

**MEMORANDUM OF UNDERSTANDING AGREED BETWEEN
THE RAIL ACCIDENT INVESTIGATION BRANCH,
THE CROWN OFFICE AND PROCURATOR FISCAL SERVICE,
THE BRITISH TRANSPORT POLICE,
THE ASSOCIATION OF CHIEF POLICE OFFICERS
(SCOTLAND)
AND
THE OFFICE OF RAIL REGULATION
FOR
THE INVESTIGATION OF RAIL ACCIDENTS AND INCIDENTS
IN SCOTLAND**

INTRODUCTION

1. This Memorandum of Understanding (MoU) has been agreed between the following parties: the Rail Accident Investigation Branch (RAIB), the Crown Office and Procurator Fiscal Service (COPFS), the British Transport Police (BTP), the Association of Chief Police Officers in Scotland (ACPOS), and the Office of Rail Regulation (ORR). It sets out the principles for effective liaison, communication and co-operation between these parties so that rail accidents, and related criminal incidents and deaths, can be independently investigated, as necessary, by each party, in a thorough and professional manner, taking into account their respective roles and responsibilities, while also ensuring that legitimate public expectations are met. The parties agree to keep the MoU under review as appropriate.

2. The MoU recognises that all parties have duties to perform in relation to investigating rail accidents and incidents and that each party in fulfilling these, should appropriately take into account the respective roles and responsibilities of the other parties.

3. The MoU sets out when the RAIB investigation will take precedence and when a criminal investigation will take precedence. In effect, this means that whilst no party can prevent other parties discharging their duties and functions, the exact timing and manner in which each party does so, may be affected by another party's investigation, where this best serves the public interest.

4. The MoU establishes that, ordinarily, the public interest will require that the RAIB investigation takes precedence, in recognition of the great importance of safety considerations and the role of the RAIB to conduct 'no blame' investigations into cause and make recommendations to improve safety. It also recognises an exception to this, namely that, where there is a clear indication of serious criminal offending¹, in the public interest the criminal investigation will normally take precedence. The MoU sets out commitments for co-operation to minimise any adverse effect on other parties' investigations. Any such adverse effect should only occur where it is in the public interest.

¹ Serious criminal offending is defined at paragraph 31

5. The MoU provides a framework within which each party can carry out their respective roles and responsibilities, and, where necessary, carry out parallel independent investigations in cooperation with one another, in a way which achieves the best outcome for all concerned. It recognises the need for each party involved in the investigation of rail accidents and incidents, to approach their task in co-operation with one another and in accordance with the public interest.

ROLES & RESPONSIBILITIES

The Rail Accident Investigation Branch

6. The RAIB was established by the Railways and Transport Safety Act 2003 (RTSA). It is the independent railway accident investigation body for the United Kingdom, as required by the European Railway Safety Directive, 2004/49/EC.

7. The Railways (Accident Investigation and Reporting) Regulations 2005 (S.I. 2005/1992) (RAIR) implement that part of the European Directive dealing with rail accident investigation which was not implemented already by the Railways and Transport Safety Act 2003. It sets out the procedures for dealing with specified accidents and incidents, including notification requirements, dealing with evidence and publishing reports and recommendations. Further information is contained in RAIB's guidance to the Regulations².

8. The RAIB conduct 'no blame' investigations into railway accidents and incidents to identify the causes and make recommendations to improve safety. The purpose behind their investigation is to ensure that safety lessons are learned quickly and that the site of the accident is restored to service as soon as possible.

9. In respect of accident or incident investigation, the RAIB is independent of the railway industry, and regulatory and prosecution bodies. Like the air and marine accident investigation branches (AAIB and MAIB), the RAIB is administratively part of the Department for Transport, but is functionally independent in its conduct of investigations, and submits its accident and incident investigation reports directly to the Secretary of State.

10. RAIB is required by the Directive to investigate serious accidents, as defined by the Directive, and has discretion to investigate other accidents and incidents. Its remit covers all railways, except for those in some industrial premises, museums and funfairs. Its remit also includes tramways in England and Wales.

