

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE OFFICE OF RAIL REGULATION AND
THE LOCAL GOVERNMENT ASSOCIATION,
THE WELSH LOCAL GOVERNMENT ASSOCIATION,
THE CONVENTION OF SCOTTISH LOCAL AUTHORITIES, AND
THE LOCAL AUTHORITIES CO-ORDINATION OF
REGULATORY SERVICES**

Signed by Bill Emery, Chief Executive on behalf of the Office of Rail
Regulation (ORR)

Signed by Councillor Geoffrey Theobald, Chairman on behalf of the Local
Authorities Co-ordination of Regulatory Services (LACORS)

Date :

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MEMORANDUM OF UNDERSTANDING BETWEEN THE OFFICE OF RAIL REGULATION AND THE LOCAL GOVERNMENT ASSOCIATION, THE WELSH LOCAL GOVERNMENT ASSOCIATION, THE CONVENTION OF SCOTTISH LOCAL AUTHORITIES AND LACORS TO CLARIFY WORKING RELATIONSHIPS BETWEEN THE PARTIES FOLLOWING THE TRANSFER OF RAILWAY REGULATION FROM THE HEALTH AND SAFETY EXECUTIVE TO THE OFFICE OF RAIL REGULATION

Purpose

1. This Memorandum of Understanding (MoU) is made between the Chief Executive of the Office of Rail Regulation (ORR) and, on behalf of local government, the Chief Executive or equivalent of the Local Government Association (LGA), the Welsh Local Government Association (WLGA), the Convention of Scottish Local Authorities (COSLA) and the Local Authorities Co-ordination of Regulatory Services (LACORS).

2. Its purpose is to ensure effective co-ordination between ORR and Local Authorities (LAs) in relation to general health and safety provisions on railways in Great Britain to the extent described in this MoU. The organisations undertake to use their best endeavours to co-operate effectively to enable and assist all parties to carry out their responsibilities and functions and to maintain effective working arrangements for that purpose. Such co-operation is aimed at improving the effectiveness of each of the parties to this MoU and avoiding difficulties that might arise through a lack of co-ordination.

3. The principles that underlie this MoU are the need to:

- secure consistent standards of protection for people at work, including those who work on the railway or in premises close to or adjoining premises used for the operation of the railway;
- secure consistent standards of protection for members of the public including those who travel on the railway and others to the extent that they may be affected by the operation of the railway;
- avoid, so far as is possible, duplication of inspection, investigation and enforcement;
- provide such mutual expertise and assistance as is necessary to achieve these principles.

Parties to this MoU

Office of Rail Regulation

4. The Office of Rail Regulation was established on 5 July 2004 under the Railway and Transport Safety Act 2003. It derives its health and safety responsibilities, functions and authority from section 2 and Schedule 3 of the

Railways Act 2005 (RA 2005) and the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (EARR 2006). ORR has therefore assumed the enforcement responsibilities formerly delivered within the Health and Safety Executive by Her Majesty's Railway Inspectorate (which have transferred to ORR). ORR is an independent, non-ministerial government department staffed by civil servants. Its Board is appointed by the Secretary of State for Transport.

Local Authority Associations

5. Local authorities (LAs) across England, Scotland and Wales have a wide range of responsibilities for the inspection and regulation of premises and activities carried out within their geographical area. Under the Health and Safety (Enforcing Authority) Regulations 1998 (EA Regulations), LAs have responsibility for health and safety enforcement in several types of premises set out in the EA Regulations. At a national level, LA's interests are represented by the three Associations which, together with ORR and LACORS (see below), are party to this MoU – the Local Government Association (LGA), Convention of Scottish Local Authorities (COSLA) and Welsh Local Government Association (WLGA).

6. LACORS is the local government central body that works to facilitate communication, sharing of good practice and co-ordination of enforcement issues between local authorities. LACORS is assisted in its work through local officer, heads of services and specialist liaison groups, LACORS' national networks of policy advisors and experts. The LACORS Board of Directors is made up of some elected Members nominated by LGA, COSLA and WLGA.

