



RSC-G-023-C

Guidance on the RSC's Supervision & Enforcement Activities

Guidance for RSC Inspectors and Railway Organisations
on the RSC's Supervision & Enforcement Activities.

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1 Document Structure – Process Map

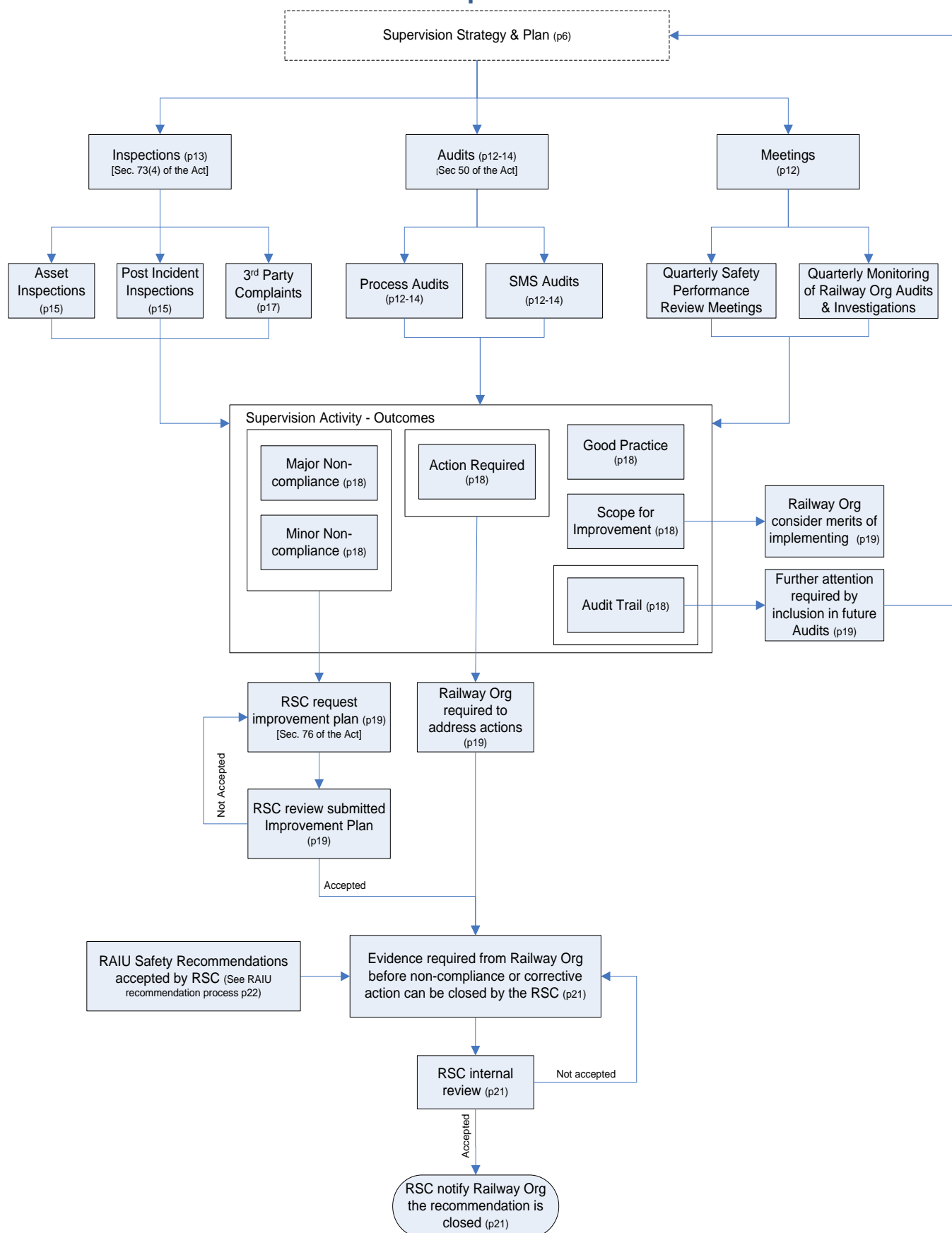


Figure 1: Document process map

2 Introduction

The Railway Safety Commission (RSC) was formally established on 1st January 2006 in accordance with the requirements of the Railway Safety Act ("Act") 2005. In the context of the Railway Safety Directive (RSD), European Directive 2004/49/EC, the RSC is the National Safety Authority for the railway sector in the Republic of Ireland. The Act was amended by S.I. No. 61, 2008, and further amended by S.I. No. 444 of 2013.

As the independent regulatory agency charged with oversight of the safety of all railway activities in the State, the RSC is required to ensure that each railway organisation understands and effectively manages the safety risk associated with its operations. This is practically achieved by the three RSC core functions:

- **Conformity Assessment** - Assessing Safety Management Systems (SMS) to ensure that they conform to all requirements prior to awarding a Safety Management Certificate and assessment of new, or significantly altered railway infrastructure and rolling stock to ensure safety compliance prior to placing in service;
- **Compliance Supervision & Enforcement** – Auditing compliance with the procedures and standards prescribed in each approved SMS, and inspection of railway assets to assess compliance with fitness for purpose criteria. Compliance with safety recommendations is assured through monitoring of implementation plans and by taking enforcement proceedings where necessary; and
- **European & Legislative Harmonisation** – Supporting the harmonisation of national legislation with European Directives and Regulations, and ensuring that the consequent implementation of related technical and procedural measures conforms to mandatory European requirements.

2.1 Definitions

"Railway Organisation" means

- a) A metro, tramway or other light rail system;
- b) A heritage, museum or tourist railway that operates on its own network, including workshops, vehicles and staff;
- c) A heritage railway that runs on the railway system in the state;
- d) A railway undertaking of an infrastructure manager as defined by directive 2004/49/EC; or
- e) Any other person who operates a railway.

"Safety Management System" (SMS) means the organisation and arrangements established by a railway organisation to ensure the safe management of its operations.

"Safety Management Document" means a document describing the components of a SMS which shall achieve the following two objectives:

- a) it shall demonstrate that the railway organisation has the ability to properly access and effectively control risks to the safety of persons in compliance with its general duty under section 36 of the Act.

- b) it shall provide a working document by which the railway organisation and the RSC can ensure that the safety systems described in the document are being properly and are continue to be maintained.

“Safety Management Certificate” means a certificate issued by the RSC notifying a railway organisation of the acceptance of its safety management document.

2.2 RSC aims

The RSC's foremost aim is to ensure that each railway organisation complies with its legal obligation to ensure the safety of all persons who may be effected by its operations (in co-ordination with other agencies that are supervising health and safety in the workplace) and to protect the integrity of the environment against unacceptable repercussions of railway operations.

The RSC shall, through its supervision activities, monitor each railway organisation's compliance with the Act and the RSD.

Supervision activities include, monitoring through supervision meetings with railway organisations, auditing of safety management systems or processes and undertaking inspections.

This guideline sets out the principles and the approach that RSC staff and/or its representatives shall follow when conducting supervision activities of a railway organisation. Similarly, it explains how the RSC shall enforce the law.

In allocating resources, the RSC shall have regard to the principles set out below, its published Statement of Strategy and the need to maintain an optimised balance between audit, inspection and other activities, including enforcement.

3 The RSC's Supervision Strategy & Plan

The method by which the RSC monitors a railway organisation's compliance with the "Act" and the RSD is through its supervision activities. To this end, the RSC has developed a supervision strategy, which is risk based, that is to say based upon the risk posed to passengers, the public, staff and contractors of railway organisations by their activities. This is in line with the current European model developed by the European Railway Agency (ERA) and employed by other National Safety Authorities in the EU.

The strategy considers, amongst other things, the size, nature and complexity of the railway organisations to be supervised and these factors assist in developing bespoke annual and multi-annual supervision activity plans. Specific sub-topic areas such as level crossings, rolling stock or incidents such as a Signal Passed at Danger (SPAD) are also taken into account in developing these plans.

