

**Ian Prosser**  
Director, Railway Safety  
Office of Rail Regulation  
Email [ian.prosser@orr.gsi.gov.uk](mailto:ian.prosser@orr.gsi.gov.uk)



15 October 2012

Sarah Wadham  
Health and Safety Executive  
1.3.74 Redgrave Court  
Merton Road  
Bootle  
L20 7HS

Dear Sarah,

**HSE Consultation Document (CD242) on Proposals to Exempt Some Self-Employed People From Health and Safety Legislation**

This response provides comments from The Office of Rail Regulation (ORR) on HSE's proposals to exempt from health and safety law those self-employed whose work activities pose no potential risk of harm to others.

ORR is the Regulator for Health and Safety on Britain's railways and we have considered the impact of your proposed options on health and safety in a railway context. We would argue that it is essential to include railways in the list of prescribed sectors contained in option 2, thereby ensuring that all those engaged in activities related to railway safety continue to be protected by health and safety controls. With railways added to the list of prescribed sectors we would be able to support your proposed option 2.

Railways fall within the category of high risk industries. They are also regulated under a permissioning system which involves both safety certification and licensing arrangements operated by ORR. Whilst Britain continues to enjoy one of the safest railways in Europe the risks associated with train operations, both passenger and freight, remain significant and require continued close regulation. Significant risks include train collisions, derailment, and road vehicle collisions. There is also a considerable amount of on-going maintenance and construction activity within the sector.

There are many self-employed workers in the railway sector and their numbers may be increasing as companies seek to reduce their core staff numbers. To illustrate the extent of their involvement, we are aware of self-employed workers engaged as sub-contractors for Network Rail on track maintenance; independent consultants often

advising in safety critical areas; boiler inspectors; and construction workers. It is hard to imagine that any of those self-employed in the rail sector would be able to argue that their activities pose no risk of harm to others, in fact many of them would be in safety critical roles. But, we feel strongly that we should not rely on the judgement of individuals to determine whether they pose a risk or not, given the nature of the risks involved in railway operations and the potential for catastrophic harm involving the travelling public.

We believe that including railways in the list of prescribed sectors would be in line with the Government's response to the Löfstedt Report, and would not compromise HSE's delivery of the Löfstedt objective to remove health and safety burdens from the self-employed in low risk occupations.

We would be happy to discuss this with you if it would be helpful. The contact here is Dawn Russell, e:mail dawn.russell@orr.gsi.gov.uk.

We are content for this response to be made public.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ian Prosser', written in a cursive style.

**Ian Prosser**

**Director Railway Safety**