Other bodies involved

Health and Safety Executive

7. Although the Health and Safety Executive (HSE) is not party to this MoU, the boundaries of enforcement responsibility between ORR and LAs are often defined by reference to HSE's responsibility for enforcing health and safety requirements. HSE was established in 1975. Its Executive is a statutory body consisting of a chief executive and two others appointed by the Health and Safety Commission (HSC). HSE is the operating arm of the HSC whose main function is to secure the health, safety and welfare of people at work and to protect the public from dangers arising from work activities. The HSC/E statutory power and responsibilities are derived from the Health and Safety at Work (HSW) Act 1974 (as modified by RA 2005). There is a separate MoU between HSE and ORR. HSC/HSE are sponsored by the Department of Work and Pensions (DWP).

Background

8. From 1 April 2006, responsibility for rail-related health and safety was transferred from HSC and HSE to ORR. RA 2005 gives ORR responsibility for the application of Part I of the Health and Safety at Work etc Act 1974 (HSWA) in respect of "railway safety purposes".

9. RA 2005 does not contain any provisions relating to the enforcement of health and safety for the purposes of railway safety. These are contained in the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (EARR 2006) which came into force on 1 April 2006, thus completing the main basis for the transfer of responsibility for rail-related health and safety to ORR.

10. EARR 2006 makes ORR responsible (subject to certain exceptions) for the enforcement of relevant statutory provisions made under HSWA to the extent that they relate to the following activities:

- the operation of a railway¹;
- the operation of a tramway; and
- the operation of other systems of guided transport².

To this extent, ORR has the same powers of enforcement that LAs and HSE have under HSWA to issue improvement and prohibition notices and institute legal proceedings.

11. The EA Regulations therefore need to be read in the light of this change and the specific amendments EARR 2006 makes to those Regulations. EARR 2006 also gives responsibility to ORR for the enforcement of section 6 of HSWA (general duties of manufacturers etc as regards articles and substances for use at work), but only in so far as these duties are carried out exclusively or primarily in the construction or operation of the above transport systems.

12. The operation of a railway, tramway or other system of guided transport includes the:

- use of the infrastructure and other fixed assets of the transport system which are used in its operation and comprise, or are located within, operational premises;
- use of centres used for signalling or the operation of communication systems or systems used for monitoring the operation of the transport system (whether or not these are operated from operational premises) together with offices in operational premises; and
- training of railway staff within operational premises or other premises referred to above,
- but does not include office activities relating to the railway which are not included in operational premises.

13. As well as the “permanent way” itself (eg the railway line and any land, infrastructure or property associated with it), “operational premises” include:

¹ Railways are defined as those where the track is either of a gauge of at least 350mm or crosses a road (whether or not at the same level). HSE is therefore the EA for miniature railways which do not cross a road.

² A system of guided transport does not include guided buses as defined by EARR 2006. HSE is the EA for guided buses

- stations; and
- any land adjacent to or adjoining the permanent way which is used, occupied or held for the purposes of the transport system.

However, such premises do not include parts which are occupied for the carrying on of any trade, business or other than for the purposes of the transport system. Operational premises do not therefore include shops, offices occupied by a separate business, or premises used to provide catering services or temporary residential accommodation.

Co-operation and co-ordination between ORR and LAs - Introduction

14. EARR 2006 sets out the basis for deciding where the enforcing authority (EA) should be ORR. Read in conjunction with the EA Regulations, it also set out where LAs have the responsibility. However, unlike the EA Regulations, there is no provision in EARR 2006 allowing for the transfer of responsibility for enforcement between ORR and LAs. As a consequence, it is particularly important for ORR and the appropriate LA to co-operate and co-ordinate any action needed on matters where their enforcement responsibilities interface. Wherever possible there should be a single EA for rail industry duty holders and stakeholders (a summary of enforcement responsibilities is at Annex 2)

15. The following paragraphs of this MOU therefore set out in more detail the basis on which both ORR and individual LAs should work together - by:

- promoting good communication and co-operation (paragraphs 16-18);
- working to standards (paragraphs 19);
- the way in which LAs interact with ORR and vice-versa (paragraphs 20-24);
- the arrangements for providing mutual advice (paragraphs 25-27);
- taking account of the need for working arrangements where there are areas of particular mutual interest (paragraphs 28-39); and
- resolving disagreements (paragraphs 40-41)