3.1 Risk Profiling

Railway Organisations are assigned a risk priority, between one and four based on the number of train km they operate each year, i.e., a railway organisation who operates high train km will be assigned as a priority 1 railway organisation, whereas a railway organisation operating low train km will be assigned as a priority 4 railway organisation. This is done to reflect that the dominant factor in relation to exposure to risk is train km, i.e., the more they operate, the more maintenance is required, the more people are involved and thus there is a greater risk exposure.

As stated above, factors such as the size, nature and complexity of the railway organisation is taken into account and these are in the form of risk adjustment factors. Applying these factors to an initial baseline risk priority, based upon the railway organisation's train km, determines a final risk prioritisation. The adjustment factors enable the RSC to target supervision activity on those railway organisations who pose a higher risk and means that, regardless of the train km it operates, a railway organisation may have its supervision regime enhanced or lessened. The adjustment factors that the RSC use are:

- The railway organisation's characteristics
 - the dimensions of the organisation, i.e., how big is the company, how many departments, etc.
 - its complexity in terms of interfaces and operations
 - the services it operates or number of passengers it carries relative to its size and
 - the type and age of the rolling stock
 - exposure to 3rd parties, other railway organisations, etc
- Safety performance data, i.e., the relative safety of the railway organisation based on its accident/incident history
- Experience of the performance of the railway organisation including information from:
 - RSC Supervision activity, e.g., audit and inspection outcomes
 - The conformity assessment process
 - Findings of, and follow up to NIB recommendations, etc.

Considering the above the railway organisation may see an increase or decrease in supervision activity and the final risk priority assigned correlates to a particular supervision regime:

A priority 1 railway organisation can expect quarterly supervision meetings, at least 3 audits and at least 10 asset/operational inspections in a calendar year while a priority 4 organisation would have a minimum of one annual inspection.

Having determined the supervision regime to be applied to each railway organisation, the Principal Inspector (Supervision & Enforcement) will, in consultation with the supervision activity team, decide the audit and inspection subject areas and determine the required resources to conduct them effectively and efficiently within specified timeframes. The supervision activity planned for a railway organisation in a calendar year is advised to them, either in writing or at the first supervision meeting, of the year, held with senior management of the railway organisation.

Typically these supervision activities include audits, inspections and meetings in sufficient quantity and at a suitable frequency so as to provide assurance to the RSC that railway organisations are implementing their approved SMSs and managing risks associated with their operations. Supervision activities include:

- SMS Audits - RSC Inspectors auditing a railway organisation's compliance with their SMS,
- Process Audits - RSC Inspectors auditing a railway organisation's compliance with processes, e.g., their technical or operational standards or procedures,
- Asset Inspections - RSC Inspectors undertaking sample asset inspections,
- Supervision Meetings - RSC Principal Inspector (Supervision & Enforcement) meeting railway organisations to review safety performance
- Post incident inspections - RSC Inspectors undertaking reactive activity following an incident, accident or complaint (representation).

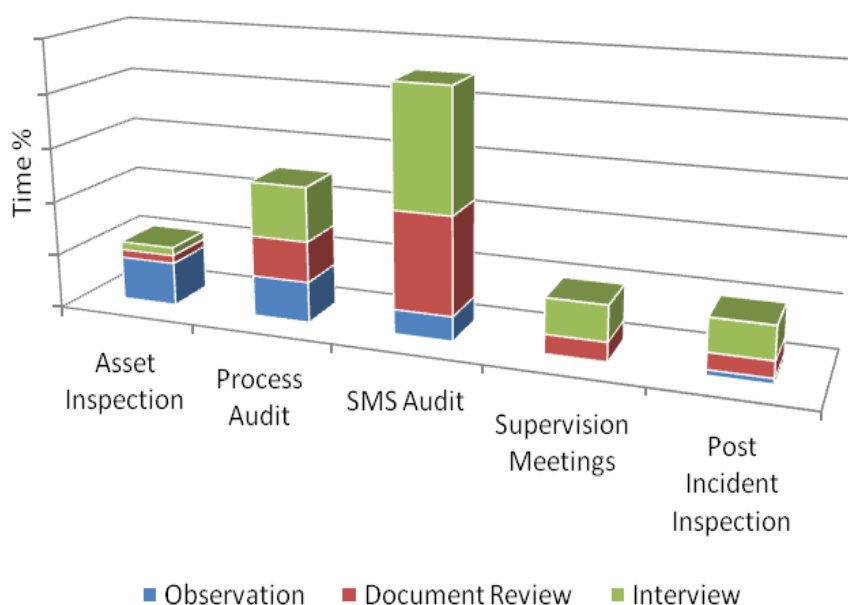


Figure 2: RSC Supervision activities and techniques by proportion of time spent on these activities

In addition to audits, inspections and meetings, Post Incident Inspection (PII) activities (*section 3.4*) will be performed where, following an accident, incident or other dangerous occurrence, the RSC considers there may be possible compliance issues. Additionally, a PII may identify imminent, dormant or systemic safety risks which could require enforcement action (See *section 3.3*). PII outcomes and/or enforcement action may be made with the purpose of preventing reoccurrence and improving future railway safety activities.

A PII by the RSC is not to be confused with an investigation conducted by the Railway Accident Investigation Unit (RAIU) who is the entity responsible for identifying the causes of serious accidents (and in certain cases other accidents and incidents) it investigates in order to improve safety, not to allocate blame. (For further information visit www.raiu.ie.)

On an annual basis the RSC will undertake a statistical review of railway safety performance of the railway organisations it oversees and make this public.

The RSC's Principal Inspector (Supervision & Enforcement) has the responsibility for managing the RSC's supervision plans and must:

- a) establish, implement, monitor, review and improve railway organisation supervision plans, and
- b) identify the necessary resources and ensure they are provided.

3.2 The Principles for Supervision & Enforcement

The RSC has adopted framework principles for supervision after the award of a safety management certificate (Part A or Part B Safety Certificate as defined in RSD and Commission Regulation, (EC) No 1158/2010, Safety Authorisation as defined in RSD and Commission regulation (EC) No 1169/2010, or other safety management certificate as defined in the Act.)

Having accepted a railway organisation's safety management document the RSC (as the designated NSA) shall supervise the railway organisation's continued compliance with the provisions of their SMS.

The RSC believes in firm but fair enforcement of the RSD and the Act and this too is informed by the framework principles from the above mentioned EU Regulations.

These principles are;

- **Proportionality** in applying legislation and securing compliance;
- **Consistency** of approach;
- **Targeting** of enforcement action and setting priorities for activities under supervision regime;
- **Resources** effectively applied by the RSC
- **Transparency** about how the RSC operates and what those regulated may expect
- **Accountability** for the RSC's decisions or actions;
- **Co-operation** with equivalent Competent Authorities such as the HSA.

3.2.1 Proportionality

Proportionality means relating enforcement action to the risks.

Action taken by an NSA to achieve compliance or hold railway organisations to account for non-compliance should be proportionate to any risks to safety or to the seriousness of any breach, which includes any actual or potential harm arising from a breach of the SMS or wider legal provisions. In practice, applying the principle of proportionality means that NSAs will take particular account of how far a railway organisation has fallen short of what the SMS or law requires and the extent of the risks to people arising from the breach. Some duties are specific and absolute whilst others require action as far as is reasonably practicable. The RSC need to apply the principle of proportionality in relation to both kinds of duty.

Deciding what is reasonably practicable to control risks involves the exercise of judgement by RSC inspectors. Where railway organisations must control risks in accordance with the provisions of Article 4 of Directive 2004/49/EC (RSD), the RSC will, when considering the protective measures taken, take account of the degree of risk on the one hand, and on the other the sacrifice, whether in money, time or trouble, involved in the measures necessary to avert the risk. Unless it can be shown that there is gross disproportion between these factors and that the risk is insignificant in relation to the cost, the railway organisation must take measures and may incur costs to reduce the risk.

