement. Should be compatible with European Rail Safety Directive.

PACTS - definition should be based on those in the proposed European Rail Safety Directive - to include track workers and level crossing users. RAIB should have maximum discretion to investigate all elements of railway infrastructure if passenger safety is compromised.

RAeng - essential RAIB established with clear and unambiguous understanding of its remit. Are accidents that result in single serious injury or problems caused by

What will RAIB do?	
	<p>objects criminally placed on line or even bombs included? Are suicide or deliberate trespass excluded?</p> <p>Network Rail - definition should be in line with forthcoming EC Safety Directive. What does railway environment actually mean?</p> <p>Railway Safety - suggest careful consideration be given to European Directive definitions of serious accidents, also define precise scope of accidents to be investigated by RAIB.</p> <p>RPC - if HSE rail accident investigation role is to be largely transferred to RAIB see no merit in events such as Kings Cross fire being excluded - EU Rail Safety Directive definitions should apply. Suggest deletion of the words 'involving train movement (or which might affect train movement)'.</p> <p>RPC Wales - relevance of inclusion of damage to the environment is not understood.</p> <p>RRG - why are derailments specifically included? Many other types of accident could have as serious results or implications as derailments.</p> <p>Tony Thompson - seems a broad approach which should cover most accidents and incidents.</p> <p>TUC - concerned that definition of accidents are not those in use by Railway Safety - believe that RAIB should investigate a certain proportion of minor incidents as well as the major ones.</p> <p>Westinghouse - derailment should be 'collision or derailment' - are freight only railways treated differently? What about accidents involving rail and non-rail, eg level crossings and road vehicles down embankments.</p>
3 (e) "Incidents", which under different circumstances may have resulted in such an accident, or any series of unplanned or uncontrolled events which under different circumstances may have resulted in such an accident, including near misses and/or precursors which may have wider implications for safety on the railways	
Agree	Angel Trains, ASLEF, ATOC, EWS, First Group, Freightliner, HSBC, HSC, IOSH, John Tilly, LUL, Merseytravel, NRCG, Network Rail, Railway Safety, RPC, RPC Wales, Stanley Hall, Tony Thompson, TUC, Westinghouse
Disagree	PACTS
Summary of issues raised	<p>ACPO - police moving away from using accident, as can be inappropriate description, and is now using the term collision.</p> <p>AEA - should consider a definition for serious so that investigations are instigated to a common standard. RAIB should follow any precedent set by the AAIB.</p> <p>Alstom - caution against too broad a definition of incidents. A close matching of the EU definition would seem sensible.</p> <p>ATOC - definitions should be compatible with final European Rail Safety Directive.</p> <p>BTP - propose that definition should either specifically exclude accidents caused by a criminal act or direct RAIB to cease an investigation when becomes clear cause is criminal.</p> <p>HRA - suggest definitions set out in RIDDOR and insert serious before accidents</p>

What will RAIB do?	
	<p>and incidents. Are derailments in sidings to be included?</p> <p>HSC - RAIB should not investigate accidents involving people on railway premises not connected with the movement of trains. HSE should investigate such accidents.</p> <p>NRCG - RAIB should also look at precursor events as well as actual accidents. RAIB should investigate all accidents and incidents as defined in Railway Group Standard GO/RT 3473 which is not limited to accidents involving train movement. Should be compatible with European Rail Safety Directive.</p> <p>PACTS - definition should be based on those in the proposed European Rail Safety Directive - to include track workers and level crossing users. RAIB should have maximum discretion to investigate all elements of railway infrastructure if passenger safety is compromised.</p> <p>RAeng - incidents should include technical failures of safety critical equipment and components, as defined in European Rail Safety Directive.</p> <p>Network Rail - definition should be in line with forthcoming EC Safety Directive. RAIB will also need to exercise discretion or scope will be too wide ranging.</p> <p>RPC - prefer term 'near misses' to be eschewed in any proposed legislation, as literal meaning is opposite of that intended.</p> <p>RPC Wales - as accidents become rarer the analysis of near misses and/or precursors and effective action will minimise the risk of future incidents deteriorating to accidents. CIRAS needs to have a pro-active, integrated fast track role here - prevention better than cure.</p> <p>Tony Thompson - seems a broad approach which should cover most accidents and incidents.</p>
3 (f) such other unplanned, uncontrolled and unintended events on the railways as the Chief Inspector of Rail Accidents or the Secretary of State may determine	
Agree	Angel Trains, ASLEF, ATOC EWS, Freightliner, First Group, HSC, HSBC, IOSH, John Tilly, LUL, Merseytravel, NRCG, Network Rail, Railway Safety, RPC, RPC Wales, Stanley Hall, Tony Thompson, TUC, Westinghouse
Disagree	HRA
Summary of issues raised	<p>ACPO - police moving away from using accident, as can be inappropriate description, and is now using the term collision.</p> <p>Alstom - not clear what might be included. Should intermodal incidents, such as road vehicles breaching the railway, be included?</p> <p>ATOC - definitions should be compatible with the final European Rail Safety Directive.</p> <p>BTP - propose that definition should either specifically exclude accidents caused by a criminal act or direct RAIB to cease an investigation when becomes clear cause is criminal.</p> <p>HRA - are unplanned, uncontrolled and unintended necessary - act of vandalism or sabotage may well be planned, controlled and intended.</p> <p>HSC - event is too broad and should be accident or incident.</p>

What will RAIB do?	
	<p>NRCG - RAIB should also look at precursor events as well as actual accidents. RAIB should investigate all accidents and incidents as defined in Railway Group Standard GO/RT 3473 which is not limited to accidents involving train movement. Should be compatible with European Rail Safety Directive.</p> <p>PACTS - definition should be based on those in the proposed European Rail Safety Directive - to include track workers and level crossing users. RAIB should have maximum discretion to investigate all elements of railway infrastructure if passenger safety is compromised.</p> <p>Network Rail - need clarity on extent to which RAIB will use its discretion to investigate particular types of accidents. AAIB's role should be examined as a pointer to what may be appropriate.</p> <p>RPC - definition appears broad enough to encompass the investigation of any event on the railways, but requires amendment to ensure sabotage and vandalism events are within RAIB's scope.</p> <p>RPC Wales - concerns about what type of unsafe events would be eligible. Following should definitely be considered; route crime, level crossings, suicide bleak spots and death or serious injury to track workers - also HST door failures at an early stage.</p> <p>Tony Thompson - seems a broad approach which should cover most accidents and incidents - but legislation should be wide enough to cover those rare occasions when there is a deliberate act such as vandalism or sabotage. Suggests there should be a section 3(f)(i) along the lines of 'Any other event on the railways as the Chief Inspector of Rail Accidents or the Secretary of State may determine'</p>
How will RAIB work?	
4 (a) a duty be placed on any relevant person, including any contractor or agent, to preserve evidence.	
Agree	ACPO, Angel Trains, ASLEF, ATOC, CPS, EWS, First Group, Freightliner, HSC, IOSH, John Tilly, LUL, Merseytravel, Mike Martino, NRCG, RAeng, Network Rail, Railway Safety, RPC, RPC Wales, Tony Thompson, Stanley Hall, Steve Firth, TUC, Westinghouse
Disagree	None
Summary of issues raised	<p>ACPO - where death or serious injury involved police has duty to preserve and control incident site as crime scene until criminal investigation complete.</p> <p>AEA - would it be intended that RAIB own the information created during an investigation?</p> <p>Alstom - need to preserve evidence must be balanced with the need to re-establish rail services. The text of 4.2 is probably relevant to a major train crash but not appropriate in most cases.</p> <p>ASLEF want reduction in use of outside contractors, track work maintenance should be in-house.</p> <p>ATOC - obligation should include investigating authorities. Guidelines also required on balance between the time reasonably required to gather evidence and the need to restore train services. The period of time that an accident site needs to be sealed off</p>

What will RAIB do?

needs to be kept to a minimum to enable rail services to resume as soon as possible.

CPS - how would duty work in practice and who would enforce a breach of the duty. Would breach be a criminal offence and how sit with perverting course of justice and wasting police time. Appropriate sanction needs addressing.

First Group - support but ask that enforcing authorities be specifically added to the definition.

HSBC - evidence should be relevant. Unless restriction of only relevant documentation on cause of incident being passed to other investigating bodies, may be reduction in information documents which could ordinarily be freely given to RAIB.

HSC - vital for prosecution purposes.

IOSH - want it extended to any organisation affected by or contributing to events leading to and ensuing from an accident.

John Tilly - should also include manufacturers of any equipment and trains.

LUL - want definition to include the multiplicity of authorities (enforcing, regulatory, strategic and any standard setting bodies) which could influence the safe operation of the railway.

Merseytravel - protection of information and data afforded in AAIB and MAIB investigation regimes should be extended to rail.

Mike Martino - suggest first responders (police, fire, rescue etc.) should be added to the list.

NRCG - should be more recognition of the need to restore train services after accidents than is currently the case.

RAeng - if relevant person restricts the power to persons connected with the rail industry, would be nothing to prevent third party from destroying evidence.

Network Rail - needs clear understanding of relevant person. RAIB will need to build public confidence - by support of those involved in investigation process

Railway Safety- want enforcing authorities included in definition of relevant person.

RPC - without this whole process of investigation could be nullified.

RRG - clear description is needed between the parties involved and a requirement to pass on evidence to the RAIB.

Steve Firth - relevant person is likely to need extending to include local highway authority in the context of railway level crossings and tramways.

Tony Thompson - is fine but what sanctions will be in place to deal with those who ignore such a duty? Key to successful evidence gathering lies in adopting a project management approach whereby RAIB/HMRI/rail industry supervise industry experts/specialists in the collection of evidence for the twin purposes of safety and criminal investigations. This can be enhanced by developing the existing protocol.

TUC - note that rail unions would want to see a major reduction in the use of outside contractors and agencies within the industry - all routine maintenance track work should be considered for bringing back in-house by labour directly employed by

What will RAIB do?	
	Railtrack or Network Rail.
4 (b) RAIB have an unfettered right of access to accident sites but be under a duty to protect the chain of evidence	
Agree	ACPO, Angel Trains, ASLEF, ATOC, CPS, EWS, First Group, Freightliner, HSBC, HSC, IOSH, John Tilly, LUL, NRCG, RPC, Network Rail, Railway Safety, RPC Wales, Stanley Hall, TUC, Westinghouse
Disagree	BTP, RAeng, Tony Thompson
Summary of issues raised	<p>ACPO - unfettered access not to be confused with uncontrolled or uncoordinated access. Co-operation from outset between various investigation bodies is crucial including agreement on cordoning off and restricting access to the site. Must be addressed in protocols.</p> <p>Alstom - access to precursor sites (local signalling centre or depot where train last maintained) might be more relevant than access to accident site.</p> <p>Angel Trains - needs a clear understanding between RAIB/HSE/BTP as to who controls preservation or indeed removal of evidence - essential there is a clear understanding between all three parties how this is to be achieved.</p> <p>ATOC - believe that one organisation only, RAIB, should have the technical lead on site and subsequently. Protocol could be confined to rights of access to the outputs of the technical work and the right of the prosecuting authorities to raise questions in its context. Protocols should permit HSE and police to commission technical evidence additional to that deemed necessary by RAIB if an exceptional requirement can be shown.</p> <p>BTP - there are circumstances when unfettered access may not be appropriate, when scene is a crime scene, then RAIB inspectors must seek guidance and advice from police. Proposed legislation to acknowledge other parties to investigation may need to guide RAIB and expect advice to be followed.</p> <p>CPS - would it be RAIB or individual member of RAIB that would be liable in event of a breach of duty? How RAIB duty affected if police and HSE attending accident scene first - impractical to await RAIB's arrival. RAIB staff will need appropriate training on potential prosecutions.</p> <p>First Group - support proposal - further ask that the primacy for evidence preservation and collection is clearly given to RAIB.</p> <p>HSC - right of access to accident sites and evidence should be agreed in protocols between HSE, BTP and RAIB.</p> <p>John Tilly - RAIB Inspectors must have right of access at any time of day or night and to any premises (not necessarily railway premises) to enable their investigation.</p> <p>NRCG - RAIB should have primacy on site and powers between police, HSE and RAIB must be absolutely clear. Protocols must make it clear that RAIB has control over who is allowed access to site during an investigation.</p> <p>RAeng - should be amended to clarify responsibility for deciding when evidence no longer needs to be preserved at accident site. RAIB should have a duty to take into account needs of other investigating bodies and need to restore rail services as soon as possible.</p>

