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# Stakeholder survey: Post Implementation Review of the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (as amended)

August 2017

## Introduction

* 1. The Office of Rail and Road (ORR) is seeking to gather views from stakeholders on the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 [S.I. 2006/557][[1]](#footnote-1) (as amended) (EARR). This is because ORR (in consultation with the Health and Safety Executive [HSE]) is carrying out a Post Implementation Review (PIR) of EARR, on behalf of the Secretary of State, and will draw conclusions and make recommendations for change if required.
	2. It is now common practice across government to carry out PIRs. For example, ORR carried out a PIR of the Railways and Other Guided Transport Systems (Safety) Regulations 2006 [S.I. 2006/599](as amended) (ROGS)[[2]](#footnote-2) in 2016 and we are carrying out the PIR for EARR in a similar context.
	3. Regulation 8 of EARR provides that by 21 May 2018 (and every five years after) the Secretary of State:
		+ - 1. carries out a PIR of EARR;
				2. sets out the conclusions of the PIR in a report; and
				3. publishes the report.
	4. This document therefore sets out a number of survey questions to seek stakeholders’ views of EARR. Your views are critical to providing a sound evidence base for us to assess the effectiveness (or otherwise) of EARR after they have been in force and operational since 2006 (including substantial amendments made in 2008, 2013 and 2014) and enable us to address:
		+ the extent to which EARR are achieving their intended effects;
		+ whether there have been any unintended effects; and
		+ practical considerations around implementation.
	5. From the stakeholder survey, we hope to collect sufficient evidence to establish whether, and to what extent, EARR have achieved their original objectives; and whether they should remain as they are or be revoked or amended.
	6. Participation is optional, but if you are willing to contribute to this process, we would appreciate responses by **19 September 2017**.
	7. Please send your responses to the survey questions to stefano.valentino@orr.gsi.gov.uk.
	8. If you have any questions about participation please, please contact Stefano Valentino, Office of Railway and Road, One Kemble Street, London WC2B 4AN, Tel. 020 7282 2003 or at the email address above.
	9. You should indicate clearly if you wish any part of your response to remain confidential to ORR. The results of this survey will be aggregate and presented so that individual respondents will not be identifiable.

## Background

* 1. The objectives of EARR are to:
		+ allocate health and safety enforcement functions to ORR in relation to railways, tramways and other guided transport systems; and
		+ define clearly whether ORR or HSE is the enforcing authority for particular activities (for example operation of a railway or operation of a tramway).
	2. Full details about the background to EARR and their intended objectives can be found in Annex A

## Stakeholder survey questions

1. We would like your views on the 12 questions set out below by **19 September 2017**. Please select the appropriate response by clicking on the relevant box.
2. Where appropriate, it would be helpful if your responses to the questions below could include examples of real world situations or specific cases.

**Contact details**

|  |  |
| --- | --- |
| **Full name** |  |
| **Job title** |  |
| **Organisation** |  |
| **Email** |  |
| **Telephone number** |  |

1. **Understanding if EARR have achieved their objectives**
2. **Question 1:** To what extent have EARR been successful in allocating health and safety enforcement functions to ORR in relation to railways, tramways and other guided transport systems?

|  |  |
| --- | --- |
| 1. Response: (Select one box only)
 | 1. Please explain your response.
 |
| 1. [ ]  Very successful
 |  |
| 1. [ ]  Somewhat successful
 |
| 1. [ ]  neither successful nor unsuccessful
 |
| 1. [ ]  Very unsuccessful
 |
| 1. [ ]  Don’t know
 |

**Question 2:** To what extent have EARR clearly defined ORR’s responsibilities for enforcement of health and safety law in relation to railways, tramways and other guided transport systems?

|  |  |
| --- | --- |
| 1. Response: (Select one box only)
 | 1. Please explain your response.
 |
| 1. [ ]  Very clear
 |  |
| 1. [ ]  Somewhat clear
 |
| 1. [ ]  Somewhat unclear
 |
| 1. [ ]  Very unclear
 |
| 1. [ ]  Don’t know
 |

**Question 3:** To what extent have EARR clearly defined HSE’s responsibilities for enforcement of health and safety law in relation to railways and other guided transport systems?

|  |  |
| --- | --- |
| 1. Response: (Select one box only)
 | 1. Please explain your response.
 |
| 1. [ ]  Very clear
 |  |
| 1. [ ]  Somewhat clear
 |
| 1. [ ]  Somewhat unclear
 |
| 1. [ ]  Very unclear
 |
| 1. [ ]  Don’t know
 |

1. **Question 4:** Regulation 5A of EARR provides flexibility for ORR and the Office for Nuclear Regulation (ONR) to agree which authority is more appropriate to be responsible for enforcement where there is uncertainty in a particular case. Whichever authority is assigned the responsibility must then notify any person affected by the assignment.
2. To what extent has this enforcement flexibility been successful in providing clarity on whether ORR or ONR is the enforcing authority in a particular case?

