



Department for
Infrastructure

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**Memorandum of Understanding
Between the
Commission for Railway Regulation & the Rail Safety Authority (Rail
Safety Branch within the Department for Infrastructure of Northern
Ireland)
April 2022**

1. Introduction

This Memorandum of Understanding (MoU) has been agreed between the Commission for Railway Regulation (CRR) and the Rail Safety Authority (Rail Safety Branch within the Department for Infrastructure of Northern Ireland - RSA) as the National Safety Authorities (NSAs) in Ireland and Northern Ireland respectively. It establishes the principles for effective liaison, communication, and co-operation between these parties so that supervision activity on the railways on the island of Ireland can be undertaken in a thorough and co-ordinated way, ultimately contributing to the safe operation of the railway service.

The MoU recognises that all parties have functions to perform in relation to supervision that are governed by each respective national legislative framework. It is recognised that there is a significant degree of commonality in relation to the requirements of the national legislative frameworks. Each party in fulfilling their statutory obligations and functions should appropriately take into account the respective obligations and functions of the other parties.

The national legislative framework regulating the operation of heavy rail in Ireland is based on national (Railway Safety Act 2005) and EU legislation (Fourth Railway Package). The legislative framework in Northern Ireland is based on the Railway Safety Act (Northern Ireland) 2002, the Railways (Safety Management) Regulations (Northern Ireland) 2006 (as amended), retained EU legislation and European Technical Specifications for Interoperability.

It is, therefore, recognised that there are separate legislative frameworks within each jurisdiction, and it is not the intention of this MoU to imply any mutual recognition in relation to these.

2. Objective of the Memorandum of Understanding

The objective of this Memorandum of Understanding between the CRR and the RSA is to:

- Facilitate co-operation between both parties in discharging their statutory responsibilities for the regulation of the railways.
- Enhance the actions of both regulators in terms of supervision activities and to avoid, where possible, duplication of effort by both regulators and the imposition of an unnecessary regulatory burden on the operators of the railways.
- Establish the principles of engagement between both parties.

3. Legal background

Both Ireland and Northern Ireland have their own legislative framework that applies to ensure the safe operations of railway undertakings.

The Railway Safety Act No. 31 of 2005 (as amended) established the Railway Safety Commission. The RSC became the Commission for Railway Regulation on 29 February 2016 following its designation as a regulatory body in EU law under S.I. 249/2015. The Act gave three principal functions: (a) to foster and encourage railway safety; (b) to enforce the Act and any other legislation relating to railway safety; and (c) to investigate and report on railway accidents and incidents for the purposes of determining compliance with safety management systems and safety targets and the powers to fulfil these functions.

S.I. No. 476/2020 European Union (Railway Safety) Regulations 2020 gives effect to Council Directive (EU) 2016/798 (Railway Safety Directive) and the CRR as the National Safety Authority ensures compliance with the Directive and these Regulations, including supervision and enforcement.

To fulfil its supervision functions the CRR conducts its activities in line with both European and national legislation.

In the European context the Commission Delegated Regulation (EU) 2018/761 establishing common safety methods for supervision by national safety authorities is applied by the CRR.

In addition, the CRR has published its own guidance in relation to supervision, RSC-G-023-C.

The RSA is responsible for ensuring regulatory compliance with the rail safety regulatory framework in Northern Ireland. It does this in accordance with the Railway Safety Act (Northern Ireland) 2002, the Railway (Safety Management) Regulations (Northern Ireland) 2006 (as amended) and other associated regulations.

The RSA is responsible for monitoring and supervising the development, implementation, and deployment of mainline railway operators' safety management systems. The RSA undertakes this activity through auditing and inspecting operators' application and practical deployment of their safety management systems. The RSA's supervision and monitoring activity is delivered in line with the respective Common Safety Methods for Supervision and Monitoring.

4. Principles of engagement between the CRR and the RSA

- ✓ Having an understanding of how each party fulfils their functions.
- ✓ Open communication.
- ✓ Sharing of information.
- ✓ Limit the potential for dual or repeated supervision activity.
- ✓ Ensuring, where possible, agreed actions based on the respective annual supervision plans.