What will RAIB do?	
	<p>Network Rail - RAIB's position in relation to other investigating bodies must be clear. Legislation must make clear that RAIB has lead responsibility to control the investigation and how other investigating bodies relate to that overall authority. Term should be control rather than right of access. When informed of an accident RAIB will need to determine very quickly whether it intends visiting the site as regards protection/gathering of evidence or will fall to others.</p> <p>RPC - is RAIB to have power of subpoena? - will require to have this as HSE does at present.</p> <p>RPC Wales - sites of accidents and incidents require strict control. Only one party should be site controller. If RAIB it should be clarified and confirmed here. If not RAIB access will necessarily be fettered for safe site management.</p> <p>RRG - concerned at the time taken to carry out site investigations. Appreciate need to ensure preservation of evidence but this painstaking process has more to do with the possibility of subsequent prosecutions and claims from various parties than of accident investigation. Real cost should be taken into account in establishing a process.</p> <p>TCL - implication of definition is that protection of site and evidence could be applied to any incident irrespective of scale. Many accidents on railways and tramways which result in derailments are of a relatively minor nature and formal protection of site could be out of all proportion to time taken to investigate the cause and restore the line to traffic. Needs to be a degree of flexibility which is recognised by RAIB.</p> <p>Tony Thompson - can be achieved by appropriate consultation and training, incorporating RAIB's access rights in a protocol with BTP and other emergency services. Police service will in most circumstances regard the scene of a rail crash as a scene of crime for evidence gathering purposes. The police, particularly in fatal crashes, preserve the scene.</p>
4 (c) certain categories of information or data, such as medical or private information or opinions expressed in the analysis of information or data, may not be disclosed without the order of the court	
Agree	ACPO, Alstom, Angel Trains, ASLEF, EWS, First Group, Freightliner, HSBC, IOSH, John Tilly, LUL, Merseytravel, NRCG, RAeng, Network Rail, Railway Safety, RPC Wales, Stanley Hall, Tony Thompson, TUC, Westinghouse
Disagree	None
Summary of issues raised	<p>ACPO - accepts this proposal but should be noted that on occasion may result in duplication of enquiries and may delay outcome of criminal investigation.</p> <p>AEA - obvious link with 4f should be acknowledged. RAIB should follow precedent set by AAIB and MAIB.</p> <p>BTP - non-disclosure will hinder any criminal or health and safety investigation. Should be a mechanism for police or other investigative agency to identify relevant material is available and whether a court order be sought. RAIB could be under an obligation to respond to requests about specified material.</p> <p>CPS - more detail needed on categories of information or data intended to be included. Would like provision for routine disclosure by RAIB where witness</p>

What will RAIB do?	
	<p>consents or where wider public interest dictates. RAIB discretion needed to obviate costly time-consuming court hearing in each case.</p> <p>HSC - RAIB will be in possession of material other than witness statements that will be relevant to any criminal investigation. RAIB, HSE and BTP should be able to share such material. HSE need access to all available evidence for effective enforcement action. Not clear how much information RAIB would be prevented from releasing to other investigators. Air and Maritime regulations go beyond medical and private information. Is not a requirement of the draft EU Rail Safety Directive.</p> <p>Merseytravel - protection of information and data afforded in AAIB and MAIB investigation regimes should be extended to rail.</p> <p>Porterbrook - does disclosure of information on a court order apply under AAIB and MAIB regimes - if not why proposed here?</p> <p>RAeng - RAIB should have access to relevant documentation or other records held by track authority and the operator such as maintenance records. Direct access to Asset Register, when completed, would be of considerable help to RAIB.</p> <p>Network Rail - clarification required on what is meant by certain categories of information or data.</p> <p>RPC Wales - proposal is endorsed subject to changing 'may' and the insertion of 'shall' on the last line. Without amendment proposal does not provide the minimum level of acceptable protection to individuals involved. Should also be clarified that RAIB can never seek disclosure - also an obligation on RAIB to contest any application for disclosure.</p> <p>RRG - if cause of an accident is due to a person's medical condition, how will the RAIB meet the criteria of reaching a swift conclusion.</p>
4 (d) no statement made by any witness in connection with an RAIB investigation may be disclosed to the police or the HSE save by the order of a judge unless the witness concerned agrees, and that a judge would need to consider whether the wider public interest outweighed any impact that disclosure might have on the investigation	
Agree	ACPO, Angel Trains, APIL, ASLEF, ATOC BTP, EWS, First Group, Freightliner, HSBC, IOSH, John Tilly, LUL, Merseytravel, RAeng, Network Rail, Railway Safety, RPC Wales, Stanley Hall, Steve Firth, Tony Thompson, TUC, Westinghouse
Disagree	None
Summary of issues raised	<p>ACPO - on occasion may result in duplication of enquiries and may delay outcome of criminal investigation.</p> <p>Alstom - for potential witnesses to be prepared to give full and free evidence, necessary to establish that confidentiality is the norm and Judge will order disclosure only in the most unusual conditions. Witnesses need to know what criteria will be used.</p> <p>APIL - will not only prevent duplication by various bodies involved in the aftermath of a disaster, but will also allow a witness to reduce the stress of providing evidence as much as possible.</p>

What will RAIB do?

ATOC - judge should also consider issues under Human Rights legislation and disclosure protection should extend to applications by the Coroner and any other party seeking disclosure of witness evidence taken by RAIB. Evidence taken in industry safety inquiries should also be included.

BTP - RAIB inspectors should be under a duty to seek the consent, and legislation will need to acknowledge likely needs of the defence and make allowances for the requirement for and the rights to a fair trial.

CPS - unless handled sensitively may be consequences for any future prosecution. CPS, HSE, ACPO, BTP and Local Government Association working to ensure liaison between them is comprehensive and consistent. Work-related Deaths Protocol for Liaison being reviewed with emphasis on jointly managed investigations and prosecutions. Advantage of joint investigations is witness only interviewed or statement taken once. Refusal by witness to consent to disclosure may lead to suspicion at criminal trial as to why consent refused - could undermine credibility of witness. Should be a presumption in favour of disclosure and statement only withheld when witness raised an objection.

EWS - support with proviso that can be overruled by judicial review.

First Group - ask that the consideration of the judge additionally looks on the impact of disclosure on future investigations - without that protection the purpose of RAIB detailed at 3a cannot be achieved.

HSC - RAIB will be in possession of material other than witness statements that will be relevant to any criminal investigation. RAIB, HSE and BTP should be able to share such material. HSE need access to all available evidence for effective enforcement action. Not clear how much information RAIB would be prevented from releasing to other investigators. Air and Maritime regulations go beyond medical and private information. Is not a requirement of the draft EU Rail Safety Directive

John Tilly - police should also include civil police. Process should be reciprocal as HSE/Police may identify a witness who could assist RAIB investigation.

Martin Dover - should be considering a mechanism for agreeing witness immunity to speed up getting to the truth.

Network Rail - why seek to qualify the judge's discretion - should be full stop after agrees on second line.

Railway Safety - suggest strengthening to ensure a judge is required to consider not only impact that disclosure might have on investigation but also on any subsequent accident investigation - add process at end of proposal.

RPC - past instances of witnesses declining to give evidence because of the risk of self-incrimination in the event of subsequent criminal proceedings. Doubt whether proposal would offer sufficient safeguard to ensure that no relevant information is withheld - may be understandable reluctance on part of some witnesses to disclose all the facts. Work of RAIB would be hampered. If judge did make an order, the effectiveness of subsequent RAIB investigations could be seriously impaired.

RPC Wales - proposal endorsed subject to deletion of 'may' and insertion of 'shall' on line 2. Without amendment maximum level of acceptable protection to individuals and parties is not provided. Cullen gave weighting 'should' to this safeguard and

What will RAIB do?	
	<p>'may' is an unacceptable weakening.</p> <p>Tony Thompson - a reasonable approach albeit somewhat frustrating to the police.</p> <p>TUC - believe that judge would have to take account of the effect of any such decision on future investigations as well as the one underway. No such application has been successfully made under AAIB and MAIB regimes - because to grant such an application would undermine the whole point of the no-blame approach.</p>
4 (e) RAIB release details of those who have given evidence in the course of an RAIB investigation	
Agree	ACPO, Angel Trains, ASLEF, ATOC, BTP, EWS, First Group, HSBC, HSC, IOSH, John Tilly, Merseytravel, NRCG, PACTS, Porterbrook, RAeng, Railway Safety, RPC, RPC Wales, Stanley Hall, Tony Thompson, TUC, Westinghouse
Disagree	Network Rail
Summary of issues raised	<p>ACPO - essential that release is restricted to statutory investigation bodies only. Confidentiality of witness details during an investigation is paramount - also right to privacy under Human Rights Act. Potential witness may be reluctant to approach RAIB if any possibility of wider release.</p> <p>Alstom - no comment</p> <p>ATOC - details released should only relate to name, organisation and position held.</p> <p>BTP - RAIB inspectors should be under a duty to seek the consent, and legislation will need to acknowledge likely needs of the defence and make allowances for the requirement for and the rights to a fair trial.</p> <p>CPS - RAIB should provide more information in cases of refusal to consent to disclosure. An indication of what the evidence contained would enable investigators to decide whether to seek a judge's order for disclosure. Needs to be mechanism for other investigators to have notice of what might be contained in withheld evidence - might have Data Protection Act implications, consult DPA Commissioner.</p> <p>First Group - support the release of names of those who have given evidence to RAIB.</p> <p>Freightliner - no comments.</p> <p>HSC - this is helpful.</p> <p>LUL - support the release of names of witnesses but on giving further details need to know what is intended before deciding to support.</p> <p>NRCG - only names and organisational positions should be released.</p> <p>PACTS - clarification needed on nature of details - assume names and, if appropriate, organisations of those who have given evidence.</p> <p>Porterbrook - assume details are limited to name and address.</p> <p>Network Rail - seems to be at odds with AAIB approach whereby witness details are not released into public domain. Does not capture essence of para 4.8 of consultation paper.</p> <p>Railway Safety - needs a definition of details other than names.</p>

