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HEALTH AND SAFETY COMMISSION

Update on Rail Transition Issues

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Issue

1. To update the Commission on developments relating to the transfer of responsibility for health & safety regulation of the rail industry to the Office of Rail Regulation (ORR) and plans for future papers to the Commission.

Timing

2. Routine.

Recommendation

3. That the Commission notes progress on rail transition & the plans for future papers. [ref previous papers in October 2004: misc 04/27 and November 2004: HSC/04/124]

Background

4. The Railways Act (2005) received Royal Assent on 7 April 2005. The Act gives effect to the changes set out in the White Paper "The Future of Rail", published in July 2004, including the transfer of responsibility for health & safety regulation. A commencement order, to be included in the railways enforcing authority regulations (see paragraph 6 below) is needed to bring the change into effect. Transition work in HSE is proceeding on the assumption that the transfer will take place in early January 2006 – immediately after the holiday period.

Argument

The Railways Act

5. The main points to note are as follows:

- The Act transfers rail-related health & safety policy functions under HSWA from the Health & Safety Commission to ORR by reference to 'railway safety purposes'.
- There is a duty on ORR & HSE to enter into arrangements to secure 'cooperation & the exchange of information, in connection with the carrying out of safety functions'. The Act disapplies section 18(5)(b) of HSWA to ORR and there is therefore no duty on ORR as an enforcing authority to carry out its duties in accordance with

guidance from HSC. HSE officials expressed concern on behalf of HSC about this and the issue was put to Ministers who re-affirmed that they wished to rely on voluntary arrangements – assumed to be a Memorandum of Understanding (MoU) - between ORR and HSE.

- ORR will not have the power to issue or amend Approved Codes of Practice (ACoPS), although it will be able to issue guidance to duty holders.

Enforcement Regulations

6. DfT is preparing supporting regulations to be made under HSWA, which will provide the legal framework for ORR's new role. In broad terms, the regulations will:

- Appoint ORR as an enforcing authority under HSWA (for railway specific and general health & safety provisions on the railway)
- Give ORR inspectors the same powers as HSE inspectors
- Allow for the transfer of current or pending enforcement / litigation action.
- Clarify which activities / premises will be inspected by ORR and which by HSE (or local authorities). HSE and ORR have made good progress on agreeing where the boundaries of responsibility will lie and have sent DfT a table of proposals, which could form a schedule to the regulations. This has been agreed with other operational divisions of HSE. DfT is holding informal consultations with industry about the proposals.

7. An above the line paper will be prepared for the Commission meeting on 26 July to enable the Commission to comment on proposals for these regulations before the formal consultation period (planned to start in mid August 2005). The DfT timetable for preparation of the regulations is very tight (and has not yet been agreed by their lawyers). HSE and ORR have expressed concern to DfT about this and stressed the need for agreement by HSC and ORR Board.

MoUs

8. Work has also started on preparing an MoU between HSC/E and ORR. The arrangements set out in this will have an important part to play in ensuring consistency of approach in implementation of health & safety law and effective regulation. ORR has publicly supported the principle that equivalent work activities must meet the same health & safety standards and that these standards should be enforced in a consistent manner by regulators. An outline of the MoU will be included in the paper for the Commission meeting on 26 July. HSE Rail officials are also working with ORR to ensure that other necessary MoUs and Agency Agreements (AA) are in place by the date of the merger.

Staff and Governance Arrangements/Transition Delivery Arrangements

9. ORR have work in hand to prepare for their new combined safety and economic role. Details of the planned recruitment for senior executive posts, proposals for future funding and other governance arrangements is contained in **Annex 1**. In addition to regulatory, policy and governance work, HSE and ORR are working closely on a wide-ranging programme to ensure that there is a smooth transition and ORR can operate as an effective regulator. Key work is contained in Annex 1.

