

OFFICIAL

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE HEALTH AND SAFETY EXECUTIVE
AND THE OFFICE OF RAIL AND ROAD**

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Introduction

1. This Memorandum of Understanding (MoU) is made between the Chief Executives of the Health and Safety Executive (HSE) and the Office of Rail and Road (ORR).
2. This MoU aims to ensure effective coordination, cooperation and joint working between HSE and ORR in relation to the regulation of health and safety on Great Britain's railways, tramways and other guided transport systems. It also facilitates wider cooperation across a range of policy, operational and other matters of shared interest between the two independent health and safety regulators. This MoU replaces the previous agreement dated 19 January 2017.

Purpose of the MoU

3. The Railways Act 2005 Schedule 3 para 10(1) gives ORR and HSE (previously Health and Safety Commission) a duty to enter into an arrangement to secure co-operation and exchange of information in connection with the carrying out of safety functions. This MoU meets that requirement.
4. This MoU recognises the allocation of responsibilities under the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (EARR). The MoU contributes to;
 - each regulator carrying out their responsibilities and functions in relation to railway matters;
 - consistent standards of protection for people at work and members of the public affected by work activities; and,
 - the effective delivery of any Agency Agreements between the two organisations.
5. Both ORR and HSE recognise the joint benefits which are likely to arise from cooperation and coordination on a variety of regulatory functions. These include the development and review of health and safety legislation and regulation, policy matters and the enforcement of health and safety law.

Financial arrangements

6. Outside of routine cross-regulator interactions, both HSE and ORR recognise that there are costs from providing more significant levels of support. That includes technical, research or other specialist resources which may have been agreed to support a particular regulatory function. HSE and ORR will recover the full costs of such support. Arrangements will be agreed in advance of the work commencing.

Collaboration, advice and support

7. There are areas of shared interest between HSE and ORR, including the shared enforcement of health and safety legislation. Where there is a shared interest, both organisations agree to actively cooperate in the development or review of regulations, guidance, regulatory practice or interpretation and policy.
8. Both HSE and ORR agree to support each other with specialist advice and opinion on their respective areas of expertise. Where more substantive support is needed, HSE and ORR will reach an understanding to monitor and record the time and amount of expertise involved.
9. HSE is a 'Category 2' responder under the Civil Contingencies Act 2004, as are train and railway infrastructure operating companies¹. On request, ORR can provide HSE with advice on relevant railway matters and alert HSE to any causes for concern.
10. ORR's and HSE's Out-of-Hours Duty Officers will share appropriate contact details.

Regulatory Functions

11. EARR allocates enforcement functions to ORR and defines who the enforcing authority (EA) is for particular activities and in relation to certain premises. Both regulators shared interpretation of the detailed enforcement responsibilities will be described in a separate guidance document, which will be created and maintained jointly by ORR and HSE.
12. Wherever possible, there should be a single EA for railway industry duty holders and stakeholders. However, where circumstances dictate that both HSE and ORR have enforcement responsibilities at the same site:
 - ORR will be responsible for any incident connected with the operation of the railway; and
 - HSE will be responsible for all other at-work activities (which are not enforced by local authorities).

¹ Schedule 1, Part 3 of the Civil Contingencies Act 2004.

13. Should an incident occur at the enforcement interface between HSE and ORR, discussions at local principal inspector level should be used to agree a view on enforcement lead roles and responsibilities based on a shared interpretation of the allocation of responsibilities in EARR.
14. Where HSE and ORR have a shared enforcement interest, they agree to keep each other informed about issues of interest, such as identified weaknesses in a company's health and safety management system.
15. Should either HSE or ORR inspectors observe *matters of evident concern* in the course of their duties for which they are not the EA, HSE and ORR will ensure there is an effective mechanism to promptly bring these matters to the attention of the correct EA.
16. ORR and HSE will keep each other informed where they carry out an inspection, or use their enforcement powers, in the Channel Tunnel UK Concession Area (Safety inspections in relation to the UK Concession Area are carried out by inspectors using their national powers).
17. ORR and HSE will enter into a Data Protection Declaration which will explain both regulators' respective roles in managing personal data and will be available as part of the shared guidance.

