

AGENCY AGREEMENT BETWEEN THE SECRETARY OF STATE FOR TRANSPORT AND THE HEALTH AND SAFETY COMMISSION

This **AGREEMENT** is made between the Secretary of State for Transport ("the Secretary of State") and the Health and Safety Commission ("the Commission") under section 13 (1)(b) of the Health and Safety at Work etc. Act 1974 ("the 1974 Act"). It relates to functions which the Commission has agreed to perform on behalf of the Secretary of State, being functions which in the opinion of the Secretary of State for the Environment can appropriately be performed by the Commission in connection with its functions.

IT IS HEREBY AGREED that :

1. Subject to the provisions of this Agreement, the functions specified in the Schedule shall be performed on behalf of the Secretary of State by the Commission.
2. The Commission shall direct the Health and Safety Executive ("the Executive") under section 11 (4) (a) of the 1974 Act to exercise on behalf of the Commission the functions specified in the Schedule.
3. The Commission shall provide to the Secretary of State such information as he may at any time reasonably require in connection with the performance of the functions specified in the Schedule.
4. This Agreement shall come into effect on 9 October 1996 ("the commencement date") and shall terminate on the expiry of six months written notice given at any time by either party to this Agreement to the other.
5. On the commencement date the Agreement dated 10 April 1995 and made between the Commission and the Secretary of State shall cease to have effect **PROVIDED** that nothing in this Agreement shall affect the validity of anything done prior to the commencement date in pursuance of that Agreement.

IN WITNESS whereof the Corporate Seal of the Secretary of State and the Common Seal of the Commission have been hereto affixed this 9th day of October 1996.

**THE CORPORATE SEAL OF THE
SECRETARY OF STATE FOR TRANSPORT**
is authenticated by :

Authorised by the Secretary of State

THE COMMON SEAL of the **HEALTH
AND SAFETY COMMISSION** is
authenticated by :

Secretary to the Commission

SCHEDULE

FUNCTIONS TO BE PERFORMED BY THE COMMISSION

1 Making any order in relation to a level crossing under the Level Crossings Act 1983 and the giving of any direction in relation to a level crossing under section 42 of the Road and Rail Traffic Act 1933 except in cases where the crossing operator has not requested an order or has requested an order in compliance with a notice given to him by the Executive.

2 Functions in any private Act authorising the construction of a relevant transport system (where "relevant transport system" is construed in accordance with the Railways and Other Transport Systems (Approvals of Works, Plant and Equipment) Regulations 1994) with regard to -

- a) the approval of plans, sections and other details of proposals with respect to any works, plant or equipment;
- b) the giving of permission for the use of any part of such a system and the prescribing of conditions for the safety of persons using such a system.

3 Approval of trains under section 24 of the Channel Tunnel Act 1987.

4 Powers under any order made under the Light Railways Acts 1896 and 1912 (as amended by the Railways Act 1921) to approve, consent to or allow any matter or thing or to prescribe or lay down any condition or requirement (however expressed) in relation to a light railway.

5 All functions under the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994.

6 Functions of the Secretary of State under agreements for the provision of services in relation to the safety of the railways in Northern Ireland and Hong Kong.

APPENDIX 1

HANDLING MAJOR INCIDENT INQUIRIES AND INVESTIGATIONS

1 This Appendix sets out the agreed arrangements for handling incident inquiries and investigations on the railways. In the event of a disaster, reference should be made to the Lord Chancellor's guidance 'Disasters and the Law'.

Criteria for determining the form of inquiry/investigation which should take place

2 In the immediate aftermath of a railway accident, it will be necessary to decide quickly what form of inquiry or investigation should take place. There are four options available :

* a public inquiry under section 14 (2) (b) of the HSWA leading to a report which will almost invariably be published. The consent of the Secretary of State for Transport is required for such an inquiry. It will be for the Commission to appoint the person to carry out the inquiry. This may be a member of the Inspectorate or, if circumstances demand it (eg. there is reason to believe that the independence of the inquiry would be compromised) by the appointment of a person of independent legal standing.

* a formal investigation (not in public) under section 14 (2) (a) of the HSWA leading to a report which may be published; and

* an investigation (not in public) using the powers of inspectors under section 20 of HSWA. A report can be published if it would be in the public interest to do so but would not be usual and would be subject to such considerations as personal privacy, commercial secrecy etc.

* no further action.

3 In determining the option to be selected, a number of factors need to be taken into account including :

* the number of fatalities/major injuries

* other similar or recent accidents

* wider implications for railway safety

* media/public interest

* political sensitivities

* significant technical factors.

