

MEMORANDUM OF UNDERSTANDING

BETWEEN

**The Rail Safety Authority (Rail Safety Branch within the
Department for Infrastructure)**

AND

The Health and Safety Executive for Northern Ireland

IN MATTERS RELATING TO

Railway Safety in Northern Ireland

Signed by Bernie Rooney (Director, Gateways and EU Relations) on behalf of the Department for Infrastructure:

A handwritten signature in blue ink that reads "Bernie Rooney". The signature is written in a cursive style with a large initial 'B'.

Date: 29th March 2022

Signed by Robert Kidd (Chief Executive) on behalf of the Health and Safety Executive for Northern Ireland:

A handwritten signature in black ink that reads "Robert Kidd". The signature is written in a cursive style with a large initial 'R'.

Date: 13th April 2022

This Memorandum shall come into immediate effect.

Date of next review: March 2023

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Version control		
Revision number	Date	Changes made
0	23/3/22	Final version for signature

1. Legislative Basis

This Memorandum of Understanding (MoU) constitutes an agreement under Article 15(1)(b) of The Health and Safety at Work (Northern Ireland) Order 1978 made by the Health and Safety Executive for Northern Ireland (HSENI) with the Rail Safety Authority (RSA) within the Department for Infrastructure (DfI).

It sets out the statutory functions of HSENI in relation to rail safety, and also those statutory functions of DfI which HSENI carries out under this agreement in connection with HSENI's functions relating to rail safety.

2. Purpose

The MoU sets out the statutory responsibilities of HSENI and the RSA relating to rail safety, recognising that there is much crossover regarding rail safety, and acknowledging the need for collaboration to ensure rail safety activities are carried out effectively.

The purpose of the MoU is to set out:

- Roles and responsibilities of each organisation with regard to rail safety;
- Activities undertaken by the RSA and HSENI;
- Joint working arrangements between the RSA and HSENI;
- Communication arrangements between HSENI and the RSA; and
- Administrative arrangements relating to the MoU.

This MoU will ensure that the RSA has access to advice and support provided by HSENI to facilitate the licensing and safety certification of railway undertakings operating on the Northern Ireland (NI) mainline or heritage networks. Further, it ensures there is effective inspection of railway undertakings' safety activities and regulatory compliance by railway undertakings operating on the NI mainline and heritage networks.

3. Background

DfI acts as the RSA for NI and is responsible for ensuring NI Railways' regulatory compliance with the rail safety regulatory framework. DfI does this in accordance with the Railway Safety Act (NI) 2002 and other domestic and European legislation. DfI has exercised this role since 2006.

HSENI has provided advice and support to the RSA to enable it to deliver its statutory functions with regard to rail safety since 2006. HSENI has obligations in relation to both mainline and heritage railways in NI. Further information on the activities undertaken by HSENI is set out in paragraph 5 and in Annex A.

4. Roles and responsibilities

There are a range of areas, set out in legislation, where the RSA and HSENI work together to ensure the safe operation of railways throughout NI. Further details of the relevant statutory obligations are set out in Annex A.

5. Activities undertaken by HSENI and the RSA

The legislative obligations set out Annex A are delivered via a range of activities as detailed below.

5.1. Advice and support provided by HSENI to the RSA

HSENI will provide advice and support to the RSA within agreed timescales, and assist the RSA to carry out its statutory functions set out in this agreement.

Any proposed amendments, additions to, or reduction in these activities will be agreed by HSENI and the RSA. Issues where agreement cannot be reached by the named contacts or which are considered to be outside the scope of this MoU should be escalated through the normal channels within each organisation, with direction or outcomes being fed back to the named contacts to ensure the appropriate individuals within each organisation are kept fully informed.

HSENI will provide advice and support as follows:

- assessment of railway safety management systems and risk assessments, required under The Railways (Safety Management) Regulations (NI) 2006, including risk assessments required for the licensing of heritage and light railways with the technical assistance of the Office of Rail and Road (ORR) if required by HSENI
- implementation of any recommendations made by the Rail Accident Investigation Branch (RAIB) following their investigation and report into any railway accident or incident (relevant to rail safety in Northern Ireland)
- investigation of any railway incident or accident not subject to any investigation that RAIB might be undertaking or where HSENI is investigating in its own right
- inspections, advice and support required for the making and amendment of level crossing orders and inspections of level crossings
- assess the technical file for safety verifications for new or substantially altered infrastructure or vehicles being authorised for use
- support the inspection of train driving licences and certificates required under The Train Driving Licences and Certificates Regulations (NI) 2010 in accordance with relevant provisions of The Health and Safety at Work (NI) Order 1978

- consider the technical information submitted in support of an application to approve an exemption and advise the RSA on the granting of exemptions
- consider the technical information submitted in support of an application for a European licence in accordance with the requirements of The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (NI) 2016
- consider the technical information submitted in support of, or an application for, an exemption order in respect of rail vehicles that are not compliant with The Rail Vehicle Accessibility Regulations (NI) 2014
- safety verification for new or substantially altered works or equipment required under The Railways (Safety Management) Regulations (NI) 2006

5.2. Enforcement responsibilities - HSENI

HSENI should ensure arrangements are made for the enforcement of any regulations for which it has responsibility as the enforcing authority and where other railway regulations impact upon its responsibilities under The Health and Safety at Work (NI) Order 1978 (these are detailed in the 'Roles and responsibilities' section above and in Annex A).

