

**MEMORANDUM OF UNDERSTANDING  
BETWEEN HEALTH AND SAFETY EXECUTIVE  
(HSE)  
AND OFFICE OF RAIL REGULATION (ORR)**

Signed by Geoffrey Podger, Chief Executive on behalf of Health and Safety Executive

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Signed by Bill Emery, Chief Executive on behalf of Office of Rail Regulation

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Date: 1<sup>st</sup> April 2006

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Following introduction of the Construction Design and Management Regulations 2007 (CDM 07) and the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) (Amendment) Regulations 2008 (the 2008 EARR amending regulations) the matters formerly dealt with in this annex are now addressed in the main appendix (Appendix A) to the MoU.	
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# **MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE HEALTH AND SAFETY EXECUTIVE (HSE) AND THE OFFICE OF RAIL REGULATION (ORR)**

## **PART I**

### **FRAMEWORK OF UNDERSTANDING**

#### **Introduction**

1. This Memorandum of Understanding (MOU) is made between the Chief Executive of the Health and Safety Executive (HSE) and the Chief Executive of the Office of Rail Regulation (ORR). Its purpose is to ensure effective coordination and cooperation between these organisations in relation to the regulation of health and safety, including policy matters and the enforcement of health and safety law, on railways, tramways and other guided transport systems in Great Britain. The previous MoU between HSE and ORR is replaced with this document.
2. HSE and ORR recognise each other's status as independent health and safety regulators. In accordance with the principles of better regulation they are committed to work closely together to achieve their health and safety objectives, and to ensure joint working where appropriate.
3. HSE considers, in accordance with Section 11 (6) of the Health and Safety at Work etc Act 1974 (HSWA), that this MOU facilitates the performance of its functions under part 1 of HSWA. The Office of Rail Regulation considers, in accordance with paragraph 2(a) of Schedule 3 to the Railways Act 2005 (RA 2005), that this MOU contributes to the provision of appropriate arrangements for fulfilling its duties in relation to the railway safety purposes.
4. HSE and ORR undertake to cooperate in order to enable each other to carry out their responsibilities and functions, and to maintain effective working arrangements for that purpose. This MOU describes the arrangements HSE and ORR will put in place to assist this.
5. HSE and ORR undertake to:
  - secure through their regulatory activity, including enforcement, consistent standards of protection for people at work and members of the public affected by work activities;
  - share knowledge and avoid duplication of effort to maximise efficiency in government and minimise burdens on business;
  - cooperate to ensure that the allocation of responsibilities set out in the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (EARR 06) works effectively and provide clarification for duty holders as necessary;
  - ensure that the development of general health and safety policy takes account of issues relevant to the railways and that mutual research interests are considered;
  - provide mutual expertise and assistance to enable the two organisations to fulfil their functions.

## Purpose of this Memorandum of Understanding

6. The RA 2005 transfers responsibility for rail-related health and safety matters from the Health and Safety Commission (HSC) to ORR by giving ORR responsibility for the application of HSWA Part 1 in respect of 'railway safety purposes'. This means that ORR has policy responsibility for any health and safety risks that either exclusively or primarily concern the construction or operation of railways, tramways or guided transport systems. RA 2005 (Schedule 3, paragraph 10) requires ORR and HSC to enter into arrangements to secure 'cooperation and the exchange of information, in connection with the carrying out of safety functions'.

7. The Railways Act 2005 (Amendment) Regulations 2006 remove 'guided bus systems' and 'trolley vehicle systems' from the definition of 'railway safety purposes', so these systems remain with HSE. The amendment regulations also make it clear that 'transport system' does not include fairground equipment as defined in section 53 of the HSWA.

8. EARR 06 allocate enforcement functions to ORR and define who the enforcing authority (EA) is for particular activities and in relation to certain premises. **Appendix A** to this MOU describes how this will work in practice.

## Liaison Arrangements

9. The following liaison arrangements will be adopted:

ORR	HSE	Frequency	Purpose
Chief Executive	Chief Executive	Annual	To review the success of the MoU in ensuring an effective partnership between ORR and HSE.
Director, Safety Policy Directorate	Director, Policy Group	6 monthly	To review the effectiveness of liaison on policy development
Chief Inspector of Railways	Operations Management Team	Annual	Exchange experiences and review effectiveness of cooperation on operational matters
RIAC	Senior policy representative	3 or 4 times per year	To maintain a link between RIAC and other industry advisory committees to promote rail industry contact with the rest of the health and safety system, and best practice in IAC activity.
HMRI Rep (to be determined)	Joint Enforcement Team (JET)	3 times a year (or more as necessary)	To discuss current and emerging or important legal and enforcement issues

Meetings between representatives of HSC and the ORR Board will be arranged as required.

## **Central Contact Points**

10. Each organisation will have a central contact point to be responsible for monitoring the practical implementation and effective working of the MoU and to assist good working relationships between the organisations. The contact should be made aware of major issues relating to how the MOU works, and will participate in the preparation of briefing for the liaison meetings.

11. The role of the central contact points will be to:
- a. help colleagues make contact with the right people in ORR and HSE. This includes maintaining up to date contact details for HSE Heads of Specialist Groups, HSE Construction Division ORR Area Field Teams, and ORR National Expertise Teams;
  - b. monitor how well the MoU is working and provide briefing on this for the senior level liaison meetings;
  - c. monitor the level of demand for support made throughout the year, making regular contact with their opposite number to compare and confirm levels of demand by each organisation;
  - d. assist in resolving any disputes between ORR and HSE; and
  - e. champion the interests of the other party so that knowledge of the MoU, and the mutual needs of both ORR and HSE, is maintained.

## **Resolving disagreements**

12. Any disagreements will normally be resolved at working level. If this is not possible, the central contact points will seek to settle the issue and ensure a mutually satisfactory resolution. Senior management of both parties will be involved as necessary.

## **Liaison**

13. In practice, most contacts between ORR and HSE will arise in the context of day-to-day operations. It is the responsibility of individuals in both organisations to identify topics requiring liaison between the two organisations, and ensure that they are dealt with effectively.

14. A separate MOU exists between ORR and Local Authorities.

## **Review Arrangements**

15. HSE and ORR agree the following arrangements for reviewing and updating this MOU:

- the MOU will be jointly reviewed on a regular basis, initially annually;
- the arrangements for provision of mutual advice and support described in Part II and Annex 2 will be reviewed annually. This will include scrutiny of the actual use of resources against the estimated levels. Key findings and any proposals for change will be considered as part of regular ORR/HSE liaison arrangements.
- detailed working arrangements in Appendix A may be amended from time to time outside the procedures for reviewing this MoU, but with the agreement of both parties.

## **PART II**

### **ARRANGEMENTS FOR THE PROVISION OF MUTUAL ADVICE AND SUPPORT IN POLICY DEVELOPMENT AND ENFORCEMENT ACTIVITY**

16. In the railway context, ORR has responsibility for enforcing non railway-specific health and safety legislation relating to risks such as noise and manual handling. HSE has responsibility for enforcement in respect of certain railway activity, as described in EARR 06 e.g. within industrial sites. Therefore, both will have an interest in the development of policy and regulations, and technical knowledge in relation to those areas, and will require advice, information and support from each other.

