

**MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT FOR
TRANSPORT, THE HEALTH AND SAFETY EXECUTIVE AND THE OFFICE OF
RAIL REGULATION ON MATTERS OF MUTUAL CONCERN IN THE CARRIAGE
OF DANGEROUS GOODS AND USE OF TRANSPORTABLE PRESSURE
EQUIPMENT REGULATIONS 2004 (AS AMENDED) IN RELATION TO THE
CARRIAGE OF RADIOACTIVE MATERIAL BY RAIL**

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Introduction

1. This Memorandum of Understanding (MoU) is made between the Department for Transport (DfT), the Health and Safety Executive (HSE) and the Office of Rail Regulation (ORR). This MoU replaces the MoU between the DfT and the HSE of 2004, following the transfer of rail-related health and safety law enforcement to ORR on 1 April 2006. Its purpose is to ensure effective co-ordination between DfT, HSE and ORR over matters affecting the packaging, labelling, preparation and carriage of radioactive material by rail. Such co-ordination should improve the effective use of Government resources and avoid difficulties that might arise from uncoordinated approaches by DfT, HSE and ORR.

Background

2. DfT, HSE and ORR need to co-operate to ensure that the policy determined by them for the packaging, labelling, preparation and carriage of radioactive material by rail is implemented and the regulatory controls properly enforced. The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004 (the Carriage Regulations)¹, the Health and Safety at Work etc. Act 1974 (HSWA)², the Railways Act 2005 and the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (EARR 2006)³ give DfT, HSE and ORR a mutual interest in matters affecting radioactive material being prepared for carriage by rail, and in the requirements concerning the carriage of radioactive material. This MoU lays down appropriate demarcation and other administrative arrangements that are considered necessary by DfT, HSE and ORR to avoid potentially disruptive enforcement overlap, and to ensure the appropriate co-ordination of the complementary functions of the three bodies.

Objectives

3. The objectives of this MoU are to ensure that:
- (a) the activities of DfT, HSE and ORR in relation to enforcement of the legislative controls on the packaging, labelling and preparation of radioactive material for carriage, and the carriage of radioactive material by rail are consistent, co-ordinated and comprehensive;
 - (b) the possibility of conflicting requirements being put on those persons involved in or otherwise concerned with the packaging and preparation of radioactive material for carriage by rail and in the carriage of radioactive material by rail is eliminated;
 - (c) provisions for the health and safety and security of people affected by the carriage of radioactive material by rail are applied consistently:
and
 - (d) duplication of activity within Government is minimised.

¹ As amended by the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment (Amendment) Regulations 2005 and the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006.

² As amended by the Railways Act 2005

³ Which make ORR an enforcing authority for certain rail related purposes of HSWA

Responsibilities

4. DfT is:
 - a) the GB Competent Authority for the approval of certain designs of packages used for transporting radioactive material and certain consignments¹;
 - b) the focal point for advice to the industry and others on the packaging, labelling and preparation of radioactive material for carriage by rail;
 - c) responsible for enforcing:
 - i. the security requirements of the Carriage Regulations²; and
 - ii. those parts of the Carriage regulations listed in paragraph 1 of the Annex to this MoU, subject to any Agency Agreement made between the HSC, ORR and the Secretary of State for Transport.

5. ORR is responsible for:
 - a) providing advice to industry and others on the carriage of radioactive material by rail;
 - b) enforcing (subject to paragraph 5A) those parts of the Carriage Regulations specified in paragraph A2 of the Annex to this MoU;
 - c) enforcing (subject to paragraph 5A) Part 1 of HSWA and Regulations, other than the Carriage Regulations, made under it in respect of the carriage of radioactive materials by rail. This includes the Radiation (Emergency Preparedness and Public Information) Regulations 2001 (as amended), which apply to the carriage by rail of radioactive substances in cases where they may have the capability of producing a radiation emergency.

- 5A. HSE is responsible for:
 - a) the enforcement of health and safety law in relation to the operation of railways at those sites referred to in paragraph 6A below, (subject to the role of the DfT under the Agency Agreement referred to in paragraph 4 and the DfT's security enforcement role under regulation 58(5) of the Carriage Regulations; and
 - b) the loading and unloading of radioactive materials at dock premises, intermodal depots or premises owned or operated by, or on behalf of, the Secretary of State for Defence, (as a result of paragraph (k) of the definition of the "operation of a railway" in regulation 2 of the EARR 2006).

6. DfT, HSE and ORR agree to consult one another at all stages on all present and future legislative proposals on the packaging, labelling, preparation and carriage of radioactive material by rail.