What will RAIB do?	
	<p>RPC - unclear what other details are envisaged and if introduced would not be consistent with that of AAIB- although Cullen suggests there may be circumstances in which preserving anonymity could be overridden. Would RAIB release details of those who have been invited to give evidence but declined?</p> <p>RPC Wales - should details of those who have declined (despite the safeguards) also be given - unsure. Would be encouraging if RAIB proposals mean that all witnesses come forward and give evidence - the evidence of a single non-co-operating witness could well be the key to a successful investigation and authoritative report.</p> <p>Tony Thompson - assumed that this information will be given to the BTP. With the police investigation moving in parallel with the RAIB's it may transpire that the BTP have already secured the person's written statement prior to the RAIB inquiry.</p> <p>TUC - believe that people who give evidence in the course of an RAIB investigation or inquiry should have the right to legal or union representation.</p>
4 (f) duty be placed on the Chief Inspector of Rail Accidents to ensure that infrastructure managers, railway undertakings, safety authority (HSE), bereaved and injured, emergency services, representatives of staff and users, owners of damaged property, and manufacturers are, as far as possible, kept informed about the progress of an investigation. In addition, when appropriate, arrangements should be made to provide a private briefing to those in a crash and to the next of kin and close family of fatalities before an RAIB Investigation report is published	
Agree	ACPO, AEA, Angel Trains, ASLEF, ATOC, COA, CPS, CPT, EWS, First Group, Freightliner, HSC, HRA, IOSH, John Tilly, LUL, Merseytravel, Mike Martino, NRCG, PACTS, Porterbrook, RAeng, Network Rail, Railway Safety, RPC Wales, Steve Firth, Tony Thompson, Westinghouse
Disagree	Stanley Hall
Summary of issues raised	<p>ACPO - request that arrangements be closely aligned to the police Family Liaison Strategy (FLO). Vital that FLO is primary point of contact with the family, particularly during the early stages. Police have degree of expertise in this potentially difficult field and vital that communication with families is properly co-ordinated and integrated.</p> <p>AEA - clear accountability for this task is required to ensure that this is done coherently and in the most appropriate fashion.</p> <p>Alstom - no comment.</p> <p>Angel Trains - generally agree - but do not agree original proposal from Cullen that representatives be allowed to attend industry inquiries where witness evidence is being given may not encourage full disclosure of information and evidence.</p> <p>ASLEF - want work colleagues included and counselling provided to injured and bereaved and work colleagues of railway personnel.</p> <p>ATOC - this procedure reflects best practice.</p> <p>COA - should specify that Coroner is included in list of those to be kept informed.</p> <p>CPS - advocate caution for private briefings with bereaved and injured as individuals may end up giving evidence in criminal proceedings. Important to consider how briefings should be recorded and to whom the records can be disclosed.</p>

What will RAIB do?

CPT - strongly support, but list of bodies to be kept informed should include operators' trade associations such as CPT, ATOC and HRA - also representatives of staff and users.

HRA - suggest adding trade associations, such as ATOC, CPT, and HRA - they can then advise member railways and tramways of any necessary action emerging from ongoing investigation.

HSBC - not explicit that owners of damaged property includes vehicle owners.

HSC - will all investigating bodies begin their investigations in parallel or will RAIB investigate and notify HSE or BTP on potential breaches of criminal law. Informing HSE/BTP about potential breaches would conflict with RAIB's no blame role. Will be easier for HSE and BTP, on occasion, to stand back while RAIB takes investigation lead if statutory duty on RAIB to advise HSE and BTP on any matters that come to their attention that they consider HSE or BTP should know in relation to their statutory duties. RAIB inspectors will need competence in identifying criminal breaches.

Mike Martino - will RAIB have enough personnel to cover this duty.

PACTS - duty could be open to legal challenge - protocol placing certain expectations on RAIB rather than specific legal duties. If legal duty on statute book, list of those to be informed also needed, may avoid potential complex legal battles about entitlement to information.

Porterbrook - involvement of interested parties will be essential for the investigation to understand the issue surrounding the accident. Is it the intent that control and management of investigation must be the sole domain of RAIB. Not only owners of damaged property, but also those who own identical or similar equipment - often the case for rolling stock, where more meaningful view of situation gained by RAIB from talking to all owners of type of equipment involved in accident.

Network Rail - inconsistency between this and para 4.12 of consultative paper. Support 4f bit not 4.12.

Ross Middleton - very concerned, seems to be additional requirement included to ensure that RAIB not only keeps all parties fully informed but as much information on possible cause is also widely distributed within the industry as soon as possible. Information may need to remain out of the public domain. Propose adding a requirement on RAIB to make as much information about causes of a crash as widely known as possible as soon as possible. Where bodies such as HSE and BTP require information to remain out of the public domain and the RAIB consider it imperative that it should be in public domain only a judge should have the power to order RAIB not to publish - along similar lines regarding witness statements.

RPC - consistent with EU Rail Safety Directive. Those bereaved and injured should be qualified by 'the accident/incident under investigation'. Tighter definition of rail users (eg RPC and its constituent area committees) may be needed as such rights of notification may be sought by the numerous voluntary groups active in this field.

RPC Wales - should include priority group lists for e-delivery of urgent items of technical fact, so non-participants can carry out urgent checks on suspect components, systems, procedures etc.

Stanley Hall - keeping informed should not be embraced within any statutory duty

What will RAIB do?	
	<p>and the frequency in which the various parties are informed of progress should be at the discretion of the Chief Inspector, depending on the nature of the accident and the progress being made.</p> <p>Tony Thompson - duty suggested is appropriate. Much work needs to be done to develop arrangements to keep the wider audience informed.</p> <p>TUC - proposal should refer directly to trade unions rather than just the representatives of staff and we would include representatives of work colleagues. Should also include the need to provide counselling to those injured and to the next of kin and close family of fatalities and work colleagues of any railway personnel.</p>
4 (g) no statutory provision is made in respect of inquiries, but the Chief Inspector should in due course develop the circumstances and means whereby observers might attend RAIB inquiries	
Agree	ACPO, Angel Trains, ASLEF, ATOC, EWS, First Group, Freightliner, HSC, HSBC, IOSH, John Tilly, LUL, Merseytravel, NRCG, RAeng, Railway Safety, TUC, Westinghouse
Disagree	RPC Wales, Tony Thompson
Summary of issues raised	<p>ACPO - except where wider public interest dictates otherwise. Process that demonstrates openness and accountability, promoting public confidence in the investigation is to be encouraged.</p> <p>Alstom - hope that combination of investigations and inquiries obviate the need for public inquiries with parties represented by barristers, other than in truly exceptional circumstances.</p> <p>ASLEF - RAIB should remove need for expensive public inquiries - be kept under review.</p> <p>ATOC - support subject to appropriate safeguards to ensure an effective process. HSE should not be an observer during an RAIB investigation or an industry panel inquiry.</p> <p>NRCG - attendance should be limited to representatives of industry parties. Because it would be extremely traumatic bereaved and injured should have representatives and not attend.</p> <p>RAeng - nothing specifying how long Chief Inspector may take to put procedure in place. Those suffering as a result of accident or incident should have right to observer attendance. Care must be taken that any actions taken by observers do not compromise subsequent proceedings</p> <p>Network Rail - confusion by what meant by an inquiry - proposal does not make clear purpose for separate review process beyond investigation, intended outcome or benefits of such meetings or sanction available for breaches of confidentiality. Need to define major incidents if different from accidents.</p> <p>RPC - clear from Cullen 2 that proceedings initiated by RAIB will largely or wholly supplant the arrangements under S14 of the HSAW Act 1974 insofar that it relates to railways. Not clear whether RAIB should only conduct investigations - on the AAIB model- or whether in the case of more serious accidents/incidents, it should convene inquiries on the basis of past railway custom and practice. Need to be consistent with inquiries under Railway Group Standard GO/RT 3434/3. Proper legislation</p>

What will RAIB do?	
	<p>provision should be made for public inquiries (in the conventional sense) to be convened into serious railway accidents - should be a function of RAIB. Agree with submission by Counsel for bereaved and injured represented by Southall and Labroke Grove Solicitors' Group that such representatives should be allowed to attend such inquiries as observers.</p> <p>RPC Wales - not endorsed as it stands - right is not strong enough. Cullen rec 64 carried a presumption in favour of attendance - this should be reinstated in unequivocal terms. For avoidance of doubt and delay, statutory provision is preferred - otherwise passengers' interest is unacceptably limited and weakened.</p> <p>Tony Thompson - essential for the bereaved and survivors that they or their representatives be allowed to attend such inquiries. Important that the Chief Inspector be given a statutory duty to develop circumstances whereby observers be allowed to attend inquiries. The wording of 4(g) is too wide and loose.</p> <p>TUC - trust that creation of RAIB will remove or at least reduce the need for lengthy and expensive public inquiries - issue needs to be kept under review.</p>
4 (h) reports should be made publicly available normally within 12 months of the date of the accident or incident, or in the shortest possible time, in the manner that the Chief Inspector of Rail Accidents thinks fit	
Agree	AEA, Alstom, Angel Trains, ASLEF, ATOC, EWS, First Group, Freightliner, HSBC, HSC, IOSH, John Tilly, LUL, Merseytravel, NRCG, RAeng, Network Rail, Railway Safety, RPC, RPC Wales, Tony Thompson, TUC, Westinghouse
Disagree	None
Summary of issues raised	<p>AEA - used to identify areas affected or needing improvement is welcome, more so if reported as appropriate to interested parties.</p> <p>Alstom - hope that most reports are issued in a much shorter timescale.</p> <p>ASLEF - wants shortest possible time</p> <p>HSC - RAIB to ensure that their reports do not prejudice potential prosecutions or HSE enforcement action. HSE/RAIB protocol to specify arrangements for HSE to be consulted before reports are published. EU Rail Safety Directive silent about publication of accident reports undermining potential prosecutions - issue needs further consideration. Procedures need to be accelerated to avoid further criticism of criminal prosecutions - needs to be explored further by HSE, BTP, CPS and others.</p> <p>John Tilly - fully support the Inspector producing a report. May be a need for interim factual reports, which in many cases may not need to be much more than one-liners.</p> <p>NRCG - 12-month period might be too long - Railway Safety usually allows 12 weeks.</p> <p>RAeng - reflects terms of European Rail Safety Directive - 12-month period should only be exceeded with agreement of Secretary of State.</p> <p>Network Rail - investigation or inquiry reports or both. Should be available as soon as possible and at latest within 12 months. HSE Hatfield report still to be finalised due to ongoing CPS deliberations.</p> <p>RPC - reports should be available both in printed and electronic formats.</p>

What will RAIB do?	
	<p>RPC Wales - should include priority group lists for e-delivery of urgent items of technical fact, so non-participants can carry out urgent checks on suspect components, systems, procedures etc. Urgent items of technical fact may require clarification immediately - owners and operators of rolling stock and infrastructure all round the world will want to know whether failures are type failures. Air industry has effective arrangements for this kind of immediate concern and such arrangements are appropriate for rail too.</p> <p>RRG - in line with the previous railway criteria, more stringent timescales should be required to ensure public confidence: conclusion reached within 1 week; initial report with areas for recommendation within 1 month; detailed recommendations within 6 months.</p> <p>TCL - no mention of how the results of RAIB's work will be circulated round the industry, other than by the implicit assumption that the rail industry exists under the umbrella of Network Rail. Would clearly be beneficial for RAIB's work to be circulated within the tramway industry. Not all operators are members of the CPT.</p> <p>TUC - would not want the shortest possible time to be longer than 12 months - do not want long waits because certain incidents are judged to be abnormal.</p>
4 (i) reports should not be made public until any person or organisation whose reputation may be adversely affected by the report is informed by notice and has been given the opportunity to make representations	
Agree	Alstom, Angel Trains, ASLEF, ATOC, EWS, First Group, Freightliner, HSBC, HSC, IOSH, John Tilly, LUL, Merseytravel, NRCG, RAeng, Network Rail, Railway Safety, RPC, RPC Wales, Tony Thompson, TUC, Westinghouse
Disagree	None
Summary of issues raised	<p>Alstom - presumably includes manufacturers and/or maintainers of assets implicated in the accident.</p> <p>ASLEF - don't want this used as a delaying tactic.</p> <p>ATOC - person or organisation concerned should be permitted to see report or relevant extracts to be able to comment.</p> <p>RAeng - must not be seen as a means of delaying publication of unpalatable findings - strictly limited period should be allowed for representations to be made.</p> <p>Network Rail - investigation or inquiry reports or both. Is how AAIB works.</p> <p>RPC - any body to which a recommendation is directed in draft report should also have the opportunity to comment at that stage.</p> <p>RRG - what safeguards are to be in place to prevent an alteration after representation has been made?</p> <p>Stanley Hall - parties should not be given the opportunity to make representations - they are not appropriate and are superfluous. But RAIB would be expected to discuss any particular recommendation with the party or parties concerned before publishing the report, as a matter of course.</p> <p>TUC - do not want this to be used as a delaying tactic - organisations in this position should be given time limit in which to respond.</p>

