

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE OFFICE FOR NUCLEAR REGULATION
(ONR)
AND THE OFFICE OF RAIL AND ROAD (ORR)**

Signed by Les Philpott, Chief Executive on behalf of Office for Nuclear
Regulation

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Signed by Richard Price, Chief Executive on behalf of Office of Rail and
Road

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C O N T E N T S	
Memorandum of Understanding between the Office for Nuclear Regulation and the Office of Rail and Road	
Topic:	Page/Annex
PART I FRAMEWORK OF UNDERSTANDING	3
Introduction	3
Purpose of this MoU	4
Liaison arrangements	4
Central contact points	4
Resolving disagreements	5
Liaison	5
MoU review arrangements	5
PART II ARRANGEMENTS FOR THE PROVISION OF MUTUAL ADVICE AND SUPPORT IN POLICY DEVELOPMENT, INSPECTION AND ENFORCEMENT ACTIVITIES	6
Principles of engagement between ORR and ONR	6
Nature of support between ORR and ONR	6
Arrangements for the provision of specialist support	6
Procedure for requesting specialist resource	6
Policy development	7
Statutory notifications and complaints	7
Financial arrangements	7
Civil contingencies	7
Out of hours response	8
Clarification of investigation arrangements	8
Arrangements for ORR's entities in charge of maintenance and other inspection activities at ONR's licenced nuclear sites	8
Enforcement	8
Matters of evident concern	8
APPENDIX A: ENFORCEMENT RESPONSIBILITIES: RELATIONSHIP BETWEEN ORR AND ONR	9
General approach to the allocation of enforcement responsibilities	9
Enforcement flexibility where there is uncertainty	9
ORR's enforcement role at GB nuclear sites	9
Entities in charge of maintenance	9
Railway systems in military establishments	10
Devonport Royal Dockyard	10
Carriage of dangerous goods	11
Radiation emergencies	11
Regulation 4 exceptions	11

MEMORANDUM OF UNDERSTANDING BETWEEN THE OFFICE FOR NUCLEAR REGULATION AND THE OFFICE OF RAIL AND ROAD

PART I

FRAMEWORK OF UNDERSTANDING

Introduction

1. This Memorandum of Understanding (MoU) is made between the Office for Nuclear Regulation (ONR) and the Office of Rail and Road (ORR). Its purpose is to ensure effective coordination and cooperation between these organisations in relation to the regulation of health and safety, including policy matters and the enforcement of health and safety law, on all of Britain's railways and to set out the interface between railways operated within nuclear sites and the rest of Britain's railway network. This is the first MoU between the two organisations following ONR's separation from the Health and Safety Executive (HSE) and establishment as an independent regulator from 1 April 2014.
2. ONR and ORR recognise each other's status as independent health and safety regulators. In accordance with the better regulation principles, we are committed to work closely together to achieve our health and safety objectives, and to ensure coordinated and consistent joint-working where appropriate.
3. ONR considers, in accordance with Section 78(1) of the Energy Act 2013 (EA13), that this MoU facilitates the performance of its functions under Part 3 of EA13. ORR considers, in accordance with paragraph 2(a) of Schedule 3 to the Railways Act 2005 (RA 2005), that this MoU contributes to the provision of appropriate arrangements for fulfilling its duties in relation to the railway safety purposes.
4. ONR and ORR will cooperate to enable each other to carry out their responsibilities and functions, and will maintain effective working arrangements for that purpose. This MoU describes the arrangements ONR and ORR will put in place to assist this.
5. ONR and ORR will:
 - secure through their regulatory activity, including enforcement, consistent standards of protection for people at work and members of the public affected by work activities;
 - share knowledge and avoid duplication of effort to maximise efficiency in government and minimise burdens on business;
 - cooperate to ensure that the allocation of responsibilities set out in the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (as amended¹) (EARR) works effectively and provides clarification for duty holders as necessary;
 - ensure that the development of general health and safety policy takes account of issues relevant to the railways and that mutual research interests are considered; and
 - provide mutual expertise and assistance to enable the two organisations to fulfil their functions.