17. Both HSE and ORR will give advice to one another on their own areas of expertise as part of the normal working relationships between two government departments. However, both will need to seek more substantive support from each other from time to time, in particular where expertise in support of enforcement activity and/or policy development is needed.

#### **Principles**

18. HSE and ORR:

- (a) recognise the importance of close working relationships, formal consultation and mutual support in health and safety policy development, enforcement and research;
- (b) agree to provide estimates of the specialist resources each will seek from the other, in good time, in accordance with each other's planning cycle, recognising the need for flexibility in order to respond to demands from reactive work;
- (c) will make adequate arrangements for reimbursement of significant costs associated with the provision of mutual advice and support, and will monitor the demands each makes of the other, and maintain appropriate records.

#### **Nature of support**

19. HSE will provide support to ORR in connection with the exercise by ORR of its functions concerning railway health and safety. This will extend, but not necessarily be limited to:

- I. railway health and safety policy development;
- II. the provision of specialist advice and opinion (see paragraph 21), in support of enforcement action; and
- III. the investigation of injuries, diseases and dangerous occurrences.

20. ORR will provide support to HSE in connection with the exercise by HSE of its functions and will extend, but not necessarily be limited to:

- I. health and safety policy development;
- II. the provision of specialist advice and opinion in support of enforcement action; and
- III. the investigation of injuries and dangerous occurrences.

## **Arrangements for provision of specialist support**

21. HSE will provide specialist support to ORR on risks from ionising radiation, asbestos, construction and civil engineering, pesticides and other health and safety hazards. ORR will provide specialist support to HSE on risks from railway activity remaining within its remit, for example, railways within industrial sites, cableways and fairground equipment.

22. Current estimates for annual resource requirements for operational and specialist support are provided in **Annex 2**. These will be reviewed annually and revised requirements agreed.

23. These estimates do not take account of resource that might be required in support of response to major incidents as it is not possible to predict how much resource any particular incident will require. ORR and HSE agree in principle to provide mutual specialist support in response to major incidents.

24. ORR and HSE have developed a procedure for requesting resource. The suitability of the procedure will be reviewed as part of the annual review process. The Health and Safety Laboratory will supply support and research services for ORR under a separate service level agreement.

## **Procedure for requesting specialist resource**

25. For access to HSE Specialist Group resource, ORR team managers should follow the same procedure as in HSE for making such applications and should inform the ORR central contact point. Details of current names and addresses of Heads of Specialist Groups will be maintained by the ORR central contact point.

26. In agreeing with ORR the nature of the specialist support required, the HSE head of specialist group or specialist unit will consider the level of hazard and risk associated with the issues in the same way as for a request from within HSE, and take account of operational and strategic priorities. Details of the level of resource supplied for each job will be confirmed on conclusion of the job and recorded by the ORR and HSE central contact points.

27. For access to support from HSE operational teams, ORR team managers should contact the relevant HSE Head of Operations. Other specialist advice can be obtained from Head of HSE's Mines Unit; HSE's Chief Inspector of Explosives; the Head of HSE's Operational Strategy in its Nuclear Safety Directorate; and the Head of HSE's Headquarters Unit in its Hazardous Installations Directorate. Details of relevant names and addresses will be maintained by the ORR central contact point who will also record details of the request. Details of the level of resource supplied for each job will be confirmed on conclusion of the job and recorded by the ORR and HSE central contact points.

28. For access to ORR resource HSE team managers must contact the relevant General Manager and inform the HSE central contact point. Details of current names and addresses of ORR General Managers in HMRI will be maintained by the HSE central contact point who will also record details of the request. Details of the level of resource supplied for each job will be confirmed on conclusion of the job and recorded by the HSE and ORR central contact points.

## **Policy Development**

29. HSE and ORR agree to involve one another as appropriate in relevant policy development. This may cover, for example:

- Policy issues where the two organisations have a common interest in legislation and a consistent approach is necessary, as in dealing with certain international regulation;
- Cross-departmental policy initiatives such as better regulation, where mutual legal and policy issues may exist and coordination of response would be desirable;
- The determination of strategies and targets for the improvement of generic health and safety standards, and the development of programmes or other initiatives to tackle them. Also, action to deliver the agreed targets;
- The development of statistical or other information systems on health and safety, and the sharing of such information.
- Formal consultation exercises; each will normally include the other in these.

## **Research**

30. HSE and ORR will also consult one another, as appropriate, when proposals for health and safety research to be funded by either organisation have relevance to the other.

## **Exemptions and other policy processes**

31. Applications from the railway industry for exemption from general (i.e. not railway-specific) health and safety legislation will be dealt with by HSE, who will consult ORR where practicable and inform ORR of the outcome of its deliberations.

32. Similarly, where employers make use of other HSE policy processes such as appeals against a doctor's decision under the Control of Substances Hazardous to Health Regulations 2002, HSE may inform ORR of the appeal and its outcome.

## **Statutory notifications and complaints**

33. Health and safety legislation requires duty holders to notify enforcing authorities of certain events e.g. notifiable accidents and dangerous occurrences. It is likely that from time to time duty holders will send notifications, or complaints about health and safety, to the wrong enforcing authority, particularly as they get used to the changes introduced by EARR06.

34. When HSE and ORR receive a notification that is incorrectly sent, they will arrange for it to be forwarded promptly to the appropriate department or to the central contact point.

## **Sharing statistical information**

35. HSE has been set targets to reduce incidences of ill health, injuries and numbers of working days lost across all industries. To help to monitor progress it will obtain statistical information from ORR.

36. In order to maintain consistent recording of health and safety statistics for Great Britain, ORR will provide the following data to HSE:

- Quarterly reports on RIDDOR reportable injuries, ill health and dangerous occurrences to be provided in May, October, January and April;
- End of year statistics (provisional and final) for the HSE annual report.

## **Financial arrangements**

37. HSE and ORR recognise that the cost of providing significant levels of support from technical and other specialists must be measured and reimbursed. The principle will be to recover full costs in accordance with Treasury guidelines but to keep bureaucracy to a minimum. **Annex 3** contains the proposed arrangements.

## **Civil contingencies**

38. HSE is a category 2 responder under the Civil Contingencies Act 2004, meaning that it is required to provide support during emergency planning and in response to any major civil contingency event.

39. As Network Rail, London Underground and all train operating companies are also included on the list of category 2 responders they are able to provide the necessary advice when planning for or responding to emergencies involving rail transport.

40. ORR will provide HSE with any additional advice on matters within its field of expertise as necessary to enable HSE to fulfil its duties under this legislation.

## **Out of Hours Response**

41. ORR and HSE Out-of-Hours Duty Officers will hold each others' contact details, and will receive guidance on appropriate liaison arrangements.

## **Clarification of investigation arrangements**

42. The respective enforcement responsibilities are set out in EARR 06. In cases where both HSE and ORR have enforcement responsibilities at the same site, such as at docks or intermodal depots, ORR will be responsible for any incident connected with the operation of the railway, while HSE will be responsible for everything else. Each organisation will determine whether to investigate in line with its own criteria and priorities, and cannot mandate the other, but there is an overall expectation that there will be mutual co-operation and liaison in these circumstances.