What will RAIB do?	
4 (j) the Inspector is required to consider any representations made prior to publication of the report	
Agree	Angel Trains, ASLEF, ATOC, EWS, HSBC, HSC, First Group, Freightliner, IOSH, John Tilly, LUL, Merseytravel, NRCG, RAeng, Network Rail, Railway Safety, RPC, RPC Wales, Tony Thompson, TUC, Westinghouse
Disagree	Stanley Hall
Summary of issues raised	<p>Alstom - not clear what type of representations are considered. Where appropriate the Inspector would consider representations during the investigation rather than at the end of the investigation.</p> <p>ASLEF - don't want used as a delaying tactic.</p> <p>ATOC - no party should be able to delay the report.</p> <p>CPS - RAIB should work closely with other investigative bodies to ensure co-ordinated approach to the development and publication of a report.</p> <p>John Tilly - representations may have already become obvious by statement taking.</p> <p>LUL - don't want delays caused - appropriate powers for RAIB should be considered.</p> <p>NRCG - as long as 12-month timescale is not exceeded.</p> <p>RAeng - must not be seen as a means of delaying publication of unpalatable findings - strictly limited period should be allowed for representations to be made.</p> <p>Network Rail - investigation or inquiry reports or both. How AAIB work and builds on concept recently introduced of 10-day consultation within Network Rail Plc.</p> <p>RPC - Inspector should also be under a duty to respond.</p> <p>Stanley Hall - should be no representations - RAIB is concerned with facts.</p> <p>TUC - do not want this to lead to further delay or allow undue pressure to be put on the Inspector. Suggest adding another clause making it clear that while Inspector is required to consider any representations they are required neither to accept any representations or explain their reason for not doing so.</p>
4 (k) a copy of the report is sent to any person on whom notice has been served (as set out in (i) above), those injured or bereaved in an accident/incident, those persons or bodies to whom recommendations have been made and to the Secretary of State	
Agree	Angel Trains, ASLEF, ATOC, COA, EWS, First Group, Freightliner, HSBC, HSC, IOSH, John Tilly, LUL, Merseytravel, NRCG, PACTS, Railway Safety, RPC, RPC Wales, Tony Thompson, TUC, Westinghouse
Disagree	Mike Martino
Summary of issues raised	<p>Alstom - no comment.</p> <p>ASLEF - want the trade unions included.</p> <p>COA - should specify that Coroner is sent copy of the report.</p> <p>John Tilly - is there also a need to seek representations from representatives of the</p>

What will RAIB do?	
	<p>bereaved and injured.</p> <p>Mike Martino - is this necessary, why not the report will be accessible to any person on whom notice has been served and requests be made to the Chief Inspector of Railway Accidents for a copy of the report.</p> <p>NRCG - as long as 12-month timescale is not exceeded.</p> <p>PACTS - should also be available to public bodies and those researching and monitoring railway safety. Also laid before Parliament and be publicly available by legislation.</p> <p>RAeng - needs to be clarified whether these persons or bodies will receive copies of report at time of publication or before report is published.</p> <p>Network Rail - investigation or inquiry reports or both. Not clear why injured or bereaved - not aware that AAIB/MAIB do this. Reference should be 4(i) not 4(h).</p> <p>RPC - reference should be to 'the accident' rather than 'an accident' (in this context would carry same meaning as any).</p> <p>Tony Thompson - essential - should be proper consultation with the parties concerned in advance of consultation.</p> <p>TUC - assume this includes trade unions in the industry - in that circumstance we agree.</p>
4 (l) interim reports promulgating urgent safety lessons are published when necessary	
Agree	Angel Trains, Alstom, APIL, ASLEF, ATOC, EWS, First Group, Freightliner, HSBC, HSC, IOSH, John Tilly, LUL, Merseytravel, Mike Martino, NRCG, RAeng, Railway Safety, RPC, RPC Wales, Tony Thompson, TUC, Westinghouse
Disagree	None
Summary of issues raised	<p>Alstom - see this as important.</p> <p>APIL - interim reports published, despite the existence of criminal proceedings, will allow important lessons to be learnt before the resolution of those proceedings.</p> <p>John Tilly - definite requirement.</p> <p>Mike Martino - suggest add after published 'and distributed to all pertinent parties.</p> <p>RAeng - will be essential for RAIB to issue special bulletins after major accident/incidents with details of the initial facts, as is AAIB practice.</p> <p>Network Rail - investigation or inquiry reports or both. Not clear who reports should go to. Network Rail experience suggests information not being supplied in all instances and certainly with no urgency - instances of police discovering potentially criminal circumstances but it has been lost or sent to wrong people.</p> <p>RPC Wales - should include priority group lists for e-delivery of urgent items of technical fact, so non-participants can carry out urgent checks on suspect components, systems, procedures etc. Urgent items of technical fact may require clarification immediately - owners and operators of rolling stock and infrastructure all round the world will want to know whether failures are type failures. Air industry has effective arrangements for this kind of immediate concern and such arrangements are appropriate for rail too.</p>

What will RAIB do?	
4 (m) the power to hold public inquiries into rail crashes remains with the Health and Safety Commission and subject to the consent of the Secretary of State	
Agree	ASLEF, COA, HSC, IOSH, PACTS, RAeng, RPC Wales, Tony Thompson, TUC, Westinghouse
Disagree	Alstom, ATOC, EWS, First Group, Freightliner, Merseytravel, Mike Martino, NRCG, Network Rail, Railway Safety, Stanley Hall, Steve Firth
Summary of issues raised	<p>ACPO - need for public inquiries will reduce but nevertheless remain. Public inquiry into Marchioness disaster was held 10 years after accident.</p> <p>Alstom - do not see the necessity for this provision. Suggest that power be transferred to the SOS for Transport.</p> <p>Angel Trains - any reason why power to hold public inquiries is not set to operate on same basis as AAIB and MAIB.</p> <p>ATOC - strongly disagree, HSC/HSE is an interested party whose activities may be subject to investigation or criticism by an inquiry. Could be open to challenge under Article 20 of proposed European Rail Safety Directive. Future Public Inquiries should be under the Tribunals & Inquiries Act 1992.</p> <p>COA - every Coroner's inquest is a public inquiry - albeit on a small scale. Suggest rewording - after hold public inquiries add in brackets (other than inquests).</p> <p>EWS - RAIB needs to be totally independent of the safety regulator HSC.</p> <p>First Group - investigations should be independent of the safety regulator.</p> <p>Freightliner - supports Railway Safety response - key requirement in EU Rail Safety Directive and Lord Cullen's proposal for RAIB is to make safety investigation independent of the safety regulator/authority. Power to hold public inquiries should continue with consent of SOS but rest with RAIB.</p> <p>HSBC - duties required of RAIB in investigation and in making recommendations should very much reduce the need to hold public inquiries.</p> <p>HSC - expect this power to be rarely used. Division between openness and blame-free RAIB investigation must be overcome.</p> <p>LUL - if accident investigation is independent of HSC/HSE how is this to be maintained if the power rests with HSC.</p> <p>Merseytravel - consideration should be given to transferring the power to call a public inquiry from HSE to RAIB - would allow the body in possession of the facts to consider whether the issues raised were sufficiently serious to require a public inquiry.</p> <p>Mike Martino - thoroughly disagree. All decisions about anything to do with an investigation should be solely up to the Chief Inspector of Railway Accidents. The power to hold public inquiries will be made by the Chief Inspector.</p> <p>NRCG - agree with proposed reduction in public inquiries but suggest that any such inquiries be under the Tribunals and Inquiries Act 1992 and not HSC/HSE - would conform with European Rail Safety Directive.</p> <p>PACTS - RAIB need to establish level of public and industry confidence as for</p>

What will RAIB do?	
	<p>AAIB to ensure public inquiries are not required. Power to hold public inquiries should still be available as last resort, but clarification needed to identify those crashes subject or not to public inquiries. Clear criteria essential to avoid cover-up claims.</p> <p>RAeng - must not undermine RAIB - HSC must treat rail accident and RAIB same way it regards AAIB and MAIB.</p> <p>Network Rail -RAIB should propose to HSC that public inquiry be considered. Should not be for HSC to make initial decision. Cullen indicated that appointing body for public inquiries should be Secretary of State - could be exercised by SOS through RAIB. Network Rail's view that if RAIB already established would not have warranted public inquiries into Clapham, Kings Cross etc accidents.</p> <p>Railway Safety - question retention of power with HSC, key requirement of European Rail Safety Directive and Cullen's recommendation is to make accident investigation independent of the safety regulator (HSC).</p> <p>RPC - RAIB inquiries should be held in public. Need for HSC to convene public inquiry should seldom if ever arise, unless past actions of RAIB are called into question. HSC powers only means other than Tribunals and Inquiries Act 1992 - believe this would be undesirable. Public inquiries should be under RAIB's auspices rather than HSC's.</p> <p>RRG - what will prevent the hurried agreement to a public inquiry by a politician under pressure at the site of a serious railway accident?</p> <p>Stanley Hall - strongly disagree, would undermine the authority of RAIB. If an inquiry is to be held in public it should be held by the Chief Inspector and he should recommend to the Secretary of State if he considers it appropriate. Chief Inspector should have powers to be able to recommend a formal inquiry if he considers it appropriate. This should only be done in very exceptional circumstances. The Act establishing RAIB should contain provisions accordingly. HSC should have no role in this matter.</p> <p>Steve Firth - have reservations, it is less likely that HSC/HSE will retain the relevant expertise.</p>
Interfaces with other organisations	
5 (a) all accidents be reported to the RAIB at the same time as they are reported to the HSE and the BTP	
Agree	ACPO, Angel Trains, ASLEF, ATOC, COA, EWS, First Group, Freightliner, HRA, HSBC, IOSH, John Tilly, LUL, NRCG, RAeng, Network Rail, Railway Safety, RPC, RPC Wales, Tony Thompson, TUC, Westinghouse
Disagree	CPT, HSC, Mike Martino, Stanley Hall
Summary of issues raised	<p>Alstom - clear and common definition of what is reportable is necessary. Urge that RAIB not be set up in addition to other bodies - should be a fundamental rationalisation of the regulatory structure.</p> <p>ATOC - RAIB should have access to SMIS (Safety Management Information System) which trigger statutory reports to HSE.</p> <p>COA - Coroner should be included in the list.</p>