¹ Since 2006 EARR has been amended by further legislation, including:

- the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) (Amendment) Regulations 2008;
- the Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013; and
- schedule 12, sections 82-85 (3) of the Energy Act, 2013, which provided for enforcement flexibility between ORR and ONR.

Purpose of this MoU

6. Under EA13, ONR is given primary responsibility for the enforcement of nuclear safety, nuclear security, transport of radioactive materials and safeguards in Great Britain. The extent of ONR's responsibilities is further defined through amendments to various health and safety legislation. Except for the transport and security of radioactive material aspects of ONR's responsibilities, ONR's primary legal responsibilities are site-limited, particularly in respect of health and safety, which is exclusively enforced by ONR on nuclear licensed sites and defence authorised sites.

7. The RA 2005 transferred responsibility for railway-related health and safety matters from HSE to ORR by giving ORR primary responsibility for the application of HSWA Part 1 in respect of 'railway safety purposes'. EARR gave ORR enforcement responsibility in relation to the operation of a railway, subject to certain exceptions. This means that ORR has enforcement responsibility for any health and safety risks that either exclusively or primarily concern the operation of railways, tramways or other guided transport systems, except where these operations are carried out within certain listed premises, which includes licensed nuclear sites. Consequently the operation of a railway does not include railway operations carried out within a licensed nuclear site other than in respect of maintenance carried out on railway vehicles by an entity in charge of maintenance within such premises.

8. EARR allocates enforcement functions to ORR and defines who the enforcing authority (EA) is for particular activities and in relation to certain premises. EARR has been amended since ONR was established to include a new provision allowing the assignment of enforcement responsibility in cases of uncertainty as to the responsibilities of ONR and ORR. Appendix A, particularly paragraph A2 (page 9) of this MoU describes how this will work in practice

Liaison arrangements

9. Liaison meetings between ORR's and ONR's chief executives and operational and or policy representatives will be arranged as and when business needs dictate; and will build on the existing good relationships developed since ONR's formation in April 2014. This will include reviewing this MoU as necessary.

Central Contact Points

10. Each organisation will have a named single central contact point responsible for monitoring the practical implementation and effective working of the MoU and to assist good working relationships between the organisations. The contact should be made aware of major issues relating to how the MoU works, and will act as gatekeepers, monitor how the MoU works and the demand for support, assist in resolving disputes and participate in the preparation of briefing for the annual liaison meetings.

Resolving disagreements

11. Any disagreements will normally be resolved at working-level. If this is not possible, the central contact points will seek to settle the issue and ensure a jointly decided and agreed resolution. Senior management of both parties at appropriate levels will be involved as necessary.

Liaison

12. In practice, most operational interactions between ORR and ONR will arise as a part of ORR's planned inspections of entities in charge of maintenance – see paragraph 32 in Part II and paragraphs A5-A6 in Appendix A. It is the responsibility of individuals in both organisations to identify topics requiring liaison between the two organisations, and ensure that they are dealt with efficiently and effectively. ORR and ONR will liaise with each other through other forums and mechanisms to be decided.

13. Separate MoUs exist between ORR and local authorities, ONR and local authorities; between ORR and the Health and Safety Executive (HSE) and ONR and HSE.

MoU review arrangements

14. This MoU will be reviewed and updated using the following principles:

- a) reviewed approximately every five years or sooner if a substantive need arises;
- b) the arrangements for the provision of mutual advice and support described in Part II (see pages 6-7) can be reviewed and amended through the arrangements of both parties at working-level from time-to-time, as appropriate and needed. This includes scrutiny of actual resources used against predicted usage;
- c) key findings and any proposals for changing the MoU will first be considered as part of routine ORR/ONR liaison arrangements; and
- d) the detailed working arrangements set out in Appendix A (pages 9 - 12) may be clarified or amended from time-to-time outside the formal procedures for reviewing this MoU, but must be decided jointly by both parties in writing.