The Lord Advocate, COPFS & the police in Scotland

11. The Lord Advocate has primary responsibility under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 for the investigation of sudden deaths in Scotland, and at common law for the investigation and prosecution of criminal

² Guidance to RAIR Regulations can be found at http://www.raib.gov.uk/guidance_and_procedures/guidance_notes.cfm

offences. The Lord Advocate's position in relation to these matters is specifically recognised and preserved by section 48 of the Scotland Act 1998.

12. The Lord Advocate and procurators fiscal, who hold commissions from the Lord Advocate, have a statutory power to instruct the police in their investigation and reporting of crime and all suspicious, sudden and unexplained deaths.

13. Where criminal and deaths investigations, carried out by the police and procurators fiscal under the authority of the Lord Advocate, arise out of rail accidents and incidents, these will proceed in parallel with any RAIB investigation. An investigation into a criminal offence or death arising out of the circumstances which led to the rail accident fulfils the function of a judicial inquiry referred to in the Directive.

The Office of Rail Regulation

14. ORR is the safety authority as required by the Directive and is therefore safety regulator for the railway industry. This function was transferred to ORR from the Health and Safety Executive on [1 April 2006] when the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (EARR2006) came into force. The safety authority works to maintain and improve railway safety by operating a system of safety certification and authorisation, by actively monitoring and ensuring compliance, and by developing the regulatory framework. Its jurisdiction covers all Great Britain's railways and associated infrastructure, including light railways, underground systems and tramways.

15. As part of its statutory functions ORR investigates potential breaches of health and safety legislation in relation to the operation of railways including those arising from rail accidents and incidents. Following an investigation, ORR will submit a report to the procurator fiscal in most cases of work-related death and may also in appropriate circumstances submit a Prosecution Report. Although the RAIR Regulations make significant changes to the way railway accidents and incidents are investigated, they do not alter the duties and functions of the railway safety regulator as they have been transferred to ORR under EARR2006 statutory.

Interface between investigations carried out by the RAIB, COPFS, the police and ORR in Scotland

16. The purpose behind the respective investigations carried out by the RAIB, the police and procurators fiscal, and ORR is very different.

17. The police, under the instruction of procurators fiscal, investigate potential criminal activity and deaths arising out of a rail accident or incident. The police investigation is concerned with the cause of the accident to the extent that it is important evidence in any criminal and/or deaths investigation. The focus of their investigation is to gather evidence about the commission of a crime(s) or which points to or helps to explain the circumstances which contributed to, or caused a death(s), with a view to assessing whether there should be a criminal prosecution and/or a fatal accident inquiry. In the case of a death(s), ORR will work closely with the police and procurators fiscal, in accordance with the terms of the COPFS, ACPOS, BTP and ORR “Work-Related Deaths” Protocol, as well as in relation to other ‘non death(s)’ investigations.

18. The RAIB has a statutory responsibility independently to investigate railway accidents and incidents, including those which may involve the commission of a criminal offence or where deaths may have occurred, and to establish the surrounding circumstances, and the cause of a railway accident or incident. Their main concern is to ensure that safety lessons are learned quickly and that the site of the accident is restored to service as soon as possible. The RAIB conduct ‘no blame’ investigations to identify the cause of an accident and make recommendations to improve safety.

19. Sometimes criminal and deaths investigations will depend, in part, on the technical expertise of RAIB and /or ORR inspectors. In this event, the RAIB may still want to investigate to establish the cause of the accident or the reasons for the severity of its consequences, independently of any criminal and/or deaths investigation carried out by the police or procurators fiscal. In addition, where the RAIB do not carry out an investigation, ORR may seek to establish the cause of a rail accident.

20. The police, procurators fiscal, RAIB and ORR inspectors, in carrying out their respective investigations, will take account of the roles and responsibilities of the other parties, and cooperate with one another to ensure the legal requirements of all parties are met. This is particularly important in respect of the collection and preservation of evidence from the accident site, the subsequent examination and analysis of items of evidence, and the interviewing of witnesses.

21. In this regard, it is essential for the police, procurators fiscal and ORR, that the manner in which evidence is gathered in the course of any investigation into a rail accident or incident, takes account of the evidential requirements of Scots law, in particular those relating to the admissibility of evidence and the need for corroboration of each essential fact in a criminal case.