43. Where an incident occurs at the interface between activities enforced by HSE and ORR, discussions between the two parties should take place which would include an assessment of which authority has jurisdiction to enforce, and a local agreement reached subsequently as to who should lead and what action, if any, will be taken. An example would be where a failure occurs during loading or unloading operations at a container depot. Any technical or organisational issues concerning the failure of the lifting equipment would be for HSE, but there might also be railway issues for ORR, for example, if the load struck a shunter.

44. The Rail Accident Investigation Branch (RAIB) has the prime responsibility for investigation of serious incidents involving train movements, and there is a separate MOU between ORR and RAIB which describes this. RAIB's role is limited to establishing the technical causes of an incident and making recommendations via ORR as the safety authority, including those directed at other parties. ORR retains the responsibility for investigating accidents with a view to establishing any legal breaches and taking enforcement action if appropriate.

## **Enforcement**

45. HSE and ORR have the same powers under HSWA, for their respective areas of enforcement, to issue improvement and prohibition notices and institute legal proceedings. HSE will be guided by the HSC enforcement policy statement, and ORR by its own enforcement policy statement, which both set out expectations and performance standards.

46. Where either HSE or ORR inspectors observe matters of evident concern in areas of the site being visited for which they are not the EA, these should be brought to the attention of the other EA in the following way:

- Where a risk of serious personal injury appears to be involved, notify the other authority by telephone to enable them to consider issuing a prohibition notice. They should inform HSE/ORR subsequently of the action decided; and
- In other cases, notify the other authority in writing.

47. Both HSE and ORR will provide each other with supporting information and expertise, if necessary, to support any notice subsequently issued by the EA.

48. If these matters are within the responsibility of another EA the receiving authority will forward the notification as appropriate and advise the original inspector. The initiative for any further action to rectify any inadequacy then rests with the appropriate EA.

49. Where HSE and ORR have a shared interest, they should keep each other informed about issues of interest to both parties eg failures of the health and safety management system.

### **Liaison with emergency services**

50. HSE is the EA for the premises occupied by the emergency services, and their activities. However, ORR will be liaising closely with the emergency services when they are carrying out their operational duties on the railway. This will mostly be during their operational response to incidents. Any causes for concern, which relate to the emergency services' practices or procedures, will be referred to HSE.

51. ORR will provide support on railway issues for any interventions carried out by HSE.

### **Access to HSE internal advice and guidance on health and safety legislation and enforcement**

52. HSE will provide ORR inspectors with access to its internal advice on interpretation of health and safety legislation. This will be by continued access to the HSE intranet and advice from, among others, HSE Sectors, Health Unit, and Safety Unit. HSE will bring to ORR's attention any significant changes in key operational procedures (e.g. the Enforcement Management Model).

53. HSE will also enable ORR access to advice provided by its Enforcement Policy Unit and the Headquarters Legal and Enforcement Team, including access to information from the Police National Computer for details of previous conviction of witnesses, subject to the agreement of the Home Office.

### **Provision of IT/telecommunications services in regional offices**

54. HSE will provide the level of support required for ORR's business needs in accordance with the agreed service level as set out in the HSE/ORR IT Service Construct. This will be managed by ORR and HSE's Heads of Information Services.

### **Accommodation**

55. ORR will occupy space in HSE regional offices and HSE will provide the level of support services as described in the Memorandum of Terms of Occupation. This will be managed by ORR's Head of Resources.

## **Training and Development**

56. As there are many areas of commonality in inspector training, the participation of ORR inspectors in joint training sessions with HSE inspectors is desirable where this is appropriate and relevant. To this end, HSE will invite ORR inspectors to attend training made available to HSE inspectors. ORR will meet reasonable costs for participation in such events either through transfer of funds or through contribution to delivery of training as agreed with HSE. ORR will agree with HSE mutually acceptable arrangements for exchange of inspectors for developmental or initial training purposes.

## **ENFORCEMENT RESPONSIBILITIES: RELATIONSHIP BETWEEN ORR AND HSE**

### **General approach to the allocation of enforcement responsibilities**

A1. The Health and Safety (Enforcing Authority for Railways and Other Guided Transport systems) Regulations 2006 (EARR)<sup>1</sup> made ORR, in general, the health and safety enforcing authority (EA) for the operation of railways, tramways and other systems of guided transport.<sup>2</sup>

A2. Irrespective of the allocation of EA responsibilities, ORR has regulatory (i.e. overall policy) responsibility for all 'railway safety purposes', as defined in the Railways Act 2005 (RA 2005) Schedule 3 in connection with the construction or operation of railways, tramways, or transport systems using any other mode of guided transport.<sup>3</sup> The definition of 'railway safety purposes' excluded its application to fairground equipment, guided bus systems and trolley vehicles. HSE regulates (i.e. develops overall policy) on all generic health and safety matters such as work at heights or exposure to dangerous chemicals.

A3. The allocation of enforcement responsibilities in EARR enshrined some broad principles, namely:

- ORR would deliver the enforcement responsibilities formerly delivered within HSE by HMRI, unless there are overriding reasons otherwise;
- Wherever possible there should be a single EA for rail industry duty holders and stakeholders, particularly avoiding circumstances where HSE and ORR both enforce at the same location;
- The EA should be determined by the nature of the activity which is being carried out, and should take account of the relevant expertise available to both HSE and ORR. In other words, the enforcing authority is established on the basis of the operation that creates the risk, not on where the effects of the risk may be felt. ORR will be the enforcing authority where a risk is part of a railway operation, even where an incident then causes effects outside the railway (for example an incident with a train results in damages to non-railway premises). Equally, operations enforced by HSE will remain within HSE's

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<sup>1</sup> any references to EARR in this appendix also refer to subsequent amendments, including those made by the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) (Amendment) Regulations 2008 (the 2008 amending regulations) with amendments made under those amending regulations highlighted as such in the footnotes.

<sup>2</sup> any references to 'railway' or 'trains' in this Appendix should be taken to include tramway systems and other guided transport systems as defined.

<sup>3</sup> see section 2 of RA 2005 and paragraph 1 of Schedule 3

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enforcement even if the risks affect the railway (for example where masonry from an HSE enforced construction site could fall on to the railway line).

A4. EARR ensures that where the activity is one of the following, then ORR usually will enforce.

- Railway infrastructure integrity;
- Rail vehicle or rolling stock safe design, maintenance and use;
- Train preparation;
- Train movements and carriage of goods;
- The operation of stations or light maintenance depots.

A5. In all other cases enforcement falls to HSE, except where allocated to local authorities (LAs) under the Health and Safety (Enforcing Authority) Regulations 1998 (EA 98) or alternative EAs under other regulations made under section 15(3)(c) of HSWA.

A6. Where either HSE or ORR is described as the EA, this means in respect of all health and safety legislation. (For ease of reference, this document also refers to the enforcement responsibilities of LAs, although they are not a party to this agreement).

A7. EARR uses the term 'operation of a railway' as a description of the activities for which ORR is the EA.<sup>4</sup> 'Operation of a railway' includes the design and use of railway infrastructure. It also includes activities carried out within railway premises, including the common parts of stations, and may include activities being carried out elsewhere. It is defined widely and is not limited solely by the specified activities in regulation 2 of EARR (see paragraph A12). ORR is also responsible for the enforcement of section 6 of HSWA as it relates to articles and substances exclusively or primarily for railway use (see paragraphs A15-A16).

