		RSD Internal Guidance		RIG-2008-09	
NOTIFICATION OF ENFORCEMENT ACTION TO THE CHIEF INSPECTOR'S OFFICE AND THE PUBLICATION OF NOTICE INFORMATION					
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				July 2018	
RIG postholder/owner			Sally Williams Regulatory Management Team		
RIG cleared by			John Gillespie, Head of Safety Policy and Central Regulation		
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Target audience		RSD_____ <input checked="" type="checkbox"/> RPP_____ <input checked="" type="checkbox"/> EA_____ <input checked="" type="checkbox"/> IM_____ <input checked="" type="checkbox"/>		Policy_____ <input type="checkbox"/> Inspectors_____ <input checked="" type="checkbox"/> Admin_____ <input checked="" type="checkbox"/>	
Keywords		Improvement Notice, Prohibition Notice, FEPA, Prosecution, Chief Inspector's Office, Publication, section 28(8), DSU, summary			
Summary		This guidance sets out the procedure for: (a) immediately informing the Chief Inspector's Office about the serving of an enforcement notice or approval of a prosecution; (b) providing information about a notice to employees and their representatives (c) publishing details of enforcement notices, both on the ORR public register and in the wider public domain; and (d) updating Mosaic with the latest status of a case.			
Original consultation		Network Rail Division: Allan Spence Directorate Support Unit: Jane Young			
Subsequent consultation (reviews only)		Directorate Support Unit: Paul Wilson DCI Network Rail: Allan Spence DCI TOC/FOC: Caroline Wake Investigation and Legal support team: Rupert Lown and William Keag Safety enforcement team: James Mack and Chris Simms Information Management team: Jenny Godfrey and Sue MacSwan External Affairs: Ken Young, Andrew Winstone, Martin Jones and Martin Spencer 2012 review: Paul Wilson DSU 2013, 2014 & 2016 reviews: Helen Ayers			

Detail

Senior management across ORR are in frequent contact with a wide range of industry stakeholders. It is important that they are made aware of any enforcement action taken at the earliest opportunity in case they are asked or challenged about the issues involved. Once notified, they are able to ensure they do not say anything that may prejudice, or appear to pass judgment on, operational enforcement decisions. Similarly, directors and senior staff outside of Railway Safety Directorate (RSD) can ensure that work within their own directorates is informed by and does not compromise actions already taken by RSD.

RSD's directorate support unit (DSU) notifies directors and the Chair immediately, along with a short background brief outlining the issue, whenever an improvement or prohibition notice has been served. These details are also forwarded to all team leaders in RSD. This notification also occurs at the point where a prosecution is approved.

We also have legal duties to publish notices on our public register and provide employees at any premises or their representatives with adequate information about issues affecting health, safety and welfare, including action taken in connection with those premises.

Under certain circumstances information about enforcement action ORR has taken may be publicised before the formal appeal process period has concluded.

This guidance document set out the actions to be taken by those individuals / teams involved in the process of publishing enforcement notices.

A flowchart setting out the key stages of this process can be found in Annex A.

Action

Inspectors

Prohibition and Improvement Notices

Issuing of Notices

Detailed guidance on the drafting and issuing of notices can be found on Orracle.

Improvement Notices

In many cases service of a notice is by hand, immediately on site (see guidance for other forms of service). Where the notice is served on an employee, then a letter with a copy of the notice should be sent to the registered office to ensure they are aware the notice has been served.

We have a duty under HSWA section 28(8) to keep the employees or their representatives informed about matters affecting their health, safety and welfare. When an inspector is intending to serve an Improvement Notice, where ever possible, the employees' representatives should be contacted at the time of the visit and told about the circumstances that have been identified

and the inspector's intended course of action. The presumption is that we will provide a copy of an Improvement Notice to employees or their representatives, once the 21 days to give notice of appeal have elapsed, and we have not been notified of an appeal.