22. It is essential for the RAIB, ORR, the police and procurators fiscal that the highest standard of expertise is employed in an investigation. Generally the police will not be trained to carry out such a technical investigation, but the police, in working with the RAIB in carrying out a criminal and/or deaths investigation, may contribute specialist forensic skills, including the examination and analysis of prints and samples. In

establishing the cause, or reasons for severity of consequences of a rail accident or incident, the necessary technical expertise will normally be provided by the RAIB, or by ORR.

23. For these reasons, the RAIB will, in most instances, assume lead responsibility for the investigation into a rail accident or incident and for the recovery of evidence from a rail accident site, as relevant to the RAIB investigation. Arrangements are set out below for securing and managing an accident site, in order that the RAIB can carry out a thorough and detailed investigation into the cause of a rail accident.

24. The police will, in most instances, be first in attendance at the scene of a rail accident and will take steps to make contact with, and establish early and good communication with the RAIB and ORR about the accident, any subsequent rescue operation, and about any collection of evidence which takes place prior to the arrival of the RAIB and ORR.

MANAGEMENT OF THE INVESTIGATION

25. Regardless of the roles of the parties in carrying out their investigative functions and responsibilities, all parties will make every effort to establish and maintain good liaison, communication and cooperation with one another throughout their respective investigations, and to work together as appropriate to achieve the best outcome for all. Even where it is not clear initially whether another party has an interest in carrying out an investigation, the potential involvement of the other parties should be borne in mind in the conduct of any investigation.

Precedence of Investigations

26. Except in the circumstances described in paragraphs 31 & 32, it will normally be appropriate for the RAIB investigation to take precedence which means that the RAIB will assume lead responsibility for the investigation.

27. In many instances, initially it will not be clear what has caused a rail accident or incident, or whether a crime has been committed. In these circumstances the RAIB, the police acting under the instruction of procurators fiscal, and ORR all have an interest in commencing an investigation.

28. The RAIB will lead the independent investigation into cause. Even where persons sustain injuries, possibly fatal, in the absence of the circumstances described in paragraph 31, the need to identify the cause and reasons for the severity of the incident is paramount and the RAIB will assume the role of lead investigator into the cause.

29. Where death(s) occur, even where no criminal activity is immediately evident, the police will fulfil their duties to investigate any fatalities. ORR may also have an interest in investigating the death(s) and will follow its normal Health and Safety Enforcement Policy.

30. Similarly, where there is an indication of gross negligence or recklessness, while the RAIB will lead the independent investigation into cause, it is likely that the police will also commence an investigation into the circumstances, as these early indications may give rise to evidence of criminal action.

Serious Criminal Offending

31. Where there is a clear indication that the railway accident or incident has been caused by serious criminal offending³, it will normally be appropriate for the criminal investigation to take precedence. Where it is agreed by procurators fiscal and RAIB inspectors that the criminal investigation takes precedence, the procurator fiscal will instruct the police to assume lead responsibility for the investigation.

32. Where the criminal investigation takes precedence, the RAIB may decide to investigate safety matters and the seriousness of the consequences of the accident or

³ “Serious criminal offending” includes the crimes of murder and culpable homicide, and any criminal act which result in a terrorist incident, deaths, multiple casualties, serious injury and/or other serious consequences, e.g. derailment of a train, or a train collision. This does not include criminal offences which properly fall to be investigated by the Office of Rail Regulation.

incident, to determine whether there are any safety issues which need to be addressed. ORR may also investigate for breaches of health and safety law.

ORR enforcement action and investigation

33. An investigation by the RAIB will not prevent ORR taking enforcement action in accordance with its statutory duties and in the public interest, or carrying out an investigation into a breach of health and safety law using technical evidence from the RAIB or in parallel with the RAIB. ORR will aim to inform RAIB before issuing an improvement notice, and will take note of RAIB's views unless urgency prevents this, in which case they will inform RAIB, without undue delay, after the event.

34. The RAIB will make available evidence required by ORR as necessary for enforcement action but subject to the restrictions outlined in paragraph 65 of the MoU (Sharing of Evidence). ORR will inform the RAIB if they are commencing an investigation which did not begin in the immediate aftermath of the rail accident or incident.