What will RAIB do?	
	<p>CPT - would be a burden on the operator. Requirement should be to make a report under RIDDOR to HSE, who would notify RAIB and the relevant police force as appropriate.</p> <p>HRA - needs to include accidents on heritage railways - these accidents are not covered by any agreement with BTP.</p> <p>HSC - do not agree that serious incidents should not be reported to RAIB as HSE would have to decide whether every incident was serious enough to inform RAIB. Legislation should be clear that only serious accidents and incidents relevant to RAIB will need to be reported to them.</p> <p>John Tilly - Chief Inspector RAIB will need powers to determine what is statutorily reportable to RAIB.</p> <p>LUL - suggest RAIB be linked into HSE RIDDOR system for reporting accidents and incidents.</p> <p>Merseytravel - more logical for reporting of accidents and incidents to be reversed - all incidents should be reported to RAIB with HSE having the right to information.</p> <p>Mike Martino - maintaining the current system that all incidents/accidents are reported to HSE it should now be incumbent on the HSE to convey these reports to the BTP, CPS and RAIB.</p> <p>NRCG - RIDDOR reportable accidents only.</p> <p>RAeng - all accidents should refer only to those falling within scope of RAIB. RAIB need not be informed about accidents not involving train movements.</p> <p>Network Rail - link to RIDDOR. Essential RAIB is informed at the time an accident occurs. Should not get detail of every accident but should be notified. Proposed remit of RAIB goes beyond that of AAIB.</p> <p>Railway Forum - does not appear to fully endorse role envisaged for RAIB in proposed EC Rail Safety Directive. Investigation of incidents should be within RAIB's remit. All incidents should be reported primarily to RAIB rather than HSE. Should ultimately be for safety regulator to enforce standards and RAIB to investigate all accidents or incidents.</p> <p>RPC - see merit in concept of a common database for recording safety related incidents. Rail industry's Safety Management Information System (SMIS) provides model. Need to look at arrangements for publishing bulletins as issued by AAIB - use existing data series covering aspects of rail safety.</p> <p>RRG - infrastructure controller must remain the focus point for reporting - suggest this remains the channel of communication between the railway and RAIB.</p> <p>Stanley Hall - strongly disagree, accidents which are reported to RAIB should not be duplicated to HSE. Only staff accidents, not part of accidents falling within RAIB remit, should be reported to HSE. RAIB should not be concerned with staff accidents.</p> <p>Tony Thompson - this is the proper way to disseminate this information.</p>
5 (b) RAIB would have the right to obtain HSE and industry reports and analysis	
Agree	ACPO, APIL, ASLEF, ATOC, CPT, EWS, First Group, Freightliner, HSBC, HSC,

What will RAIB do?	
	IOSH, John Tilly, LUL, NRCG, RAeng, Network Rail, Railway Safety, RPC, RPC Wales, Tony Thompson, TUC, Westinghouse
Disagree	Stanley Hall
Summary of issues raised	<p>Alstom - urge that RAIB not be set up in addition to other bodies - should be a fundamental rationalisation of the regulatory structure.</p> <p>Angel Trains - concerns that RAIB would not have direct access to key information to enable it to instigate inquiries and investigations with the industry. Sending information electronically is not likely to cause too many problems.</p> <p>APIL - the RAIB, in considering industry reports and identifying possible safety problems will have a continual focus on prevention.</p> <p>ATOC - RAIB should have power to call in any investigation or delegate to an industry inquiry - industry inquiry would then report to RAIB.</p> <p>HSC - right to obtain reports and analysis by HSE will need to be clarified, particularly if to become a statutory right.</p> <p>NRCG - suggest HSE does not have right to obtain internal industry reports.</p> <p>RAeng - helpful for incidents to be reported direct to RAIB as well as HSE and would be consistent with Cullen that all cases be required to be reported to RAIB.</p> <p>Railway Forum - does not appear to fully endorse role envisaged for RAIB in proposed EC Rail Safety Directive. Investigation of incidents should be within RAIB's remit. All incidents should be reported primarily to RAIB rather than HSE. Should ultimately be for safety regulator to enforce standards and RAIB to investigate all accidents or incidents.</p> <p>RPC - should be a duty on the industry to provide these.</p> <p>RRG - roles of RAIB and HSE not clear in respect of monitoring safety performance - industry needs administrative streamlining not increasing.</p> <p>Stanley Hall - RAIB should not need to obtain any reports from HSE, only staff accidents should be reported to HSE.</p> <p>Westinghouse - term 'rail industry or industry' needs to be defined</p>
5 (c) RAIB should issue guidance to the industry in regard to good practice on formal inquiries and accident investigations and that it should monitor the working of the co-ordinated arrangements in the industry	
Agree	ACPO, Angel Trains, Alstom, ATOC, CPT, EWS, First Group, Freightliner, HSC, HSBC, IOSH, John Tilly, LUL, NRCG, RAeng, Railway Safety, RPC, RPC Wales, Tony Thompson
Disagree	Stanley Hall
Summary of issues raised	<p>Alstom - guidance should supersede Group Standards GO/RT3473, GO/RT3673 and similar. Guidance should also cover inquiries held by organisations not part of the railway group, into railway related incidents.</p> <p>ASLEF - believes that RAIB should be conducting accident investigations.</p>

What will RAIB do?	
	<p>Merseytravel - essential for a clear understanding to be reached between RAIB and HSE on the exercise of the powers of both bodies and co-ordination between them.</p> <p>NRCG - guidance should be based on existing Railway Group Standards. Guidance prepared by RAIB should be issued through Rail Safety and Standards Board, as referred to by Cullen, and be part of industry's main document control system.</p> <p>Pre Metro - needs to be established that all current functions of the HMRI are absorbed within the new RAIB.</p> <p>RAeng - right to obtain reports and analysis from HSE and industry must be limited to specific duties of RAIB and should exclude 'fishing expeditions'.</p> <p>Network Rail - possibility of over-prescription and interference. Guidance already issued via Railway Group Standard GO/GN 3673 for rail industry formal inquiries and formal investigations. Good practice guidance welcome through RAIB to RISB before being promulgated to the industry.</p> <p>Railway Forum - does not appear to fully endorse role envisaged for RAIB in proposed EC Rail Safety Directive. Investigation of incidents should be within RAIB's remit. All incidents should be reported primarily to RAIB rather than HSE. Should ultimately be for safety regulator to enforce standards and RAIB to investigate all accidents or incidents.</p> <p>Railway Safety - state that Cullen endorsed their practice of using independent panels for their formal inquiries and will maintain the process until RAIB issues guidance for change.</p> <p>Stanley Hall - RAIB should not need to issue such guidance.</p> <p>TUC - concerned that while this might flow from accident investigation, the main function of RAIB should be to conduct such investigations.</p> <p>Westinghouse - RAIB not have relevant experience to issue guidance. Recognition of HMRI experience in this area and requirement for RAIB to consult with and take account of HMRI comments before issuing guidance should be made.</p>
5 (d) RAIB should be empowered to examine reports of industry investigations and that the Chief Inspector of Rail Accidents have the power to require industry to provide necessary material to enable the RAIB to look for trends and lessons in near misses or precursors and to provide periodic short reports of any investigation recommendations to bring matters of local or national importance to the attention of the industry	
Agree	Angel Trains, APIL, ASLEF, ATOC CPT, EWS, First Group, Freightliner, HSBC, HSC, IOSH, John Tilly, LUL, Merseytravel, Mike Martino, NRCG, RAeng, Railway Safety, RPC, RPC Wales, Stanley Hall, Tony Thompson, TUC, Westinghouse
Disagree	None
Summary of issues raised	<p>Alstom - might subsume part of the existing Safety Related Defect Reporting (NIR) system.</p> <p>Angel Trains - essential that duplication is avoided.</p> <p>APIL - it does not appear that RAIB will have powers to require the rail industry to take action.</p>

What will RAIB do?	
	<p>ATOC - RAIB should have power to check against prior recommendations on same point in subsequent inquiry - also need clear transitional arrangements between creation of RISB and RAIB. RAIB should also have power to investigate actions and policy decisions by public and regulatory authorities which may have caused or contributed to a specific event.</p> <p>CPT - RAIB should be empowered to examine industry reports and look for trends subject to a reasonableness limitation on the resources to be supplied by the industry.</p> <p>John Tilly - fully support, sharing of information is currently very poor.</p> <p>Mike Martino - suggest add 'studies' after investigations. If Chief Inspector sees a trend developing and does not want to wait for more accidents/incidents to occur they could call for a study on the subject matter thus initiating a proactive measure.</p> <p>Porterbrook - definition of industry investigations needs to be better defined - limited to current Railway Group Standard GO/RT 3473 - otherwise all internal and multi-lateral industry investigations would fall to RAIB, which would not add value to the railway.</p> <p>Network Rail - RAIB should have power to require HSE to provide necessary material to enable it to undertake this function. Raises question about RAIB powers to investigate work of HSE and other statutory bodies whose functions impact on safe operation of the railway. Should this be clarified here?</p> <p>RPC - extent such work already undertaken by HSE and Railway Safety and disseminated within the industry should not be understated. Favour co-operative approach advocated - over time may be an increasing need to address matters of international as well as local and national importance. Do not favour use of term 'near misses'.</p> <p>RPC Wales - should not be confined to UK trends, lessons, pre-cursors etc but should obtain and analyse relevant experience world-wide. RAIB should also ensure UK experience and analysis is promptly shared with relevant bodies in overseas rail industries.</p> <p>TCL - should be recognised that there are operators/systems within the rail industry which do not come under Network Rail and do not conduct enquiries under Railway Group Standard GO/RT3473. Nonetheless there is a reasonable expectation that they will conduct their enquiries in accordance with the same general principles.</p>
5 (e) the undertaking of investigations by the RAIB should not affect the responsibility of the industry, HSE, or BTP to undertake their own investigations, or in the case of the BTP for the Coroner, as required	
Agree	ACPO, Angel Trains, APIL, ASLEF, ATOC, BTP, COA, CPS, CPT, HRA, HSBC, HSC, IOSH, John Tilly, NRCG, PACTS, RAeng, RPC Wales, Tony Thompson, TUC, Westinghouse
Disagree	Alstom, DLR, EWS, First Group, Freightliner, Railway Safety, Stanley Hall
Summary of issues raised	<p>ACPO - police service's responsibility to conduct both criminal and coronial enquiries should not be affected by RAIB investigation.</p> <p>Alstom - cannot see the need for parallel investigations and the setting up of RAIB should be accompanied by the reduction in powers of other bodies.</p>

What will RAIB do?

Angel Trains - has to be on basis there is a clear understanding between all parties how each is taking their own investigation forward and to maintain co-operation with the others to ensure equally important investigations are allowed to carry on. Essential that key evidence or safety critical information is actually conveyed to RAIB for any appropriate action to ensure safety of the rail industry is not delayed.

APIL - vital for RAIB and other bodies conducting parallel investigations to co-operate and to be co-ordinated.

ATOC - RAIB should simplify and help co-ordinate effective investigations - creating another layer would be unhelpful and not in line with Cullen 2.

BTP - opportunity to provide clarity on responsibilities between other investigation bodies. Propose that BTP and others should be authorised to cease an investigation if crime not the cause - would reduce number of investigations. Consider formal mechanism for agency ceasing investigation to hand over all its material evidence and advise on whether HSE or BTP should take lead.