PART II

ARRANGEMENTS FOR THE PROVISION OF MUTUAL ADVICE AND SUPPORT IN POLICY DEVELOPMENT, INSPECTION AND ENFORCEMENT ACTIVITIES

15. In the railway context, ORR is responsible for enforcing non-railway-specific health and safety legislation, such as HSWA 1974, in relation to the operation of a railway. ONR has enforcement responsibility only in respect of activities relating to the safe and secure transport of radioactive (class 7) goods on the mainline railway, and exclusively on railway systems on nuclear sites (except in relation to entities in charge of maintenance, where ORR has sole responsibility). However, both ONR and ORR have an interest in the development of each other's policies and regulations, and technical knowledge relating to those areas, and will, from time to time, require advice, information and support from each other.

16. Both ONR and ORR will give advice to one another on their own areas of expertise as part of the normal working relationships between two government departments. However, both will need to communicate proactively with and seek more substantive support from each other from time-to-time, in particular where expertise in support of enforcement activity and/or policy development is needed.

Principles of engagement between ORR and ONR

17. As enforcing authorities of health and safety law, ONR and ORR:

- a) recognise the importance of their close working relationships, formal consultation and mutual support in policy development, and enforcement;
- b) enter into arrangements to provide annual outline estimates of the specialist resources each will seek from the other based on regulatory priority areas, in good time, and in accordance with each other's planning cycle. This recognises the need for flexibility in order to respond to the demands of reactive work; and
- c) will make adequate arrangements for the reimbursement of significant costs for the provision of mutual advice and support to each other on a, monthly basis and will monitor the demands each makes of the other, and maintain appropriate records centrally.

Nature of support between ONR and ORR

18. ONR and ORR will provide mutual support to each other around railway safety operational activities at licenced nuclear sites.

19. ORR will provide policy input from a railway health and safety perspective to support ONR's work-related health and safety functions at nuclear sites, which will include, but is not limited to:

- a) occupational health and safety policy development, as they relate to railway-related operations;
- b) the provision of specialist advice and opinion in support of enforcement action in connection with the railway; and
- c) the investigation of occupational fatalities, injuries and industrial dangerous occurrences in connection with the railway.

Arrangements for the provision of specialist support

20. ORR and ONR will enter into arrangements to, in principle, provide reciprocal specialist support in response to major incidents as needed and recognise the potential need to provide support in response to major incidents on an ad-hoc basis.

Procedure for requesting specialist resource

21. To gain access to support from ONR's operational teams, ORR's Principal Inspectors should contact the relevant ONR Programme Manager (in most instances, the Head of Conventional Health and Safety). Details of the level of resource supplied for each job will be confirmed on its conclusion and recorded by the ORR's and ONR's central contact points/finance teams.

22. To gain access to support from ORR's operational teams, ONR's team managers must contact the relevant ORR Principal Inspector, or more appropriate ORR personnel, and inform the ONR central contact point. Details of the level of resource supplied for each job will be confirmed on its conclusion of and recorded by ONR's and ORR's central contact points/finance teams.

Policy development

23. ONR and ORR have decided to involve one another proactively as appropriate in relevant policy development. This may cover, for example:

- policy issues where the two organisations have a common interest in legislation and a consistent approach is necessary, such as dealing with international regulation;
- cross-departmental policy initiatives, such as better regulation, where mutual legal and policy issues may exist and coordination of response would be desirable;
- determining strategies and targets to improve generic health and safety standards, and developing programmes or other coordinated cross-industry initiatives to help achieve them;
- developing statistical or other information systems on health and safety, and the sharing of such information; and
- responding to formal consultation exercises on health and safety matters; each will normally include the other as statutory consultees. Where changes to legislation are involved, informal consultation should precede the publication of a consultation document (CD) to allow both regulators to raise and discuss any implications for regulatory activity before publication of the CD.