3.2.2 Consistency

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar results.

There are many variables, including the degree of risk, the attitude and competence of management, any history of incidents or breaches involving the railway organisation, previous enforcement actions and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the SMS or wider legal provisions that make applying the principle difficult.

Decisions on enforcement action are discretionary, involving the judgment of individual RSC inspectors. The RSC has arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other NSAs through the NSA Network. To this end the RSC will conduct a peer review of prospective enforcement activity to ensure insofar as possible decisions made by its Inspectors are consistent.

3.2.3 Targeting

Targeting means making sure that supervision activities are targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled and that action is focused on those railway organisations who are responsible for the risk and who are best placed to control it, whether employers, manufacturers, suppliers or others.

The RSC will use its discretion and engineering judgement in deciding which supervision techniques, e.g., audit, inspection, it employs in the course of its activities. Similarly, the RSC will use its discretion and engineering judgement in deciding its prioritisation and frequency of its supervision activities. The RSC will take cognisance of the railway organisation's management competence, because a relatively low hazard activity poorly managed can entail greater risk to workers or the public than a higher hazard activity where proper and adequate risk control measures are in place.

When Inspectors issue Improvement or Prohibition Notices, or prosecute, the RSC will ensure that a senior officer of the railway organisation concerned, typically the CEO or Managing Director, is notified.

3.2.4 Resources

The RSC shall decide on priorities to use their resources. Action shall be focused on those who are responsible for the risk and who are best placed to control it.

The RSC will use its discretion and judgement in deciding what resource it will assign to supervision activities. The RSC will produce an annual supervision programme targeting those areas it believes pose risk to the safe operation and maintenance of the railway network. The annual programme will identify the resource need for specific supervision activities such as audit and inspection. In some cases the resource may be external to the RSC but those consultants engaged by the RSC are appointed Inspectors and shall be afforded the same level of access as a fulltime RSC Inspector.

Resource to undertake inspections, post incident inspections or other supervisory activity will be prioritised according to the nature and extent of risks posed by a railway organisation's activities.

3.2.5 Transparency

Transparency means helping railway organisations to understand what is expected of them and what they should expect from the RSC. It also means making clear to railway organisations not only what they have to do, but where this is relevant, what they don't. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.

This guidance sets out the general framework within which the RSC will operate. Railway organisations, employees, their representatives and others also need to know what to expect when an Inspector visits and what rights of complaint are open to them. It may be expected that:

- when Inspectors offer railway organisations Information or explanation, face to face or in writing, they will explain where the law is not complied with, and why. Inspectors will, if asked, write to confirm any Information or Explanation and distinguish between legal requirements and best practice approach;
- in the case of Improvement Plans, the serving Inspector will ensure the letter requesting an Improvement Plan clearly states what is required, why and by when, and that in the opinion of the Inspector an activity being or likely to be carried on by or under the control or on behalf of a railway organisation or any other person on or near a railway poses a risk to the safety of persons involved in the operation of the railway or being carried on the railway;
- in the case of Improvement Notices, the serving Inspector will advise the railway organisation of its intent to serve the Notice and consider any representations made to it. If after considering any representations made to it, the serving Inspector will, if issuing a notice, clearly state what needs to be done, why and by when, and state the section of the "Act" or the RSD where in the opinion of the Inspector a breach of the law has been committed; and
- in the case of a Prohibition Notice, the Notice will explain why the Prohibition is necessary.

3.2.6 Accountability

The RSC is accountable to the Oireachtas for its actions. This means that the RSC has policies and processes against which it can be judged, and an effective and easily accessible mechanism for dealing with comments and handling representations (complaints).

The RSC has a procedure for dealing with comments and handling complaints, including RSC decisions. These are explained on the RSC's website www.rsc.ie. Should you remain dissatisfied with our service, you may contact the Department of Transport, Tourism & Sport to re-investigate the concerns you have raised. Ultimately, it is the duty of the Oireachtas and the Transport Committee to ensure that transport related public bodies comply with the terms of their complaints handling procedure, and ensure that customers receive the service to which they are entitled.

3.2.7 Co-operation

Regulators must co-operate with equivalent authorities such as other National Safety Authorities (in other countries) to ensure due process is achieved. This means that the RSC has procedures, e.g., memoranda of understanding with equivalent competent authorities to facilitate joint supervision investigation and enforcement.

The RSC's procedures for dealing with other competent authorities is such that it adopts the above principles and will endeavour to assist in whatever capacity necessary to ensure due process has been achieved. To that end the RSC has signed two memoranda of understanding, on each with;

- the Health & Safety Authority (HSA), and
- the Department for Regional Development of Northern Ireland (DRDNI) – the NSA for Northern Ireland

4 RSC's Supervision Activities

The RSC's annual supervision plans include all the activities necessary to effectively oversee the railway organisations under its remit. As previously stated the plans include, supervision meetings, auditing of processes and the railway organisation's SMS, undertaking sample asset inspections and conducting reactive activities such as following up on accidents, incidents, dangerous occurrences or public or other third party complaints.

4.1 RSC's Safety Performance Review meetings

The RSC shall meet with railway organisations at varying frequencies depending on their 'Risk Priority' (See section 3) as determined by the RSC.

Typically a 'Priority 1' railway organisation (railway organisation) should, expect the following:

- Quarterly Safety Performance Review meetings which will review at a minimum; safety performance, accidents and incidents, internal auditing, changes to organisation or plant, equipment, infrastructure or operations. Such meetings should be attended to by senior representatives from the railway organisation.

Additionally, a 'Priority 1' railway organisation (railway organisation) should, expect the following:

- Quarterly Meetings with Heads of Investigation & Audit specifically to track railway organisation accident/incident investigations and internal auditing.
- Quarterly RAIU Recommendations Tracking meetings to track railway organisation progress against safety recommendations.

For lower priority organisations similar meetings may take place but with less frequency. In all cases meeting minutes will be kept and circulated to the relevant parties.

4.2 RSC's methodology for Undertaking Audits

Part 50 of the Railway Safety Act 2005, as amended, ("Act"), pertains to safety audits.

The RSC shall develop annual supervision plans for each railway organisation it has responsibility for overseeing. These plans may consist of a combination of audits, inspections and meetings. In terms of RSC audits, these can be either a Safety Management System (SMS) or Process audit. Where SMS audits are identified as an activity the supervision programme will ensure that, over the periodicity of the Safety Certificate or Safety Authorisation the criteria listed in the applicable Common Safety Method for Conformity Assessment are audited.

In the case of Process audits, the RSC will consider those activities it believes give rise to the greatest risks. To determine these the RSC shall use supervision activity findings, accident investigations reports, safety performance data, RSC Inspector judgement etc.

The resources necessary to conduct these supervision activities effectively and efficiently within specified time frames will be defined in the RSC's annual supervision programme.

The flow chart (on the next page) indicates the audit methodology that the RSC will follow.