A8. ORR's enforcement role is limited by EARR regulation 4, which lists exceptions to the activities for which ORR is the EA. In most cases HSE is the EA for these excepted activities, other than where LAs are the EA by virtue of EA 98. There are some premises where both ORR and HSE have enforcement responsibilities (see paragraph A33 for example). In these interface areas the responsibilities of HSE and ORR are set out in EARR.

A9. The following paragraphs describe how EARR allocates the EA for activities, and in some cases premises, and provides guidance and clarification on areas where there is potential for ambiguity. There is no provision under EARR for enforcement allocations to be transferred between EAs by mutual agreement (i.e. the local transfer agreements allowed for under EA 98 are not possible for activities covered by EARR). Where such situations arise, HSE and ORR will work together to agree a common understanding of which organisation has enforcement responsibility under EARR.

### **What is the extent of ORR's enforcement authority? *Regulations 3(1) and 3(2)***

A10. EARR regulation 3(1) made ORR the enforcing authority for all relevant statutory provisions under HSWA to the extent that they relate to the operation of a

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<sup>4</sup> defined in regulation 2, as amended by the 2008 amending regulations.

railway, tramway or other guided transport system. This is the case even if, by virtue of EA 98, those activities take place at premises where HSE or a local authority is the enforcing authority, and includes activities at premises occupied by the Crown.<sup>5</sup> Premises previously transferred or assigned by agreement between HSE and a local authority revert to ORR under EARR.<sup>6</sup>

A11. Under EARR, ORR is the EA for any railway which either has a gauge of at least 350 mm, or crosses a carriageway, (whether or not at the same level), and for any tramways.<sup>7</sup> The term 'operation of a railway' is defined in EARR regulation 2 by reference to a list of activities. It is not limited to particular premises and, therefore, may extend beyond the physical boundary of a railway. This means that some activities at railway access points, such as rail employees unloading goods from lorries on the public highway for use on the railway, would be within the meaning of 'operation of a railway'.

A12. ORR's enforcement remit is subject to the exceptions in EARR regulations 4 and 5, as described in paragraphs A50–A78.

A13. The enforcement of the mainline railway, metro and light rail systems, minor railways and tramways, and guided transport systems such as monorails and people movers is allocated to ORR by EARR regulation 3(2). Guided bus systems are not included.

***Regulation 3(3) – duties of designers, manufacturers, importers and suppliers***

A14. Under the RA 2005 paragraph 1 to Schedule 3, ORR's regulatory (i.e. overall policy) responsibility for 'railway safety purposes' includes developing policy with a view to securing the proper construction of transport systems and the proper construction of locomotives, rolling stock or other vehicles used, or to be used, on such systems.

A15. Complementary to this function EARR regulation 3(3) makes ORR the EA for HSWA section 6 in respect of articles and substances for use in transport systems for which it is the EA for other health and safety matters. This is limited to articles that are designed or constructed, either exclusively or primarily, for use on a transport system, or have been specifically adapted or modified for use on such a system. Similar considerations apply to the manufacture, import or supply of substances.

A16. An example would be a road/rail vehicle that was designed as a piece of construction plant, but then adapted for use on the rail infrastructure. ORR would follow up any issues about the rail running part (e.g. how the brakes work when switching from one mode to the other on the railway), while HSE have the lead in pursuing section 6 enquiries for a brake failure which could equally well have occurred on the road. So, HSE will continue to have enforcement responsibility for some failures in non-rail exclusive equipment, even if the failure occurs while the equipment is used on the railway.

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<sup>5</sup> see regulation 4(3)(h) of EA 98

<sup>6</sup> see regulation 3(6)

<sup>7</sup> see the definition of 'railway'

A17. ORR inspectors deal with manufacturers and suppliers, including visiting their premises as appropriate. They do not enforce either non-rail related design and supply issues or other health and safety legislation at these premises, which are enforced by either HSE or LAs as appropriate.

A18. In a similar vein, EARR regulation 3(4) made ORR responsible for the enforcement of section 6(3) of HSWA with regard to the erection or installation of articles for use in the operation of a railway.

**Regulation 3 (6) – effect of EARR on provisions in EA 98**

A19. Regulation 3(6) of EARR ensured that the allocations to ORR in regulation 3 had effect regardless of anything to the contrary in various provisions of EA 98. For example, under EA 98, the LA is the enforcing authority for office activities.<sup>8</sup> However, under EARR ORR is the EA for railway offices within the same premises as signalling control centres or centres used for the operation of communications systems or for monitoring the ‘operation of the railway’.<sup>9</sup> Likewise, regulations 3(3) and 3(4) of EARR take precedence over regulation 4(4)(a) of the EA 98 in respect of matters relating to the ‘operation of a railway’.

A20. ORR enforces relevant statutory provisions in respect of county councils, LAs and the Crown and their premises to the extent that they come under the activities in regulation 3(2).<sup>10</sup>

**Regulation 3 – effect of allocations for particular activities**

*Stations occupied by a railway undertaking*

A21. ORR is the EA for stations,<sup>11</sup> including the common parts, station car parks, railway offices, ticket offices, left luggage and lost property facilities but excluding those parts of stations occupied by a separate business engaged in office, retail, catering or other consumer services.<sup>12</sup> For these separate businesses the LA would enforce. The exceptions to this are: dry cleaning establishments, which could be found at large stations; radio and TV repairs (highly unlikely to be found on station premises); and walk-in health centres. For those premises HSE is the EA. ORR is the EA for some activities of non-rail duty holders at stations, e.g. movement of goods across a station concourse for loading onto a train. This activity is covered by the term ‘operation of a railway’.

*Training activities*

A22. ORR is the EA for any training if the training forms part of the operation of a railway or if it takes place within operational premises, including signal cabins and

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<sup>8</sup> see EA 98, regulation 3(1); paragraph 3 to Schedule 1

<sup>9</sup> see definition of ‘operation of a railway’ paragraph (f)

<sup>10</sup> see EARR regulation 3(6)

<sup>11</sup> see the definition of ‘operation of a railway’ paragraph (e), and the definition of ‘operational premises’ paragraph (b).

<sup>12</sup> see the exclusion in paragraph (e) of the definition of ‘operational premises’

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control centres.<sup>13</sup> A common example would be personal track safety training, or possession management training.

A23. Where the training takes place in operational premises (including signal cabins and control centres), ORR will be the EA for the training and the premises. Where the training takes place elsewhere, ORR will be the EA for the training but HSE or the LA will be the EA for the premises.

### *Light Maintenance*

A24. 'Light maintenance depots' are premises normally used for light maintenance services, whether or not they are also used for other purposes. 'Light maintenance services' are defined in regulation 2 as refuelling, cleaning and planned maintenance normally carried out at intervals of up to twelve months. 'Maintenance' includes the detection and rectification of faults. ORR is the EA for light maintenance depots even where the depot is not connected to the network, or owned or operated by a railway undertaking.

