

MEMORANDUM OF UNDERSTANDING BETWEEN THE HEALTH AND SAFETY EXECUTIVE AND THE STRATEGIC RAIL AUTHORITY

Introduction

- 1 This Memorandum of Understanding (MOU) is made between the Strategic Rail Authority (SRA) and the Health and Safety Executive (HSE). Its purpose is to promote effective co-operation, and the co-ordination of their respective functions. It is not intended to be legally binding or to create expectations non-fulfilment of which would give rise to rights at law. This MOU replaces the letter of understanding signed on behalf of the Director of Passenger Rail Franchising and HSE in 1997.

The roles of SRA and HSE

- 2 The Health and Safety Executive (HSE) is the operating arm of the Health and Safety Commission (HSC), the single regulator for all railway safety matters in Britain. HSE is responsible for administering the Health and Safety at Work etc. Act 1974 (HSWA), and for enforcing the general duties in the HSWA and associated Regulations. In relation to railways, HSE is responsible for assessing and accepting safety cases submitted by infrastructure controllers, train operators and station operators under the Railways (Safety Case) Regulations 2000, and for approving new and altered works, plant and equipment (including rolling stock) under the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994. These functions are carried out by HM Railway Inspectorate, an operating unit within HSE. Responsibility for policy advice to the HSC rests with a separate Railway Safety Policy Section outside HMRI.
- 3 The SRA is established under the Transport Act 2000 which transferred to it the functions of the Director of Passenger Rail Franchising. Its functions include issuing invitations to tender for the right to provide passenger services under franchise, entering into new or amended franchise agreements, providing or securing the provision of passenger services in the absence of an acceptable tender or where directed to do so, and enforcing the franchise terms and conditions. These terms and conditions cover minimum train service levels including train frequency, punctuality and seat capacity; the on-train environment, including toilets, washing facilities and heating; and requirements for stations, including access for people with disabilities and arrangements for providing information to passengers. Franchise agreements include an incentive and penalty regime which rewards or penalises good or bad performance as respects punctuality, reliability and train capacity.
- 4 The purposes of the SRA under the Transport Act 2000 are to promote the use of the rail network for the transport of passengers and goods, to secure its development, and to contribute to an integrated system of transport of passengers and goods. The SRA is required by the Act to -

- a) formulate strategies with respect to its purposes;
 - b) consult the Rail Regulator and such other persons as it thinks fit before formulating its strategies and when reviewing the strategies;
 - c) exercise its functions with a view to furthering its purposes, in accordance with its strategies and a manner best calculated to (amongst other things) protect rail users' interests, contribute to sustainable development and to transport integration and promote efficiency and economy;
 - d) in exercising its functions, to have regard to "the need to protect all persons from dangers arising from the operation of railways (including, in particular, by taking into account any advice given by HSE)" (section 207(3)(a)).
- 5 The Secretary of State may give the SRA directions and guidance on how it should exercise its functions in order to, amongst other things, comply with the safety requirement in d) above, or directions not to exercise its functions in a particular manner.

Co-operation and exchange of information

- 6 The parties recognise that the terms and conditions of franchise agreements can provide an opportunity to secure desirable improvements in health and safety, for example in relation to rolling stock renewal and refurbishment and improved train protection systems, and are committed to a co-operative approach in the interest of securing a safer railway. The parties agree to consider co-ordinated approaches to and joint discussion with railway operators and other industry parties to this end.
- 7 The parties undertake to use every endeavour to co-operate effectively so as to enable and assist each other to carry out their duties, and to establish effective working arrangements for that purpose including jointly agreed procedures for seeking and providing HSE's advice in connection with the SRA's franchising functions. Each party will appoint a Liaison Officer to act as focal point for communications, but may nominate other persons for specific liaison purposes such as the despatch and receipt of franchise documents.
- 8 The parties agree to hold regular liaison meetings approximately once every three months to exchange information and to progress and monitor work streams, and meetings at more senior level approximately once every six months to discuss strategic issues and identify work that is necessary to meet common aims. In addition, the Chief Executive of the SRA and the Director General of the HSE will hold an annual meeting.