¹ Regulation 8 of the Carriage Regulations

² See regulation 58(5) of the Carriage Regulations

Exceptions

6A. The effect of regulation 4 (exceptions) of the EARR 2006 is that HSE remain the enforcing authority for health and safety law in relation to the operation of railways at the following sites¹. (Regulation 2 of the EARR 2006 contains definitions of those premises numbered 2-8 below). :-

1. Establishments to which the Control of Major Accident Hazards Regulations 1999 apply ("COMAH sites").
2. Factories.
3. Mines.
4. Nuclear licensed sites.
5. Quarries.
6. Warehouse premises other than where enforcement falls to a local authority.
7. Dock premises which are premises within numbers 1-6 above.
8. Any other dock premises unless:-
 - (i) the railway operated is part of a railway which is operated outside the dock premises; and
 - (ii) the operation is for the purposes of or related to the carriage of passengers or goods to or from the dock premises by that system.

Thus in so far as operations at these sites involve, or relate to, the carriage of radioactive material by rail, there may be a need for close liaison between ORR/HSE/DfT in relation to operational activities including inspections, investigations and enforcement.

Working arrangements

7. The working arrangements to achieve these objectives are set out in more detail in the attached Annex. They are based on the following principles:
- a) either DfT or ORR or HSE will, whenever possible, be identified as having the primary responsibility for enforcing the regulatory provisions. More specifically:
 - i. DfT will have primary responsibility for enforcing the provisions relating to:
 - The packaging, labelling, preparation for carriage of radioactive materials by rail; and
 - The security of the carriage of radioactive materials by rail;

¹ Other than in relation to security provisions, (for which, under regulation 58(5) of the Carriage Regulations, the SofS remains the enforcing authority).

- ii. ORR will have primary responsibility for enforcing those provisions relating to the actual carriage of radioactive materials by rail plus certain other requirements specified in paragraph A2 of the annex to this MoU (e.g. training of dutyholders) (subject to iii below).
 - iii. Within the confines of excepted sites (that is, those listed in paragraph 6A), HSE will have primary responsibility for enforcing those provisions relating to the actual carriage of radioactive materials on the site by rail plus certain other requirements specified in paragraph A3 of the annex to this MoU (e.g. training of dutyholders).
- b) the body having the primary responsibility will be the normal contact point for persons involved in the packaging, labelling, preparation of radioactive material for carriage by rail, and in its carriage by rail for all matters relevant to that particular interface;
 - c) the formal dealings of persons involved in the packaging, labelling, preparation of radioactive material for carriage by rail, and in its carriage by rail will, as a general rule, be with the body which has primary responsibility;
 - d) the other bodies will be consulted by the body having the primary responsibility;
 - e) any information regarding compliance with the Carriage Regulations which is in the domain of the body with primary responsibility but which comes first to the notice of one of the other bodies will be passed to the body with primary responsibility;
 - f) where DfT, HSE or ORR disagree on any matter of mutual concern which could result in requirements being placed both on the persons involved in the packaging, labelling and preparation of radioactive material for carriage by rail, and on those responsible for its carriage by rail, they will seek to resolve their differences before any specific requirements are placed upon those persons;
 - g) where such disagreements cannot be resolved the matter will be referred to a Joint Review Committee (see paragraph 10 below);
 - h) DfT agrees to provide training to ORR and HSE staff on the International Atomic Energy Agency's standards for the transport of radioactive material.

DfT/ORR/HSE Liaison arrangements in relation to incidents involving the carriage of radioactive material

8. The liaison arrangements between DfT, ORR and HSE in the event of an incident are set out below. These will apply whether or not the incident is one which is subject to separate investigation by the Rail Accident Investigation Branch (RAIB). The Railways (Accident Investigation and Reporting) Regulations 2005 give powers to RAIB to undertake investigations into specified accidents and incidents. This might include an investigation into any incident involving the carriage of radioactive material by rail. If RAIB are investigating an incident also subject to an investigation

undertaken in accordance with this MoU, then the tripartite MoU between RAIB, the British Transport Police and ORR together with any appropriate interface agreements within DfT and with HSE, must be taken into account as any investigation progresses.

9. The arrangements between DfT ORR and HSE are:
- a) that liaison with respect to incidents involving the carriage of radioactive material by rail will involve:
 - i. ORR's, or HSE's, investigating inspector who will act as ORR's, or HSE's, nominated liaison officer as appropriate; and
 - ii. DfT's nominated liaison officer (or deputy);
 - b) where either DfT, ORR or HSE become aware of an incident which may involve a breach of the Carriage Regulations in relation to the carriage of radioactive material by rail, initial contact between DfT ORR and HSE will be made by telephone, e-mail or fax, to be followed up as appropriate by more detailed information;
 - c) the body with the primary responsibility will co-ordinate the incident investigation team. Responsibilities will be decided at the operational level or, if necessary, by the Joint Review Committee (see paragraph 10 below);
 - d) where action by a body is taken in respect of issues connected with the carriage of radioactive material by rail where it has primary responsibility, copies of relevant parts of letters or any enforcement notice will be sent, for information, to the other bodies with enforcement responsibilities. Matters for which a body has responsibilities which do not significantly impact on its own primary responsibility will only be formally raised with a duty holder by that body in exceptional circumstances and only after agreement with the body with primary responsibilities;
 - e) in the investigation of incidents which are of interest to more than one party consideration will be given to undertaking a joint investigation and producing a joint report. Where a joint investigation is agreed it will be managed by the body deemed to have primary responsibility, following discussion between the nominated liaison officers. The name of the investigation leader for each body will be advised to the other bodies by the nominated liaison officers and the said investigation leaders will discuss and agree a mutually acceptable way of working;
 - f) where there has been a joint investigation the relevant parties will agree the drafting before their joint report is regarded as complete;
 - g) any submission to Ministers or press statement in relation to incidents involving the carriage of radioactive material by rail will be prepared by the body with primary responsibility (as defined in the Annex to the MoU). It will be faxed or e-mailed (in draft) to the other bodies for comment. If the matter is pressing, or needs to be actioned outside of normal office hours, the liaison officers will consult by telephone or e-mail as appropriate.