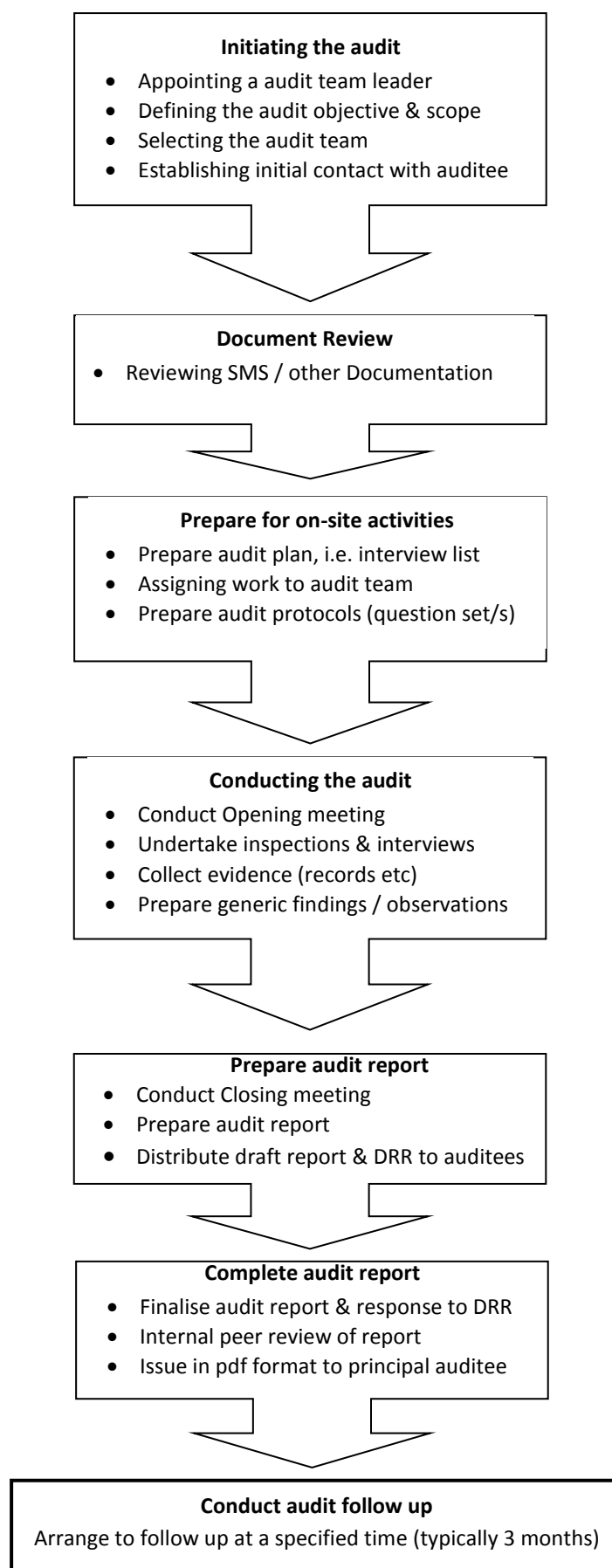


Figure 3: RSC Audit Process (Based on ISO 19011 principles)

4.2.1 The Purpose of Audits

The purpose of RSC audits, under section 50(7) of the “Act” is to ensure that railway organisations are implementing their SMS and that they manage and control risks effectively, thus preventing harm. The term ‘audit’ has a wide meaning, however, the RSC have adopted the terms and definitions set out in international standard ISO 19011:2002: Guidelines for quality and/or environmental management systems auditing, i.e.,

Audit: A systematic, independent and documented process for obtaining **audit evidence** and evaluating it objectively to determine the extent to which the **audit criteria** are fulfilled.

Audit criteria: A set of policies, procedures or requirements.

Audit Evidence: Are records, statements of fact or other information, which are relevant to the **audit criteria** and are verifiable.

4.2.2 The Principles of Audit

The RSC shall, when undertaking an audit, adopt the principles set out in international standard ISO 19011:2002. These principles are:

The following principles relate to auditors:

- **Ethical conduct:** *the foundation of professionalism*
Trust, integrity, confidentiality and discretion are essential to auditing.
- **Fair presentation:** *the obligation to report truthfully and accurately*
Audit findings, audit conclusions and audit reports reflect truthfully and accurately the audit activities. Significant obstacles encountered during the audit and unresolved diverging opinions between the audit team and the auditee are reported.
- **Due professional care:** *the application of diligence and judgement in auditing*
Auditors exercise care in accordance with the importance of the task they perform and the confidence placed in them by audit clients and other interested parties. Having the necessary competence is an important factor.

Further principles relate to the audit, which is by definition independent and systematic:

- **Independence:** *the basis for the impartiality of the audit and objectivity of the audit conclusions*
Auditors are independent of the activity being audited and are free from bias and conflict of interest. Auditors maintain an objective state of mind throughout the audit process to ensure that the audit findings and conclusions will be based only on the audit evidence.
- **Evidence-based approach:** *the rational method for reaching reliable and reproducible audit conclusions in a systematic audit process*

Audit evidence is verifiable. It is based on samples of the information available, since an audit is conducted during a finite period of time and with finite resources. The appropriate use of sampling is closely related to the confidence that can be placed in the audit conclusions.

4.3 RSC's methodology for Undertaking Inspections

Part 73(4) of the Railway Safety Act 2005, as amended, (the "Act"), pertains to Inspectors and the activities they may undertake.

4.3.1 The Purpose of Inspections

The purpose of the RSC's inspections, under section 73(4) of the Act, and any other legislation relating to railway safety, is essentially to undertake an immediate snapshot of assets to check railway organisations are managing and controlling risks effectively, thus preventing harm. The RSC may undertake two types of inspection. They are;

- **Sample asset inspections** as part of the RSC's supervision activities,
- **Sample operations inspections** as part of the RSC's supervision activities, and
- **Post incident inspections** following an accident, incident or complaint (representation).

Sample Asset & Operations Inspections

Sample asset & operations inspections are proactive inspections are unannounced or short notice inspections of infrastructure, rolling stock assets, drivers, typically checking for;

- General asset condition
- Asset fitness for purpose
- Documentation relating to the asset
- Safety statements (e.g., at stations or in train depots)
- Observance to rules (train Drivers/Level crossing gatekeepers etc.)

If an inspection requires an RSC Inspector to go on or near the line then in most instances protection arrangements will be sought from the relevant railway organisation.

4.4 RSC's methodology for Undertaking Post Incident Inspections

In the case of Post Incident (reactive) Inspections (PIIs) the RSC will use discretion in deciding whether accidents, incidents, or complaints should be further investigated ("inspected" as per section 73 of the "Act").

The RSC fully recognises the role and responsibility for accident investigation of the Railway Accident Investigation Unit (RAIU). Working arrangements between the RSC and RAIU reflect both their respective statutory duties and the need to ensure efficient and effective liaison. The RAIU is responsible for identifying the causes of accidents (and in certain cases incidents) it investigates in order to improve safety, not to allocate blame. The RSC will ensure thorough consideration is given to all RAIU recommendations made to it for action by railway organisations or others to reduce risks.

The RSC shall undertake a PII in order to determine:

- whether there are systemic failures and/or non-compliance with a railway organisation's SMS;

- whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the “Act”;
- lessons to be learnt and to influence the law and guidance;
- what response is appropriate to a breach of the “Act”;

To maintain a proportionate response, most resources available for PIIs of accidents or incidents will be devoted to the more serious circumstances. The RSC recognises that it is neither possible nor necessary for its statutory purposes to investigate all issues of non-compliance with the law that are uncovered in the course of audit or inspection, or during the post incident inspection of reported events.

The process flow chart on page 17 indicates the PII methodology the RSC will follow. Where outcomes are deemed necessary they will be in the same format as for any RSC supervision activity. Should further enforcement be necessary the Railway organisation will be informed in accordance with Part 7 of the “Act”.

4.4.1 Workplace Fatalities

The RSC will not carry out a PII of a reportable work-related fatality on a railway. Such investigations would be under the remit of the Health & Safety Authority (HSA) and An Garda Síochána. However, should such an accident occur there is a clear overlap of the roles of the RSC and HSA. For that reason the RSC and HSA have put into effect a ‘Memorandum of Understanding’ (MoU) to ensure that whatever assistance is necessary by either Agency will be made available.