A25. ORR is the EA for the parking, sheltering, maintenance and repair of any rail, tram or other guided transport vehicle including its inspection, cleaning, fuelling and preparation for use.<sup>14</sup>

### *Factories*

A26. Activities in factories that are not light maintenance depots are enforced by HSE, whether or not the site is occupied by a railway undertaking or connected to the network<sup>15</sup>. This includes those premises that build or renovate vehicles or rolling stock, or manufacture or repair components for use on the railway.

A27. However, ORR is the EA for any renovation, refurbishment, repair or reconstruction work to locomotives or rail vehicles carried out at heritage railway premises if the premises form part of the heritage railway and are used exclusively or primarily by the heritage railway.

### *Signalling, Electrical and Operational Control Centres*

A28. ORR is the EA for the activities of signalling, electrical and operational control centres operated from within administrative buildings, or from other premises, whether adjacent to or remote from, the railway;<sup>16</sup>

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<sup>13</sup> see the definition of 'operation of a railway' paragraphs (f) and (g)

<sup>14</sup> see the definition of 'operation of a railway' paragraphs (a)

<sup>15</sup> see regulation 4(3)(d)

<sup>16</sup> see the definition of 'operation of a railway' paragraphs (f)

*Non-Railway Premises*

A29. EARR identifies certain premises on the railway as 'operational premises'. These include the permanent way, stations, light maintenance depots and land next to the permanent way that is used, occupied or held for railways purposes. However, separately occupied parts of operational premises in which non-railway related activities are carried out are not operational premises. For example, LAs will be the EA for newsagents, even where they are located within a railway station.<sup>17</sup>

A30. LAs are also the EA for any railway-related office or catering activities not carried out on operational premises (for example, in office buildings occupied by railway companies but which are not on a station).<sup>18</sup>

*Museums and heritage centres not part of a 'heritage' railway*

A31. Where a railway is operated at a museum or heritage attraction, ORR is the EA for the operation of the railway. This will include museums where running vehicles are exhibited and which may be moved on a railway system around and out of the museum site. Any surrounding and associated activities would also fall to ORR, in so far as they form a part of the operation of the railway.

A32. When a railway at a museum is operated on a seasonal basis ORR is the EA even when the railway is dormant. However, where a museum houses static exhibits which are not operated then ORR will not be the EA. As an example, if a museum decided to steam a locomotive to demonstrate the operation of the boiler but it did not move, ORR would not be the EA; ORR would be EA for the steaming of a locomotive or operation of the boiler in preparation for the operation of a rail vehicle<sup>19</sup>.

*Rail systems in military establishments*

A33. To provide consistency of approach, under EARR ORR is the EA for all railways in military establishments, with the exception of those in establishments licensed under the Nuclear Installations Act 1965, such as certain naval dockyards.<sup>20</sup> ORR is the EA for any activity covered by the term 'operation of a railway' e.g. infrastructure design, maintenance and safe operation, train preparation and train movements, the interface with the mainline rail network, and the safe design and use of vehicles and rolling stock. ORR is also the EA in respect of the condition and distribution of the load to the extent that this could affect the safe running of the train and the importation of risk onto the mainline railway. HSE is the EA for the activities of loading and unloading of goods on or from trains at premises owned or operated by, or on behalf of, the Secretary of State for Defence. These activities are specifically excluded from the term 'operation of a railway'.

A34. Military Establishments include sites under the direct control of the Ministry of Defence (MOD) or run by private companies on their behalf.

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<sup>17</sup> see the definition of 'operational premises' paragraph (e)

<sup>18</sup> see the definition of 'operation of a railway' paragraph (j)

<sup>19</sup> see the definition of 'operation of a railway' paragraph (c)

<sup>20</sup> see regulation 4(3)(a) and (f)

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### *Devonport Royal Dockyard*

A35. This is a unique and complex establishment that can be used to show how the above principles will apply in practice. The naval base dockyard is a nest of separate sites each of which has to be considered in terms of its allocated EA. At its core is a dockyard owned by Babcock Marine (Devonport) Ltd. The dockyard is operated by Devonport Royal Dockyard Limited (DRDL) a wholly owned subsidiary of Babcock Marine (Devonport) Limited. Part of the dockyard is a nuclear licensed and surrounding this is the larger naval dockyard owned by MOD but containing facilities run on their behalf by DRDL. A railway connected to the national infrastructure runs across the whole site.

A36. Under regulation 4(3) of EARR:

- HSE is the EA for all activities, including the railway, within the nuclear licensed site; and
- ORR is the EA for the operation of the railway throughout the remainder of the site owned by or operated on behalf of MOD.

### *Railways at airports*

A37. Under EA 98 regulation 3, HSE is the EA for the common parts of airports, which are either not within a building or where only passengers are admitted, but not other members of the public. LAs are the EA for the common parts within terminals to which any member of the public can be admitted.

A38. ORR is the EA for any railway or system of guided transport (including people movers) at an airport. The one exception to this is Birmingham Air-Link. As this is a cableway installation, HSE is the EA.

A39. The Civil Aviation Authority has responsibilities for aircraft and passenger safety that are not affected by this MoU.

### *Eurotunnel Folkestone Terminal*

A40. This is a site operating under specific arrangements, with inspections carried out by inspectors who retain their national powers as inspectors but are also authorised by the Channel Tunnel Safety Authority (CTSA), established under the Treaty of Canterbury 1986. The CTSA's cadre of inspectors include members of ORR, the Kent Fire and Rescue Service and Kent Police.

A41. The whole of the demarcated site (which is known as the UK Concession Area), including the terminal and three tunnels up to the mid-point between Britain and France, is considered to be a railway operation, for which ORR is the EA. This includes the following:

- The railway itself and associated passenger and freight loading areas;
- Facilities within the UK part of the Concession Area including the offices, road traffic management and Terminal Control Centre, pay booths, Rail Control Centre;
- Activities of HM Customs and Immigration Service and their French equivalents where they operate on British soil;
- The Euroscan X-ray facility operated by Eurotunnel.

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A42. ORR has no jurisdiction for the UK control zone in France. HSE is the EA for any Police activity within the Concession Area.

A43. Inspectors authorised by CTSA do not have any specific enforcement powers as a result of this authorisation. However, they have certain powers related to entry and investigation under Section 17 of the Channel Tunnel Act 1987 and may use their powers under national legislation while on British territory, i.e. up to the mid-point of the tunnel system. Those CTSA authorised inspectors who are also members of ORR will be able to use their enforcement powers in the Concession Area on the English mainland since ORR is the EA.<sup>21</sup> HSE specialist inspectors authorised by CTSA will need to refer to ORR for action on any enforcement issues arising within the Concession area.

### *Carriage of dangerous goods*

A44. ORR is the EA for health and safety risks associated with the carriage of dangerous goods by rail. This includes enforcing the relevant duties imposed by the Carriage of Dangerous Goods and use of Transportable Pressure Equipment Regulations 2004 (as amended), together with the few remaining requirements, which relate to petrol tankers, contained in the Carriage of Dangerous Goods Regulations 1996 (CDGRail).<sup>22</sup>

A45. The Police and the Vehicle and Operator Services Agency (VOSA) are the enforcing authorities when dangerous goods are carried on the road. HSE is the EA for all other land-based carriage of dangerous goods; however, by virtue of regulation 58(5) of the Carriage of Dangerous Goods and use of Transportable Pressure Equipment Regulations 2004, the Secretary of State for Transport is the EA for security provisions relating to the carriage of dangerous goods by rail (regulation 10A). This arrangement is continued by regulation 3(5) of EARR.