Change of lead responsibility for the investigation

35. If at any point, one or more parties consider that the circumstances of the rail accident or incident require another agency to assume lead responsibility for the investigation, the Chief Inspector or, in the absence of the Chief Inspector, the Deputy Chief Inspector of the RAIB, and the procurator fiscal will discuss and agree as to whether or not any change is necessary. ORR will be advised accordingly. Parties will discuss the handling of all aspects of an investigation, particularly the handling of witnesses, in the event that a change is agreed.

Accident site

36. Parties must have a clear understanding of their respective responsibilities on the accident site to minimise delays, including the release of the accident site back to rail operations, and to ensure preservation of the best evidence.

Prior to the arrival of the RAIB

37. Where any party is made aware of an accident or incident likely to require the attendance of the police, the RAIB, or ORR, that party will contact the other parties as soon as possible to inform them about the accident.

38. The RAIB has a duty co-ordinator available 24 hours a day with specific responsibility for deciding on the appropriate level of response to an accident or incident. The RAIB duty co-ordinator will decide whether the RAIB is to undertake an immediate investigation and the form that any such investigation should take. Where appropriate, the RAIB duty co-ordinator will mobilise a RAIB investigation team to go to the accident site.

39. The RAIB duty co-ordinator will inform the police of the intended RAIB response and estimated time of arrival. BTP has its own communication centre available 24 hours a day and this would normally be the initial contact point for the RAIB. Where BTP is the first point of contact they will provide the initial liaison and co-ordination role for the RAIB with other police forces. Where the railway is not within the jurisdiction of BTP, RAIB will contact the relevant force communication centre

directly. Where it is not clear which force has jurisdiction, BTP will assist RAIB in establishing the relevant contact with the other police force.

40. When ORR or the RAIB is informed of an accident or incident which is likely to require attendance on site, the RAIB duty co-ordinator and ORR accident officer will contact each other as soon as possible to confirm that the other is aware of the incident and to advise whether or not staff are being sent to site, and the approximate arrival time.

41. The priority should be to arrange appropriate medical attention for, and the removal of any casualties, and to identify and secure the accident site for the benefit of all the investigative bodies. The police should thereafter maintain the security of the site until the arrival of the RAIB. The site should be subject to the minimum level of disruption in the process of securing it and attending to and removing any casualties. At any stage during the investigation of an accident or incident where the site has been cordoned, the RAIB duty co-ordinator or the RAIB inspectors, may request the extent of the cordon to be extended, or other areas to be cordoned off, and will make appropriate arrangements with the police.

42. The site should be preserved as closely as possible in its state immediately after the accident. After the initial emergency response the accident site should not be disturbed until the arrival of the RAIB unless this results in the prevention, as opposed to delay, of one of the parties carrying out their responsibilities. Vital evidence can easily be destroyed by well intentioned people climbing over wreckage, or by moving items of equipment etc. The number of people in and around the wreckage in the aftermath of an accident needs to be kept to an absolute minimum.

43. Should the RAIB or its accredited agent be delayed in attending the accident site, ORR and the police should take steps to ensure, as far practicable, that evidence is not disturbed prior to the arrival of the RAIB. However it is in the interests of all parties that appropriate steps are taken by the police or ORR to secure any evidence which either party has reason to believe may be lost, damaged or destroyed.

44. To ensure evidence is preserved most effectively, and to minimise the potential loss of evidence and technical information, the police and ORR should, where practicable, notify the RAIB and agree any steps they intend to take to secure evidence on the accident site (recognising that this may include remote locations such as signal boxes, and track some distance in rear of the main site).

45. In this context practicability relates to whether it is absolutely essential for the action to be taken at that particular time to secure best evidence, as opposed to incurring a delay for discussion. If it is not possible to discuss such action with the RAIB before taking it, the police and ORR should inform the RAIB as soon as practicable of any action taken while on the site.

46. This process is not intended to impose any undue burden on the police or ORR as the level of actions informed or reported only needs to be sufficient to enable RAIB to have the opportunity to come to appropriate arrangements with the other parties prior to them taking action, or to fully understand what has taken place after the event.

47. At this stage, the police will assist their own and/or the RAIB investigation by compiling an initial list of witnesses and their contact details. The ORR may also do this if appropriate.

After the arrival of the RAIB

48. At the scene of a railway accident or incident, which has been cordoned, the site will generally comprise an inner cordoned area, (which will include any relevant rail vehicles), further cordoned areas (which may be remote sites relevant to the investigation), and the main outer cordon (which defines the extent of the police controlled access area). In general terms it will be the area within the inner cordon, and any further evidential cordoned areas that will be of interest to RAIB investigators.