4.5 RSC's methodology for dealing with public complaints (representations)

The RSC has an office procedure, RSC-OP-002, which clearly explains the roles and responsibilities of RSC staff regarding the follow up to complaints made by the public or other individual or organisation. It is RSC policy that **all safety related** complaints are examined by an RSC Inspector and, where a response is required or requested, the RSC will respond within 20 working days. Further information is available on our website www.rsc.ie

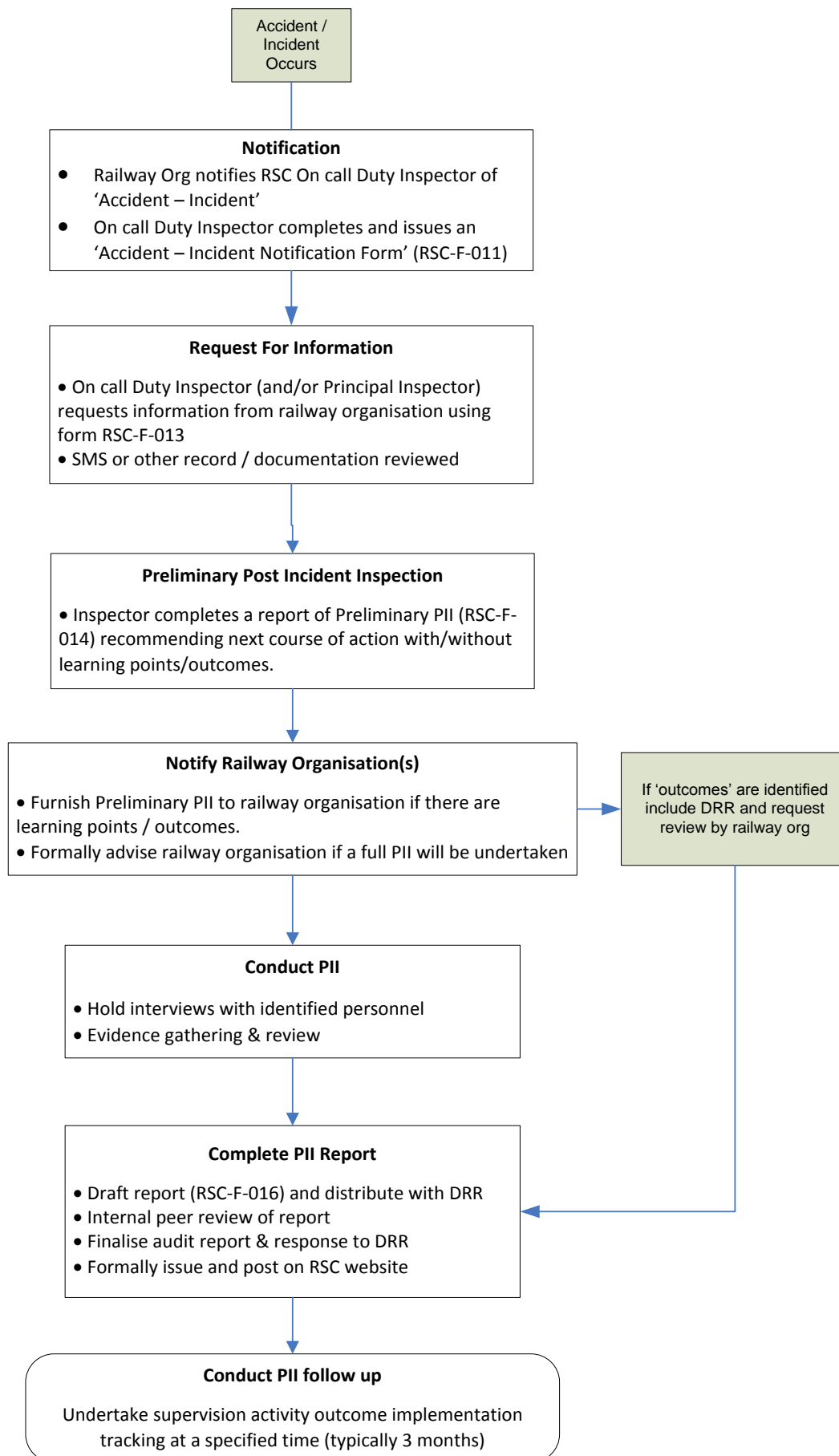


Figure 4: RSC Post Incident Inspection Process

5 RSC supervision activity outcomes

5.1 Audit Outcomes

Following an audit, an Inspector may be of the opinion that corrective action is necessary to remedy specific issues that have been identified throughout the course of the supervision activity. Such issues should be stated, if known, at the closing meeting with the railway organisation. Furthermore, if corrective action is required, the RSC shall, in the Audit Report, clearly state what action is necessary. Typically the RSC may identify:

- A non-compliance (NC) and these may be classified as being either major or minor
 - **Major Non Compliance (MaNC)**: an area of non-compliance with a railway organisation's internal, an applicable external standard, or legislation that is evidence of a system failure.
 - **minor Non Compliance (miNC)**: an area of non compliance with a railway organisation's internal, an applicable external standard, or legislation that is evidence of a sporadic lapse in implementation of a system or deviation from a system.
- **Action Required (AR)**: an area where potential exists for a non compliance to occur unless remedial action is taken or improvement is made, an isolated error that requires correction, or some other action arising from the audit.
- **Scope for Improvement (Sfi)**: an area highlighted where, in the opinion of the Auditor, system or business improvement can be achieved by the company. Typically this is phrased as a recommendation, the merits and implementation of which should be decided by audited organisation.
- **Audit Trail (AT)**: an area that the auditor feels should have further attention, either by inclusion in the programme for future audits (but not necessarily an external audit item) or by some other means.
- **Good Practice (GP)**: an area highlighted which, in the opinion of the Auditor, is good practice within the industry.

Examples

- ⊙ A technical standard states that an asset will be inspected monthly and the audit evidence collected for a number of locations suggests this frequency is not being met. This would constitute a major Non Compliance.
- ⊙ A member of staff is carrying out an activity that he has not received the training to do so or he has not been assessed. This would constitute a minor Non Compliance.
- ⊙ An RU/IM is found not to be complying with legislation. This is also a non-compliance. This would constitute a major Non Compliance.

Where a non-compliance with the railway organisation's SMS, a standard/rule book, other applicable document or legislation is identified the RSC Inspector, responsible for the audit, will clearly state the standard or legal document and section where the railway organisation is found to be non-compliant.

If a non-compliance has been identified the RSC will request an 'Improvement Plan' (Plan), as per section 76 of the "Act". The RSC shall stipulate when the Plan must be submitted and provide whatever direction is necessary to the railway organisation to ensure satisfactory action is taken.

Having reviewed a submitted Plan the RSC will, in accordance with section 76 subsection 2, write to the railway organisation or person concerned that they are either satisfied with the Plan or are not satisfied that the Plan is adequate. If the latter is the case the RSC will direct that the Plan be revised and re-submitted within a time period specified.

More often than not the RSC will identify 'Action Required' items. An 'Action Required' should be made if following an audit (or post incident inspection);

- ⊙ anomalies are found with standards, or
- ⊙ standards are vague and clarity is needed, or
- ⊙ processes, (not mandated in standards) are not being followed, or.
- ⊙ Safety information is not fully completed or is poorly completed.

If the RSC requires action/s to be taken, SMART principles shall be applied, i.e., the action required will be specific, measureable, achievable, realistic and timely. All preventative actions must be assigned with a Planned Completion Date (PCD) and this is set depending upon the identified risk. The list below may be used as a guide;

- Action needed immediately to avoid unacceptable risk (complete within 1 month or as soon as possible)
- Action needed to control a safety risk (complete within 3 months),
- Action needed to control a safety risk with limited severity or likelihood (complete within 6 months) and
- Action needed to support longer term improvement in safety management (complete within 12 months).

The format of an audit outcome is shown below:

Number	"unique surveillance activity number for the year"/"Year"- "Surveillance Type"- "Counter with a prefix MaNC, miNC, AR, Sfl, AT or GP"
Title and further detail as required	
Planned completion date	Timescale in months to complete recommendation (AR items only)

Figure 5: RSC Recommendation Format

If 'Scope for Improvement' is identified this will be clearly identified in the audit report. The railway organisation is under no obligation to take any action. They are simply made for the consideration of the audited party. An example might be if

- standards, technical documentation, training processes could be improved with relative ease to align with best practice.