A46. As far as class I explosives are concerned, ORR enforces once the package is travelling on the mainline rail network, or in the case of military railways, once the consignment has been loaded. HSE is the EA for the classification and packaging requirements and loading procedures at consignor premises.

A47. There are some differences in the arrangements for enforcing the requirements relating to the carriage of class 7 radioactive materials. In this case, DfT is the EA for all requirements concerning the classification, packaging, labelling and preparation of radioactive material for carriage by rail. This authority has been delegated to DfT under a separate agency agreement<sup>23</sup> and MoU<sup>24</sup> between DfT, ORR and HSE, and is consistent with DfT's role as the designated competent authority for this.

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<sup>21</sup> Section 10 (1) of the Channel Tunnel Act 1987 incorporates the length of the tunnel up to the boundary with France, together with the surrounding supporting subsoil into England, and states that the laws of England shall apply.

<sup>22</sup> see regulation 3(1) and see paragraph 10 to the Schedule which shows consequential amendments to the Carriage of Dangerous Goods and use of Transportable Pressure Equipment Regulations 2004.

<sup>23</sup> [http://www.rail-reg.gov.uk/upload/pdf/Agency\\_Agreement-Radioactive\\_Materials.pdf](http://www.rail-reg.gov.uk/upload/pdf/Agency_Agreement-Radioactive_Materials.pdf)

<sup>24</sup> [http://www.rail-reg.gov.uk/upload/pdf/MoU-Radioactive\\_Materials.pdf](http://www.rail-reg.gov.uk/upload/pdf/MoU-Radioactive_Materials.pdf)

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A48. ORR is the EA for other matters, e.g. training requirements concerning the actual carriage of such materials by rail.

### *Radiation emergencies*

A49. The Radiation (Emergency Preparedness and Public Information) Regulations 2001 (REPPIR) establish a framework for the protection of the public through emergency preparedness for radiation accidents with the potential to affect members of the public, and ensure the provision of information to the public.<sup>25</sup> REPPIR places duties on operators of premises on which are held, or which contain the facilities to hold, radioactive substances over certain thresholds, and to carriers who transport such substances by rail. HSE is the EA except where the goods are being handled as part of the operation of a railway, in which case ORR will enforce requirements related to duties on carriers.

A50. Certain radioactive sources and packages containing radioactive substances are exempted from REPPIR, and under current practice in this sector the types of transport packages and quantities of radioactive substances generally carried by rail are unlikely to fall within the scope of REPPIR.

### *British Transport Police (and security of railways)*

A51. HSE is the EA for the British Transport Police when they are carrying out their duties on the operational railway, as they are a police service and not part of the operation of a railway. This includes their occupation of police stations on railway premises, as this activity is not considered to come under the definition of 'operation of a railway.' Enforcement in respect of a police authority is reserved to HSE under EA 98. As many of the risks BTP officers are exposed to arise from the operation of the railway, ORR inspectors will work closely with HSE to provide the necessary expertise. Private security companies are considered to be part of the 'operation of a railway' and ORR is the EA.

### **Regulation 4 exceptions**

#### *Cableway installations*

A52. HSE is the EA for cableway installations, which are defined in full in regulation 2.<sup>26</sup> A result of this was to allocate cable drawn cliff railways to HSE, even though these might previously have been subject to permissioning under the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994 (ROTS).<sup>27</sup> Where, however, the installation is also a tramway as at Great Orme, or a rack railway, ORR is the EA.

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<sup>25</sup> see regulation 3(1) of EARR and see paragraph 10 to the Schedule which shows consequential amendments to the Radiation (Emergency Preparedness and Public Information) Regulations 2001.

<sup>26</sup> derived from the Cableway Installations Regulations 2004, made under European Directive 2000/9/EC

<sup>27</sup> the definition of a cableway installation in regulation 2 includes at (c)(iii) 'funicular railway or other installation with vehicles mounted on wheels or other suspension devices where traction is provided by one or more cables.'

*Fairground equipment*

A53. HSE is the EA for the operation of any system that is defined as fairground equipment as in HSWA section 53.<sup>28</sup> This will include rides in parks where other health and safety matters are enforced by LAs. If a railway or system of guided transport is not similar to a fairground ride it is outside the definition of 'fairground equipment' and enforcement will fall to ORR. If a railway or system of guided transport is similar to a fairground ride but is nonetheless designed to carry passengers from one part of the park to another, then this also takes it outside the definition of fairground equipment (because it would be designed to be in motion not for entertainment purposes but for people-moving purposes) and it too will be enforced by ORR.

*Guided buses*

A54. HSE is the EA for guided bus systems.<sup>29</sup> Such systems use vehicles that can operate in two modes – on a road under the guidance of a driver or by means of external guidance such as tracks, buried cables etc.<sup>30</sup>

A55. Overall, these vehicles look and operate like buses rather than trains, and are subject to road traffic legislation. The policy lead is with DfT and enforcement with either the police, VOSA, Traffic Commissioners or Highways Agency. HSE is the EA for any residual health and safety issues not adequately addressed by more specific road safety legislation. HSE enforces in line with its enforcement policy on other buses.

*Miniature railways*

A56. Most miniature railways, which operate within a site such as an amusement park or fairground, are enforced by HSE or Local Authorities. ORR only enforces for miniature railways (i.e. railways below 350mm gauge) that cross a public highway.<sup>31</sup>

*Provision of bus substitution services*

A57. A bus substitution service is a bus service provided as an alternative to a railway or tramway service. ORR is the EA for a bus substitution service while it is on operational premises, but not otherwise. The selection of a suitable bus company and the embarkation and disembarkation of passengers from the buses within operational premises relate to the operation of a railway, and are enforced by ORR.

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<sup>28</sup> see regulation 4(1)(b). Also note that the Railways Act 2005 (Amendment) Regulations 2006 removed 'fairground equipment' from the reference to transport system in subparagraph 3 of paragraph 1 to Schedule 3 of the Railways Act 2005. This means that ORR does not have policy responsibility for health and safety of fairground equipment. EARR regulation 4(1)(b) removes the operation of fairground equipment (including rollercoasters which otherwise would fall under the definition of railway) etc from the activities in regulation 3(2).

<sup>29</sup> see regulation 4(2)(a) of EARR.

<sup>30</sup> see definition of 'guided bus system'

<sup>31</sup> see regulation 4(1)(c) of EARR, amended by regulation 4 of the 2008 amending regulations.

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Safety on the road and general safety within bus companies remain matters for the police and HSE respectively as EAs for these activities.<sup>32</sup>

### *Harbours*

A58. ORR is the EA for the operation of any railway where the railway also operates outside the harbour and is transporting goods or passengers to and from the harbour. ORR is also the EA for a railway that operates exclusively within a harbour if the railway is carrying members of the public.<sup>33</sup> This is in respect of any activity covered by the term 'operation of a railway' and includes pier railways and pier tramways.