Promoting good communication and co-operation

16. The ORR and relevant LAs should establish proportionate and effective liaison arrangements to ensure:

- Co-ordination and co-operation between the parties involved
- A better mutual understanding of roles and responsibilities
- Agreed working arrangements
- Resolution of any local problems

17. Information about the location of ORR offices and contact details is attached in Annex 1 and this also shows the counties within those ORR

regions. This will be kept up-to-date through ORR's website (www.rail-reg.gov.uk).

18. Each party will work to:

- Avoid any duplication of activity and facilitate co-operation in all aspects of policy development and implementation; and
- Promote flexible and practical working level relationships, procedures and clear lines of communication, thus providing mutual support for all parties concerned to carry out their respective responsibilities; and
- Keep each other informed about common issues.

Standards

19. Use of enforcement protocols will be adhered to and communication between parties where necessary will be timely and co-operative. Local authorities work to the HSC enforcement policy statement³, which is backed up by performance standards such as those contained in the Enforcement Management Model⁴. The ORR has a health and safety enforcement policy statement which can be found on the ORR website: www.rail-reg.gov.uk/upload/pdf/281.pdf. Both set out the expectations and performance standards required of enforcing authorities.

Interaction between LAs and ORR

20. Where either LA inspectors or ORR inspectors observe **matters of evident concern** in the areas of a 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. The other authority should inform the first of any action subsequently taken;
- In other cases, notify the other authority in writing.

Only the relevant EA, as allocated by EARR 2006, may take enforcement action. Each will however provide the other organisation with any information and expertise to support any action subsequently taken such as the issuing of a notice.

21. If it transpires that such matters are within the responsibility of an enforcing authority other than either ORR or the LA (such as HSE), the receiving authority will forward the notification on to that authority and advise the original inspector accordingly. The initiative for any further action will then rest with the appropriate authority.

³ <http://www.hse.gov.uk/pubns/hsc15.pdf>

⁴ <http://www.hse.gov.uk/enforce/emm.pdf>

22. There may be certain cases where **several enforcing authorities could be responsible for different aspects of one premise** (eg museums or heritage centres – see paragraphs 34-36). Local arrangements for the inspection of such premises will need to be agreed or amended to take account of ORR’s role in enforcing rail-related health and safety: whether joint inspections should take place, or separate inspections should take place but information is passed on. Sharing of information must be in accordance with section 28 HSWA and the Data Protection Act, and for local authorities in accordance with Part 9 of the Enterprise Act 2002. However, EARR 2006 sets out clearly where ORR is the EA and does not allow for the transfer of responsibility for premises between ORR and LAs. Only the EA with responsibility for a particular issue will therefore be able to take enforcement action on that issue.

23. **Specialist support** will be available to LAs from ORR on railway specific matters. To gain access to ORR support, LA inspectors should contact the relevant General Manager in ORR (details in Annex 3). These will be updated from time to time through ORR’s website. Details of the level of resource supplied for each job will be confirmed on conclusion of the job and recorded by the ORR focal contact point.

24. **Parliamentary and public enquiries** relating to specific incidents will be handled by the organisation that takes the lead in the investigation or enforcement action. If the enquiry is of a general nature, the recipient organisation must decide on the main thrust of the inquiry and pass the correspondence to the organisation that would be responsible for taking any enforcement action. If there is any doubt it should be copied to all parties and a reply agreed.

Arrangements for providing mutual advice in support of policy development and enforcement activity

25. The arrangements for providing such support will be based on the following principles:

- the importance of close working relationships and mutual support in ensuring consistent application and enforcement of health and safety legislation should be recognised;
- A recognition of the need for flexibility in order to respond to demands from reactive work; and
- The need to review the adequacy of arrangements - through discussion at a national level at the HELA meeting.

26. The exchange of advice between ORR and local authorities (and where necessary HSE) will continue to occur in their respective areas as part of their normal working environment. But LAs may require more substantive assistance from ORR from time to time in particular where specialist expertise in support of enforcement activity and or policy developments is needed (see para 23).