Once an audit report is complete, but prior to it being issued, the RSC will conduct an internal peer review process to satisfy itself that non-compliances identified and/or corrective actions specified are done so in accordance with the principles outlined in section 2.1. This peer review process will consist of at least one RSC Inspector, not involved in the audit, reviewing the report and providing feedback. The process will be documented.

5.2 Inspection Outcomes

Following an Asset Inspection, an Inspector will complete a 'Report of Inspection', recording what was inspected and any deficiencies or other observations. This form will be forwarded to the relevant railway organisation for their attention. As with audits, findings may be made and these will be categorised in the same way as they are following an audit and their rectification monitored (See section 5.1).

If an RSC Inspector is of the opinion that there is a risk that isn't being managed appropriately, then the RSC can use its enforcement powers. (See section 6)

6 Non-compliance, corrective action & recommendation tracking

6.1 RSC Findings

The RSC shall conduct follow up meetings with the most appropriate senior manager of the railway organisation, or their representative, until it is fully satisfied that all non-compliances and corrective actions have been acted upon. The first meeting will typically take place within 3 months of issuing a report to the railway organisation with subsequent meetings taking place as required, but typically on a quarterly basis. Tangible evidence will be sought before any non-compliance or corrective action is closed by the RSC: a statement that "something will be done" is not sufficient evidence. The Principal Inspector for Supervision is responsible for the tracking of all non-compliances and corrective actions, but any RSC Inspector may be involved in the tracking activity. The RSC shall conduct an internal peer review process to satisfy itself that a non-compliance or corrective action has been suitably addressed before notifying the audited party of its closure.

This peer review process will consist of an RSC Inspector formally presenting the evidence to at least one RSC Inspector, this process will be recorded through meeting minutes or email, and the documentation saved in the appropriate file/folder.

6.2 Recommendations made by outside parties

6.2.1 Findings and recommendations made by the RAIU

Safety recommendations made by the RAIU should not come as any surprise to the railway organisation or RSC, given the RAIU should provide regular progress updates on the their investigation. Safety recommendations made in an investigation report, and addressed to the RSC will be considered. Having considered such safety recommendations the RSC will advise the RAIU if it considers that a safety recommendation is inappropriate.

In the case of safety recommendations the RSC accepts in full or in part, the RSC will formally write to the relevant railway organisation(s) and direct those safety recommendations. Target dates for completion shall be agreed and their implementation monitored through quarterly meetings with senior representatives from the relevant railway organisation or other body.

The Principal Inspector (Supervision & Enforcement) is responsible for the tracking of RAIU recommendations, but any RSC Inspector may be involved in the tracking activity. The RSC shall conduct an internal peer review to satisfy itself that safety recommendation has been suitably addressed before notifying the relevant railway organisation of its closure. This peer review process will be undertaken in the same manner as that for the RSC's own supervision activity outcomes, i.e., non-compliances and 'action required' items. The RSC will advise the RAIU of progress against safety recommendations they have made, annually, on or before the end of February each year. Figure 6 on the following page illustrates the process.

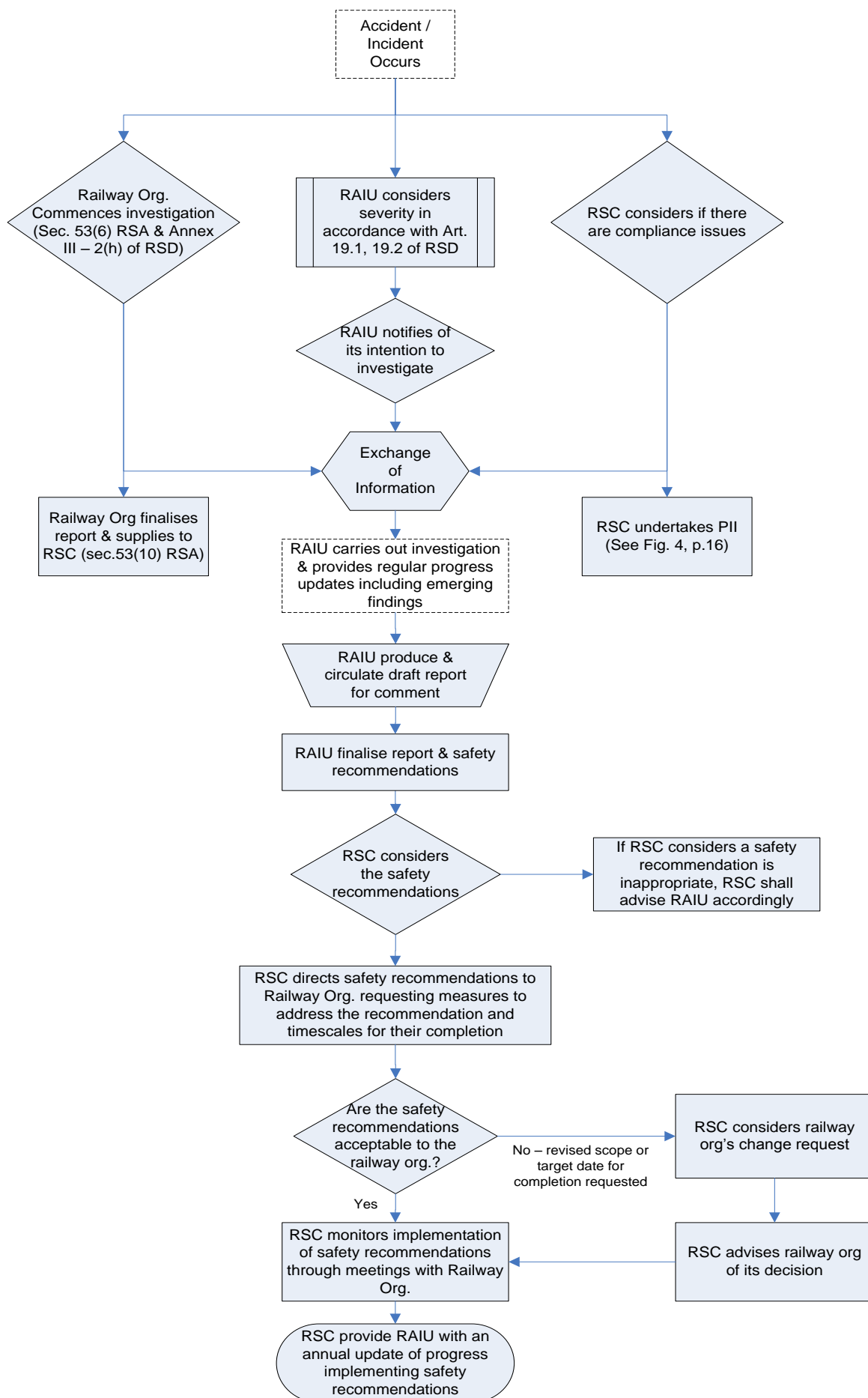


Figure 6: Process for dealing with RAIU safety recommendations

6.2.2 Findings and recommendations by external bodies

Should the RSC engage an external body, i.e., outside consultants, to undertake an audit on its behalf, the RSC will supply that consultant with a copy of these guidelines and other applicable documents, e.g., the Supervision Regime Manual. The RSC shall consider all Non-Compliances, Actions Required, etc. raised by that outside consultant and, in the case of those it accepts, will track their implementation and subsequent closure in the same manner as outlined above in section 4.1.

7 Enforcement

7.1 The RSC's Enforcement Activities

Part 7 of the Railway Safety Act 2005, as amended, (the "Act"), pertains to enforcement.