Statutory notifications and complaints

24. Legislation makes arrangements for certain persons to notify enforcing authorities of certain events or concerns, such as accidents and dangerous occurrences under RIDDOR 2013. From time to time notifications about health and safety may be sent to the wrong EA.

25. When ONR or ORR receive an incorrectly directed notification, they will arrange for it to be supplied promptly in an approved format and delivery medium to the appropriate organisation through their nominated central policy-level contact point. Periodic provision will be made to review whether the sign-posting provided to industry for notify reportable incidents is operating effectively.

Financial arrangements

26. ONR and ORR recognise that the cost of providing significant levels of support from technical and other specialists must be measured, recorded and reimbursed. ONR and ORR will recover the full costs (including overheads) of reciprocal services in accordance with HM Treasury guidelines in Managing Public Money.

Civil contingencies

27. ONR is a category two responder under the Civil Contingencies Act 2004, which requires it to provide support during emergency planning and in response to any major civil contingency event.

28. As Network Rail, Transport for London and all train and railway infrastructure operating companies are also included on the list of category two responders, they are able to provide the necessary advice when planning for or responding to emergencies involving railway transport.

29. ORR will provide ONR with any additional advice on matters within its field of expertise as necessary to enable ONR to fulfil its duties under this legislation.

Out of hours response

30. ORR's and ONR's Out-of-Hours Duty Officers will hold each other's contact details, and will maintain appropriate guidance liaison arrangements as appropriate.

Clarification of investigation arrangements

31. The respective enforcement responsibilities are set out in EARR and the Health and Safety (Enforcing Authorities) Regulations 1998. Where an incident occurs at the interface between activities enforced by ONR and ORR, discussions at local principal inspector-level should be used to allocate enforcement lead roles and responsibilities, and to decide what action, if any, will be taken.

Arrangements for ORR's entities in charge of maintenance and other inspection activities at ONR's licenced nuclear sites

32. Most of ORR and ONR operational interactions will arise from ORR's planned entities in charge of maintenance inspections at ONR's licenced nuclear sites. These will be organised between ORR and ONR specialist and site-specific principal inspectors and involve joint site visits at planned times and locations.

Enforcement

33. ONR and ORR are both enforcing authorities for HSWA. ONR and ORR are guided by their respective published enforcement policy statements, of which both set out expectations and performance standards.

Matters of evident concern

34. Where either ONR or ORR inspectors observe matters of evident concern in areas of the site being visited for which they are not the EA, these should be brought to the attention of the applicable EA in the following way:

- where a risk of serious personal injury appears to be involved, notify the EA immediately by telephone so that the respective EA can consider taking appropriate enforcement action. The EA should inform the other EA of the action decided; or
- in other less serious and immediate cases, notify the EA in writing.

35. Both ONR and ORR will provide each other with supporting information and expertise, if necessary, to support any notice subsequently issued by the EA.

36. If these matters are within the responsibility of another EA, the receiving authority will forward the notification as appropriate and advise the original inspector. The initiative for any further action to rectify any inadequacy then rests with the appropriate EA.

37. Where ONR and ORR have a shared interest, they should keep each other informed about issues of interest to both parties, such as identified weaknesses in a company's health and safety management system.

ENFORCEMENT RESPONSIBILITIES: RELATIONSHIP BETWEEN ORR AND ONR

General approach to the allocation of enforcement responsibilities

A1. The Health and Safety (Enforcing Authority for Railways and Other Guided Transport systems) Regulations 2006 (EARR)² made ORR the health and safety enforcing authority (EA) for the operation of railways, tramways and other systems of guided transport in place of HSE³. However, pursuant to Regulation 4 of EARR, ORR is not the EA in respect of the operation of a railway carried out within a GB nuclear site other than in respect of: (i) the enforcement of orders made under section 1 of the Level Crossings Act 1983 in relation to any level crossing irrespective of the premises within which it is situated, and (ii) maintenance performed on a vehicle that is to be placed in service or used on the mainline railway by an entity in charge of maintenance (ECM). Consequently ORR only has a limited enforcement role at nuclear licensed sites in relation to the operation of a railway.