Future Papers

10. We propose the following further papers for the Commission:

- above the line on 26 July on DfT's proposed railway enforcement regulations and an outline of the proposed MoU between HSC/E and ORR;
- misc paper in September to update on transition, including:
 - draft rail health & safety strategy for ORR;
 - MoU between HSC/E and ORR;
 - proposals for future funding of the regulator, etc
- as there are no Commission papers in November, we will find an alternative means of seeking HSC's approval of the final regulations;
- paper prior to the transfer on implementation of the changes to give the Commission an opportunity to discuss any concerns;
- in addition, an opportunity will be identified for a valedictory statement/speech by the Chair shortly before the transfer of responsibility.

Consultation

11. Within HSE Rail

Presentation

12. N/A

Costs and Benefits

13. N/A

Financial/Resource Implications for HSE

14. See Annex 1 para 6.

Environmental Implications

15. N/A

Other Implications

16. N/A

Action

17. The Commission is invited to note progress on rail transition and plans for future papers.

Staff and Governance Arrangements

1. ORR has been recruiting for several senior executive posts. An announcement of the new Chief Executive is expected shortly. Jim O'Sullivan, Director of Quality Assurance for Transco, was appointed on 1 April as the non-executive ORR Board member to give the ORR Board specialist high-level health & safety experience, ORR has proposed that HMRI should retain its distinct identity within the new ORR and continue to discharge the duties of the Safety Authority including enforcement of all health & safety law for the operational railway. ORR has recently advertised for a successor to Allan Sefton, who will retire toward the end of 2005, as head of the Inspectorate. ORR also proposes to create a new Safety Policy Directorate, separate and distinct from HMRI. A decision on who will lead this Directorate is expected shortly after 15 June. The Directorate will be responsible for presenting options and recommendations to DfT Rail and industry, whether investment or legislative based, to improve safety on the railways. The Directorate will have access to a mix of health & safety, technical & economic skills.
2. 

3. Work has started on the preparation of an enforcement policy statement for ORR and an initial meeting is being held in June with HSE officials. We will keep the Commission updated on developments.
4. ORR Board proposes to set up an advisory committee to ensure it has the opportunity to consult stakeholders, including employer and worker representatives. It is currently considering options for the constitution and formation of such a committee. The views of Rail Industry Advisory Committee (RIAC), and particularly those of the Chair, Margaret Burns, have been sought and there will be further consultation on proposals in due course. ORR has also been working up a programme of consultation with stakeholders for key stages in the transition process. It intends to prepare regular safety bulletins to give updates on progress (the first was published in April) and is likely to hold an event for stakeholders in the Autumn, to explain its thinking on how a joint economic and safety regulation will operate.



Delivery Arrangements

6. Workstreams have been set up on finance, HR, Accommodation, IT and Business Support. Key work includes:

- establishing the resource HSE will save by not having to support HSE Rail in order to inform considerations of how much HSE's funding will reduce following the transfer of responsibility. It is likely that ORR will continue to seek support in areas of HSE expertise and this will be reflected in the financial settlement and the MoU;
- ORR is proposing to locate all London-based staff in the new organisation in the same building and has identified the CAA HQ building in Kingsway as the favoured option. However, this decision is subject to Treasury approval and the successful conclusion of the usual negotiations for new property. Field staff outside London will continue to be based in HSE offices post-transfer and subject to any further review that ORR may wish to conduct;
- transferring all HSE Rail staff who are in post at the date of the merger to ORR. Transferred staff will have the opportunity to apply for posts in HSE, as if they were HSE staff, for three years. ORR are developing a programme for harmonisation of pay systems.
- setting up a business support workstream to ensure that the necessary support mechanisms are in place to ensure effective regulation after the merger. Although the work is being carried out mainly by HSE Rail staff, the workstream will be 'owned' by ORR, as it will increasingly be dependent on decisions by ORR as it moves forward;
- ensuring involvement of staff and their representatives. For example, a Joint Consultative Committee has been set up for transition delivery matters.