

# **MEMORANDUM OF UNDERSTANDING BETWEEN THE HEALTH AND SAFETY EXECUTIVE AND THE RAIL REGULATOR**

## **INTRODUCTION**

1. This Memorandum of Understanding is made between the Rail Regulator and the Health and Safety Executive. Its purpose is to promote effective co-ordination of the regulatory roles of each body, and effective co-operation between them. It is not intended to be legally binding or to create expectations whose non-fulfilment would give rise to rights at law.

## **THE RESPECTIVE DUTIES AND FUNCTIONS OF THE HEALTH AND SAFETY EXECUTIVE AND THE RAIL REGULATOR**

2. The Health and Safety Executive (HSE) is appointed by the Health and Safety Commission under the Health and Safety at Work etc Act 1974 (HSWA). Under section 18 of HSWA, the HSE has a duty to make arrangements for the enforcement of the "relevant statutory provisions" as defined in Part 1 of the HSWA. The "relevant statutory provisions" include general duties under HSWA and the requirements of Regulations made under HSWA such as the Railways (Safety Case) Regulations 1994. HSE also provides an information and advisory service, and advises the Health and Safety Commission on policy matters.

3. The duties of the Rail Regulator are defined in Section 4 of the Railways Act 1993. These duties include protecting the interests of rail users, promoting the use and development of the network, promoting efficiency and economy in the provision of rail services and promoting competition in the provision of rail services. Section 4(3)(a) places the Regulator under a specific duty in exercising his functions to "take into account the need to protect all persons from dangers arising from the operation of railways, taking into account, in particular, any advice given to him in that behalf by the Health and Safety Executive".

4. The Regulator's functions are also defined in the Railways Act 1993 and include the issue of licences to operators of railway assets, and approval of all access agreements. Section 151(7) of the 1993 Act states that nothing in or done under the Act affects the operation of the "relevant statutory provisions" as defined in Part 1 of the HSWA. Licences granted by the Regulator will contain a provision enabling the Regulator to revoke a licence following a serious breach of the Railways (Safety Case) Regulations. The Regulator also has specific duties under sections 8(7), 12(4) and 15(5) of the 1993 Act to send a copy of every licence granted by him, and of all modifications to the conditions of such licences, to the HSE as soon as practicable.

5. The parties recognise the importance of maintaining a clear distinction between the health and safety responsibilities of HSE and the wider duties of the Rail Regulator. However, they recognise that actions by each party in performance of its duties may on occasion impinge on the other party's performance of its duties, and that therefore a framework of effective working arrangements is necessary to ensure mutual co-operation whenever appropriate. The following paragraphs set out such a framework of mutual co-operation.

## CO-OPERATION AND EXCHANGE OF INFORMATION

6. The parties undertake to use their best endeavours to co-operate effectively to enable and assist each other to carry out their duties and functions, and to establish and maintain effective working arrangements for that purpose. As part of these working arrangements each party will appoint a liaison officer to act as a focal point for communications between the parties.

### 7. The Rail Regulator undertakes:

- (a) in performing his functions (including his functions as appeal body or otherwise set out in Access Agreements and Railtrack Access Conditions) to consult HSE on any matter which appears to the Regulator to have or to be likely to have material implications for health and safety;
- (b) to take account of any advice on health and safety matters which he receives from HSE which relate to the exercise of his functions, and to consult HSE on any occasion when he is minded to disregard any aspect of such advice;
- (c) not to grant any licence or licence exemption to any person who is subject to the requirements of the provisions of the RSC Regulations unless he has received written notification from HSE that the prospective licensee has prepared and secured acceptance of a safety case under those Regulations or has been exempted from the requirement to do so;
- (d) to notify HSE forthwith whenever he receives an application for a licence or for exemption from the requirement to obtain a licence, and whenever he grants a licence or an exemption;
- (e) to consult HSE before he makes any change to the standard terms and conditions of licences as granted by the Secretary of State before 1 April 1994 and before he departs from them in a particular case unless such departure appears to him not have or to be likely to have material implications for health and safety;
- (f) to comply with the above-mentioned requirements of sections 8(7), 12(4) and 15(5) of the Railways Act (to send to HSE copies of licences granted by the Regulator and of modifications made by the Regulator to licence conditions) by sending the relevant documents to a person in HSE nominated for the purpose of receiving such documents;
- (g) to notify HSE forthwith of every revocation and every surrender of a licence granted by the Regulator;
- (h) to notify HSE forthwith whenever he gives directions under section 17, 18 or 19 concerning an access agreement, or grants an exemption under section 20, or gives or revokes a general approval under section 22;
- (i) to consult HSE before proposing or amending any model clause for access agreements and before permitting any departure from those model clauses or from the access contracts entered into before 1 April 1994 unless such departure appears to him not to have or to be likely to have material implications for health and safety;

- (j) to consult HSE before permitting or directing any change to the Railtrack Access Conditions, unless such departure appears to him not to have or to be likely to have material implications for health and safety;
- (k) to notify HSE forthwith whenever he makes a final or provisional order under section 55 of the Railways Act in respect of a contravention or likely contravention of a condition, or requirement of a licence, or a closure restriction, or institutes any legal proceedings against a railway operator;
- (l) to consult HSE on the preparation of his annual report to the Secretary of State, in particular on railway health and safety matters; and
- (m) to provide HSE with any information in his possession which appears to him to have or to be likely to have material implications for health and safety on the railways, of which he believes HSE is or may be unaware.

**8. The Health and Safety Executive undertakes:**

- (a) in performing its functions, to consult the Regulator on any matter which appears to the Executive to have or to be likely to have material implications for the Regulator's duties and functions;
- (b) to provide the Regulator with timely advice on health and safety matters, both upon the Regulator's request and on other occasions where such advice is warranted;
- (c) to notify the Regulator forthwith whenever a safety case or revision of a safety case is submitted to HSE or an infrastructure controller for acceptance, and of every application to HSE for exemption from any of the provisions of the I RSC Regulations;
- (d) to notify the Regulator of every acceptance, and every refusal, of a safety case or revision of a safety case, and of any exemption granted by HSE from any of the provisions of the RSC Regulations;
- (e) to ensure that the Regulator is included in all relevant consultations carried out by the Health and Safety Commission or HSE involving the railway industry or employees in the industry;
- (f) to inform the Regulator of the details of any enforcement action it proposes to take (or, in any case where immediate enforcement action is necessary, any action already taken) which may affect the quality or nature of operations or could have serious effects on a railway service;
- (g) to consult the Regulator on the preparation of the annual report of KM Railway Inspectorate; and
- (h) to provide the Regulator with any information in its possession, relevant to the performance of the Regulator's functions, of which it believes the Regulator is or may be unaware.

**IMPLEMENTATION AND REVIEW**

9. The parties agree to inform appropriate staff in their own organisations of the contents of this Memorandum of Understanding and any amendment to it which may from time to time be agreed, and of their responsibility for helping to ensure prompt and effective liaison between the parties whenever the need arises' Any difficulties should be taken up at an appropriate level with the other party, initially through its designated liaison officer. The parties undertake to make every effort to resolve any difficulty or disagreement which may arise between them in an open and constructive manner.

10. The parties agree that this Memorandum of Understanding and the working arrangements to which it refers will be reviewed jointly by the parties as the need arises and upon the request of either party. Any changes will be subject to the agreement of both parties.

Signed:

Director General of the  
Health and Safety Executive

Rail Regulator