The RSA has very limited enforcement powers in its own right, and therefore will engage HSENI to undertake enforcement on behalf of the RSA where it has the ability to do so.

Prior to enforcement taking place, HSENI and the RSA should engage regarding enforcement and the issues concerned, particularly where these issues impact on the remit of the RSA and can therefore inform any wider monitoring and supervision processes. The RSA should provide information and support to HSENI as appropriate during any enforcement activity.

Where the RSA identifies compliance issues, and continued non-compliance is identified, it will submit a request for HSENI to commence enforcement action as appropriate, and both organisations should continue to engage as action progresses.

Where the RSA identifies any health and safety concerns outside their rail safety remit while undertaking their duties, they will share this information with HSENI.

In the event that HSENI conduct any investigation on activities of NI Railways, HSENI shall keep the RSA informed of developments and the outcome of such investigations.

6. Joint working arrangements

6.1. Regular engagement between HSENI and the RSA

The RSA and HSENI will schedule regular meetings to discuss issues relevant to their responsibilities regarding rail safety, and to share information which may help each organisation take forward their responsibilities more effectively. Meetings should take place quarterly or more frequently if required and responsibility for minute-taking will alternate between organisations. Issues which may be discussed should include updates regarding relevant inspections and follow-up activity.

Each organisation will designate named contacts for this engagement and for all other issues requiring a co-ordinated approach between HSENI and the RSA.

6.2. Process for dealing with emerging issues

While ongoing regular engagement between the RSA and HSENI will take place as set out in paragraph 6.1, emerging issues concerning rail safety which are outside the normal issues dealt with by each organisation or which require a more urgent response may arise. Such issues should be brought to the attention of the named contacts as soon as possible to allow for discussion and agreement of a common approach, or for escalation as appropriate.

Issues which require escalation should be raised through the normal channels within each organisation, with direction or outcomes being fed back to the named contacts to ensure the appropriate individuals within each organisation are kept fully informed.

6.3. Engagement with other organisations

The RSA and HSENI may wish to engage jointly with organisations, such as ORR, where it is appropriate in the context of the activities listed in this MoU. Engagement should take place as required to ensure an efficient and joined-up approach to rail safety. This is particularly important where there is a crossover of responsibilities, for example, where HSENI engage with ORR, it may be appropriate for both the RSA and HSENI to provide input.

In the event that the RSA engage ORR to conduct any investigation on activities of NI Railways, the RSA shall keep HSENI informed of developments and the outcome of such investigations.

7. Administrative arrangements

7.1. Financial arrangements

Where HSENI incur costs under the terms of this agreement, such as engaging the assistance of ORR, the RSA shall bear the cost. HSENI should communicate this matter to the RSA prior to engagement and provide estimated costs. Following agreement by all

parties, engagement of ORR would be via the RSA to ensure their continued involvement in the process. Where costs may be incurred for any other joint activities, both organisations should agree financial arrangements in advance of the activity taking place. Financial arrangements may be considered during regular engagement as appropriate.

7.2. Information management

Both organisations will meet their obligations under The Freedom of Information Act 2000, The Environmental Information Regulations 2004, The Data Protection Act 2018 and the UK General Data Protection Regulation for any information requests they receive in connection with this MoU. If specific data sharing arrangements between HSENI and the RSA are required, a data sharing agreement will be put in place, and each organisation will follow the principles set out in that agreement.

7.3. Monitoring and review of MoU

Both organisations will jointly review the MoU annually, however if any issues arise that may require revisions, or if either organisation wishes to propose amendments, a review may be brought forward.

8. Disclaimer

By signing this document, HSENI and the RSA are not committing to legally binding obligations. It is intended that the partners remain independent of each other and that this collaboration does not constitute the creation of a legal entity, nor authorise the entry into a commitment for or on behalf of each other.

Annex A – Legislation, functions and areas for collaboration

Legislation	Relevant content	Functions of the RSA/HSENI	Areas for collaboration
The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016	Regulation 44 – Appointment of licensing authority and grant of European licences	RSA grants or modifies a European licence, and must consult with HSENI before doing so	HSENI provides support in the issuing of European licences
The Rail Vehicle Accessibility Regulations (Northern Ireland) 2014	Regulations 3 and 4 – Exemption orders for rail vehicles Regulation 6 – Enforcement	HSENI will provide support and advice in considering any application for an exemption under these Regulations HSENI has an enforcement power in relation to accessibility standards	HSENI enforcement supports delivery of the requirements in the Regulations
The Railways (Interoperability) Regulations 2011	Regulation 40 - Enforcement in Northern Ireland	HSENI has an enforcement power in relation to these Regulations	HSENI enforcement supports delivery of the requirements in the Regulations
The Train Driving Licences and Certificates Regulations (Northern Ireland) 2010	Regulation 40 - Enforcement	The RSA has an enforcement power in relation to these Regulations. This has previously been delegated to HSENI	HSENI enforcement supports delivery of the requirements in the Regulations
The Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008	Regulation 8(3) – Driving time Regulation 9 – Records Regulation 10 – Enforcement Regulation 15 – Prosecutions by inspectors Schedule 2 – Enforcement	HSENI has an enforcement power in relation to these Regulations	HSENI enforcement supports delivery of the requirements in the Regulations