27. ORR should consult local authorities when undertaking policy development - for example procedures for evacuation of stations or access routes.

Boundaries - working arrangements in areas of mutual interest

28. There are a number of particular areas of mutual interest where working arrangements for effective co-ordination of enforcement need to be established between ORR and LAs. These are:

- separately occupied offices, retail, catering or other consumer services at railway premises;
- railway undertakings remote from the infrastructure;
- training activities;
- certain museums and heritage centres which are not part of a heritage railway;
- railways at airports;
- catering services and toilets on trains;
- HSWA section 6 requirements in respect of articles and substances for use exclusively or primarily in the construction or operation of transport systems to which EARR2006 applies,

and are covered in more detail below.

Separately occupied offices, retail, catering or other consumer services at railway premises

29. ORR is the EA for health and safety matters arising in premises used for the purposes of operating the railway or other guided transport system. This includes the common parts of stations, station car parks, railway offices, left luggage and lost property facilities. But these do not include those parts of stations occupied by a separate business engaged in office, retail, catering or other consumer services. For these latter premises, LAs would enforce (the only two possible exceptions to this would be dry cleaning (except in Scotland) and radio or TV repair shops at stations where HSE is the EA by virtue of EA Regulations). Where risks to the safe operation of the railway or other guided transport system arise from the need to convey goods to LA enforced premises across the common parts of stations to LA enforced premises, ORR would be the EA.

30. Issues may arise where either these two sets of premises interface or where matters are referred to one enforcing authority that needs the co-operation of the other. In cases such as the examples below, both ORR and LA inspectors will need to liaise to ensure appropriate action is taken:

- Cases of slips, trips and falls occurring in one set of premises, but caused by mismanagement of risks in the other. For example, a slip

on a station caused as a result of a spill from a nearby café or shop not being mopped up;

- Cases where risks to health and safety arise from the delivery of food and other refreshments to trains across the common parts of stations. Where such deliveries are made to trains, LAs are the EA for the premises of the catering firm supplying the train, while any risk to the health and safety of workers or the public arising from the need to convey the delivery to the train is for ORR to enforce. But ORR and the appropriate LA would need to liaise if the risk in conveying the delivery arose as a result of bad practice at the catering firm's premises – or vice-versa;
- Cases where risks to health and safety arise from the delivery of goods to retail outlets across the common parts of stations. LAs are the EA for the retail outlet and ORR the EA for any risk to the safe operation of the railway arising from the delivery of the goods across the common parts of the station. As above, there would need to be liaison where risks arose in one set of premises as a result of bad practice in the other;
- Cases where enforcing authorities come across matters of evident concern should be passed onto the appropriate enforcing authority eg if a local authority inspector comes across fencing preventing access that has been damaged they should notify ORR.
- Complaints about the cleanliness of public toilets in stations. Where these complaints are of an environmental health character, it would be for the relevant LA to take the lead. But where they raise issues which have implications for station safety ORR would be the EA and both ORR and the appropriate LA would need to liaise to establish if there were risks to health and safety involved;
- Complaints about the level of noise and diesel fume at stations/depots. It is for ORR to take the lead where these arise from the operation of the railway or other guided transport system and also involve a possible breach of the Noise at Work Regulations 1989 or the Control of Substances Hazardous to Health Regulations 2002. Potential breaches of these Regulations arising from separate businesses in the station would be for LAs to enforce, as would complaints of nuisance caused by noise or fume. Work is continuing between ORR and LACORS to achieve further clarification on this issue. However, local authorities retain their duties under the Environmental Protection Act 1990 to deal with noise emitted from premises which amounts to a statutory nuisance .

Transport system undertakings remote from the infrastructure

31. Not all activity relating to the operation of the transport system takes place on or adjacent to the system. ORR is the EA for the activities of signalling, electrical and operational control operated from within offices or from other premises whether attached to or remote from the transport system.

32. LAs are the EA for any office or catering activities not carried out on operational premises. However, if railway offices share the same building as a signal control centre (or similar) remote from the transport system, then ORR would be the EA for the railway office components of the building as well as the control centre. LAs would remain responsible for enforcing non-health and safety issues such as food safety.