A59. HSE is the EA for any railway within a harbour that is not connected to the network and carries no members of the public. This would include railways where there is movement of materials to and from factories and associated storage facilities, such as tank farms, on the harbour site.

A60. HSE is also the EA for all activities within the harbour other than the operation of the railway, including the loading and unloading of trains.<sup>34</sup>

A61. Harbours, with a railway transferring goods or passengers to and from docks and onto the mainline rail network, can therefore be contrasted with railways associated exclusively with industrial processes. This split of responsibility is considered appropriate because such harbours, unlike other industrial sites, are an integral part of the national transport network, and significant rail movements are usually involved, often using level crossings over the public highway.

### *The operation of pier railways and tramways*

A62. ORR is EA for pier railways and tramways, i.e. railways and tramways on a pier that are used by the public as a means of transport. However, HSE remains the enforcing authority where the pier railway is also a miniature railway (see paragraph A54).

### *Rail systems within industrial sites*

A63. Under EARR regulations 4(3)(c) to 4(3)(h), rail operations carried out at certain listed sites are exceptions to the operation of a transport system. This means that ORR is not the EA for rail operations within the following:

- an establishment to which the Control of Major Accident Hazards Regulations 1999 applies;
- a factory<sup>35</sup> (including a power station);<sup>36</sup>

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<sup>32</sup> see regulation 4(1)(d) of EARR, amended by regulation 4 of the 2008 amending regulations.

<sup>33</sup> see regulation 4(3)(a) and (b) of EARR amended by regulation 4(a) and (b) of the 2008 amending regulations.

<sup>34</sup> see definition of 'operation of a railway' paragraph (k) in EARR, amended by the 2008 amending regulations to replace the term 'dock premises' with 'harbour'.

<sup>35</sup> within the 'close and curtilage' of the factory, as defined in the Factories Act 1961.

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- a mine or quarry;
- a nuclear licensed site; or
- warehouse premises.

A64. At these sites the transport of materials tends to be primarily for processing locally, and rail movements are likely to be limited. HSE is the EA within these sites. Once a train exits from them on to the mainline rail network, enforcement passes from HSE to ORR.

A65. When an incident occurs solely in relation to railway related activities within the site (e.g. internal shunting of wagons), but has consequences which impact on activity on the mainline rail network, the enforcing authority will be that for the location where the original incident occurred, e.g. HSE if the failure occurs within the factory premises, and ORR if the failure occurs outwith the factory premises.

### *Mines*

A66. Under the Mines and Quarries Act 1954,<sup>37</sup> a railway serving a mine and owned by a mining company is deemed to be part of the mine. For the purposes of EARR the definition of mine has been amended so that railways serving and owned by a mine, but outside the curtilage, are not deemed to be part of the mine.<sup>38</sup> An effect of this change is that ORR is the EA for any specialist mines regulations which could apply to any such railway outside of the curtilage. This is because it is not part of the mine under the definition in section 180 of the Mines and Quarries Act 1954.

### *Quarries*

A67. Enforcement responsibilities in respect of the operation of a railway in connection with quarries will be the responsibility of ORR only where the railway line is exclusively under the control of either:

- a railway company<sup>39</sup>; or
- a person who carries on an undertaking which consists of, or the main activity or one of the main activities of which consists of, the management of a network within the meaning of section 83(1) of the Railways Act 1993.

A68. In all other circumstances enforcement in relation to the operation of a railway in connection with a quarry will fall to HSE. Where enforcement matters arise relating to the safe design, construction, operation and maintenance of such a railway ORR will provide technical support and advice to HSE in line with protocols existing at that time.

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<sup>36</sup> see regulation 2 – definition of ‘factory’ (e) – a factory does not include any power generating stations which produce power exclusively for the railway – e.g. power plants for the London Underground

<sup>37</sup> Section 180

<sup>38</sup> see regulation 2 – definition of ‘mine’ and the corresponding amendment to the EA 98 at paragraph 5(2)(c)

<sup>39</sup> as defined in the Quarries Regulations 1999, i.e. a railway company established under an enactment

*Rail systems within inter-modal depots*

A69. Inter-modal depots are found either as part of a dock complex or connected to the mainline rail network by short sidings. They handle containers, which are transferred from rail to road and vice versa, generally by the use of straddle carriers. EARR does not define 'container', so this is taken to mean any box, container, tank or tank container, or vessel capable of being transferred between different types of vehicle. This may cover not only containers as defined in international transport standards, but also vessels for gases or liquids or non-standard designs. Goods handling and transfer facilities which are properly part of railway operations, such as transferring materials from road to engineering trains working in possessions are not inter-modal depots.

A70. ORR is the EA for the 'operation of a railway' within an inter-modal depot in relation to rail infrastructure maintenance and safe operation, train preparation and train movements, the interface with the mainline rail network, the safe design and use of rolling stock and the condition and distribution of the load (the load examiners' duties).<sup>40</sup> HSE is the EA for loading and unloading on or from trains.<sup>41</sup>

*Level crossings*

A71. ORR is the EA for all places where railways cross public roads, other public rights of way, such as footpath and bridleway crossings, or cross private access ways such as crossings between a farmer's fields. HSE is the EA for crossings on railways within a range of industrial premises, including factories, mines, nuclear installations, quarries, warehouses and certain harbour railways, by virtue of regulation 4. However, ORR is the EA for any level crossing orders made under section 1 of the Level Crossings Act 1983, regardless of whether the crossing is within premises otherwise allocated to HSE.

A72. The enforcement allocations described above mean that only ORR can take enforcement action in the event of a breach of a level crossing order, wherever the crossing may be. These orders specify controls which must be in place at a particular crossing, and the duty to comply with such an order is in regulation 3 of the Level Crossings Regulations 1997. Good liaison is required in the case of a level crossing on industrial premises which has an order, and in cases of doubt ORR will confirm to HSE if an order is in force.

A73. Enforcement action may be required in circumstances where an order is not in force, or that have nothing to do with the requirements in an order, for example, where there has been misuse of a crossing. In these cases the relevant enforcing authority for the railway concerned can take enforcement action using general HSWA provisions.

A74. Situations may arise where HSE is the EA for a duty holder whose premises incorporate a level crossing for which ORR is the EA. An example would be when a farmer uses an accommodation crossing between two fields, and access is by a private road or track over his land rather than a public right of way. An incident at

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<sup>40</sup> see definition of 'operation of a railway'

<sup>41</sup> see definition of 'operation of a railway' paragraph (k), which takes loading and unloading at intermodal depots out of the ambit of the definition of operation of a railway

such a crossing may well involve both ORR and HSE in looking at issues of possible crossing misuse and the wider health and safety management arrangements of the duty holder. In such cases ORR and HSE inspectors will work in close co-operation and determine who the EA is for any enforcement action considered necessary.

A75. ORR inspectors have powers under HSWA section 20 to enable them to pursue inquiries with a non-rail duty holder and, if relevant, require the non-rail duty holder to implement a safe system of work for use of that crossing and ensuring the safety of the rail network and relevant rail and non-rail employees.