Joint Review Committee

10. A Joint Review Committee whose members are drawn from existing members of the DfT led Carriage of Dangerous Goods Enforcement Committee will meet whenever the need arises to review the workings of this MoU. The terms of reference of the Joint Review Committee are to keep under review the workings of the MoU between DfT, ORR and HSE, and in particular to:

- a) resolve any problems which have arisen;
- b) discuss matters of common interest;
- c) take a forward look at matters of common interest.

Responsibilities

11. It is the responsibility of inspectors and managers at each level within each body to ensure that the principles and procedures set out in the MoU are observed. It is recognised that this may involve discussions between DfT, ORR and HSE at working level, to agree the necessary interpretation.

DIVISION OF RESPONSIBILITIES BETWEEN DfT (DGD), ORR (HMRI) and HSE IN ENFORCING THE CARRIAGE OF DANGEROUS GOODS AND USE OF TRANSPORTABLE PRESSURE EQUIPMENT REGULATIONS 2004 (AS AMENDED) IN RESPECT OF THE CARRIAGE OF RADIOACTIVE MATERIAL BY RAIL

A1. DfT will take **primary** responsibility for enforcing the following regulations as they apply to the carriage of radioactive material by rail:

- regulation 11 (class 7 goods for carriage by rail), as it relates to the duties of the designer, manufacturer, consignor and user;
- regulation 15 (classification of goods);
- regulation 17 (dangerous goods list and special provisions);
- regulation 18 (use of packagings);
- regulation 19 (use of tanks);
- regulation 20 (consignment) as it relates to the duties of the consignor, packer or filler;
- regulation 21 (construction and testing of packagings and packages);
- regulation 22 (construction and testing of tanks etc);
- regulation 50 (security requirements) as it relates to the duties of any person involved in the carriage of class 7 goods by rail, except the carrier, and except in so far as it relates to nuclear material as defined in section 76(7) of the Anti-Terrorism, Crime and Security Act 2001; and
- regulation 55 (placards, marks and plate markings for carriage within GB) as it relates to the duties of the consignor, filler or loader.

A2. ORR will take **primary** responsibility for enforcing the following regulations as they apply to the carriage of radioactive material by rail (subject to paragraph 3 below):

- regulation 9 (training);
- regulation 10 (safety obligations);
- regulation 11 (class 7 goods for carriage by rail), as it relates to the duties of the carrier;
- regulation 12 (safety advisers);
- regulation 13 (reports on accidents and incidents);
- regulation 14 (emergency plans for marshalling yards);

- regulation 20 (consignment) as it relates to the duties of the carrier;
- regulation 23 (carriage, loading, unloading and handling)¹;
- regulation 50 (security requirements) as it relates to the duties of the carrier;
- regulation 53 (marshalling and formation of trains);
- regulation 54 (keeping of information by the carrier);
- regulation 55 (placards, marks and plate markings for carriage within GB) as it relates to the duties of the carrier.

A3. HSE will take **primary** responsibility for enforcing the regulations referred to in paragraph A2 above to the extent they relate to:-

- the operation of railways within the sites excepted from ORR responsibilities by regulation 4 of EARR 2006, as set out in paragraph 6A; and
- the loading and unloading of radioactive materials at dock premises, intermodal depots or premises owned or operated by, or on behalf of, the Secretary of State for Defence (as a result of paragraph (k) of the definition of “operation of a railway” in regulation 2 of EARR 2006).

A4. In taking primary responsibility, the relevant body is responsible for inspection to ensure compliance with the relevant legal requirements and the investigation of incidents. Each is also responsible for advising the other bodies on incidents where there may be breaches of the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004 (as amended). The liaison arrangements to be followed are those set out in this MoU.

¹ Under regulation 3(2) of the EARR 2006, ORR’s responsibilities do not extend to loading and unloading (including the loading and unloading of radioactive materials) at dock premises, intermodal depots or premises owned or operated by, or on behalf of, the Secretary of State for Defence (see the paragraph (k) of the definition of “operation of a railway” in regulation 2 of EARR 2006). Responsibility for enforcement relating to these operations at these premises lies with the HSE, and the necessary liaison arrangements are covered in a Memorandum of Understanding between ORR and HSE.