Training activities

33. ORR is the EA for any training activities in connection with the operation of the transport system on or near the system or in other operational premises such as a signal cabin or control centre. An example would be personal track safety or possession management training. ORR will also be the EA in the case of training being carried out at station premises such as a driver training school. However, where training is carried out on premises, (which are not operational and are not educational establishments) such as in a classroom environment in offices not in railway premises it falls to LAs to enforce.

Museums and heritage centres not parts of a heritage railway

34. There are a number of railways and tramways which are operated at museums open to the public but which are not part of a heritage railway. Where such systems are operated at any museum or heritage attraction, ORR is the EA for the railway operation (see paragraph 10 for the definition of a railway). This will include museums where running vehicles are exhibited and which may be moved on a railway system out or around the museum site. Any surrounding or associated activities would also fall to ORR in so far as they form a part of the operation of the railway.

35. 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, ORR is not the EA.

36. The above applies whether or not the museum or centre is run by the LA. Where the LA runs the museum, HSE is the EA for the rest of the premises other than the operation of the railway. In cases where the LA does not run the museum or heritage centre, ORR remains the EA for the railway or tramway but the LA will be the EA for the rest of the premises (the museum or heritage centre is considered to be an entertainment, cultural or recreational activity).

Railways at airports

37. ORR is the EA for any railway at an airport while LAs are the EA for the common parts within terminals to which any member of the public can be admitted and airport parking. HSE remains the EA for the common parts of airports which are either not within a building or where passengers only are admitted (but not other members of the public).

Catering services and toilets on trains

38. Any issues that arise which have implications for the safe operation of the railway will be for ORR to deal with. Other food safety or nuisance issues would be for LAs to enforce and, where such issues arise, there might be a need for the LAs through whose area a train runs, to co-ordinate action between themselves.

HSWA section 6 requirements

39. Regulation 3(3) of EARR 2006 makes ORR the EA for section 6 of HSWA (see also paragraph 11 above) in respect of articles and substances for use exclusively or primarily in the construction or operation of transport systems to which EARR2006 applies. This will necessitate ORR inspectors dealing with manufacturers and suppliers including visiting their premises where appropriate. In so doing, they will not be enforcing the requirements of other general health and safety legislation at these premises: such requirements will be enforced by either HSE or LAs as appropriate.

Resolving disagreements

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

41. LACORS will be able to discuss national issues on behalf of local authorities across England, Scotland and Wales with ORR and HSE.

Review of MoU

42. The working of the agreement and the need for changes to the text of the memorandum is kept under review by the organisations. Any amendments proposed would need to be agreed by all parties.

43. ORR and LACORS will provide a contact for any queries relating to this MOU. The contact should be aware of major issues arising out of the functioning of the agreement and should participate in the preparation of briefing for reviews of the MOU.

44. In practice most contact between LAs and ORR will arise in the context of day to day working. It is the responsibility of individuals in all organisations to identify topics needing liaison as they arise and ensure they are dealt with effectively.

45. A yearly item on the HELA (Health and Safety Executive/Local Authority Local Liaison Committee) agenda will allow for an assessment of how well the arrangements are working. The Chief Inspector of Railways will attend the HELA meeting to discuss any national issues. Throughout the year issues can be raised locally and dealt with at a local level or can be raised through

LACORS who will work with ORR to resolve any national policy or enforcement issues.