Until that time, employee representatives should be provided with a summary of the facts observed by the inspector and any action they have taken or propose to take.

• **A summary of the notice** that has been served should cover the following specific points:

- summary of the breach;
- date and location of incident;
- duty holder details;
- relevant dates (date served and required compliance date);
- breaches of legislation;
- measures to be taken by duty holder;
- the status of the notice; and
- ORR details.

If an inspector feels that they can only comply with Section 28(8) by sending a copy of the notice straight away, they should consult with the legal team and/or RMT first.

Under no circumstances should an improvement notice be made available to **any third party** until the document is either formally published on the ORR public register or approved for wider external circulation by the Chief Inspector and Director of External Affairs.

Prohibition Notices

Prohibition Notices have immediate effect, and therefore can be copied to employee representatives straight away.

Notifying DSU and updating Mosaic

- along with the notice, please also provide a short explanation of the circumstances causing it to be served, including:
 - details of the duty holder;
 - location of incident;
 - link to the Mosaic enforcement case;
 - the required compliance arrangements; and
 - any other relevant information (i.e. a letter sent to the duty holder).

Please also provide a photograph of what was observed if possible.

You **must** also confirm whether the notice is a relevant notice for the

purposes of the Environment and Safety Information Act 1988 (ESIA)¹.

- if you have recorded details of the enforcement action taken on Mosaic (including adding a copy of the notice as an attachment to a new case note explaining why it was served), then simple notification of the Mosaic link number to DSU will be sufficient;
- **if a notice is appealed, notify DSU** immediately and provide details of the date the appeal was made, the grounds for appeal and tribunal involved (or Mosaic link if this has been updated);
- inform the DSU immediately once any appeal has been concluded.
- inform the DSU at the earliest opportunity of the date that the notice was formally complied with.

Prosecutions

- provide details of prosecutions when a decision to prosecute has been taken. This should include information about whether the duty holder is aware they are to be prosecuted.

Updating Mosaic

It is important that records on the status of an enforcement notice/prosecution are accurately maintained on Mosaic. Inspectors should therefore:

- ensure that a new enforcement notice case is created / updated within **ten working days** of a notice being issued.
- update Mosaic within **ten working days** of a notice being closed due to compliance, or the time for compliance being extended;
- update Mosaic **within 48 hours** of notification when an appeal is received, giving details of the grounds for appeal and tribunal involved;
- update Mosaic with the result of any appeal **within 48 hours** of the decision; and
- update Mosaic entries **within 48 hours** of prosecution action commencing with details of court dates, relevant events and the result of any court hearing.

¹ An ESIA entry is relevant for any breach that has requirements outside of the constraints of pure worker health and safety matters

Action Team leaders

Area and other team leaders are responsible for ensuring that their staff are aware of this RGD and the importance of it being followed, and for carrying out periodic random checks to ensure actions set out above for inspectors are being followed and completed to deadlines.

Action Directorate Support Unit (DSU)**Prohibition and Improvement Notices:**

- ensure that Chief Inspector's Outlook inbox is checked regularly every day to identify served enforcement notices;
- when a notice is received record it on the enforcement notice spread sheet;
- produce a summary of the notice covering the following areas:
 - summary of the breach;
 - date and location of incident;
 - duty holder details;
 - relevant dates (date served and required compliance date);
 - breaches of legislation;
 - measures to be taken by duty holder;
 - the status of the notice; and
 - ORR details.
- circulate summary and any additional information provided by the Inspector (i.e. actual notice, description of events, photographs) to Chief Inspector, RSD DCIs, Chair, CEO, other ORR Directors, RSD team managers, the serving Inspector and External Affairs.
- once the appeal process has been concluded and the terms of a notice have been complied with by the relevant duty holder, these events should be recorded as soon as possible on the enforcement notice spread sheet. Updates should be sought from inspectors where the recorded compliance date has expired and no further notification of closure or extension has been received.

