

Ref:	NR/L3/INV/3001/RIM116
Issue:	2
Date:	3 March 2012
Compliance date:	1 April 2012

REPORTING & INVESTIGATION MANUAL

REPORTING OF AND RESPONDING TO ENFORCEMENT ACTION

1 Purpose

To provide a structured process for the:

- a) reporting of enforcement action, including an enforcing authority's intention to serve an enforcement notice (i.e. a Prohibition or an Improvement Notice), and
- b) the management of the response to any enforcement action served on Network Rail such that:
 - 1) it is processed expeditiously,
 - 2) its contents evaluated and
 - 3) appropriate action is taken and, in the case of Prohibition and Improvement Notices, the risk of further enforcement action (i.e. a summons) is reduced or eliminated.

2 Scope

2.1 This module specifies the arrangements to be applied where:

- a) an enforcing authority advises its intention to serve an enforcement notice on the company, and
- b) enforcement action is served on the company, including where the enforcement action may be served locally.

2.2 This module applies to all Network Rail Functions and Business Units.

2.3 This module applies to all health and safety enforcement action served on Network Rail by the Office of Rail Regulation (ORR), the Health and Safety Executive (HSE), Environment Agency or other enforcing authority in respect of operations and/or activities on or affecting Network Rail's:

- a) managed infrastructure (NRMI);
- b) managed stations;
- c) managed depots and maintenance facilities;
- d) owned or leased buildings, equipment and vehicles.

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3 Reference documentation

NR/L3/INV/3001/RIM101	General requirements for reporting accidents, incidents and occupational ill health
NR/L3/INV/3001/RIM102	Reporting of accidents, incidents and occupational ill health to SMIS
NR/L3/INV/3001/RIM115	Network Rail and National Safety Authority (ORR) Interface and Liaison Arrangements
	Network Rail's Health & Safety Management System (H&SMS)

4 Definitions

Enforcement action – Improvement Notices (except Improvement Notices served under the Fire Precautions Act 1971), Prohibition Notices and summonses served by the ORR, HSE, Environment Agency or other enforcing authority.

Enforcement notice – For the purposes of this module only this relates to Improvement Notices and Prohibition Notices served by an enforcing authority.

Enforcing authority – For the purposes of this module this includes the Office of Rail Regulation (ORR), the Health and Safety Executive (HSE), the Environment Agency or other enforcing authority in respect of operations and/or activities on or affecting Network Rail's:

- a) managed infrastructure (NRMI);
- b) managed stations;
- c) owned or leased buildings, equipment and vehicles.

Improvement Notice – For the purposes of this module this relates to a notice issued by an enforcing authority for contravention of one or more statutory provisions and requiring remedial action to be taken within a period of time specified in the Notice.

Lead manager – For the purposes of this module only, the lead manager is the Network Rail manager nominated to manage arrangements for progressing received enforcement action.

Network Rail managed infrastructure (NRMI) – Network Rail managed infrastructure is the infrastructure that falls within the geographic boundaries of Network Rail's operational railway, including the permanent way and land within the lineside fence, and plant used for signalling or exclusively for supplying electricity for traction purposes to Network Rail's operational railway.

It does not include stations (whether or not these are managed by Network Rail), nor does it include depots, yards or sidings owned by, or leased to, other parties. However, it does include permanent way at stations and plant within these locations used for signalling Network Rail's operational railway or exclusively for supplying electricity for operational purposes to the operational railway.

Structures such as tunnels, bridges, viaducts, underpasses, etc, are deemed to form part of NRMI only in relation to their potential to transfer risk onto, or from, the operational railway.

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Prohibition Notice – For the purposes of this module this relates to a notice issued by an enforcing authority where it considers there is a risk of serious personal injury, regardless of whether a statutory provision has been contravened, and directing the cessation of the relevant activities either immediately or from a date specified in the Notice.

Response manager – The person nominated by Network Rail's Executive Committee to progress actions in response to the intended enforcement notice.