Annex 1

List of HMRI Enforcement Contacts in ORR by Area of Responsibility

HMRI Field Team	Main Duty holder responsibility	Approximate geographical responsibility*	Contact
London Metro	London Underground including Metronet and Tube lines	London (Non-Network Rail infrastructure)	020 7 282 2000
	Docklands Light Railway		
	Croydon Tramlink		
Sussex and Wessex	Network Rail Routes: Wessex and Sussex	Sussex Surrey Dorset Hampshire Isle of Wight	01256 404 055
	London Mainline Stations: Victoria and Waterloo		
Kent and Anglia	Network Rail Routes: Kent, Anglia	Essex Suffolk Norfolk Hertfordshire (East) Cambridgeshire (East) Kent	020 7 282 3878
	London Mainline Stations: Liverpool St, Fenchurch St, London Bridge, Cannon St, Blackfriars and Charing Cross		01245 706 262
	Channel Tunnel including Eurostar and Channel Tunnel Rail Link		
Western	Network Rail Route: Western	Wales Berkshire South Oxfordshire Wiltshire Gloucestershire Worcestershire Shropshire Somerset Devon Cornwall	0292 026 3021
	London Mainline Station: Paddington		0117 988 6048
London North West	Network Rail Route: London North Western	Buckinghamshire Northants Staffordshire North Oxfordshire Warwickshire West Midlands Cheshire	0161 952 8290
	London Mainline Station: Euston and Marylebone		

HMRI Field Team	Main Duty holder responsibility	Approximate geographical responsibility*	Contact
	Midland Metro	Lancashire Cumbria North Wales Merseyside	0161 952 8290
London North West	Serco Metrolink (Manchester Trams)	Greater Manchester	0161 952 8387
London North Eastern	Network Rail Route: London North Eastern	Nottinghamshire Hertfordshire (West)	0115 971 2816
	London Mainline Stations: Kings Cross and St Pancras	Cambridgeshire (West)	0113 283 4299
		Bedfordshire Leicestershire Derbyshire Lincolnshire Yorkshire Tyne and Wear Cleveland Northumberland	0191 202 6268
		Stagecoach Supertram (Sheffield) West Yorkshire PTE	Sheffield Leeds
	Nexus (Tyne and Wear Metro)	Tyne and Wear	
Scotland	Network Rail Route: Scotland	Scotland	0141 275 3071
	Strathclyde PTE (Glasgow Underground)		0141 275 3088

* The organisation of HMRI enforcement activities reflects the way in which Network Rail organises its responsibilities as railway infrastructure provider. This cuts across the boundaries of county councils, so this table does not specify exactly the geographical extent of the responsibilities of those contacts listed above – it is only an approximate indication.

Annex 2

Summary of enforcement responsibilities in relation to health and safety provisions on railways

Authority	Responsibility
ORR	Operation of mainline rail network including safety of trains, track, signalling and communication systems, maintenance depots
	Operation of metro and light rail systems including safety of trains, track or other guidance systems, signalling and communication systems
	Operation of tramways including safety of trams, track, signalling and communication systems
	Operation of heritage railways
	Operation of miniature railways which cross a carriageway (whether or not at the same level)
	Stations including common parts, station car parks, railway offices, left luggage or lost property facilities but not those parts of stations occupied by a separate business engaged in office, retail, catering or other service
	Training activities in connection with operation of transport system at operational premises
	Operating railway at a museum or heritage centre
	Railways at airports
	Railways at intermodal depots, industrial sites, docks and railways at MoD sites insofar as it affects the importation of risk onto the mainline railway
LAs	Cableways (other than those enforced by HSE)
	Most separate businesses in stations see exceptions below
	Offices or catering facilities not carried out on operational premises
	Training taking place away from operational premises and not in connection with operation of transport system
	Aspects of a museum or heritage centre other than the operation of any railway at the centre
HSE	Cableways (other than those enforced by LAs)
	Some separate businesses in stations (eg dry cleaners and TV repair)
	Aspects of the operation of railways at intermodal depots, industrial sites, docks and MoD sites insofar as this does not affect the importation of risk onto the mainline railway
	Miniature railways which do not cross a carriageway

Annex 3

General Managers in ORR to contact for access to specialist support

Specialist area	General Manager contact
Command, control signalling	John Gillespie Tel : 01782 602 2313
Railway Operations	John Gillespie
Level Crossings	John Gillespie
Rail Vehicles	Steve Bliss Tel : 0191 202 6218
Infrastructure and Stations Electrification and Major Railway Projects	Allan Spence Tel : 0121 607 6263 or 0207 282 2086
Light Rapid Transport Tramways Metros Heritage Railways	Allan Spence
Safety Management Systems Risk and Human Factors Channel Tunnel	Myles Sibley 01256 404059