**Regulation 5: Construction**

A76. ORR has regulatory (i.e. overall policy) responsibility for all 'railway safety purposes', as defined in paragraph 1 of Schedule 3 to the Railways Act 2005, in connection with the construction (as well as the operation) of railways, tramways, or transport systems using any other mode of guided transport.

A77. ORR is the EA in relation to 'construction work' as defined in the Construction (Design and Management) Regulations 2007 (CDM), where the activities are the management and carrying out of such work on the operating railway.<sup>42</sup> This includes:

- Railway maintenance, repair, renewal and improvement work carried out on existing infrastructure.<sup>43</sup> This will generally include conversion of existing infrastructure and permanent way from one form of rail transport to another (e.g. conversion of freight lines to light rail) or from one rail operator to another (e.g. mainline to metro).
- Construction work within 'operational premises'<sup>44</sup> and on fixed assets other than the infrastructure within operational premises

A78. However, there are the following exceptions to these basic rules (achieved by way of exclusions from the definition of construction within 'operational premises'<sup>45</sup>)

- HSE will be the EA if work (within operational premise and on fixed assets other than the infrastructure) is carried out:
  - in a physically segregated area where the normal activities (other than the through running of the railway ) are suspended, or
  - where the construction work is arranged in such a manner that access to the construction area is separated from public areas or areas where railway workers are routinely working on the operational premises.
- Where a bridge or other structure, which spans or is adjacent to operational premises, is not owned by the transport undertaking (e.g. a road bridge over a

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<sup>42</sup> see definition of 'operation of a railway' paragraph (h)

<sup>43</sup> see regulation 5(1) of EARR as amended by regulation 5 of the 2008 amending regulations.

<sup>44</sup> see regulation 5(2) of EARR as amended by regulation 5 of the 2008 amending regulations.

<sup>45</sup> see regulation 5(3) of EARR as amended by regulation 5 of the 2008 amending regulations.

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railway) HSE is the EA for any construction activity. However, where a bridge or other structure owned by one operating railway system spans or is adjacent to the operational premises or infrastructure of another operating railway system, then ORR is the EA.

- HSE is the EA for construction activity in relation to a new build project until it becomes an operational railway, including any extension or enlargement to the railway except where the work is in such close proximity to the operation of a railway, tramway or other system of guided transport that such operation creates a risk to the health, safety or welfare of those engaged in that work. Where such circumstances arise ORR will be the EA in respect of such activities.
- HSE is the EA for construction activity relating to the reinstatement of a railway, where this involves anything other than minor, non-railway preparatory work (i.e. HSE will enforce where the work involves such things as extensive felling of trees and clearing of brushwood, removal of accumulated waste or other obstructions at multiple locations, or any reinstatement of earthworks and other structures).

A79. The interface between EAs for rail related construction activity necessitates good liaison arrangements between HSE and ORR so that sensible working arrangements can be agreed between the enforcing authorities and communicated to the duty holder. Railway construction projects notifiable under the CDM regulations can be notified by duty holders using HSE's on-line notification form following agreement between HSE and ORR. ORR have formalised access arrangements to the HSE F10 database and any notification of railway construction projects made on it is regarded as having been notified to the relevant enforcing authority.<sup>46</sup>

### *Work with asbestos*

A80. HSE is the EA for any work with asbestos that requires a licence under the Control of Asbestos Regulations 2006 (the asbestos regulations)<sup>47</sup>, whether or not such work is also 'construction work' as defined in the CDM Regulations. Work requiring a licence also requires notification to the appropriate EA, which for licensable work will be HSE.

A81. ORR is the EA for any other work with asbestos that does not require a licence and that is carried out at light maintenance depots, operational premises or elsewhere on the railway system.<sup>48</sup> ORR is also the EA for the duty on occupiers of railway premises to manage the presence of asbestos in their buildings.

### *Gas Safety*

A82. HSE is the EA for the installation, maintenance or repair of any gas system (or any work in relation to a gas fitting) where the work is being carried out in premises by people who do not normally work in those premises. This would include

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<sup>46</sup> <https://extranet.hse.gov.uk/lfserver/external/f10>

<sup>47</sup> see regulation 4(5)

<sup>48</sup> see definition of 'operation of a railway'

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most work being carried out by Network Rail gas fitters. ORR will be the enforcing authority for the installation, maintenance or repair of gas systems (or any work in relation to a gas fitting) when it is being carried out by people who normally work in the premises where the work is being carried out.<sup>49</sup>

### Regulation 7 Transitional Provisions

A83. Regulation 7 of EARR provided for the seamless transfer of responsibilities from HSE to ORR. Anything which HSE had done was treated as having been done by ORR,<sup>50</sup> ORR continued activities started by HSE,<sup>51</sup> and references in documents to HSE could be read as references to ORR,<sup>52</sup> so far as the circumstances required it.

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<sup>49</sup> see paragraph 4(b) to Schedule 2 of EA 98

<sup>50</sup> see regulation 7(2)

<sup>51</sup> see regulation 7(3)

<sup>52</sup> see regulation 7(4)

## **LIAISON ARRANGEMENTS BETWEEN ORR RAILWAY AND HSE CONSTRUCTION INSPECTORS**

Following introduction of the Construction Design and Management Regulations 2007 (CDM 07) and the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) (Amendment) Regulations 2008 (the 2008 EARR amending regulations) the matters formerly dealt with in this annex are now addressed in the main appendix (Appendix A) to the MoU.

**ESTIMATES FOR ANNUAL RESOURCE REQUIREMENTS**

HSE Discipline	No of days per year	Band	Comments
Construction	30	Band 2: 15 days. Band 3: 15 days	Includes civil engineering
Electrical	30	Band 2: 15 days. Band 3: 15 days	
EMAS	10	Band 2: 5 days. Band 3: 5 days	
Mechanical	10	Band 2: 5 days. Band 3: 5 days	Includes pressure vessels
Noise/vibration	10	Band 2: 5 days. Band 3: 5 days	
Occupational hygiene	20	Band 2: 10 days. Band 3: 10 days	Includes lead, asbestos
Ionising radiation	5	Band 2: 2.5 days. Band 3: 2.5 days	
Pesticides	5	Band 2: 2.5 days. Band 3: 2.5 days	
Legal advice	2.5	Band 1: 1.5 days Band 2: 1 day	Advice from Legal Adviser's Office
Legal support	2.5	Band 2: 1.5 days. Band 3: 1 day	Operational policy and liaison with OPSD or FOD HQ
Explosives	5	Band 2: 3 days Band 3: 2 day	

ORR specialist input to HSE planned work provisionally estimated to be 15 days annually.

## **ARRANGEMENTS FOR SERVICE CHARGES**

1. HSE and ORR will levy charges for the services provided in accordance with this Agreement. This will comprise an annual payment to cover the costs associated with the estimated level of support required. ORR and HSE will consider the costs associated with the estimated resource demands and agree the indicative payment at the start of each financial year.

2. Each organisation will monitor the demands made in terms of staff time, calculated to the nearest hour; travel and subsistence costs; and any additional necessary expenses. The indicative cost for the respective organisations will be reviewed in August each year and adjusted where necessary. Any balancing payment will be agreed and made by the end of September. The objective will be to recover the full cost in accordance with Treasury guidelines, of advice and support in steady state (see paragraph 37).