COA - Coroner's officers also perform investigations in their own right - in some areas Coroner's officers do all the investigation in any non-criminal case. Role of Coroner for railway fatalities needs greater acknowledgement. Para 5.12 needs rewording to add in Coroner after BTP, then In case of the Coroner the BTP may assist or the Coroner's own officers may perform this task, and protocols can be arranged locally.

CPS - strongly agree that RAIB investigations should not impede those of other bodies.

CPT - RAIB investigation should not affect the duty of BTP or HSE to investigate - relevant police force may be local police and not BTP.

DLR - preference would be for one organisation, the RAIB, to undertake the investigation of railway accidents.

EWS - RAIB must be the lead body in all investigations and direct co-operation of all parties - separate investigations are source of conflict.

First Group - proposal as written will not provide the improvement in investigation that is being sought - RAIB should hold primacy of investigation both on and off site. Would welcome the involvement of the other parties in the investigation rather than setting up a number of separate investigations. Key issue of Cullen was the ability of any investigation to look at and draw judgement on the activities of the safety regulators - this principle must be upheld.

Freightliner - primacy for investigation needs to be established by RAIB - if RAIB investigation is undertaken should be no need for further investigation by the companies involved in the accident/incident.

HRA - needs to include accidents on heritage railways - these accidents are not covered by any agreement with BTP.

HSBC - in general propose that BTP and HSE/HMRI investigations should be carried out on the preserved evidence off site whenever possible.

HSC - Cullen saw no reason why RAIB, HSE and BTP investigations should not proceed in parallel where necessary. EU Rail Safety Directive accepts that judicial inquiries and accident investigations continue to take place. Will be necessary for

What will RAIB do?	
	<p>HSE to investigate major and serious incidents alongside RAIB, BTP and duty holders.</p> <p>John Tilly - HSE has right to be represented in a Coroners Court - should RAIB have similar rights.</p> <p>LUL - insufficient thought given to change in statutory relationships - there is a need to improve quality and scope of investigations - not to have a further layer of investigation</p> <p>NRCG - RAIB investigation should have priority over those of other bodies. HSE and police involvement should be at discretion of RAIB when evidence of criminal actions found. Should also apply to internal formal inquiry and investigations by the industry.</p> <p>PACTS - for significant train accident essential for co-ordination to be undertaken between the investigating bodies. RAIB must lead to improvements in safety and not expansion in bureaucracy of investigation.</p> <p>Network Rail - when investigation initiated by RAIB rail industry should only conduct investigations outwith the process of identifying the root causes. Clarity on lead control make a positive difference on way investigation are handled. RAIB should bring changes to the statutory responsibilities that bring clarity to the process - do not want an add-on investigating body. Only RAIB should be able to seize and retain evidence in the first instance.</p> <p>Railway Safety - RAIB should have primacy of investigation, RAIB investigation should be the only safety investigation and require other parties to co-operate rather than carry out their own separate investigations.</p> <p>RPC - proposed EU Rail Safety Directive envisages the need for only two investigative/inquiry processes - one technical and one judicial. RAIB inquiries should render the need for industry formal inquiries and HSC inquiries into the same events as superfluous. Kings Cross inquiry recommended that duplication in holding a public inquiry and coroners inquest should be avoided. Creation of RAIB will remove HSE from investigation process - unless HSE can spell out more clearly the benefits of keeping its role.</p> <p>Stanley Hall - triplication of investigations must be avoided at all costs. RAIB is the leading player and should liaise with BTP and HSE as necessary - they should not carry out their own investigations in parallel as this would defeat the purpose of Cullen's recommendations. Must rely on RAIB who will be responsible for determining the cause of any accident. BTP will be on site for normal policing role but not to investigate the cause. HSE should not be on site at all.</p> <p>Steve Firth - suggest providing a mechanism under the new primary legislation to permit appointment of RAIB accident investigators as assessors to the Coroner (as previously in 1871 Act) - help to avoid painful duplication of questioning and exposure to description of events for victims of accidents and bereaved families.</p>
5 (f) RAIB and the HSE, BTP, the police service, Railway Safety (or its successor) and CPS should enter into non-statutory protocols for joint working	
Agree	ACPO, Angel Trains, APIL, COA, CPT, CPS, EWS, First Group, Freightliner, HRA, HSBC, HSC, IOSH, John Tilly, Merseytravel, Mike Martino, NRCG, PACTS,

What will RAIB do?	
	RAeng, Network Rail, Railway Safety, RPC, RPC Wales, Stanley Hall, Suzy Lamplugh Trust, Tony Thompson, Westinghouse
Disagree	ATOC, RRG, TUC
Summary of issues raised	<p>ACPO - formation of joint protocols essential if proposed system for investigating rail crashes is to work effectively. Protocols should be subject to regular review.</p> <p>Alstom - with fewer bodies involved there would be less need for protocols.</p> <p>APIL - wholeheartedly supports the suggestion that protocols should be developed for joint working. There is no suggestion that similar protocols should be developed in relation to AAIB and MAIB.</p> <p>ASLEF - wants protocols on a statutory basis.</p> <p>ATOC - protocols should be set out in statutory instruments constituting RAIB - protocols should be short, non-complex and in line with AAIB practice. Protocols should not inhibit RAIB from looking at role of safety regulator and other public bodies.</p> <p>COA - Coroner should be included in this list.</p> <p>CPS - National Liaison Committee oversees protocol on work-related deaths and may be best body to enter into protocol with RAIB - would ensure existing relationships are built on and any reciprocal arrangements do not conflict with work-related deaths protocol.</p> <p>DLR - concerns over the number of organisations involved in examining the results of a rail accident. Strong emphasis must therefore be given to develop the protocols suggested.</p> <p>EWS - support proposal to clarify responsibilities.</p> <p>First Group - agree in principle but concerned that protocols introduced since Southall, Ladbroke Grove, Hatfield and Potters Bar would indicate that having such protocols in place has failed to deliver swift learning of lessons or conclusion of accidents. May be solved with clarification of primacy but may need statutory intervention.</p> <p>HRA - separate non-statutory protocol needed between Heritage Railways and appropriate County or Regional police service for procedures to be followed after an accident. Discussions with ACPO suggested as way forward - tramway sector has similar concerns.</p> <p>HSBC - in general propose that BTP and HSE/HMRI investigations should be carried out on the preserved evidence off site whenever possible.</p> <p>HSC - there should not be statutory protocols, which could be inflexible. Will be necessary for RAIB/HSE/BTP/CPS/RISB non-statutory protocols for joint working.</p> <p>John Tilly - protocols need to consider that Scottish and Northern Ireland relevant railway legislation is different.</p> <p>LUL - don't want a further layer on investigation.</p> <p>Merseytravel - non-statutory protocols should govern relationships between these</p>

What will RAIB do?	
	<p>bodies in the first instance, although if poor co-operation between them statutory provisions governing working arrangements could become necessary.</p> <p>Mike Martino - as long as it is understood that RAIB has primacy of the investigation once they choose to investigate the incident/accident.</p> <p>NRCG - should be clear in protocols that RAIB has primacy and that they be prepared through Rail Safety and Standards Board, as referred to by Cullen, and be part of industry's main document control system.</p> <p>PACTS - protocols essential to ensure effective working and learning from investigations - protocol already exists for investigating work-place fatalities.</p> <p>Network Rail - essential that primacy and role of RAIB be recognised. Lack of understanding on future role of Railway Safety (RISB). Investigation of accidents duty under HSAW Act with infrastructure controller and TOCs and will not change - Network Rail see no long-term role for Railway Safety in accident investigation.</p> <p>RPC - appears sensible and advantageous. Any such protocol would have to address in strictest terms the need to protect evidence in such a way as to prevent any possibility of self-incrimination.</p> <p>RPC Wales - should state Railway Safety and its successor - successor to Railway Safety may not be established as the same date as RAIB.</p> <p>RRG - consider that joint protocols should be statutory.</p> <p>Stanley Hall - very important, protocol must lay down firmly that RAIB is the sole non-industry body responsible for investigating railway accidents and determining the cause. Other bodies must assist RAIB when called upon to do so.</p> <p>Suzy Lamplugh Trust - need for protocols between BTP, HSE, CPS and solicitors/barristers is essential and must be overseen, possibly outside the RAIB and especially outside the individual railway owners. The individual overseer would need to be a real expert in railway accidents and the people concerned. Having a single 'wise man' who can and indeed must intercept when discussions get out of hand would be added good sense.</p> <p>Tony Thompson - Protocols must be accompanied by appropriate training for the personnel of the organisations concerned.</p> <p>TUC - these protocols should be agreed well ahead of legislation and need the force of a statutory basis, as there have been problems between some of these bodies in the past.</p>
5 (g) comments are particularly welcome on statutory provisions that might be appropriate to achieve these ends	
Agree	EWS, Freightliner, HSC, Railway Safety
Disagree	CPT
Summary of issues raised	<p>ACPO - statutory measures should identify RAIB as the owner and co-ordinator of protocols for joint investigation.</p> <p>Alstom - not able to comment.</p> <p>ASLEF - wants consultation on a statutory basis.</p>

What will RAIB do?

ATOC - primary legislation to constitute RAIB to establish lines of reporting and its funding. Regulations to lay down how RAIB should operate - based on AAIB Regs 1996 and MAIB Regs 1994 but with more detail on interfaces with other organisations by including protocols.

BTP - to ensure integrity of evidence the seizure and retention of evidence should be to the highest standard required by any agency.

CPT - do not believe statutory provisions are necessary.

EWS - support primary enabling legislation where duties and powers clearly laid out with regulations to define operations and interrelationships with other bodies.

First Group - statutory provision must be given to RAIB including primacy of RAIB investigations - must also make clear the relationship of RAIB with other bodies such as HSE, BTP and security organisations.

Freightliner - supports Railway Safety proposal that Chief Inspector be provided for in statute.

HSBC - any statutory provision should be kept to a minimum and be limited to merely requiring protocols to be set up to assist various bodies in working with each other within the limitation of their particular investigation responsibility.

IOSH - no comment

John Tilly - primary legislation should be simple with detail in easily amendable regulations that can be changed in the light of experience. RAIB must have powers to: gain access to all accidents sites; seize any relevant evidence and or documentation; take witness statements; require assistance of a constable to overcome any obstruction to duty; allow statutory access by HSE/police to technical information; may need powers to caution witnesses; offence to obstruct RAIB inspector in exercise of their duty; offence to refuse to answer RAIB inspector questions or give statement.

LUL - no comment

NRCG - provisions should contain: statement of objectives for RAIB; appointment of Chief Inspector of Rail Accidents; set out powers, duties and scope of RAIB showing primacy; allow statutory introduction of protocols between RAIB, HSE and police if non-statutory fail or cannot be agreed.

RAeng - need to make corresponding changes to remit of HSE to avoid conflict and duplication. Also suggest BTP should not carry out any form of technical investigation (other than forensic related to possible criminal acts) at site of accident/incident.

Network Rail - as a minimum provisions should address: appointment of Chief Inspector of Rail Accidents; powers, duties and scope of RAIB; primacy position RAIB will have for investigations; relationship between new statutory provisions and existing legislation and proposed EC Directive.

Railway Safety - statutory provisions should set out duties, powers and make clear relationships between new provisions and existing under HSAW Act 1974, and give primacy to safety investigations by RAIB.