7.2 The purpose and method of enforcement

The ultimate purpose of the RSC's enforcement of the "Act" and any other legislation relating to railway safety is to ensure that railway organisations manage and control risks effectively, thus preventing harm. The term 'enforcement' has a wide meaning and applies, here, to all dealings between the RSC and those on whom the law places safety duties (railway organisations and others).

The purpose of enforcement is to:

- ensure that railway organisations or others take action to deal immediately with intolerable or unacceptable risks;
- promote and achieve sustained compliance with applicable legislation; and
- ensure that railway organisations or others who breach the Act, and directors or managers who fail in their responsibilities may be held to account. This may include bringing forward proceedings against alleged offenders.

RSC Inspectors have a range of tools at their disposal to secure compliance with the "Act". Inspectors may offer railway organisations and others information and explanation, both face-to-face and in writing. This may include advising a railway organisation or other party that, in the opinion of the Inspector, they are failing to comply with the "Act". In such a case an Inspector will write to the railway organisation and request an Improvement Plan in accordance with section 76 of the "Act". Where appropriate, Inspectors may also serve Improvement and Prohibition Notices, in accordance with sections 77 and 78 of the "Act".

Giving information and explanation, requesting an 'Improvement Plan' and issuing 'Improvement or Prohibition Notices', are the main tools which Inspectors use to ensure railway organisations are compliant with the "Act". Information on Improvement and Prohibition Notices will be made publicly available in the RSC's annual report.

Every 'Improvement Notice' contains a statement that, in the opinion of an Inspector, a railway organisation or other person is contravening or has contravened or is failing to comply or has failed to comply with any provisions of the "Act".

Examining the circumstances encountered during inspections or following incidents or complaints (representations) is essential before taking any enforcement action. In deciding what resources to devote to these activities, the RSC will have regard to the principles of supervision (and enforcement) set out in this guidance.

Guidance on the RSC's Supervision Activities

RSC Inspectors will use discretion in deciding when to undertake an inspection or what enforcement action may be appropriate. The RSC has, in this guidance, set down the decision-making process and principles that Inspectors will follow when deciding on enforcement action.

8 Prosecution

The decision to initiate proceedings against a company or individual rests with the RSC. The RSC will use its discretion in deciding whether to bring forward proceedings in consultation with its legal advisors.

While the primary purpose of the RSC's enforcement is to ensure that railway organisations manage and control risks effectively, thus preventing harm, prosecution is an essential part of enforcement. Where the circumstances warrant it, and the evidence to support a case is available, the RSC will prosecute following the provisions laid down in the "Act". Examples where proceedings are likely to be brought forward include;

- death was a result of a breach of the legislation;
- there has been reckless disregard of safety requirements, i.e., careless or dangerous working;
- there have been repeated breaches giving rise to substantial risk, or persistent and significant poor compliance;
- work has been carried out without or in serious non-compliance with, a safety management system;
- there has been a failure to comply with an 'Improvement or Prohibition Notice'; or there has been a repetition of a breach that was subject to previous action by the RSC;
- false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to substantial risk; or
- Inspectors have been intentionally obstructed in the lawful course of their duties.

The RSC will, in the public interest, consider prosecution, or consider recommending prosecution, where, following an Inspection or other regulatory contact, the following has been identified:

- a breach giving rise to intolerable or unacceptable risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity or railway operations.

8.1 Prosecution of individuals

Subject to the above, the RSC will identify and prosecute, or recommend prosecution of, individuals if it considers that a prosecution is warranted. In particular, the RSC will consider the management chain and the role played by individual executives, directors and managers, and should take action against them where the Inspection reveals that the offence was committed with their consent or involvement, or where it is attributable to neglect on their part, and where it would be appropriate to do so in accordance with this guidance document.

8.2 Publicity

The RSC has arrangements for making publicly available information on its enforcement activity including Improvement and Prohibition Notices that it has issued. Typically such information will be included in the RSC's Annual Report to the Minister of Transport, Tourism & Sport.

9 Decision-making process

RSC Inspectors should always deal first with matters which give rise to risk of serious injury. RSC Inspectors have the power to prohibit under section 78 of the “Act” if, in the opinion of the Inspector, the activity or operation which is creating the risk is deemed to pose an immediate and substantial risk to the safety of persons.

The term ‘risk’ has a wide meaning, however, the RSC have adopted the terms and definitions set out in Commission Regulation (EC) No 352/2009 on the adoption of a common safety method on risk evaluation and assessment i.e.,

Risk:	means the rate of occurrence of accidents and incidents resulting in harm (caused by a hazard) and the degree of severity of that harm;
Risk analysis:	means systematic use of all available information to identify hazards and to estimate the risk;
Risk evaluation:	means a procedure based on the risk analysis to determine whether the acceptable risk has been achieved;
Risk assessment:	means the overall process comprising a risk analysis and a risk evaluation;
Hazard:	means a condition that could lead to an accident;
Risk Control Measures:	or ‘safety measures’ means a set of actions either reducing the rate of occurrence of a hazard or mitigating its consequences in order to achieve and/or maintain an acceptable level of risk;

When considering the immediacy of risk, RSC Inspectors should use the principles of ‘risk gap analysis’ described below (Section 8.1). They must have an understanding of ‘actual risk’, and take account of any relevant standards when considering what can be done to reduce the risk of serious injury.

9.1 Gap analysis

9.1.1 Principles

During supervision activities RSC Inspectors shall use the concept of explicit risk estimation and evaluation. They will gather information about hazards and the risk control measures used by the RU/IM to control them. This information is used to make an initial assessment of the safety risks posed by the various activities and determine the actual risk.

Inspectors should compare this to the risk accepted by the “Act”, i.e., ‘so far as is reasonably practicable’ (SFAIRP). This involves weighing a risk against the time, effort and money needed to control it. Thus, SFAIRP describes the level to which the RSC expect to see railway safety risks controlled. The difference between the actual risk (where the duty-holder ‘is’) and what the “Act” requires (SFAIRP) is the risk gap.

The concept of risk gap is fundamental to the decision making process and is used to assess what enforcement is necessary to secure compliance with the “Act”.

9.1.2 Determining the risk gap

The first step in determining the risk gap is to assess the level(s) of actual risk arising from the railway organisation's activities. Inspectors should base this judgement on information about hazards and risk control measures informed by their training, experience, knowledge of past incidents and accidents in the State or in other countries, guidance and other relevant sources of information.

Having identified the level(s) of actual risk an Inspector should identify the risk gap using table 1 below.

Risk Gap	Definition	Enforcement Action
Minor	<ul style="list-style-type: none"> Deficiencies or inadequacies are minor, have little material impact and can be remedied easily. Examples include; <ul style="list-style-type: none"> Infrastructure or rolling stock damage or deficiencies are identified Operational irregularities are observed 	Letter or 'Report of Inspection' form
Inadequate	<ul style="list-style-type: none"> Standards/ procedures exist but they are not fully complied with, i.e., there are non-compliances. Examples include; <ul style="list-style-type: none"> Not meeting mandated inspection frequencies of assets Inadequate control measures to mitigate and manage risks Internal standards fall short of CSM requirements 	Improvement Plan or Improvement Notice
Absent	<ul style="list-style-type: none"> Total absence of standards/ procedures or application of them. Repeated non-compliances. Failure to comply with the "Act" or direction under s. 76 or s. 77 of the "Act". An activity involves or is likely to pose an immediate and substantial risk to the safety of persons. Examples include; <ul style="list-style-type: none"> CSMs are not followed The RSC is not notified about a significant failing of the SMS Railway organisations fail to manage change / notify the RSC Significant risks are not managed 	Improvement Notice or Prohibition Notice
Extreme	<ul style="list-style-type: none"> Failure to comply with the "Act" or direction under s.77 or s.78 of the "Act". Significant safety management failings indicating negilgance exist. Examples include; <ul style="list-style-type: none"> A death or serious injury occurs due to negligence 	Procecuton

Table 1: Compliance and enforcement expectation

Having determined the risk gap an Inspector considering the action to take shall present their findings, proposed enforcement action and the reasons for them to the Principal Inspector (Supervision and Enforcement) prior to any action being taken.

