

AGENCY AGREEMENT BETWEEN THE HEALTH AND SAFETY EXECUTIVE AND THE OFFICE OF RAIL REGULATION UNDER PARAGRAPH 7(2) SCHEDULE 3 OF THE RAILWAYS ACT 2005 AND SECTION 13(3) OF THE HEALTH AND SAFETY AT WORK ETC ACT 1974 IN CONNECTION WITH THE CARRYING OUT OF ENFORCEMENT FUNCTIONS ARISING IN RELATION TO ROAD VEHICLE INCURSIONS

This Agreement is made between (1) the Health and Safety Executive (“**HSE**”) and (2) the Office of Rail Regulation (“**ORR**”) under paragraph 7(2) of Schedule 3 to the Railways Act 2005 (the “**2005 Act**”) pursuant to the authorisation of the Secretary of State given on 25 March 2015, and section 13(3) of the Health and Safety at Work etc. Act 1974 (the “**1974 Act**”).

**WHEREAS:**

- A. Regulation 3(1) of the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (the “**2006 Regulations**”), made under the 1974 Act, confers on ORR responsibility for enforcing the relevant statutory provisions to the extent that they relate to certain activities, including, the operation of a railway.
- B. HSE and ORR acknowledge and agree that there is a lack of clarity over whether the 2006 Regulations include responsibility for enforcing the relevant statutory provisions where there is a health and safety risk to the operation of a railway arising out of or in connection with an actual or potential incursion by a vehicle from a road (a “**Road Vehicle Incursion Risk**”).
- C. This Agreement relates to certain functions which, to the extent they are exercisable by HSE under the 1974 Act, ORR has agreed to perform on behalf of HSE, being enforcement functions which the Secretary of State has considered can appropriately be carried out by ORR in connection with the carrying out of its safety functions.

**IT IS HEREBY AGREED THAT:**

1. To the extent that the responsibility for the enforcement of the relevant statutory provisions (the “**enforcement functions**”) in relation to Road Vehicle Incursion Risks is not transferred to ORR under the 2006 Regulations, and consequently lies with HSE under section 18(1) of the 1974 Act, HSE and ORR agree that ORR will perform HSE’s enforcement functions, on behalf of HSE, in relation to such Road Vehicle Incursion Risks.
2. ORR and HSE will each provide the other with such information as they may at any time reasonably require in connection with the performance of the functions specified in this Agreement.
3. In this Agreement:
  - (a) “*operation of a railway*”, “*railway*” and “*road*” each has the meaning set out in the 2006 Regulations; and

(b) “the *relevant statutory provisions*” has the meaning set out in section 53 of the 1974 Act.

4. HSE and ORR must regularly review the terms of this Agreement and must do so at least once each year that this Agreement is in force from the date it comes into effect.
5. HSE and ORR must ensure that the memorandum of understanding between HSE and ORR is amended to facilitate the performance of, and set out provision for appropriate arrangements for implementation of, this Agreement.
6. This Agreement comes into effect on 27 April 2015 and will terminate either on a date agreed by both HSE and ORR or on the expiry of 28 days following receipt of a written notice given by either party to this Agreement to the other.

**Signed on behalf of the Office of Rail Regulation on 27 of April 2015 and:**

**Authorised by Ian Prosser, Chief Inspector of Railways of the Office of Rail Regulation**

**Signature: [IAN PROSSER]**

**IN WITNESS Whereof the Common Seal of the Health and Safety Executive is affixed on 21<sup>st</sup> of April 2015 and authenticated by:**

**[SEAL OF THE HEALTH AND SAFETY EXECUTIVE]**

**Authorised by Judith Hackitt, the Chair of the Health and Safety Executive**

**Signature: [JUDITH HACKITT]**