The Railway Safety Regulations (Northern Ireland) 2007	Regulation 8 – Exemption certificates	HSENI will provide advice and support and advice in considering any application for an exemption under these Regulations	HSENI support and advice provides assurance to the RSA in meeting its requirements in issuing exemption certificates
The Railway Safety (Miscellaneous Provisions) Regulations (Northern Ireland) 2007	Regulation 8 – Exemptions	HSENI will provide advice and support and advice in considering any application for an exemption under these Regulations	HSENI support and advice provides assurance to the RSA in meeting its requirements in issuing exemption certificates
The Railways (Safety Management) Regulations (Northern Ireland) 2006	Part II – Safety Management, Certification and Authorisation Part III – General Duties Regulation 26 – Exemptions Schedule 1 – Safety Management System	RSA is responsible for assessment of railway safety management systems and risk assessments required for the licensing of heritage and light railways. HSENI will provide advice and support and advice in relation to this role HSENI will provide advice and support and advice in considering any application for an exemption under these Regulations	HSENI support and advice provides assurance to the RSA in meeting its requirements under these Regulations

<p>Railway Safety Act (Northern Ireland) 2002</p>	<p>Enforcement via Health and Safety at Work (NI) Order 1978 as attracted by the Railway Safety Act (NI) 2002</p>	<p>RSA is responsible for approval of railway works, plant and equipment, and HSENI will provide support and advice in relation to these approvals</p> <p>RAIB investigate railway accidents in accordance with The Railways (Accident Investigation and Reporting) Regulations 2005</p> <p>HSENI carry out investigations of any railway incident or accident not subject to any investigation that RAIB might be undertaking or where HSENI may investigate in its own right</p>	
<p>Level crossing orders</p>	<p>N/A</p>	<p>HSENI carry out inspections and provide advice and support required for making and amendment of level crossing orders</p> <p>HSENI consider technical file and application for approval of railways works, plant and equipment</p> <p>Investigation of any railway incident or accident not subject to any investigation that RAIB might be undertaking. HSENI can also take forward an investigation in its own right</p> <p>Enforcement of Regulations where a person has not complied with any requirements at a level crossing</p>	<p>HSENI enforcement supports delivery of the requirements in the orders</p>

Annex B – Railway operators

Operating on mainline network

Northern Ireland Railways

Iarnród Éireann

Railway Preservation Society of Ireland

Heritage operators

Downpatrick and County Down Railway

Railway Preservation Society of Ireland

Peatlands Park Railway

Bulrush Horticulture

Giant's Causeway and Bushmills Railway

Annex C – Named contacts within HSENI and the RSA

HSENI

- Kellie McNamara, Principal Health & Safety Inspector, Major Hazards, Gas & Transport
Kellie.McNamara@hse.gov.uk; 02890547028

All correspondence issued to named individuals within the HSENI should also be copied to Mail@hse.gov.uk

RSA

- Dr Graeme Banks, Acting Head, Rail Safety Branch
graeme.banks@infrastructure-ni.gov.uk; 02890540065
- Joanne Magee, Rail Safety Branch
joanne.magee@infrastructure-ni.gov.uk; 02890542917

All correspondence issued to named individuals within the RSA should also be copied to railsafety@infrastructure-ni.gov.uk

Annex D – Glossary

European train driving licence – a licence issued by a safety authority in accordance with article 14 of Directive 2007/59/EC (certification of train drivers operating locomotives and trains on the railway system in the Community) indicating that the holder satisfies medical, educational and professional skills for train driving.

Health and Safety Executive for Northern Ireland (HSENI) – HSENI is an executive non-departmental public body sponsored by the Department for the Economy. It is the lead body responsible for the promotion and enforcement of health and safety at work standards in Northern Ireland.

Rail Safety Authority (RSA) – the Rail Safety Branch within the Department for Infrastructure acts as the RSA for Northern Ireland. The RSA is the National Safety Authority with regards to rail safety and acts as the competent authority for interoperability of the rail system.

Rail safety regulatory framework – the range of legislation (domestic and EU legislation) that sets out requirements for safe railway transport.

Railway undertaking – a railway undertaking as defined in point (1) of Article 3 of Directive 2012/34/EU (undertakings licenced according to the Directive), and any other public or private undertaking, the activity of which is to provide transport of goods and/or passengers by rail on the basis that the undertaking is to ensure traction, including undertakings which provide traction only.

Safety management system – the organisation and arrangements established by a mainline railway operator to ensure the safe management of its operation. Heritage operators carry out a *risk assessment*.