Summons – An official order issued by a court requiring attendance at the court, at a specified time and date, to answer a charge(s). In Scotland, a summons is referred to as a "complaint".

5 Enforcing authority's intention to take enforcement action

An enforcing authority may provide an indication of its intention to serve Network Rail an enforcement notice informally or at a formal meeting with Network Rail staff.

NOTE 1 *Details of an enforcing authority's intention to take such action may be known locally before an enforcement notice is formally served on Network Rail.*

NOTE 2 *The ORR may provide an indication of its intention to take enforcement action at a Network Rail/ORR interface and liaison meetings referred to in module [NR/L3/INV/3001/RIM115](#).*

NOTE 3 *In the case of the ORR, where reference is made in the following process to the 'enforcing authority's representative', this may be the ORR's lead inspector.*

NOTE 4 *The flowchart provided at clause 12 reflects the following process.*

5.1 Within 24 hours of the advice being received

5.1.1 Where an enforcing authority's representative advises it intends to serve an enforcement notice on Network Rail, the persons identified in **Tables 1 and 2** shall be informed immediately and provided with the following details:

- the issue giving rise to the intended enforcement notice and the reasons why such action is being taken,
- the legislation alleged to have been breached, if known, and
- the type of notice intended to be served.

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	Person to be informed of enforcing authority's intention:
In all cases	Director, Safety & Sustainable Development
	Head of Legal Services, Litigation
	The relevant Route Safety Improvement Manager

Table 1 – Person to be informed of enforcing authority's intention to serve enforcement notice irrespective of activity, operation or process affected

Intended enforcement notice related to the activities, operations and/or processes of:	Person to be informed of enforcing authority's intention:
Investment Projects	relevant Programme Director
Other than the Investment Projects	relevant Route Managing Director

Table 2 – Person to be informed of enforcing authority's intention to serve enforcement notice

5.1.2	The relevant Executive Director shall then be informed and provided relevant details, including: <ul style="list-style-type: none"> a) the issue giving rise to the intended enforcement notice and the reasons why such action is being taken, b) the legislation alleged to have been breached, if known, and c) the type of notice intended to be served. 	Person shown at Table 2
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5.2 Within 2 working days of the advice being received

5.2.1	A Response Manager shall be nominated to progress actions in response to the intended enforcement notice. <i>NOTE 5 The Response Manager may be a Route Managing Director, Director, Route Asset Manager, a Professional Head, a Programme Director, etc depending on the risks posed by the potential enforcement action.</i> <i>NOTE 6 The Response Manager should be the person who is most likely to expedite resolution irrespective of hierarchy.</i>	Relevant Executive Director
5.2.2	The person shown in Tables 1 and 2 shall be informed the name of the nominated Response Manager.	Relevant Executive Director
5.2.3	The enforcing authority's representative shall be contacted to clarify the reasons for the enforcing authority's intention to serve an enforcement notice. <i>NOTE 7 This is to enable the Response Manager to identify the necessary actions needed to address the risks/issues associated with the potential enforcement action.</i>	Person shown at Table 2

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5.2.4	The nominated Response Manager shall then be briefed on the reasons for the enforcing authority's intention to serve an enforcement notice.	Person shown at Table 2
5.2.5	Where the enforcing authority is the ORR, the ORR's Head of Rail Regulation shall be contacted to discuss the intention to issue an enforcement notice. Any information obtained shall be passed to the Response Manager.	Director, Safety & Sustainable Development
5.2.6	A meeting shall be arranged with representatives of the relevant Functions/Business units to: <ul style="list-style-type: none"> a) identify the actions necessary to resolve risks/issues associated with the intended enforcement notice and b) develop a 'Closure Plan'. <p><i>NOTE 8 The 'Closure Plan' should detail the actions needed to avoid the enforcement notice being served.</i></p>	Response Manager
5.2.7	Minutes of the meeting shall be kept.	Response Manager

