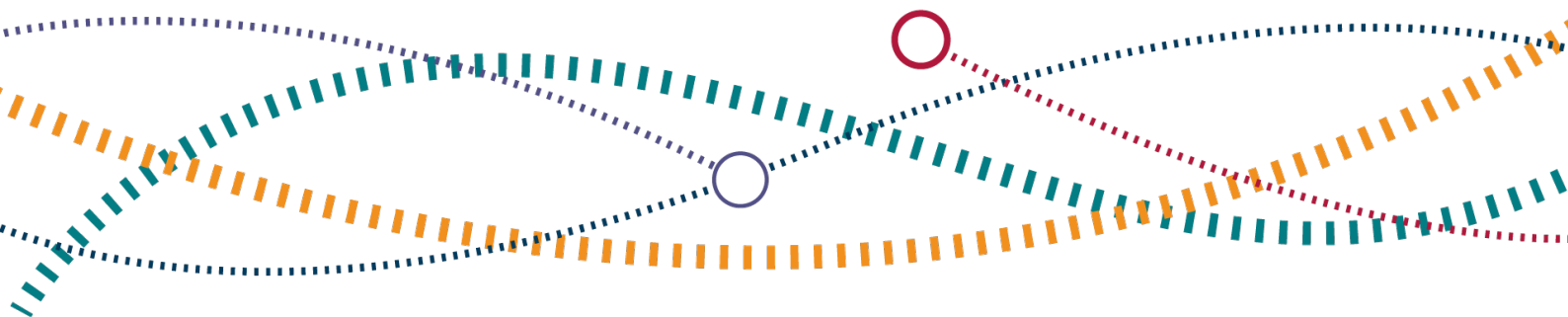




# Wholly volunteer run railways and the law

June 2021



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# Foreword

This short note sets out the Office of Rail and Road's position in relation to wholly volunteer run railway organisations (WVRR) and health and safety law. Centrally, our position is that section 4 of the Health and Safety at Work Act 1974 applies to WVRR where they make their premises, plant and any substances available to volunteers (or other organisations) for use.

Therefore, inspectors may enforce under section 4 against WVRR. Potentially, we may also take action in relation to certain health and safety regulations, including the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS).

# Chapter 1

1. Any organisation with at least one paid employee is an 'employer' for the purpose of the Health and Safety at Work Act 1974 (HSWA 1974). But a wholly-volunteer run railway organisation (WVRR) will not have any employees.
2. Not all of HSWA 1974 applies to a WVRR - because of the 'employer' requirement. But our position is that section 4 of HSWA 1974 does apply to WVRR where they make their premises, plant and any substances available to volunteers (or other organisations) for use.
3. This means that there is a duty on all WVRRs to ensure their premises, all means of access to it or egress from it, plant (including rolling stock) and substances available for use are safe and without risk so far as is reasonably practicable.
4. Inspectors may take enforcement action against a WVRR under section 4, HSWA 1974. Potentially, action may also be taken in relation to certain health and safety regulations such as the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS), amongst others.
5. Annex 1 contains a short number of 'Questions and Answers' to assist understanding of this topic.

# Annex A

## Question and Answers

**Q1) My railway organisation doesn't employ anyone. Why does the HSWA apply to us?** Section 4 of HSWA 1974 places a duty on persons who have, to any extent, control of a premises under certain circumstances. Those circumstances include making a non-domestic premise available to people not in their employment for:

- use as a place of work, or
- as a place where they may use plant or substances provided for their use there.

'Persons' includes anybody of persons corporate, or unincorporate. Therefore, a heritage railway run by an unincorporated association is a 'person' for the purposes of section 4 HSWA 1974.

**Q2) So, because only part of HSWA 1974 applies to a WVRR, are there fewer 'health and safety rules' to follow?** ORR has a clear legal view on this matter. And, irrespective of a WVRR's own views about whether there are strict legal duties arising from HSWA, it is good practice for these organisations with volunteers to provide the same level of health and safety protection as they would if they were an employer.

**Q3) I thought health and safety regulations, including ROGS, don't apply to a WVRR because not all of HSWA 1974 applies?** The applicability of a health and safety regulation is not dependent upon whether Sections.2 - 8 of HSWA applies. Therefore, potentially, the relevant parts of ROGS and other health and safety regulations apply to WVRR. ROGS refers to "any person" or a "transport operator" rather than an employer and states that 'work' includes voluntary work.

**Q4) What enforcement action can ORR take against a WVRR?** If an inspector believes that it is appropriate to enforce (having considered ORR's [Health and Safety Compliance and Enforcement Policy Statement](#) and other resources) they may do so. Enforcement options include improvement notices and potentially prosecution.

**Q5) As a WVRR, I'm not sure whether we are fully complying with the relevant legislation and regulations. What should I do?** You have a duty to ensure that you comply with the relevant legislation and regulations. However, the [Health and Safety Guidance and Compliance](#) area of our website provides useful information. You'll also find information on ROGS, which sets out the regulatory regime for rail safety, [here](#).



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