Public register:

To meet the requirements of the Environment and Safety Information Act 1988 (ESIA), where there is no right of appeal against a served notice, for example a notice served under the Food and Environment Protection Act (FEPA), notices must be added to the ORR public register **within 14 days** of service.

Where there is a right of appeal (i.e. improvement and prohibition notice) a copy of the notice must be added to the public register **within 14 days** of either:

- the 21 day period for lodging an appeal with an employment tribunal

expiring without an appeal being made: or

- where an appeal is made the dismissal of any such appeal.

To do this, the notice (but not any related Schedule) should be sent, immediately the appeal period has expired or appealed notice upheld, to the Information Management team using the form at Annex B.

In the event that the duty holder gives written notification that a notice would disclose commercially sensitive information, then only the following details should be added to the public register as a temporary measure until a revised draft entry is added under the terms of the ESIA:

- the name and address of the person affected;
- the place where the alleged breach occurred / is occurring; and
- the statutory provisions which are being or are likely to be contravened.

This entry should also state that information has been withheld in accordance with the provisions of section 4 of the ESIA.

Once the terms of a notice have been complied with by the relevant duty holder, this should be recorded as soon as possible on the public register by separate notification to the Information Management team.

All enforcement notices and summaries should be retained on the public register for the foreseeable future.

ORR website:

At the same time as a notice is added to the public register, an entry should also be made on the ORR website recording the service of the notice. The format for this record should be:

Company and notice number	Brief description	Issue date	Compliance date	Result
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The result column should read either 'Open' or 'Complied' depending on the status of the notice, and be updated when appropriate.

Action **Chief Inspector and External Affairs**

The early disclosure of any enforcement information should only be made if it is consistent with the general purpose set out in section one of the Health and Safety at Work etc Act 1974.

Where a notice has been served and:

- information about the relevant incident is already in the public domain;
- there is significant media interest in an issue;
- there is a specific public interest issue (i.e. the safety of the travelling public is affected); and/or
- it is considered that public confidence will be increased through the knowledge that we have taken action over an issue of concern,

The Chief Inspector, in consultation with the Director of External Affairs and with advice from Legal Services, will decide whether the enforcement action taken should be publicised to a wider audience prior to the conclusion of the normal appeals process.