5.3 Within 7 working days of the advice being received

	A 'Closure Plan' shall be drafted which shall include the following information: <ul style="list-style-type: none"> a) details of how the risks/issues will be resolved (the tasks); b) the key milestones and target end date(s); c) details of those involved in implementing associated tasks; d) a broad outline of the likely additional workload (resource) and cost implications. 	Response Manager
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5.4 Within 10 working days of the advice being received

5.4.1	The draft 'Closure Plan' shall be passed to the enforcing authority's representative to confirm whether the 'Closure Plan' is acceptable. Where necessary the 'Closure Plan' shall be amended to reflect any comments made by the enforcing authority's representative.	Response Manager
5.4.2	Where the enforcing authority's representative rejects the 'Closure Plan' and advises an enforcement notice will be served, the following shall be informed immediately: <ul style="list-style-type: none"> a) the relevant Executive Director b) the persons shown at Tables 1 and 2. <p><i>NOTE 9 See clauses 6 to 11 of this module for the requirements for reporting and responding to enforcement action served.</i></p>	Response Manager

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5.5 Within 14 working days of the advice being received

5.5.1	Where the completed 'Closure Plan' has been accepted by the enforcing authority's representative, it shall be forwarded to: a) the persons shown at Tables 1 and 2 ; and b) the relevant Executive Director.	Response Manager
5.5.2	The enforcing authority's representative shall be sent the completed 'Closure Plan'.	Person shown at Table 2

5.6 Monitoring progress of 'Closure Plan' actions

5.6.1	Arrangements shall be put in place to monitor progress in completing the 'Closure Plan' actions by the target end date(s).	Response Manager
5.6.2	The enforcing authority's representative shall be regularly informed of progress in completing the 'Closure Plan' actions and where it becomes evident that a 'Closure Plan' action will not be completed by the target end date(s) the enforcing authority's representative shall be: a) advised the reasons why the action will not be completed by the target end date(s), b) informed when the action will be completed and c) asked to confirm the revised target end date(s) is acceptable.	Response Manager
5.6.3	Where the enforcing authority's representative indicates the revised target end date(s) is not acceptable and that an enforcement notice will now be served, arrangements shall be made to: a) complete the 'Closure Plan' actions and b) advise the persons shown at Tables 1 and 2 of the likelihood that an enforcement notice will be served the enforcing authority.	Response Manager
<p>NOTE 10 Evidence of completion of the 'Closure Plan' actions may assist in responding to the resulting enforcement action.</p>		

5.7 Completion of 'Closure Plan' actions

5.7.1	The enforcing authority's representative shall be informed when all the 'Closure Plan' actions have been completed.	Response Manager
5.7.2	A 'Closure Statement' shall be prepared for the 'Closure Plan' actions and submitted to the persons shown at Table 2.	Response Manager

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6 Enforcement action issued formally to Network Rail

6.1 All enforcement action

Details of any enforcement action received shall be sent to the Head of Legal Services, Litigation. Group Company Secretary

NOTE 11 *The requirement to report enforcement action is not restricted to actual operations on or affecting NRMI, etc. but includes enforcement action issued in respect of, for example, changes to or failure to comply with the organisation's health and safety management system (H&SMS).*

NOTE 12 *Enforcement action will normally be served formally on Network Rail at its headquarters offices at Kings Place, 90 York Way, London, N1 9AG. In such circumstances, the Group Company Secretary will normally receive the enforcement action. Refer to clause 6 for enforcement action that may be served locally.*

NOTE 13 *Where this clause requires details of enforcement action to be provided, this should include:*

- the Notice and, where appropriate, any associated schedule, or*
- in the case of a summons, details of the offence.*

6.2 Enforcement action related to the company as a whole

6.2.1 Where the enforcement action relates to the activities/operations/processes of Network Rail as a whole, details of the enforcement action received shall be provided, within one working day of its receipt, to:

- a) the relevant Functional/Business unit Director, and
- b) the National Community Relations Manager, and
- c) the Safety Validation Co-ordinator, Safety & Sustainable Development and
- d) the Head of HSEA, Investment Projects where the enforcement action relates to the activities, operations and/or processes of Investment Projects or Asset Management.

Head of Legal Services, Litigation