4 In general the presumption will be that if an investigation is considered appropriate it will be carried out under s20 HSWA and that the alternatives will only be contemplated if the individual circumstances of the particular case merit it. This is consistent with the statutory test for section 14 powers ie. that the Commission may order an inquiry or investigation under section 14 where it considers it "necessary or expedient to investigate". A table is attached which attempts to identify how this system might operate in practice. It is recognised, however, that it is impossible to lay down hard and fast rules to be followed in every instance and that ultimately decisions may be influenced less by the severity of the accident itself than than by the expectations of the public and political considerations. It is also recognised that there may be a transitional period after the abolition of the 1871 Act and whilst the industry undergoes further change and break up when there may be a need to rely more heavily on s14 powers than should be the case once the situation has stabilised and the new arrangements have properly 'bedded down'.

Procedures

5 In the first instance it will be for the HM Railway Inspectorate Accident Officer or designated person receiving the report to consider and initiate the response to a reported accident. He will also ensure that the Department of Transport's Duty Officer, amongst others, is informed as a matter of priority if the circumstances warrant this.

6 If it is clear that the accident/incident either does not justify further investigation or that such investigation should properly be made under s20, no further action will normally be necessary other than a routine report to the Secretary of State for Transport, to the Chairman of the Commission and to senior Health and Safety Executive (HSE) and Department of Transport (DOT) officials.

7 As it becomes clear that there are wider considerations or any doubt about the appropriateness of using s20, the Accident Officer will report as a matter of priority to the appropriate Deputy Chief Inspector of Railways (DCIR) or, in his absence, the Chief Inspector of Railways (CIR). The DCIR will consult also as a matter of priority with the appropriate Head of Division (HOD) and/or Head of Section (HOS) in Safety Policy Directorate (SPD) and with the HOD in DOT on the appropriate way forward. This discussion will cover :

* which type of investigation/inquiry is appropriate in the circumstances

* whether, on the basis of existing information, there should be a published report

* what form any public announcements should take.

8 The respective Press Offices should be kept informed of developments and the outcome of discussions and should be consulted about any public announcement.

9 DOT officials will then be responsible for recommending to the Secretary of State the course of action agreed with HSE officials. HSE will supply such material as is needed and will be given the opportunity to approve the submission. On the basis of this advice, it will be open to the Secretary of State to ask the Commission if it will consider a particular form of inquiry or investigation.

10 Following consultation and in parallel, it will be the responsibility of the DCIR/CIR to make a recommendation to the Commission on the course of action to be adopted. This will need to be cleared with a member of the Executive before being put to the Commission. The aim should be to reach agreement and make a recommendation to the Commission within half a working day of the accident (one day if the accident takes place at a weekend).

11 It will be the responsibility of the Commission Secretariat to obtain the clearance of the Commission. Every effort should be made to ensure that this is given absolute priority and that decision is reached within one working day of the accident (two days if the accident takes place at a weekend). It may be necessary to invoke arrangements to delegate powers in order to ensure a decision is reached quickly. In the case of a s14 (2)(b) inquiry, the Commission Secretariat will arrange for the Secretary of State's consent to be obtained.

12 The duties of the respective Press Offices are set out in Appendix 2. It will be of paramount importance that close liaison is maintained between Press Offices and officials so that press briefings can be prepared and agreed at an early stage. HSE's Press Office will be responsible for informing the DOE Press Office. See also paragraphs 15 - 19 below.

13 The Office of the Rail Regulator should be informed of the action that has been agreed in respect of regulated train services.

14 A flow chart is attached which identifies the key stages in the process. More detailed information on the specific roles and responsibilities of those involved in the process within HSE is given in the Major Incident Response Corporate Instructions.

Public Announcements

15 The arrangements for making public announcements (press conferences, press notices, briefing for press offices) should be included in the discussions that take place on the appropriate response to make in investigative terms (see paragraph 7 above) and will be influenced by this decision. Ministerial and Parliamentary interests will also need to be considered.

16 In the immediate aftermath of an accident, it is unlikely that anything other than a 'holding' line will be appropriate. A suggested form of words is attached at Annex 3 which could be used by HSE and DOT in such instances.

17 Once a decision has been taken, it will possible to be a little more positive but, again, there will be considerable limits on what is either possible or sensible to say. A suggested form of words is also attached at Annex 3.

18 In rare instances (where, for example, there have been a large number of casualties or the accident had some particularly worrying features), it may be necessary to produce a fully fledged press notice to satisfy media demands.

19 Detailed guidance on press handling in the event of a major accident, including dealing with Ministerial visits, is covered in Appendix 3.