A2. In parallel, the Energy Act 2013 and amendments to the Health and Safety (Enforcing Authority) Regulations 1998, makes the ONR the EA for nuclear safety, nuclear security, transport of radioactive materials and nuclear safeguards, as well as health and safety on all nuclear licensed sites. In addition, ONR has responsibility for health and safety on all defence authorised sites, and enforcing the Ionising Radiations Regulations 1999 (IRRs) and Radiation (Emergency Preparedness and Public Information) Regulations 2001 (REPPPIR) in respect of nuclear warship docking arrangements. ONR is also currently the only EA in Great Britain with a remit to enforce carriage of class 7 (radioactive goods) by road, railway and inland waterway.

Enforcement flexibility where there is uncertainty

A3. The amendments to EARR also included the introduction of an enforcement flexibility provision⁴. This allows ONR and ORR to assign enforcement responsibility in situations where they both decide there is uncertainty as to what their respective responsibilities are, and they both decide on who is the most appropriate EA in the particular case. A decision to assign enforcement responsibility under this provision must be communicated to any person affected.

ORR's enforcement role at GB nuclear sites

Entities in charge of maintenance

A4. As set out in paragraph A1, ORR's enforcement role in relation to railway activities at nuclear licensed sites is limited to: (i) level crossings orders; and (ii) maintenance of railway vehicles by entities in charge of maintenance. An entity in charge of maintenance (ECM) is any person or organisation that is responsible for the safe maintenance of a railway vehicle and is registered as an ECM in the national

² any reference to EARR in this Appendix also refers to subsequent amendments by the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) (Amendment) Regulations 2008 (the 2008 amending regulations) and the Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013. Amendments made under the 2008 amending regulations are highlighted in the footnotes.

³ any references to 'railway' or 'trains' in this Appendix should be taken to include tramway systems and other guided transport systems as defined.

⁴ Regulation 5A of EARR.

vehicle register⁵. This can include people or organisations such as a train operator, an owner or a maintenance organisation.

A5. Regulation 4A of EARR makes ORR the EA in relation to maintenance work by an ECM on a vehicle to be put in service on the mainline railway. This applies wherever that maintenance work is carried out, including:

- harbours;
- factories;
- mines;
- **nuclear licensed sites;**
- quarries;
- warehouse premises; and
- establishments to which the Control of Major Accident Hazards Regulations 1999 apply.

Railway systems in military establishments

A6. In accordance with EARR, ORR is the EA for all railways in military establishments, with the exception of those military establishments at Britain's licensed nuclear sites such as certain naval dockyards⁶, which, as of 1 April 2014, are regulated by ONR. However, ORR continues to be the EA on nuclear licensed sites in relation to the activities of an ECM.

Devonport Royal Dockyard

A8. Devonport Royal Dockyard is a unique and complex establishment that helps to show how the above principles will apply in practice. The naval base dockyard is a nest of separate sites each of which has to be considered individually in terms of their allocated EA. At its core, it is a dockyard owned by Babcock Marine (Devonport) Ltd. The dockyard is operated by Devonport Royal Dockyard Limited (DRDL) a wholly-owned subsidiary of Babcock Marine (Devonport) Limited. Part of the dockyard is a nuclear licensed site and the surrounding area is the larger naval dockyard owned by MOD, but contains facilities run on their behalf by DRDL. A railway connected to the national infrastructure runs across the whole site.

A9. Under regulation 4(3) of EARR:

- ONR is the EA within the nuclear licensed site, including in respect of the operation of the railway;
- ORR is the EA for the operation of the railway throughout the remainder of the site owned by or operated on behalf of MOD;
- ORR is the EA in relation to ECM activities for each of the sites; and
- HSE is the EA for all other activities.