4.1 Having an understanding of how each party fulfils their functions

Both the CRR and the RSA will ensure that they advise each other, at least annually, on the structure of their organisations, how supervision is undertaken and the general way that they operate. They will continue to keep each other advised on any changes or future development that may bring alterations in any of these areas and that may impact on how they engage.

4.2 Open communication

Both the CRR and the RSA will agree the means of engagement and communication between them that will ensure effective co-operation. This will include identified contacts and methods of engagement. There will on an annual basis be a review meeting of the operation of the MoU. In addition, there will be an annual engagement to advise each other on their proposed supervision plan on any entity subject to dual regulation. This should be supported by regular in year engagement to deliver any joint or co-ordinated supervisory activity and, where appropriate, may also cover sharing of information relating to any major compliance gaps of entities subject to dual regulation identified in one or other jurisdiction.

4.3 Sharing of information

Recognising that there may be restrictions on the sharing of certain information obtained through statutory functions as well as those imposed by data protection legislation, both the CRR and the RSA are committed to sharing information that is relevant and important for each party to have a full understanding and knowledge of the safety performance of any entity subject to dual regulation. To that end, the CRR and RSA as part of their regular communication and co-ordination activities will agree what information will be shared. This may include, as appropriate, copies of safety authorisations, audit or inspection reports, enforcement decisions or actions, and the safety performance of entities subject to dual regulation in the respective jurisdictions.

Where a specific data sharing agreement between parties is required, this will be co-ordinated outside of the MoU and put in place accordingly.

Each organisation will meet their obligations under the relevant legislation in their jurisdiction regarding any information requests they receive in connection with this MoU.

4.4 Limit the potential for repeated supervision activity

In meeting their statutory function of supervision, both the CRR and the RSA will have active engagement with any entity subject to dual regulation. Both parties recognise the potential for duplication of effort on their behalf and the potential for additional regulatory burden on any regulated entity. It is seen as beneficial to all that such duplication is reduced to the lowest level possible. Individual annual supervision plans by both the CRR and the RSA will be developed so that there is a shared approach to supervision activity. This will ensure that the highest risk areas as understood by both regulators are addressed, while the potential for unnecessary duplication of effort is minimised. The potential for a single joint supervision plan on railway organisations shall be possible if considered prudent and appropriate, and this will be developed outside this MoU and put in place accordingly.

Annex I sets out a range of items that should be considered when undertaking co-ordinated supervision.

4.5 Ensuring, where possible, agreed actions based on the respective annual supervision plans

The CRR and the RSA have similar methods of engagement with regulated entities based on audit, inspection and supervision meetings. Where a single common plan is agreed then the nature of the engagement should also be agreed. Any of these methods of engagement may, by mutual agreement, be conducted jointly. If an activity is being conducted jointly then the

CRR and the RSA will agree who is taking the lead (likely based on the jurisdiction in which the activity is being conducted) and clearly define roles as may be necessary. The regulated entity must be advised of and be in agreement with joint activities prior to their commencement. Where this agreement is not given then the activity can be conducted by each party independently.

Both the CRR and the RSA have an approach to supervision that relies, in the first instance, on voluntary compliance. It is, however, recognised that each party has available to them the necessary enforcement powers where compliance is required. Where formal enforcement action is deemed necessary, either party will advise the other of its intent. Both the RSA and Health and Safety Executive for Northern Ireland (HSENI) have enforcement powers on rail safety matters and work collaboratively to undertake enforcement action – the arrangements covering such activity are outlined in a separate MoU with HSENI.

As may be expected, from time to time plans may need to be amended due to unforeseen circumstances. Should changes to agreed supervision plans be necessary the party making the change shall advise the other via the respective key contact(s) at the earliest opportunity.

5. Accident and incident investigations

The Rail Accident Investigation Unit (RAIU) and Rail Accident Investigation Branch (RAIB) are the accident and investigation bodies in Ireland and Northern Ireland respectively. Both bodies take a lead role in investigating those incidents which meet their criteria for investigating and RAIU and RAIB have a separate MoU to cover arrangements for how those bodies work together.