Policy and research

18. HSE and ORR will cooperate and coordinate in the following areas:
 - policy issues where the two organisations have a common interest, including legislation or regulation;
 - consultation exercises (including Post Implementation Reviews) on health and safety legislation, regulations or similar;
 - cross-industry health and safety initiatives;
 - specialist policy topics (for example, occupational health policy);
 - research in areas of shared relevance; and
 - our shared guidance on enforcement allocations between ORR and HSE.

Agency Agreements

19. HSE and ORR may enter into agency agreements, for example, to assume certain enforcement functions or to clarify enforcement responsibilities. Both HSE and ORR commit to monitoring the effectiveness of these agreements, including agreeing how to implement the review arrangements.

Statutory notifications, complaints and reporting

20. Legislation sometimes requires events or concerns to be notified to a specific enforcing authority. In addition, there are some arrangements in place between HSE and ORR for monitoring and sharing information. These are:

- a) ORR will provide end of year statistics for HSE's annual report if requested (for example, incidences of ill-health, injuries and numbers of working days lost across all industries);
- b) HSE will maintain the agreement for ORR to have access to the notifiable construction projects database. (For projects that should be notified to the relevant EA under Construction (Design and Management) Regulations 2015, duty holders are encouraged to use HSE's on-line construction work notification form. Such notifications will be regarded as having been made to the relevant EA as required by CDM 2015);
- c) HSE will ensure that all railway-related occupational road fatalities are reported to ORR;
- d) For statutory enforcement purposes, including the Control of Lead at Work Regulations 2002, HSE will provide ORR with the case details relating to railway employees, in accordance with the provisions of the General Data Protection Regulation and the Data Protection Act 2018;
- e) HSE will deal with applications from the railway industry for exemptions from general (i.e. not railway-specific) health and safety legislation. HSE will consult ORR, where practicable, and inform ORR of the outcome of its deliberations;
- f) where employers make use of other HSE 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.

21. From time to time, notifications will be sent to the wrong EA. HSE and ORR will promptly redirect these notifications.

Training, development and learning

22. Where appropriate, HSE and ORR may coordinate and cooperate in their respective training and development programmes.

23. HSE will provide ORR's inspectors with access to its internal advice on interpretation of health and safety legislation. This will be by advice from, among others, HSE Sectors and policy teams. HSE will bring to ORR's attention any

significant changes in its key operational procedures relating to general health and safety topics, such as the Enforcement Management Model.

Liaison arrangements

24. Each organisation will have a single, named, Central Contact Point responsible for maintaining the good working relationship between ORR and HSE, sharing information, connecting colleagues and managing and resolving issues quickly.

25. Each year, there will be a set of liaison meetings, as per the table below:

Meeting Name	Attendees	Frequency	Main purpose
Annual Meeting	Chief Executives of both HSE and ORR, plus HM Chief Inspector of Railways and HSE's Director of Regulation and Support as required.	Annual	to review the effectiveness of both organisation's interactions over the year, including any significant achievements (or issues) in the operation of the MoU.
Working Level Liaison Meeting	Designated Central Contact Points from both HSE and ORR, plus other colleagues as required.	At least 4 times a year	to raise and then take forward any emerging policy, legal, enforcement or other matters of shared interest. Identify and resolve any areas of uncertainty or dispute arising from the MoU. (when required) lead the MoU review arrangements.

MoU review arrangements


26. A full review will take place approximately every five years (sooner if there is a substantive need). The review arrangements are:

- a) the Working Level Liaison Meeting, and any subsequent arrangements made at those meetings between the two Central Points of Contact, will define how the review and re-drafting works in practice (including timescales, lead roles and coordination);
- b) any changes to the MoU must be agreed by each organisation in accordance with their own governance arrangements.

27. Outside of the MoU, HSE and ORR may have other shared resources, including guidance. For the avoidance of doubt, such guidance documents are not part of the MoU or subject to the MoU review arrangements. However, the shared guidance on interpretation and practical arrangements should be reviewed annually by the Central Contact Points at a Working Level Liaison Meeting.

Termination

28. This MoU comes into effect on the date it is signed by both HSE and ORR. The MoU can be terminated either on a date agreed between both HSE and ORR, or following written notice given by either party to the other.

signature  Date: 9 th May 2022	signature  Date: 30 May 2022
Sarah Albon, Chief Executive	John Larkinson, Chief Executive
Health and Safety Executive	Office of Rail and Road