Undertakings of the SRA

9 The SRA undertakes:

- a) in performing its duties, to consult HSE on any matter which appears to the SRA to have or to be likely to have material implications for health and safety;
- b) to seek HSE's advice on health and safety matters as provided for in any procedures that are agreed between the SRA and HSE;
- c) to take account of HSE's advice, whether given in response to requests under sub-paragraph b) above, information provided under paragraph 10, or otherwise; and to consult HSE before disregarding any aspect of such advice;
- d) to provide HSE with any information in its possession which appears to have or to be likely to have material implications for health and safety on the railways, of which it believes HSE is or may be unaware;
- e) to provide HSE with a copy of any directions and guidance given to it by the Secretary of State as to the manner in which it is to (or is not to) exercise its functions, and any changes thereto, insofar as these appear relevant to health and safety;
- f) to ensure that HSE is included in all relevant consultations carried out by the SRA;
- g) to consult HSE on the preparation and subsequent revision of any code of practice issued under section 71B of the Railways Act 1993 concerning rail users with disabilities, and before approving any proposal for a railway operator to depart from the standards set out in the Code of Practice;
- h) to consult HSE when preparing any plans or strategies as respects health and safety on the railways;
- i) to consult HSE on the conduct of its reviews of franchise holders' health and safety performance;
- j) to require franchise bidders, and franchise holders seeking to renegotiate a franchise, to submit proposals for maintaining and improving safety, with timescales, with their bid;
- k) to give HSE opportunity to attend any meetings with franchisees where health and safety is to be discussed; and

10 In relation to the franchising programme and individual franchises, the SRA undertakes to provide the following information to HSE:

- a) details of the forward franchise programme and any subsequent changes to the programme;
- b) information relevant to health and safety about specific franchise bids at the short-listing stage;
- c) updated information at 'preferred bidder' stage;
- d) information relevant to health and safety about any request by a franchise holder to extend or significantly change the terms of an

- existing franchise, or of any intention on the part of the SRA to consider such an extension or change; and
- e) the fact that the SRA has determined to enter into a new, extended or significantly amended franchise agreement.

Undertakings of HSE

11 HSE undertakes:

- a) in performing its functions, to consult the SRA on any matter which appears to HSE to be likely to have material implications for the SRA's duties and functions;
- b) to provide the SRA with timely advice on health and safety matters, both upon the SRA's request and on other occasions where such advice is warranted;
- c) to provide the SRA with any information in its possession, relevant to the performance of the SRA's functions, of which it believes the SRA may be unaware;
- d) to notify the SRA when HSE accepts, or rejects, a safety case, or a revised safety case submitted under regulation 16 of the Railways (Safety Case) Regulations 2000, which has been submitted by an existing or prospective franchise holder, and when HSE grants an exemption to an existing or prospective franchise holder;
- e) to inform the SRA when it refuses to grant any approval under the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994, where such refusal is likely to affect the operation of franchise holders' train or station services;
- f) to inform the SRA of the details of any formal enforcement action it is taking which is likely to significantly affect the operation of franchise holders' train or station services;
- g) to provide the SRA with adequate and timely comments, as requested, on the information provided by the SRA under paragraph 10 above;
- h) to advise the SRA of the Health and Safety Commission's and Executive's strategies for railway safety so that they can be integrated into overall industry strategies;
- i) to ensure that the SRA is included in all relevant consultations carried out by the Health and Safety Commission or HSE involving the railway industry;
- j) to inform the SRA about the preparation of each HMRI annual report on the safety record of the railways of Great Britain; and
- k) to inform the SRA of any proposals of which it is aware for new or amended standards or regulations, where such action may require revisions to any Code of Practice issued under section 71B of the Railways Act 1993 concerning rail users with disabilities.

Changes of train operator: safety case implications

12 Train operators cannot operate without having secured acceptance of a railway safety case or an exemption. Following the coming into force of the Railways (Safety Case) Regulations 2000 on 31 December 2000, safety cases which were accepted before that date under Railways (Safety Case) Regulations 1994 are deemed to have been accepted under the 2000 Regulations.

13 When the business of a franchise holder is taken over by a different corporate entity, a new operator, or the SRA itself, the new legal operator inherits the existing safety case and associated duties, but may also need to make a 'material revision' to the safety case to reflect the new circumstances. Under the 2000 Regulations, changes which involve a material revision of a safety case cannot be made before the revision has been formally accepted by HSE, unless HSE grants an exemption. HSE recognises that this has potential implications for the SRA, and undertakes to make every endeavour to exercise its functions in a way which results in Minimum disruption to the SRA's processes. The SRA recognises however that HSE's obligations to safeguard safety cannot be compromised.

Review

14 The SRA and HSE agree that this MOU will be reviewed jointly at least annually, or earlier if the need arises or if one of the parties requests it. Any changes will be subject to the agreement of both parties.

Signed

Signed

Timothy Walker

Director General

Health and Safety Executive

Richard Bowker

Chief Executive

Strategic Rail Authority

(Date) 21/02/01

(Date) 14/02/01