The CRR and the RSA agree that incident/accident investigations will be treated on a case-by-case basis.

It is agreed that communication should be established between identified individuals in the CRR and the RSA at the earliest opportunity where a role for both NSAs arises as soon as practicable after such an occurrence. This is in order to ensure mutual cooperation and assistance were agreed as necessary with regard to the investigation.

In Ireland, investigation of any railway incident or accident is usually carried out by either the RAIU or HSA. The CRR's role in accident or incident investigation is specific to investigating and reporting for the purposes of determining compliance with safety management systems and safety targets.

In Northern Ireland, investigation of any railway incident or accident is usually carried out by either the RAIB or HSENI. The RSA's role in accident or incident investigation is specific to investigating and reporting for the purposes of determining compliance with safety management systems and safety targets.

A copy of draft reports shall be shared between both the CRR and the RSA for comment before issuing to the railway organisation, where the report addresses issues relevant to both parties and a dual regulated entity. Comments should be addressed to the satisfaction of both the CRR and the RSA before issuing for comment to the railway organisation.

6. Reports required from Regulated entity

The CRR are required to report annually to the European Union Agency for Railways (ERA) in relation to the safety performance within its jurisdiction. The format of this report is set by the ERA. To compile the report individual railway organisations must by 31 May each year submit their own individual annual report to the CRR.

Similarly, the RSA is required to publish an annual report on safety on the rail network as set out in Regulation 18 of the Railways (Safety Management) Regulations (Northern Ireland) 2006 (as amended). In preparing the report, each railway operator certified and/or authorised by the Department is required to submit a return no later than 31 August each year.

Both the CRR and the RSA will seek to ensure that there is, where possible, a common approach to reporting requirements for regulated entities.

7. Consultation with regulated entities

The legislative framework for entities subject to dual regulation can be complex and subject to regular update or change. Both parties agree to keep each other advised on such legislative developments within their own jurisdiction and to have in place a means of engagement with the relevant regulated entities where consultation is ongoing on any framework updates or changes.

8. Annual Review of MoU

A meeting between senior representatives of both NSAs will be held at least annually where activities in the areas in relation to the supervision of railway undertakings and co-operative measures will be reviewed.

In addition, the content of this MoU will be reviewed annually to ensure that it remains relevant. If any issues arise that may require revisions, or if either organisation wishes to propose amendments, a review may be brought forward. Any changes to the MoU will involve all parties and will be agreed by each organisation in accordance with their own governance arrangements.

9. Termination

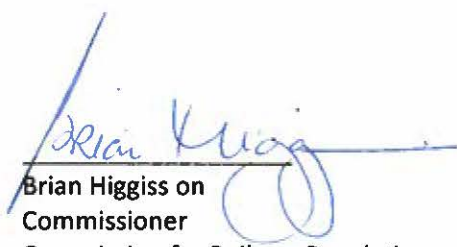
The MoU comes into effect on the date it is signed by both organisations. The MoU can be terminated either on a date agreed by the organisations, or following written notice given by one organisation to the other.

10. Contact points

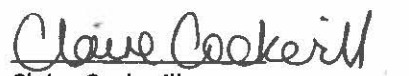
Key contact points:

CRR: Principal Inspector with responsibility for Supervision & Enforcement

RSA: Head of Rail Safety


Brian Higginson
Commissioner
Commission for Railway Regulation

04 Aug 2022


Claire Cockerill
Acting Director, Gateways & EU
Relations Division
Department for Infrastructure - NI

23/8/22

Annex I

1. The following is a non-exhaustive list of items that should be considered for exchange when developing a co-ordinated approach to supervision

- exchange information on the safety management systems of railway undertakings and share information on weaknesses noticed during safety management system assessment (issues logs)
- provide copies of safety certificates in terms of validity and duration
- share supervision strategies and plans, e.g. planned annual supervision activity
- share results on relevant supervision activity findings and enforcement activity
- share information on safety performance of railway undertakings
- share information on how each NSA targets its supervision activities for the specific railway undertaking concerned as part of the supervision plan
- agree on how the NSAs involved will arrive at a proportionate response to dealing with compliance issue
- share good practice