



OFFICE *of*
RAIL REGULATION

Combining Safety and Economic Regulation

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This is our third bulletin informing stakeholders of progress in transferring responsibility for railway health and safety regulation from HSC/E to ORR. The Bulletin is provided for information, though we welcome any comments you may care to make.

Please send any comments to:

Margaret Duke: Office of Rail Regulation
1 Waterhouse Square, 138-142 Holborn, London, EC1N 2TQ

Or, from 1 April 2006 –
One Kemble Street, London WC2B 4AN

Email: Margaret.Duke@orr.gsi.gov.uk

Background

1. The Government announced its intentions for the regulation of rail health and safety in its White Paper (*The Future of Rail*: 15th July 2004) as “Bringing regulation of all aspects of the rail industry – safety, reliability and efficiency – together under a single public regulator” [ORR]
2. The first step towards this objective was taken by Parliament in April 2005 by the passing of the Railways Act 2005 whose provisions include transfer of the policy functions of the Health and Safety Commission (HSC) under the Health and Safety at Work etc. Act 1974 (HSWA) to the ORR in respect of ‘railway safety purposes’.
3. Our two previous Bulletins [April 2005 and July 2005] have updated stakeholders on the preparations and further legal instruments that would be necessary before we could assume the full role of joint safety and economic regulator.
4. This Bulletin provides a final update confirming that ORR will assume full responsibility for safety regulation of the railways on 1 April 2006.

Progress

The Railways Act 2005

5. The Railways Act¹ has the effect of making ORR responsible for safety policy with respect to operation of the main line railway, heritage, metros and light rail systems. The Act, as passed, would also make ORR responsible for guided buses and certain fairground attractions which run on parallel guided rails.

6. Ministers have issued a Commencement Order² so that the safety related aspects to the Railways Act come into force on 1 April. Ministers have also signed an Amendment Regulation, which removes fairground equipment from the definition of transport systems and gives health and safety policy responsibility for guided buses and trolley vehicles to HSC. We fully support this change. The Amendment Regulations also come into effect on 1 April.

Enforcing Authority (Railway) Regulations

7. In addition to the primary powers in the Railways Act 2005, supporting Regulations are necessary to make ORR the enforcing authority for the Health and Safety at Work etc. Act 1974 and its relevant statutory provisions. These Regulations have been signed by the Minister and will come into force on 1 April. The Regulations and supporting guidance³ set out the boundary of enforcement responsibilities between ORR and HSE on the railway.

8. The Regulations also include certain other provisions that are necessary for the seamless transfer of safety responsibility to ORR such as: ensuring ORR inspectors have the same legal status as HSE or local authority inspectors; and enabling the transfer of ongoing enforcement action and litigation.

¹ <http://www.opsi.gov.uk/acts/acts2005/20050014.htm>

² http://www.uk-legislation.hmso.gov.uk/si/si2006/uksi_20060266_en.pdf

³ Guidance will be available on the ORR Website from 1 April 2006

Railway Safety Levy

9. Provision is made in the Railways Act 2005 for the Secretary of State to make regulations under the Health and Safety at Work etc. Act 1974 for a levy to be paid to ORR in respect of its safety-related activities. The Railway Safety Levy Regulations are expected to be approved by Parliament during March so that they come into effect on 1 April.

Health and Safety Enforcement Policy

10. We sought comments on a health and safety enforcement policy for the railways. It is important to ORR and HSC/E that common health and safety provisions are generally enforced in a consistent manner across different industry sectors. Our enforcement policy can be found, with effect from 1 April, on our website. We are committed to reviewing this policy in the light of experience.

Health and safety strategy

11. We have developed our strategy and approach for regulating health and safety on the railways. Our strategy is an integral part of our Corporate Strategy, which will be published before the end of March 2006 following extensive consultation. We have held a number of meetings throughout the country to debate and explore our Corporate Strategy as part of our consultation. We have found these meetings to be very useful in determining the final shape of our Strategy.

Guidance

12. HSE has published considerable guidance of specific value to the rail industry, as well as other guidance of a more generic nature. From the date that we assume the role of safety regulator, we will treat, and wish the rail industry to treat, rail specific guidance as if it had been issued by ORR. From 1 April our website will list this guidance and we will, as soon as possible, make it electronically available. We do not intend to reprint/publish each of these documents to reflect the transfer of safety responsibility until there is a compelling business case to do so.

Business infrastructure

13. On 1 April, HSE-Rail staff will transfer to become employees of ORR. Outside London, transferring HSE staff will remain in the regional offices where they are currently based. HSE staff based in London, together with existing ORR staff, will move to new premises in Kemble Street, Holborn.

14. A new corporate logo has been established for the new organisation. Work will continue for some time to bring about the necessary cultural change that is inevitable when two distinct organisations join.

Advisory Committee

15. ORR have made arrangements to continue with the HSC Rail Industry Advisory Committee (RIAC). Jim O'Sullivan (ORR Non-Executive Director) will chair RIAC and its first meeting is scheduled for May 2006.

16. ORR is committed to ensuring that it engages in constructive dialogue with stakeholders in a variety of ways.

Maintaining the ORR-HSE Rail relationship

17. ORR and HSE are finalising a Memorandum of Understanding setting out how we will share information and specialist expertise necessary to deliver our respective functions. ORR and HSE will particularly work together in development of policy where we share an interest and to ensure equivalent standards of safety and consistency of enforcement.

18. A number of other Memoranda of Understanding and Agency Agreements are being put in place with other Government bodies.

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