49. On arrival, the RAIB inspectors, the RAIB accredited agents, technical experts working on behalf of the RAIB and the ORR inspectors should be allowed access to the site without delay, even where it is considered a crime scene, in order for the RAIB or ORR to commence their investigations into the cause of the accident. In the event of a terrorist incident, the police may need to restrict access to the accident site.

50. When the RAIB arrive at the scene of an accident the police and/or ORR inspectors should brief the RAIB inspectors as to what has happened prior to their attendance. The police will provide appropriate assistance to the RAIB inspectors while they are carrying out their initial investigation.

51. On arrival at the accident site, RAIB staff, accredited agents or technical experts working on behalf of the RAIB, and ORR inspectors will identify themselves, first to the police at the site cordon (where a cordon exists), and then to the railway industry's Rail Incident Officer (RIO), or equivalent representative of the infrastructure controller. The RAIB and ORR staff will endeavour to make contact with each other as soon as practicable after arrival.

52. In order to preserve perishable evidence, the RAIB will maintain a register of 'accredited agents' able to identify and record this evidence. Accredited agents will normally be staff employed by railway industry bodies who will be part of the initial response to the accident. Accredited agents are specially trained and have powers necessary for this specific role. Accredited agents should be given access to the site without delay for the specific purposes of recording perishable evidence on behalf of the RAIB. The accredited agent will normally carry out their duties under the escort of a police officer, who will witness their actions for evidential purposes.

53. The RAIB duty co-ordinator will have available the register of RAIB accredited agents to which the COPFS, the police or ORR will also have access. Should there appear to the police, COPFS or ORR to be any conflict of interest arising from an accredited agent carrying out activities on behalf of the RAIB, the RAIB duty co-ordinator will provide advice as to how the RAIB investigation will proceed.

54. It is important that the RAIB, ORR and police maintain liaison about site security until the wreckage has been removed and the site has been handed back to the rail operator. If any party intends withdrawing from the site they will inform the other interested parties. This is particularly important where the police wish to withdraw,

so that the RAIB or ORR can make alternative security arrangements before their departure.

55. Parties will consult with other interested parties before they hand the accident site, or part of it, back to the site operator, to enable any of those parties to continue with or to commence an investigation.

56. The RAIB may be able to release parts of the site from its investigation in a phased manner, as evidence is gathered and the investigation becomes focused in fewer geographical locations. In such cases this will be managed carefully and only after consultation with ORR, COPFS and the police to ensure that any hand-over/hand-back is done in a controlled manner, taking account of the interests of all parties.

Accident Site Safety

57. Parties will retain primary responsibility for the safety of both their own staff and those working under their direction, but it is important for the RAIB inspectors, ORR and the police to co-operate, and to co-ordinate their activities in order to maintain the safety of the accident site. When present on site ORR will provide the RAIB and the police with advice on site safety issues. When ORR are not on site, they will not normally turn out on request but will provide general advice in accordance with their statutory functions.

Collection and Use of Evidence

58. References to evidence in this section relate to evidence in which the RAIB, ORR, police and COPFS have an interest. Each party should liaise and agree, taking into account investigation precedence, the overall plan for gathering evidence to ensure all parties are informed. Where there is any doubt as to another party's interest in a piece of evidence steps should be taken by all parties to clarify their respective interests.

59. In this regard, the police and RAIB and ORR inspectors, agree to keep a record of any evidence collected and significant steps⁴ taken in the course of their investigation which can be shared at any time with the other party, subject to legal restrictions on disclosure.

60. It is essential that the RAIB and ORR inspectors, the police and procurators fiscal take account of their respective interests in the gathering and preservation of evidence from the accident site, and in any subsequent examination or analysis of items of evidence.

61. Any evidence gathered by the police, ORR or by the RAIB inspectors should be properly preserved so that the other parties can access it if required, and if it is within their power to do so.