Ross Middleton - RAIB should have the power to investigate any incident involving

What will RAIB do?	
	<p>any railway tramway or guided transport system including network, rolling stock or track unhindered by any conflicting requirements of any other statutory bodies. (it being paramount to determine the cause and therefore preventative action for any accident).</p> <p>RPC Wales - statutory provisions should include: preparation of an Annual Report for the SOS for Transport; free distribution to all relevant parties - all in Appendix G; prompt inclusion of all documents in the public domain onto RAIB's own well publicised web site.</p> <p>Stanley Hall - RAIB should not be concerned with staff accidents. Only staff accidents should be reported to HSE. RAIB should not need to obtain any reports from HSE. RAIB is the leading player and should liaise with BTP and HSE as necessary, who must not carry out their own investigations in parallel. RAIB will be the responsible body for determining the cause of any accident.</p> <p>Tony Thompson - should set in statute the requirement for these organisations to prepare and enter into protocols for joint working to achieve evidence collection, scene access and information sharing.</p> <p>Westinghouse - no comment</p>
5 (h) the Rail Industry Safety Body should maintain records on the state of progress towards implementation of all recommendations arising from RAIB investigations or inquiries and industry formal inquiries (as described in para 5.16 of Consultation paper) and that this not be set out in statute	
Agree	ACPO, AEA, Angel Trains, ASLEF, ATOC, BTP, CPS, EWS, First Group, Freightliner, HRA, HSC, IOSH, John Tilly, LUL, Merseytravel, NRCG, Railway Safety, RPC Wales, Tony Thompson, TUC, Westinghouse,
Disagree	RPC
Summary of issues raised	<p>ACPO - as RISB will be an industry body no need to set out function in statute.</p> <p>AEA - used to identify areas by or needing improvement is welcomed, particularly if reported as appropriate to interested parties.</p> <p>Alstom - RISB only concerned with Railway Group members - while accident investigations often produce recommendations relating to other bodies. Number of recommendations from inquiries and industry inquiries runs at several hundred a year - keeping track of these is a major task. Might be more effective for investigations to produce fewer, but more significant, recommendations which would make it more likely they would be implemented.</p> <p>Angel Trains - important that duplication that exists with current system of industry parties jointly reporting to Railway Safety and HSE on progress on key recommendations is clarified and focused through a single body.</p> <p>APIL - monitoring the implementation of recommendations by RISB will allow the industry to monitor its own progress on safety issues - this is something that has led to problems in the past.</p> <p>ATOC - collation and tracking of recommendations should be for RAIB - RAIB should have the power to check against prior recommendations when same point arises in subsequent inquiry.</p>

What will RAIB do?

BTP - should be explicit what RAIB can and cannot make recommendations on. Not appropriate for one party investigating an accident to be monitoring other parties investigating same accident in a different way who already have robust review process in place.

CPS - need to make clear status of material maintained by RISB for access to it by others. Could be important evidence in criminal trial and should be disclosed to investigating body on request.

HRA - if to be formal relationship do not object to proposal.

HSBC - is it the intention that the responsibility for this task is moved solely to RISB.

John Tilly - fully support. Not clear if RISB will have powers over all railway companies.

LUL - strongly support that tracking of recommendations is not set out in statute.

NRCG - RISB primarily focused on ex BR network - recently introduced SMIS system takes proposal forward within ex BR network.

RAeng - unclear to what extent these records will be in the public domain or if to remain confidential whether RAIB have power or responsibility to audit them - needs clarifying. Unclear why it should not be set out in statute.

Network Rail - should seek to avoid duplication and urge for a facility for industry to access information to reduce risks of repeat recommendations and or contradictions. Should also ensure that any lessons learnt are widely disseminated to parties other than those immediately affected.

RPC - proposed EU Rail Safety Directive requires the investigating body to publish an annual report accounting for safety recommendations that were issued and actions taken. If enacted will become responsibility of RAIB. RAIB's remit extends to entire rail industry - RISB's remit beyond Network Rail-controlled infrastructure not yet clear.

RPC Wales - proposal is endorsed subject to: maintaining a record of progress towards implementation even if no timescale stated and making the record publicly available by publication - RISB web-site and RISB Annual Report.

TCL - some reports contain a great many recommendations which have been made without apparently any great thought as to either their practicality or value. Consequently some recommendations either cannot be acted upon or compliance would result in costs which are out of proportion with either the risk incurred or the benefit that would be gained. There should be a process whereby an operator can appeal against an unreasonable recommendation.

Tony Thompson - RISB may be the most appropriate body to carry out such monitoring but because RISB is not to be created through statute it is doubtful whether it will have the power or authority to achieve very much. Much more work needs to be done to work out the best way records can be kept and maintained in accurate and up-to-date form with an effective audit trail.

What will RAIB do?	
Structure and governance	
6 (a) the structure and governance of the RAIB should broadly follow the AAIB and MAIB models	
Agree	ACPO, Alstom, Angel Trains, ASLEF, ATOC, Brian Finney, EWS, First Group, Freightliner, HSBC, HSC, IOSH, John Tilly, LUL, Merseytravel, NRCG, RAeng, Network Rail, Railway Safety, RPC, RPC Wales, Tony Thompson, TUC, Westinghouse
Disagree	Safety Cases Ltd
Summary of issues raised	<p>Alstom - the concomitant action must be for other bodies (HSE, police etc) also to follow the AAIB model.</p> <p>Brian Finney - structure and governance of RAIB should be totally independent and divorced from the current railway family including Railway Safety. RAIB has the potential to drive real progress.</p> <p>IOSH - want exchange of best practices between the bodies to be encouraged.</p> <p>RAeng - RAIB will need to operate as a fully independent body - but as part of Govt Department, in early years and in controversial circumstances, could be problems being perceived as fully independent. Should be body analogous to CAA which RAIB can interact in a similar way - insufficient information about intended RISB. Secretary of State may want advice from such a body in addition to RAIB advice.</p> <p>Network Rail - RAIB structure should follow AAIB and MAIB models. RAIB should have independent integrity to draw conclusions and make recommendations to any parties, including those outside the industry, not just HSE or BTP, but Govt and other agencies.</p> <p>Railway Forum - for RAIB to be fully independent it must attract new staff in addition to HMRI investigation skills. RAIB must inspire public and industry confidence that investigations are truly independent.</p> <p>Railway Safety - head of RAIB should be Chief Inspector of Railway Accidents - suggested staffing level of 18 may be conservative and may not be sufficient to generate public confidence</p> <p>Safety Cases Ltd - do not think structure and governance arrangements come anywhere near meeting the independence requirement because railways are responsibility of DfT and proposed RAIB would also be responsibility of DfT. RAIB investigation would amount to DfT investigating itself, led by Chief Inspector appointed by DfT. Fundamental conflict of interest at the heart of the structure. Relationship between RAIB and DfT needs far greater separation if to enjoy real and perceived independence. Arrangements for appointment of Chief Inspector need to allow for public participation - member of public on the appointment board.</p> <p>TUC - concerned there might be implications that staffing might be at the expense of HMRI. Skills and expertise of HMRI must be protected within the HSE so that prevention has the highest priority.</p>
6 (b) a non-statutory secondment programme of appointments to the RAIB from the rail industry should be encouraged	

What will RAIB do?	
Agree	ACPO, Alstom, Angel Trains, ASLEF, ATOC, EWS, First Group, Freightliner, HSBC, HSC, IOSH, John Tilly, LUL, Merseytravel, NRCG, PACTS, RAeng, Network Rail, Railway Forum, Railway Safety, RPC, RPC Wales, Steve Firth, Stanley Hall, SRA, Tony Thompson, Westinghouse
Disagree	None
Summary of issues raised	<p>ACPO - secondments to RAIB will benefit safety within the industry and will require careful management for RAIB to gain same level of confidence as AAIB and MAIB.</p> <p>Alstom - support in principle but recognise practical difficulties of industry losing some of its best staff and difficulty in RAIB ensuring its independence. As part of transfer of work to RAIB other Govt bodies should shed staff thus requiring no net increase in resources.</p> <p>ATOC - proposal needs to be consistent with European Rail Safety Directive and needs clear terms of reference and code of conduct.</p> <p>Brian Finney - secondments from the railway family should be few and far between, especially in the early days until a robust and independent RAIB culture is formed.</p> <p>IOSH - want those with interest and experience to be able to volunteer.</p> <p>John Tilly - RAIB would need to ensure that secondees were given security of employment with their normal employer.</p> <p>NRCG - secondments will have to be paid for by RAIB. RAIB need to be aware there is little spare resource in the industry - must recruit most of its staff.</p> <p>PACTS - programme of secondments should be encouraged, from elsewhere in rail industry and other transport sectors including research and university fields.</p> <p>Network Rail - more clarity needed. Secondment may result in shortage within the industry for its own investigations. How will secondment programme work - for given period, for particular expertise and how will independence be achieved. Need to consider public perception of railway people being involved in investigations - also conflicts with proposed EC Safety Directive.</p> <p>Railway Forum - secondment programme must acknowledge scarcity of particular skills in the industry - industry's best resources used for managing regulatory regime - in order to retain an adequate and sustainable skill base within the industry.</p> <p>Railway Safety - key to success depends on industry parties recognising benefits of secondments and independence of secondees and being seen as such.</p> <p>RPC - periods of secondment should be of sufficient length to ensure RAIB has necessary continuity of expertise available at all times. Rail industry might include HSE and BTP. Cross-fertilisation between RAIB and AAIB/MAIB could be further explored, as in some countries roles of these bodies are combined within singly cross-modal agency, an arrangement encompassed by EU Rail Safety Directive.</p> <p>RPC Wales - all knowledge, skills, ideas and experience should be as international and bilateral as possible.</p> <p>RRG - cannot agree that secondment should be on a voluntary bottom up basis. If staffing managed properly establishment of RAIB is an ideal opportunity to attract both the right calibre of people and provide them with a career opportunity.</p>

What will RAIB do?	
	<p>Converse would apply in respect of people moving from RAIB into railway operations.</p> <p>SRA - would expect RAIB to draw on the skills of people existing in the industry already to support investigations.</p> <p>Stanley Hall - should also be secondments from HMRI to provide cross-fertilisation. Should be a provision for seconded staff to return to former employer after a suitable period. Maintenance of effective cross-fertilisation between RAIB and HMRI is very important so that each can remain fully up to date with trends and technical developments.</p> <p>Steve Firth - fully support this provision and would consider participating.</p> <p>Tony Thompson - to be applauded but needs to be written down otherwise it may be ignored. Programme should be extended to include BTP. A seconded BTP officer would encourage close working between the two organisations. Worth including in a protocol between the organisations, supported by the statutory requirement to develop a protocol enabling such secondments.</p> <p>TUC - believes there may be conflicts of interest for the individuals concerned but could be advantages in using experience such individuals have. Clear guidelines or a code of conduct would need to be drawn up and monitoring (seeking unions' views) should take place to ensure they were fit for purpose and being applied.</p>
Funding and resourcing	
7 (a) whether the provision of funding to the RAIB be made through grant in aid	
Agree	ACPO, Alstom, Angel Trains, ASLEF, ATOC, CPT, EWS, First Group, Freightliner, HSBC, HSC, John Tilly, LUL, Merseytravel, NRCG, RAeng, Network Rail, Railway Safety, RPC, RPC Wales, Serco Rail, Steve Firth, Tony Thompson, TUC, Westinghouse
Disagree	Mike Martino
Summary of issues raised	<p>ACPO - ensures consistency along lines of AAIB and MAIB.</p> <p>AEA - proposed staffing level seems small.</p> <p>Alstom - logical that RAIB should be funded in this way and by the least complicated mechanism.</p> <p>ATOC - resource levels suggested for RAIB may not be sufficient - suggest annual review within the industry by RAIB on resourcing.</p> <p>CPT - should be funded through grant-in-aid. The light rail industry in particular has limited resources.</p> <p>HSBC - Government should fund normal running of RAIB. Should also include cost of investigation where total cost of any incident including injury compensation is less than £1 million - currently the maximum insured amount for any InterCity TOCs. Costs of significant investigations would then be borne by the insurance company of the party eventually deemed to have responsibility for the incident.</p> <p>IOSH - no comment.</p> <p>John Tilly - should be on the same basic principle as that of AAIB and MAIB.</p>