|  |  |
| --- | --- |
| 1. Response: (Select one box only)
 | 1. Please explain your response.
 |
| 1. [ ]  Very successful
 |  |
| 1. [ ]  Somewhat successful
 |
| 1. [ ]  neither successful nor unsuccessful
 |
| 1. [ ]  Very unsuccessful
 |
| 1. [ ]  Don’t know
 |

1.
2. **Question 5:** The Law Commission’s report on the review of level crossings law[[3]](#footnote-3) in 2013 recommended that the power to delegate enforcement responsibility should be available to HSE and ORR in cases where there is doubt. It also suggested that the Department for Transport should consider the benefits of such a power beyond enforcement at level crossings. In other words, this would be an enforcement flexibility similar to that between ORR and ONR.
3. To what extent do you agree that power should be given to ORR and HSE to delegate enforcement in cases where there is doubt?

|  |  |
| --- | --- |
| 1. Response: (Select one box only)
 | 1. Please explain your response.
 |
| 1. [ ]  Strongly agree
 |  |
| 1. [ ]  Agree
 |
| 1. [ ]  Neither agree nor disagree
 |
| 1. [ ]  Disagree
 |
| 1. [ ]  No opinion
 |

1. **Question 6:** Are you aware of any unintended effects resulting from EARR?

|  |  |
| --- | --- |
| 1. Response: (Select one box only)
 | 1. If yes, please explain what these are and whether they are positive or negative effects.
 |
| 1. [ ]  Yes
 |  |
| 1. [ ]  No
 |
| 1. [ ]  Don’t know
 |

1. **Understanding business impacts**
2. The original impact assessment[[4]](#footnote-4) for EARR identified costs (to ORR and HSE) related to the initial transfer of functions and resources from HSE to ORR in 2006. It estimated that any additional costs for businesses would be likely to relate to understanding the new Regulations, but these were not monetised. There were no material ongoing costs identified for businesses.
3. An impact assessment was not prepared when EARR were amended in 2008 because they do not create costs or savings (benefits) for businesses.
4. **Question 7:** What information on costs and benefits for businesses created by EARR can you provide?

|  |
| --- |
| 1. Response: Please provide your response below (expand box as appropriate).
 |
|  |

1. **Question 8:** To what extent do you think that EARR has affected businesses to different extents depending on their size (i.e. 50 or fewer employees compared to those with more than 50)?

|  |
| --- |
| 1. Response: Please provide your response below (expand box as appropriate).
 |
|  |

1. **Recommending the next steps for EARR**
2. **Question 9:** What would be your recommendation for the next steps for EARR?

|  |  |
| --- | --- |
| 1. Response: (Select one box only)
 | 1. Please explain your response if you chose (a), (c) or (e).
 |
| 1. [ ]  (a) Keep EARR as they are
 |  |
| 1. [ ]  (b) Make some changes to EARR (see question 10)
 |
| 1. [ ]  (c) Remove EARR and don’t replace them
 |
| 1. [ ]  (d) Remove EARR and replace them with something else (see question 11)
 |
| 1. [ ]  (e) Don’t know
 |

1. **Question 10**: In relation to question 9(b), what changes could be made to EARR (such as simplification or improvements in clarity)?

|  |
| --- |
| 1. Response: Please provide your response below (expand box as appropriate).
 |
| 1.
 |

1. **Question 11:** In relation to question 9(d), if EARR were removed, what should replace them?

|  |
| --- |
| 1. Response: Please provide your response below (expand box as appropriate).
 |
|  |

1. **Question 12:** Do you have any additional comments?

|  |
| --- |
| 1. Response: Please provide your response below (expand box as appropriate).
 |
|  |

--------------------------------------Thank you for completing this survey--------------------------------

## Annex A: Background to EARR

* 1. EARR came into force on 1 April 2006 and have subsequently been amended by
		+ The Control of Asbestos Regulations 2006 [S.I. 2006/2739];
		+ The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007 [S.I. 2007/1573];
		+ The Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) (Amendment) Regulations 2008 [S.I. 2008/2323];
		+ The Control of Asbestos Regulations 2012 [S.I. 2012/632];
		+ The Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013 [S.I. 2013/950];
		+ Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations 2013 [S.I. 2013/1506];
		+ The Energy Act 2013 (Office for Nuclear Regulation)(Consequential Amendments, Transitional Provisions and Savings) Order 2014 [S.I. 2014/469];
		+ The Mines Regulations 2014 [S.I. 2014/3248];
		+ The Construction (Design and Management) Regulations 2015 [S.I. 2015/51];
		+ The Control of Major Accident Hazards Regulations 2015 [2015/483];
		+ The Office of Rail Regulation (Change of Name) Regulations 2015 [S.I. 2015/1682]; and
		+ The Dangerous Goods in Harbour Areas Regulations 2016 [S.I. 2016/721].
	2. The Railways Act 2005 (the 2005 Act) made provisions for the transfer of various safety functions from HSE to ORR in relation to railways, tramways and other guided transport systems. The Health and Safety at Work etc. Act 1974 (HSWA) will continue to provide the statutory framework for health and safety on these modes of transport. However, the safety functions transferred by the 2005 Act did not include responsibility for the enforcement of health and safety law. Therefore, EARR makes ORR responsible for enforcement of health and safety law in relation to the operation of railways, tramways and certain other systems of guided transport in place of HSE.