62. Scottish criminal law requires that all essential facts in the commission of a crime are corroborated, i.e. the prosecution must present corroborated evidence to the court

⁴ "Significant steps" include actions taken which may impact on the evidence gathering process, e.g. moving a piece of wreckage as part of the rescue operation. It is not intended that parties will note down every minor action taken on the accident site or otherwise in connection with their investigation, but the record of evidence gathered should contain necessary information about actions taken as part of the evidence collection process, which have been essential for the securing of best evidence.

to establish that a crime was committed and who is responsible. This means that there must be evidence of each essential fact from two independent sources.

63. This evidential standard must be taken account of when evidence is being gathered, passed on to any third party, examined or analysed. Therefore, for example, when pieces of evidence are gathered from the accident site this must be done by one person in the presence of another. Both of these people should be able to speak to the evidence gathering process and the record of the collection of evidence must be maintained by two people. For this purpose an RAIB inspector or its accredited agent, or an ORR inspector may provide mutual assistance, or require police assistance. All efforts should be made to ensure that provision of this resource does not unnecessarily delay the investigation.

64. These evidential standards are equally important with regard to the examination or analysis of a piece of evidence. This is particularly important where the examination or analysis could result in the destruction of the item; in this event other parties will not have an opportunity to instruct an independent analysis. If this is contemplated then all parties must be consulted on, and given the opportunity to be represented during the examination or analysis.

Sharing of Evidence

65. The RAIB will make available to ORR, and COPFS or the police, evidence and confirmed findings, with the exception of, witness statements, witness details, medical records, opinions unsubstantiated by evidence, inspector's working notes or working documents, subject to any legal restrictions on disclosure.

66. The COPFS or the police, and ORR will make available relevant evidence and findings to the RAIB. This applies even where the RAIB has not initially attended at the accident site but subsequently decides to commence an investigation.

Witnesses

67. The police will assist their own and/or the RAIB investigation by compiling a list of persons who have witnessed the accident or incident and their contact details. The ORR may also do this if appropriate.

68. The RAIB must carry out its own separate interviews of those persons as appropriate. ORR and the police should carry out their own separate interviews of witnesses. The RAIB will normally wish to interview persons before the police or ORR do so, in order to obtain the fullest and most frank account of events. Where practicable, parties should liaise, as appropriate, to co-ordinate witness interviews.

69. On occasion, the police may require to exercise their power under section 14 of the Criminal Procedure (Scotland) Act 1995 to detain a person who is a suspect in the criminal investigation. Such action may be required prior to any interview of the suspect by another party. In order to achieve the best co-ordination of witness interviews, the police, where practicable, will notify the RAIB of their intention to detain a person who is a suspect, and agree this course of action, but where it is not practicable to do this, the police will inform the RAIB of this action as soon as possible after taking the action. Practicability in this context has the same meaning as in paragraph 45.

70. The RAIB will keep confidential the details of any RAIB witness statement taken by them. The RAIB will also protect the identity of a RAIB witness from whom they take, or intend to take, a statement. Except in exceptional circumstances, this provision would not normally apply to any person engaged by the RAIB as an expert in the investigation.

Contact with the injured and bereaved and next of kin

71. When accidents result in serious injuries and fatalities, it is important that all the investigating bodies liaise and agree arrangements for keeping the injured and bereaved informed regarding the progress of the investigations. In the first instance the police Family Liaison Officer (FLO) will be the main channel for this process and as far as possible all contact with the bereaved and injured will be co-ordinated through the FLO. It will be important for the FLO to explain to the bereaved the respective roles of the police, RAIB and ORR, and the fact that the RAIB investigation is independent of any criminal investigation.

Employing third parties

72. As far as is practical parties should consult with one another on the employment and remit of third parties to be contracted in relation to their investigation to ensure their remit meets the needs of all parties.

Urgent safety advice

73. Both ORR and the RAIB have a responsibility to take such immediate action as they consider necessary if either becomes aware of information that may have an immediate impact on safety. As outlined in paragraph 34 above, the RAIB will make available evidence required by ORR for its enforcement action but subject to the restrictions outlined in paragraph 65 of the MoU regarding the sharing of evidence.

74. The RAIB may issue urgent safety advice to the railway industry. It will aim to inform ORR before doing so and will take into account ORR views unless urgency prevents this, in which case they will inform ORR after the event.