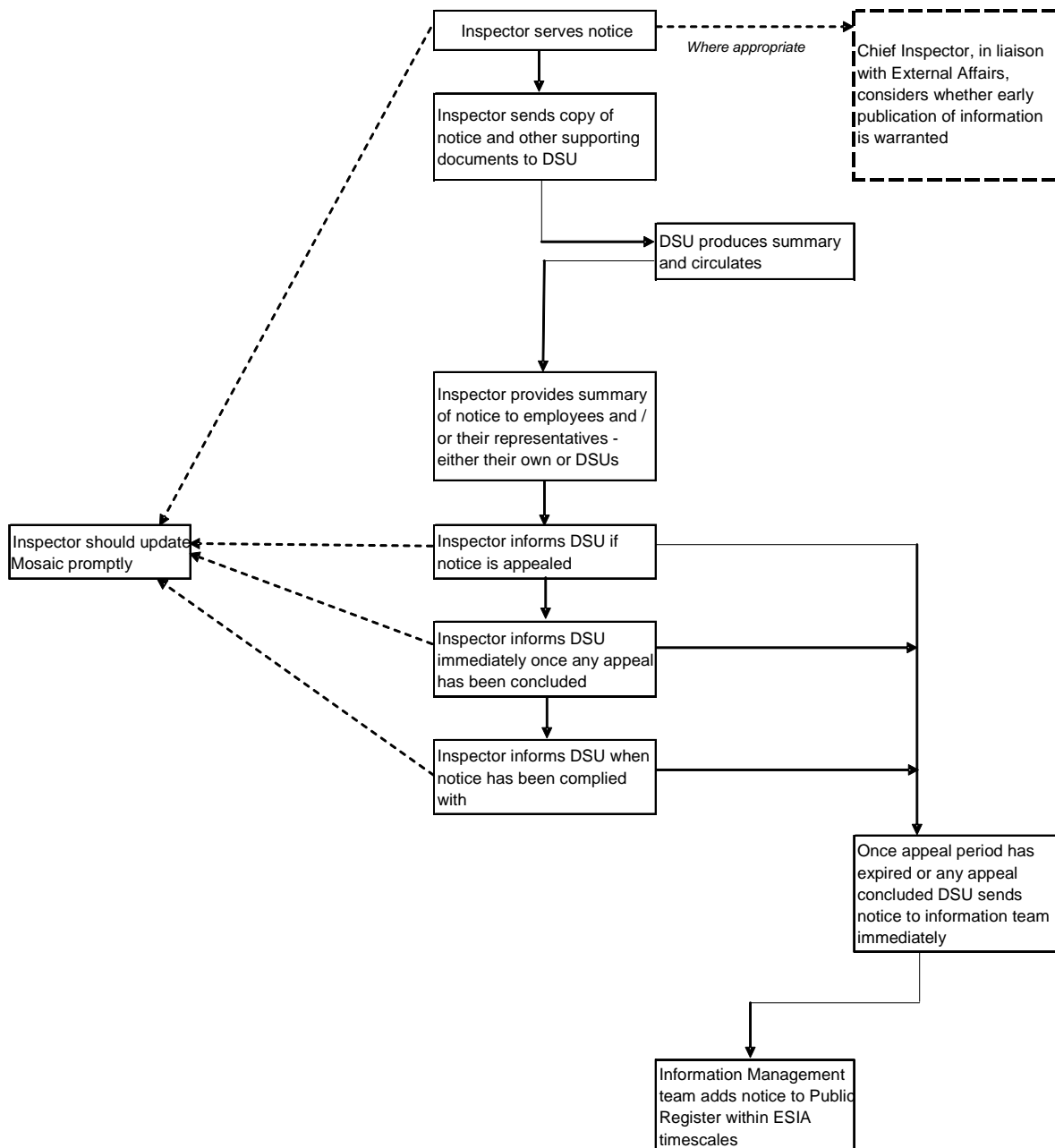
If it is decided to publish information earlier than normal the duty holder must be given prior warning.

Action **Information Management**

Upon receipt of a final notice for publication, the ORR public register must record, and be searchable to identify, whether the notice is a relevant notice for the purposes of the ESIA.

All enforcement notices and summaries should be retained on the public register for the foreseeable future.

KEY STAGES OF ENFORCEMENT NOTICE PUBLICATION PROCESS



ANNEX B

Date:

To: Information Manager

ITEM FOR THE PUBLIC REGISTER**IMPROVEMENT AND PROHIBITION NOTICES**

Please add the improvement / prohibition notice* attached to this form to the ORR public register. The relevant information required for the item details page are as follows:

Doc Type:	Improvement and Prohibition Notices
Operating Company:	<i>[Insert name of duty holder on whom the notice has been served]</i>
Sub Type:	ESIA Notice <i>[where relevant – otherwise leave blank]</i>
Document Date:	<i>[Insert date of notice – in format xx-xx-xx]</i>
Doc Ref No:	<i>[Insert notice serial number – this should be the number on the top of the served notice]</i>
Collection Ref:	Improvement / Prohibition* Notice
Doc Description:	Improvement / Prohibition* Notice - <i>[Insert Details of Premises]</i>
Supp Ref:	<i>[Insert details of legislation quoted on the notice i.e. The Health and Safety at Work etc Act 1974 Section 2(1), The Railways and Other Guided Transport Systems (Safety) Regulations 2006 Regulation 19(5), etc)</i>
Status	Open / Complied with <i>[when appropriate]*</i>