

		RSD Internal Guidance		RIG-2010-06	
Indemnification of RSD visiting staff					
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RIG postholder/owner			Sally Williams Regulatory Management		
RIG cleared by			Colin Greenslade, Head of Strategy, Planning and Regulatory Management		
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Keywords		Indemnification, visiting staff, Inspectors			
Summary		This guidance set out the arrangements in place to indemnify inspectors and inspectors' assistants in RSD and engineers in RPP who are warranted by HM Chief Inspector of Railways, in the event of civil proceedings arising from their actions at work.			
Original consultation		Legal Services: Jessica Walters, Chris Simms. RSD: John Gillespie, Allan Spence, Caroline Wake, Ian Prosser. Legal Support: Rupert Lown. Prospect Branch Executive.			
Subsequent consultation (reviews only)		Legal Services: Liz Thornhill Regulatory Management Team: Sally Williams			

<u>Detail</u>	The detailed policy is attached at Annex 1
<u>Action</u>	All warranted staff and their managers to be aware of ORR's policy on indemnification.

Annex 1

ORR's policy on protection and support for visiting staff carrying out duties in line with ORR's obligations

Introduction

1. Railway Safety Directorate inspectors, inspectors' assistants and Rail Planning and Performance warranted engineers are called on to make judgements in the course of their work that may lead to formal enforcement action that can have significant financial or other consequences for the duty holder. These judgements could be challenged in the civil courts or by a formal enquiry. Warranted staff are in the position of having a personal responsibility for their actions, as well as ORR having a corporate responsibility.
2. This policy explains what protection and support is provided for warranted staff who may find themselves involved in legal proceedings or formal enquiries as a consequence of their employment.
3. As civil servants, all staff are covered by the protections in the Civil Service Management Code <https://www.gov.uk/government/publications/civil-servants-terms-and-conditions>

Legal representation and indemnification at public expense provided by the Civil Service Management Code

4. Chapter 12 of the Code lays down the guidelines:

12.2.1 Civil servants may be involved in legal proceedings or formal enquiries as a consequence of their employment. Unless the circumstances are covered by the rules set out in paragraphs 12.2.2 to 12.2.5 below, departments and agencies have discretion to grant civil servants so involved some or all of their legal representation or pay for some or all of their legal costs. In deciding whether to exercise this discretion, departments and agencies must take into account the following considerations:

- a. whether or not it is in their interest to grant assistance;
- b. whether the act in question was committed or suffered within the scope of the civil servant's employment.

Rules for departments and agencies

12.2.2 Departments and agencies must provide legal representation for civil servants who are sued for damages as a result of actions carried out in the course of their employment. This representation will be by the solicitor acting for the Crown. **Any damages and/or liability for the other sides' costs must also be met from public funds.** This right does not apply if:

- a. the department or agency consider that the civil servant was acting outside the scope of his or her employment; or

- b. the civil servant refuses to instruct the solicitor in terms required by the solicitor.

12.2.3 Departments and agencies must also:

- a. provide legal advice to civil servants assaulted in the course of their official duty. Departments and agencies have discretion to give assistance with any subsequent proceedings; and
- b. permit civil servants involved in an inquest or fatal accident enquiry as a result of their official duty to be represented by the legal representatives of the department or agency, provided there is no conflict of interest. Otherwise assistance with legal representation is at the discretion of the department or agency; and
- c. when a formal enquiry might lead to a civil servant being blamed, consider with their legal adviser whether the individual concerned should be given legal representation at public expense; tell the relevant trade union of their provisional decision and give sympathetic consideration to their views; and
- d. provide legal representation for civil servants sued as a result of the findings of the enquiry for actions carried out in the course of their official duty, unless the civil servant appears to have been guilty of wilful or gross negligence.

Right of appeal

12.2.4 Civil servants who are refused legal representation or assistance with legal expenses may appeal to the Head of Department or his delegated representative.

Liability of directors

12.2.5 Subject to paragraph 12.2.6 the Crown will accept responsibility for the civil liabilities, including costs, of a civil servant incurred in connection with his or her performance of the functions of a director (or any similar position, however described) or other officer of a company, provided that the department or agency has given written confirmation that the appointment is one to which this paragraph applies.

12.2.6 Paragraph 12.2.5 will not apply if:

- a. the liability arises from any wilful default or bad faith on the part of the civil servant; or
- b. the civil servant is otherwise indemnified against the liability.

Additional protection provided by Health and Safety at Work etc Act 1974 (HSWA) s26:

5. HSWA Section 26 extends the potential scope of indemnification beyond that of the CS Code:

Where an action has been brought against an inspector in respect of an act done in the execution of or purported execution of any of the relevant statutory provisions and the circumstances are such that he is not legally entitled to require the enforcing authority which appointed him to indemnify him, that authority may, nevertheless, indemnify him against the whole or part of any damages and costs or expenses which he may have been ordered to pay or may have incurred, if the authority is satisfied that he honestly believed that the act complained of was within his powers and that his duty as an inspector required or entitled him to do it.

Approval must also be sought from the Treasury for any expenditure in these cases.

ORR's policy:

6. It is ORR's policy that, in addition to the protections provided by the Civil service Management Code, it will:

- indemnify warranted inspectors, inspectors' assistants and warranted engineers as per HSWA S26, subject to approval of the Treasury for any expenditure; and
- provide legal advice to staff - legal advice specifically in the interests of the individual - in the event of staff coming under scrutiny or being subject to a civil action, together with such other support as necessary, in accordance with its health and safety policy statement and arrangements, to help staff address any consequential effects or other health concerns.

What you can expect of ORR:

7. **ORR will** take all reasonable steps to enable staff to carry out the duties required of them. This will include, but is not limited to provision of:

- resources that are adequate to enable staff to carry out their functions, including personal protective equipment;
- timely provision of technical and other personal development training necessary for the execution of their duties;
- readily available access to information and guidance; and
- monitoring, management and supervision of work, including peer review, where appropriate.

What ORR expects of staff:

8. **ORR expects that staff will** conduct themselves in a professional manner at all times when at work, in line with ORR's policies, procedures and values and the Chapter 4 of the Civil Service Management <https://www.gov.uk/government/publications/civil-servants-terms-and-conditions>. This will include, but is not limited to:

- taking personal responsibility for identifying any personal training and/or other development needs, required for carrying out their functions;
- taking advantage of, and maximise the benefits of training and development made available by ORR;
- in the course of their work, not deliberately or intentionally engaging in issues that are outside their authorised powers; and
- recognising areas where specialist or other assistance may be needed, and requesting that such support be provided.



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