Carriage of dangerous goods

A10. ONR is the only regulator responsible for the civil carriage of Class 7 (radioactive) goods by road, railway or inland waterway under the Carriage of Dangerous Goods and use of Transportable Pressure Equipment Regulations 2009 (CDG Regs) in the UK. This will shortly be extended under an Agency Agreement to allow the police to jointly enforce

⁵ The national vehicle register is a database of railway vehicles authorised or operated in Great Britain under the Railways (Interoperability) Regulations 2011.

⁶ see regulation 4(3)(a) and (f).

CDG Regs on the road. The MOD retains all responsibility for military shipments of radioactive materials.

A11. ORR is the EA for health and safety risks associated with the carriage of all other dangerous goods by railway. This includes enforcing the relevant duties imposed by the CDG Regs, together with the few remaining requirements, which relate to petrol tankers, contained in the Carriage of Dangerous Goods Regulations 1996 (CDGRail)⁷.

A12. The Police and the Vehicle and Operator Services Agency (VOSA) are the EA when non-class 7 dangerous goods are carried on Britain's roads. HSE is the EA for all other land-based carriage of dangerous goods; however, by virtue of regulation 58(5) of the CDG Regs 2004, the Secretary of State for Transport is the EA for security provisions relating to the carriage of dangerous goods by railway (regulation 10A). This arrangement is continued by regulation 3(5) of EARR.

Radiation emergencies

A13. REPIR 2001 establishes a framework for the protection of the public through emergency preparedness for radiation accidents with the potential to affect members of the public and ensure the provision of information to the public⁸. It places duties on operators of premises which hold, or contain facilities to hold radioactive substances over certain thresholds, and to carriers who transport such substances by railway. HSE is the EA at locations outside nuclear sites, except where the goods are being handled as part of the operation of a railway, in which case ORR will enforce requirements related to duties on railway carriers. ONR is the EA in respect of all other interactions on nuclear sites, MOD authorised sites and nuclear warship (submarine) berths.

A14. Certain radioactive sources and packages containing radioactive substances are exempted from REPIR, but under current practice in this sector, the types of transport packages and quantities of radioactive substances generally carried by railway are unlikely to fall within the scope of REPIR.

Regulation 4 exceptions

Railway systems within industrial sites

A15. Under EARR regulations 4(3)(c) to 4(3)(h), railway operations carried out within certain listed sites are exceptions to the operation of a railway, except if it relates to the activities of an ECM. This means that ORR is not the EA for the operation of a railway within a nuclear licensed site. However, ORR is the EA in relation to the activities of an ECM on these premises where the vehicles are placed in service or used on the mainline railway⁹. ONR is the EA for those locomotives and wagons which are exempt from ECM requirements because they are used and operated on routes solely within licensed nuclear sites and not used or operated on the mainline railway network.

A16. At these sites the transport of materials tends to be primarily for processing locally, and railway movements are likely to be limited. ONR is the relevant EA within nuclear sites in relation to railway operations other than the activities of an ECM. However, once a train exits from a nuclear site on to the mainline railway network, enforcement passes from ONR to ORR, except for the carriage of dangerous responsibilities arrangements set out in A10.

⁷ see regulation 3(1) and see paragraph 10 to the Schedule which shows consequential amendments to the Carriage of Dangerous Goods and use of Transportable Pressure Equipment Regulations 2004 (CDG).

⁸ see regulation 3(1) of EARR and see paragraph 10 to the Schedule which shows consequential amendments to the Radiation (Emergency Preparedness and Public Information) Regulations 2001.

⁹ see regulation 4(4A) of EARR.

Security status: OFFICIAL

A17. When an incident occurs solely in relation to railway-related activities within a nuclear site (e.g. internal shunting of wagons), but has consequences which impact on activity on the mainline railway network, the EA will be determined on the basis of the location where the original incident occurred, e.g. ONR if the failure occurs within the nuclear site, and ORR if the failure occurs outside the nuclear site.