## Objectives of EARR

* 1. The original objectives of EARR were to:
		+ allocate health and safety enforcement functions to ORR to support the transfer of railway safety functions to ORR from HSE; and
		+ clarify ORR’s and HSE’s respective responsibilities for enforcement of health and safety law in relation to railways, tramways and other guided transport systems.

## Enforcement responsibilities

* 1. Broadly speaking, in 2006 EARR made:
		+ ORR the enforcing authority for health and safety law in relation to the operation of railways, tramways and certain other systems of guided transport (for example airport transit systems), instead of HSE;
		+ HSE the enforcing authority for health and safety law in relation to the operation of cableways, guided buses, any other road based systems of guided transport, (other than tramways) and lifts (unless they are used in the operation of a railway, tramway or other system of guided transport); plus railway activities within certain premises; and
		+ amendments to various pieces of legislation to substitute ORR for HSE in exercising exercise certain functions for purposes connected with health and safety on the transport systems enforced by the relevant authority.
	2. In the light of experience of operating under the provisions, EARR were substantially amended as set out below.

2008 amendments

* 1. The Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) (Amendment) Regulations 2008 [S.I. 2008/2323] made amendments to EARR to improve clarity of the enforcement boundary between ORR and HSE. These changes clarified that:
		+ - 1. HSE is the enforcing authority for miniature railways (i.e. railways under 350mm gauge);
				2. ORR is the enforcing authority for pier railways (in terms of ‘harbour areas’ rather than ‘docks’ to provide consistency with ROGS);
				3. HSE is the enforcing authority for bus substitution services from the point where such a service leaves the operational premises in question, when ORR will be the enforcing authority;
				4. HSE is the enforcing authority for construction of any extension or enlargement of existing railways if there is no risk to construction workers from the operation of a railway;
				5. ORR is the enforcing authority for the extension or enlargement of existing railways which are in close proximity to an operating railway; and
				6. ORR is the enforcing authority for construction at ‘operational premises’ except where the work falls into one of the following three categories, in which case HSE enforces:

the construction work undertaken has no connection with the operation of a railway, tramway or other system of guided transport; or

the operation of the railway, tramway or other system of guided transport is suspended in the operational premises, (other than the through running of trains), and

the work is carried out in physically segregated areas at operational premises; and

the contractor controls access and can exclude from the segregated area persons who are not attending in connection with the construction work;

the operation of the railway, tramway or other system of guided transport continues at the operational premises and in addition to (b)(i) and (b)(ii) above the access to the areas(s) where the construction work is carried out is such that it does not allow access to the remainder of the operational premises.

2013 amendments

* 1. The Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013 [S.I. 2013/950] made amendments to EARR to allow ORR inspectors to enter and have enforcement powers in those premises that they were not able to enter without HSE authorisation because those premises are excluded from the definition of ‘operation of a railway’. The purpose of the amendment was solely to enable ORR inspectors to monitor compliance by ‘entities in charge of maintenance’ with the requirements in regulation 18A of ROGS.
	2. These premises are:
		+ - 1. a harbour area within premises referred to in any of sub-paragraphs (c) to (h);
				2. any other harbour area subject to certain exceptions;
				3. an establishment to which the Control of Major Accident Hazards Regulations 2015 [S.I. 2015/483] apply;
				4. a factory;
				5. a mine;
				6. a GB nuclear site (within the meaning given in section 68 of the Energy Act 2013);
				7. a quarry; or
				8. warehouse premises.

2014 amendments

* 1. The Energy Act 2013 (Office for Nuclear Regulation)(Consequential Amendments, Transitional Provisions and Savings) Order 2014 [S.I. 2014/469] inserted an enforcement flexibility provision in regulation 5A of EARR. This provides flexibility for ORR and the Office for Nuclear Regulation (ONR) to agree which authority is more appropriate to be responsible for enforcement where there is uncertainty in a particular case. Whichever authority is assigned the enforcement responsibility must then notify any person affected by the assignment.



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1. <http://www.legislation.gov.uk/uksi/2006/557/contents/made> [↑](#footnote-ref-1)
2. <https://www.gov.uk/government/publications/review-of-the-implementation-of-rogs-2006> [↑](#footnote-ref-2)
3. <https://www.lawcom.gov.uk/project/level-crossings/> [↑](#footnote-ref-3)
4. <http://www.legislation.gov.uk/uksi/2006/557/pdfs/uksiem_20060557_en.pdf>

 [↑](#footnote-ref-4)