Other information

75. Periodically, the RAIB may request (RAIR Reg 15(2) (a) ORR to provide, at times and in such a manner as the Chief Inspector of the RAIB may reasonably determine, information about, and statistical summaries of incidents which are reported to ORR under the requirements of RIDDOR⁵, but which are not required to be reported by the railway industry to the RAIB.

Evidential Costs

76. In the first instance, where railway industry duty holders need to preserve, move, analyse and store evidence in order to carry out their own investigation in the absence of RAIB involvement, the industry body or bodies will bear these costs (RAIR Reg. 6(4)).

⁵ Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.

77. Beyond this, costs associated with the handling, analysis and storage of evidence will be shared between the parties where they have an interest in the activity or service concerned.

Public Statements / Media Coverage

78. In the event of a need to make a public statement, the RAIB, ORR, the police and COPFS will consult one another to ensure the factual accuracy of any media release and as far as possible to co-ordinate activities.

RAIB reports and recommendations / Potential criminal prosecution/FAI

79. The RAIB is required to publish reports on the accidents and incidents it investigates as early as possible so safety lessons can be learned and recommendations made known as soon as possible. Subject to the normal provisions of contempt of court, reports may be published whether or not civil or criminal proceedings are in progress or may be instituted. The RAIB may issue an interim report or immediate safety advice if appropriate.

80. The RAIB recommendations must be addressed to the safety authority, and may be addressed to other appropriate public authorities. Before finalising its draft report on an accident, the RAIB will discuss the formulation of recommendations arising from the investigation with ORR and will take into account any comments made, but will not be bound by them. ORR will provide input to the formulation of recommendations as appropriate.

81. Where a prosecution and/or a fatal accident inquiry is under consideration, the COPFS shall notify the RAIB of its interest in their investigation. If the RAIB has been so notified, or is otherwise aware of an ongoing criminal and/or deaths investigation by the police and the COPFS, it will make available to the COPFS a pre-publication copy of the finalised report at the earliest opportunity. The pre-publication copy of the finalised report shown to the COPFS will be treated as confidential and not disclosed before the date of publication.

82. The COPFS will keep the RAIB and ORR informed as to the possible timing of any prosecution or fatal accident inquiry related to a rail accident which the COPFS is aware the RAIB is investigating.

83. The COPFS may comment on the finalised report and any comments made will be considered by the RAIB before the report is published, but the RAIB it is not obliged to take any action as a result. Information given to the RAIB by the COPFS will be treated as confidential.

84. ORR will ensure that the RAIB's recommendations are duly taken into consideration by the end implementers and where appropriate acted upon. ORR will then, without delay, inform the RAIB of the result of the end implementer's consideration and subsequently, without undue delay or within such other period not exceeding 12 months, as may be agreed with the RAIB's Chief Inspector, provide details of the measures taken to implement the recommendation. If ORR are considering sanctioning an end implementer's non-implementation of a recommendation then they will consult the RAIB prior to final agreement.

Resolution of issues arising from investigations

85. Where a question arises as to the appropriateness of any action taken or proposed to be taken by any party, parties on the ground will seek to continue working in co-operation with one another and negotiate a way forward taking account of their respective interests, and responsibilities, as well as the nature of the incident.

86. In doing so parties should consider whether the action in question is essential and whether it is critical that the action be taken immediately or in the proposed manner. All parties should consider the relative importance of the action for their purposes and identify whether an alternative solution or modified approach can be agreed which most effectively addresses all parties' concerns. Where possible, parties should agree a solution, or alternative approach, which provides the optimum solution for all parties.

87. Where a resolution cannot be reached between the RAIB and the police or the COPFS, the matter will be referred for resolution to the Chief Inspector of the RAIB, and the Crown Agent in the COPFS, or in their absence their deputies. In discussions, either party will take into account, and decide on a course of action which best serves the public interest, without treating either party's needs as automatically outweighing the other.

88. Where a resolution cannot be reached between the RAIB and ORR, the matter will be referred to the Chief Inspector of the RAIB and the relevant General Manager in ORR. If a solution cannot be reached, Sections 8(5) and (6) of the RTSA give the Chief Inspector the power to determine the course of action which best serves the public interest. The Chief Inspector may only exercise this power where there is a conflict with an RAIB investigation.

On behalf of RAIB

On behalf of COPFS

On behalf of BTP

On behalf of ACPOS

On behalf of ORR

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Dated: 2006