What will RAIB do?	
	<p>Mike Martino - funding from industry should be done in a pool, eliminating the possible air of collusion by a carrier that may be under investigation since all funds would be from all carriers contributing to a central pool. Proposed staffing levels of RAIB not sufficient, suggest a total of 22 personnel to fill ranks of RAIB.</p> <p>NRCG - essential that RAIB is not underfunded or not able to function.</p> <p>PACTS - given potential workload of RAIB further thought is needed on number of proposed inspectors, flexibility for increases in staffing is essential.</p> <p>Pre Metro - proposed staffing levels for RAIB are inadequate - would be inappropriate to establish an important safety body with inadequate resources.</p> <p>Network Rail - should be properly funded to undertake its role and be truly independent. Could indicate number of investigations envisaged, per annum, to get better feel for accuracy of the numbers of staff required.</p> <p>RPC Wales - RAIB should be financed entirely by grant in aid from the Department for Transport.</p> <p>RRG - staff numbers proposed are less than both the AAIB and MAIB. Consider an assessment of the workload which would have fallen to RAIB had it been in place currently be made to validate the numbers needed.</p> <p>Safety Cases Ltd - astounded to see RAIB will have a staffing level of about one third that of AAIB - it will require far more personnel than AAIB.</p> <p>Steve Firth - strongly support the concept of grant aid.</p> <p>TUC - critical that this should not reduce the amount of money available for HSE/HMRI to carry out its functions. Prevention must have the first call on resources. Grant in aid should be through the Department for Transport and not DWP.</p> <p>Westinghouse - Government grant not industry levy</p>
7 (b) the extent to which industry would be prepared to provide assistance and access to specialist equipment either free of charge or at nominal cost	
Agree	ACPO, AEA, Alstom, ASLEF, ATOC, CPT, HRA, HSC, First Group, Freightliner, John Tilly, LUL, Merseytravel, Mike Martino, RAeng, Network Rail, RPC, Steve Firth, TUC, Westinghouse
Disagree	Tony Thompson
Summary of issues raised	<p>ACPO - requires careful management so independence of RAIB not called into question arising from relationship with the industry.</p> <p>AEA - any charges could be based on the level of benefit to the provider - alternative is that companies having few facilities would bear no cost while others may see themselves as being repeatedly hit.</p> <p>Alstom - yes - although the amount of specialist equipment of interest to RAIB and available in Alstom is likely to be limited.</p> <p>Angel Trains - where industry is also carrying out its own investigations any tasks undertaken as a result of that would be shared with RAIB.</p> <p>ASLEF - want industry to provide assistance free of charge - if not levy should be</p>

What will RAIB do?

imposed. Review after 2 years to examine industry co-operation.

ATOC - believe that arrangements for assistance and access should be capable of being made and charged at cost of no profit/no loss - specialist consultancies may change on a commercial basis.

CPT - would reserve the right to make an appropriate charge where substantial resources are involved.

Don Foster - not clear whether contractors or sub-contractors may or may not be used within RAIB as they are at present by HSE, some of whom are also involved in track maintenance contracts creating a conflict of interest. RAIB must not be allowed to have any such conflict on interest.

EWS - needs further consideration by examination of recent incidents and how costs were allocated and calculated.

Freightliner - is prepared to provide assistance to RAIB on request for a nominal charge.

HRA - pleased to co-operate with RAIB in any assistance when HRA expertise may be of value.

HSBC - seems wrong to expect those who have developed accident and incident investigation skills such as AEA and WS Atkins to be expected to offer their skills free of charge or at a nominal rate to RAIB. Support idea of industry experts co-opted by RAIB for the course of an investigation - but cost of back-filling the vacancy should be met if necessary by the RAIB.

HSC - would be concerned if provision of assistance or access to specialist equipment were to undermine RAIB's independence or ability to undertake investigations. HSE prepared to assist RAIB through secondments.

IOSH - no comment

John Tilly - support but there will be commercially sensitive issues to overcome.

Merseytravel - reasonable to expect similar co-operation between the rail industry and RAIB as already applies between aviation industry and AAIB. Should co-operation not be forthcoming on a voluntary basis could be enforced by statute or through licence conditions imposed by Rail Regulator.

Mike Martino - use of special equipment is allowed as long as it is understood that all parties will be present when such equipment is being used and the parties may bring their experts in to ensure the equipment is being properly used.

NRCG - non-railway group members, in particular consultants, could only provide expertise to RAIB at commercial rates. Large scale components needed removing from site then only at commercial rates.

Porterbrook - precedent from other industries is for the industry only to provide a small proportion of required services free of charge. Some parties such as consultancies provide valuable accident investigation assistance and could not be expected to provide this service free of charge.

RAeng - should be requirement for rail industry to co-operate fully with RAIB and to provide equipment and technical assistance subject to availability. Services obtained from industry should be paid at appropriate rates to maintain good relations

What will RAIB do?

and independence.

Network Rail - funding and resourcing must be agreed at an early stage. Would results be open to industry who with assistance or equipment funded a proportion of the investigation. Industry could be open to criticism without a very clear understanding. What is a nominal charge. Needs to be proper agreements to what industry is prepared to pay for and what it is not. To work properly greater degree of co-operation needed from RAIB than currently from HSE, whose approach is dictated by its enforcement role.

Railway Safety - there is co-operation but some specialist support is provided on a commercial basis. Railway Safety will be prepared to provide assistance to RAIB on request.

RPC - would have to be done in a such a way so as not to compromise RAIB's objectivity and independence. Clear protocols needed to ensure that such arrangements can cut in smoothly when required. Not all train operating companies in a position to pass on any costs incurred in providing services and facilities to RAIB gratis.

RPC Wales - not in agreement on all aspects. However agree that: industry parties should attach no conditions or constraints to any assistance whatever the payment terms; all contributions by industry parties should be on the record, both in accident/incident report and Annual report; and all failures to contribute to the reasonable expectations of RAIB should be similarly recorded.

RRG - suggest that cost should be free of charge if at industry behest and at cost if at RAIB behest.

Serco Rail - not practical for industry to provide assistance and access to specialist equipment, either free of charge or at nominal cost. Only a small number of specialist suppliers of services would be able to provide such assistance and access - these suppliers would be providing the services on behalf of the industry. More appropriate for RAIB to pay for the assistance they require as HMRI does currently. Would be entirely reasonable for RAIB to be provided with the results of testing carried out for internal industry purposes free of charge.

Steve Firth - agree in principle and suspect that registration and control would be necessary to make this work.

Tony Thompson - should be a statutory provision for RAIB and rail industry to enter into protocols for the provision and extent of equipment loan and service provision. Best option is to provide, through grant in aid, sufficient funds for RAIB to operate wholly independently of the rail industry. The proposed arrangements do not provide a way of resolving intransigence within the industry should it emerge.

TUC - industry ought to provide these services free or at minimal charge - if industry proves reluctant then a level should be introduced. Suggest a review is carried out in due course to identify whether the provision is working. RAIB should also have ready access to HSL or equivalent bodies and that free access to such resources should be underpinned by statute.

Westinghouse - to be encouraged but not made mandatory. The rail industry is fragmented with large number of players from various countries.

What will RAIB do?	
RAIB to cover Scotland, Wales & Northern Ireland	
8 (a) RAIB would operate in Scotland and Wales on the same basis as the MAIB and AAIB	
Agree	ACPO, ASLEF, ATOC, EWS, First Group, Freightliner, HSBC, HSC, John Tilly, Merseytravel, NRCG, Network Rail, RAEng, Railway Safety, RPC, RPC Wales, Tony Thompson, TUC, Westinghouse
Disagree	None
Summary of issues raised	<p>Alstom - many trains operate Anglo-Scottish services - switching to a different safety regime part way along the WCML and ECML makes no sense.</p> <p>HSC - should not imply that RAIB will be under a duty to investigate serious accidents in Great Britain. RAIB should have power to investigate accidents and have discretion to choose what it investigates.</p> <p>IOSH - no comment</p> <p>LUL - no comment</p> <p>RPC Wales - content for RAIB to operate in Wales on the same basis as AAIB and MAIB.</p> <p>Tony Thompson - the different legal system and procedures in Scotland may require different protocols to be developed to those proposed for England and Wales.</p>
8 (b) that Government provide a power to enable the RAIB to provide services in Northern Ireland if requested	
Agree	ACPO, ASLEF, ATOC, EWS, Freightliner, HSC, John Tilly, Merseytravel, NRCG, RAEng, Network Rail, Railway Safety, RPC Wales, Tony Thompson, TUC, Westinghouse
Disagree	None
Summary of issues raised	<p>Alstom - no comment.</p> <p>ATOC - would arrangement be in line with European Rail Safety Directive?</p> <p>First Group - have no view on this issue.</p> <p>HSBC - powers for Northern Ireland should be same as for AAIB and MAIB. Concerned that body of experience and expertise (RAIB) unlikely to be present in Northern Ireland.</p> <p>HSC - should not imply that RAIB will be under a duty to investigate serious accidents in Great Britain. RAIB should have power to investigate accidents and have discretion to choose what it investigates.</p> <p>IOSH - no comment</p> <p>John Tilly - support as a second choice. NI Assembly should be statutorily required to call on RAIB rather than request assistance. NI should follow UK practice. NI is part of the UK and NI railways should have the same facilities provided.</p> <p>LUL - no comment</p> <p>NRCG - all railways and contractors should be treated equally through the country.</p>

What will RAIB do?

European Rail Safety Directive will have a bearing.

Railway Safety - question why parts of the European member state have been excluded from the proposed scope of RAIB.

RPC - if RAIB's jurisdiction does not automatically extend to the whole of Britain other arrangements would have to be made to bring Northern Ireland into conformity with the proposed EU Rail Safety Directive.

RPC Wales - seems sensible - but concerned there appears to be no passengers' representative or Eire cross-border consultation.

Tony Thompson - consideration should be given for RAIB to provide assistance and advice to other countries upon request to the UK Govt. Provision could be made in statute for the Secretary of State to consider such requests in consultation with the Chief Inspector of Rail Accidents.

Annex C: Abbreviations/Glossary of Terms

AAIB	Air Accidents Investigation Branch
BTP	British Transport Police
HMRI	Her Majesty's Railway Inspectorate
HSC	Health and Safety Commission
HSE	Health and Safety Executive
MAIB	Marine Accident Investigation Branch
ORR	Office of the Rail Regulator (now the Office of Rail Regulation)
RAIB	Rail Accident Investigation Branch
Railway Safety	A wholly owned subsidiary of Railtrack Group Plc/Network Rail which carries out independent safety activity, including formal industry investigations into railway accidents and incidents
RISB	Rail Industry Safety Body - the body that Lord Cullen recommended should replace Railway Safety - to be set up by licence change and now to be known as Rail Safety and Standards Board (RSSB)
RIDDOR	Reporting of Injuries, Diseases and Dangerous Occurrences Regulations
SRA	Strategic Rail Authority