Every 'Improvement Plan' request (in accordance with s.76 of the Act) contains a statement that, in the opinion of an Inspector, a railway organisation or other person is carrying out an activity likely to pose a risk to the safety of persons.

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Every 'Improvement Notice' (in accordance with s.77 of the Act) contains a statement that, in the opinion of an Inspector, a railway organisation or other person is contravening or has contravened or is failing to comply or has failed to comply with any provisions of the "Act".

Plans and Notices will also contain such particulars and direction to the railway organisation or other party as to how they can become compliant with the "Act".

For further information on the RSC's activities please refer to the RSC website, www.rsc.ie

10 References

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Office of Rail Regulation, (2010), ORR enforcement management model, ORR, London, UK, 2010

ISO 19011:2002: Guidelines for quality and/or environmental management systems auditing, International standard organisation, Geneva, Switzerland 2002

Railway Safety Act 2005, as amended

Directive 2004/49/EC on safety on the Community's railways. (Railway Safety Directive)

Commission Regulation (EU) No 1158/2010 of 10 December 2010 on a common safety method (CSM) for assessing conformity with the requirements for obtaining a railway safety certificate

Commission Regulation (EU) No 1169/2010 of 10 December 2010 on a common safety method (CSM) for assessing conformity with the requirements for obtaining a railway safety authorisation

Commission Regulation (EU) No 1077/2012 of 16 November 2012 on a common safety method (CSM) for supervision by national safety authorities after issuing a safety certificate or safety authorisation

Appendix 1

Penalties for Offences under the Railway Safety Act

Breach of sections 36 and 37 of the Act, which set out the general duties of a railway undertaking; employees; and of any person being on a railway or railway premises or railway land or on a train; every person, in carrying out an activity on or near the railway or railway premises or railway land to safeguard the safety of workers and members of the public who may be exposed to danger as a consequence of any act or omission:

- **no penalty is stated and therefore prosecution would not be brought under these sections**

Breach of sections 42 and 43 of the Act, which set out the duties of a railway undertaking in terms of a safety assessment of either new works or new rolling stock:

- **on summary conviction** a fine not exceeding €3000; or
- **on conviction on indictment** a fine not exceeding €500,000;.

Breach of section 44 of the Act, which set out the duties of a railway undertaking in terms of the transfer of ownership:

- **on summary conviction** a fine not exceeding €3000; or
- **on conviction on indictment** a fine not exceeding €500,000;.

Breach of section 45, 47, 48 of the Act, which set out the duties of a railway undertaking in terms of the submission, implementation and revision of a safety case:

- **on summary conviction** a fine not exceeding €3000; or
- **on conviction on indictment** a fine not exceeding €500,000;.

Breach of section 50 of the Act, which set out the duties of a railway undertaking in terms of procuring an independent competent person to audit its safety management system:

- **on summary conviction** a fine not exceeding €3000; or
- **on conviction on indictment** a fine not exceeding €60,000;.

Breach of section 53 of the Act, which set out the duties of a railway undertaking in terms of they own internal investigations following a reportable railway incident:

- **on summary conviction** a fine not exceeding €3000; or
- **on conviction on indictment** a fine not exceeding €60,000;.

Breach of section 69, 70, 72 of the Act, which set out the duties of a railway undertakings and other organisations which represent staff of railway undertakings and other such persons as in the opinion of the Commission may be relevant contravenes or fails to comply with regulations made under this part (Part 6):

- **on summary conviction** a fine not exceeding €3000.

Breach of section 74 of the Act, which set out the requirements of persons to give their name and address to a member of the Garda Síochána who is accompanying an inspector:

- **on summary conviction** a fine not exceeding €3000; or to imprisonment for a term not exceeding 3 months

Breach of section 77 of the Act, which set out the duties of a railway undertaking or other person to comply with an Improvement notice:

- **on summary conviction** a fine not exceeding €3000; or
- **on conviction on indictment** a fine not exceeding €300,000;.

Breach of section 78 of the Act, which set out the duties of a railway undertaking or other person to comply with a Prohibition notice:

- **on summary conviction** a fine not exceeding €3000; or to imprisonment for a term not exceeding 3 months, or to both
- **on conviction on indictment** a fine not exceeding €1,000,000; or to imprisonment for a term not exceeding 2 years, or to both.

Breach of section 103 of the Act, which set out the duties of a safety critical worker following the provision of a breath test to sign statements:

- **on summary conviction** a fine not exceeding €1000; or to imprisonment for a term not exceeding 1 month, or to both.

Breach of section 109 of the Act, which set out the duties of a person (other than section 103) to comply with Chapter 2 - Intoxicants:

- **on summary conviction** a fine not exceeding €5000; or to imprisonment for a term not exceeding 6 months, or to both.

Breach of section 110 of the Act, which set out the duties of a safety critical worker not to work carelessly:

- **on summary conviction** a fine not exceeding €2500; or to imprisonment for a term not exceeding 3 months, or to both.

Breach of section 111 of the Act, which set out the duties of a safety critical worker not to work dangerously:

- **on summary conviction** a fine not exceeding €5,000; or to imprisonment for a term not exceeding 6 months, or to both, or;

- **on conviction on indictment** a fine not exceeding €100,000; or to imprisonment for a term not exceeding 5 years, or to both.

Breach of section 113 of the Act, which set out the duties of works by road authorities or other person to notify the railway undertaking if their works on a public road could affect the safe operation of the railway:

- **on summary conviction** a fine not exceeding €3,000; or;
- **on conviction on indictment** a fine not exceeding €500,000;.

Breach of section 114 of the Act, which states that a person may not use or attempt to use a train or other mechanically propelled vehicles without the consent of the railway undertaking is guilty of an offence and is liable;

- **on summary conviction** a fine not exceeding €5,000; or to imprisonment for a term not exceeding 6 months, or to both.

Breach of section 116 of the Act, which states that a person who causes a hazard or risk to persons by accidentally or negligently causing any structure, vehicle or other matter of thing to come to lie on railway infrastructure or to overhang or protrude into the operational area above or adjacent to the railway infrastructure to contact a member of the Garda Síochána. A person who fails to comply with this is guilty of an offence and is liable;

- **on summary conviction** a fine not exceeding €5,000; or to imprisonment for a term not exceeding 3 months, or to both.

Breach of sections 115, 117 or 119 of the Act, which states that a person who; deliberately or wantonly or attempts to cause damage to any railway property; deliberately or wantonly exposes another to danger; deliberately or maliciously attempts to obstruct, damage or derail a train or to injure persons present on, using or working on railway property is guilty of an offence and is liable;

- **on summary conviction** a fine not exceeding €5,000; or to imprisonment for a term not exceeding 3 months, or to both.

- **on conviction on indictment** a fine not exceeding €100,000 or to imprisonment for a term not exceeding 3 years or two both.

Part 14 of the Act pertains to 'Provisions relating to Córas Iompair Éireann'.

Part 15 of the Act pertains to 'Fare evasion and fixed penalty notices'.

Part 16 of the Act pertains to 'Light rail and Metro'.

Part 17 of the Act pertains to 'Road Traffic – Bridge Strikes'.

Breach of section 138 (2) of the Act, which set out the duties of road traffic users in relation to Bridge strikes:

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- **on summary conviction** a fine not exceeding €5,000; or to imprisonment for a term not exceeding 6 months, or to both, or;

- **on conviction on indictment** a fine not exceeding €50,000; or to imprisonment for a term not exceeding 3 years, or to both.

Breach of section 138 (4) of the Act, which set out the duties of road traffic users in relation to notifying the relevant body (railway undertaking) of a bridge strike:

- **on summary conviction** a fine not exceeding €1,000.