Progress reports

20 HSE (HMRI) will ensure that SPD and DOT are kept informed of the progress of any investigation/inquiry and any emerging findings with :

- * widespread implications across the industry and/or
- * plans to prosecute, the issue of Improvement Notices etc.

The Executive, the Chairman and, where appropriate, the Commission will also be kept informed.

Findings

21 DOT officials will be informed of the findings of the investigation and the recommendations it is intended to make in advance of publication. In reaching its recommendations, HSE will ensure that a cost benefit analysis is carried out. The Office of the Rail Regulator should also be informed in respect of regulated train services.

Publication of reports

22 A report of a section 14 (2) (b) public inquiry will almost invariably be published. Whether a report is published under s14 (2) (a) or s20 and the form this should take will depend on similar factors to those which determined the type of investigation undertaken. An initial view will need to be taken in the early stages after the accident has taken place (see paragraph 7) but the possibility that that decision will need to be reviewed at a later stage cannot be ruled out ie. as the findings of the investigation emerge. It may be, for example, that it becomes clear that there are wider implications which need to be widely disseminated within the industry or issues of public concern which demand some form of written response.

23 Again the approach will be a hierarchical one depending on individual circumstance :

i no publication needed

ii key recommendations made known to appropriate parts/all of the industry

iii recommendations made public

iv full report published.

24 In the case of s14 (2) (a) and (b) investigations, it will be for the Commission to decide what form publication should take on advice from HSE officials. DOT will be consulted.

25 There are two instances when this process might be disrupted :

i if it becomes apparent that legal proceedings are justified; and/or

ii if, at any stage, findings are sufficiently significant in health and safety terms to demand immediate action.

26 In the first instance, a report would have to be delayed until the legal process had been completed. In the second, it might be necessary anticipate the final report, in whole or part, in order to ensure that concerns about health and safety are tackled quickly/without delay.

APPENDIX 1 ANNEX 3

EXAMPLES OF LINES TO TAKE IN PRESS BRIEFING FOLLOWING REPORTED INCIDENTS

HSC/E LINES TO TAKE - in order of use

Initial, holding

HSE is investigating.

Initial press statement

HSE has confirmed that it is investigating the at..... which happened at..... A Railway Inspector has been sent to/is already at the scene and the HSE investigation will continue until the cause of the accident is known.

Later, once an HSE investigation has begun

A press release, similar to the attached example which was issued for the Maidenhead train fire, would be issued.

Later still, once a formal investigation is announced

This would be an HSC release, similar to the one attached, issued for the Rickerscote accident. It would simply need minor adjustments to the wording to accommodate the different types of formal investigation. This should not be released until the Chairman has obtained the Secretary of State's agreement.

HSC ORDERS FORMAL INVESTIGATION OF RICKERSCOTE**RAIL COLLISION**

The Health and Safety Commission has today directed the Health and Safety Executive (HSE) to hold a formal investigation into the collision of a postal train with a freight train at Rickerscote, near Stafford, on the evening of Friday 8 March, which regrettably resulted in the death of a postal worker. A special report will be published.

Frank Davies, Chairman of the Health and Safety Commission, said today: "The Commission has directed HSE to hold the formal investigation under Section 14(2)(a) of the Health and Safety at Work etc Act 1974. The Commission has taken this decision following a request from the Secretary of State for Transport and advice from HSE.

"The Commission also expresses its sympathy to the relatives of the postal worker who was killed and to those who were injured."

David Eves, HSE's Deputy Director General, said: "HSE's investigation into this collision began immediately. Railway Inspectors are making detailed enquiries into the technical causes of the derailment and into the actions of railway staff immediately prior to the collision. They are being assisted by scientists from the Health and Safety Laboratory.

"Our investigation is complex and detailed and will continue until we have found the reason for the accident. It is too soon to speculate about how long our investigation will take, but we will publish a special report in due course."

Ends

E134:95

11 September 1995

HSE INVESTIGATES TRAIN FIRE

The Health and Safety Executive (HSE) confirmed today that it is investigating the fire which occurred on a high speed train near Maidenhead station on Friday 8 September 1995 and the resulting tragic death of a passenger.

Stan Robertson, HM Chief Inspecting Officer of Railways for HSE, said today: "Railway Inspectors were sent to the scene immediately to begin our investigation, which is continuing. We have taken possession of the train for a detailed forensic examination by HSE scientists from the Health and Safety Laboratory and technical experts from the Railway Inspectorate.

"We are also examining the track and we will be looking at the way that passengers were evacuated from the train and the methods for alerting and stopping other trains. We will also be carrying out checks on similar rolling stock.

"This investigation is complex and technical and will take some time. Our findings will be made public."

Note to Editors

The investigation is expected to take some time - a further press release will be issued in due course.

Ends