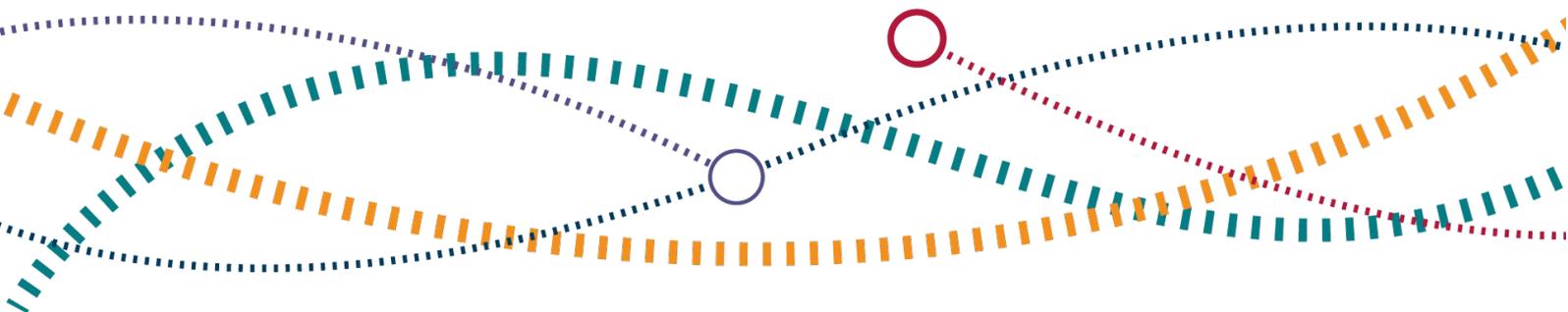


# Guidance on EARR

Guidance on the interpretation of The Health and Safety (Enforcing Authority for Railways and Other Guided Transport systems) Regulations 2006 (EARR) (as amended)

13 November 2023



# Contents

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<b>1. Introduction</b>	<b>3</b>
Demarcation of enforcement responsibility	3
Use of terminology in the document	4
Activity areas	4
<hr/>	
<b>2. Practical information</b>	<b>6</b>
Purpose	6
Legislation	6
Collaborative working	7
Recording decisions	7
Monitoring and sharing information	8
Matters of evident concern	8
Document ownership, review and further advice	8
Agency agreements	9
<hr/>	
<b>3. EARR Regulation 3</b>	<b>10</b>
Introduction and legislation	10
Regulations 3(3) – 3(6) of EARR	10
Effect of Regulation 3 on activities	11
<hr/>	
<b>4. EARR Regulation 4: exceptions</b>	<b>21</b>
Introduction and legislation	21
Effect of Regulation 4 on activities and situations	21
<hr/>	
<b>5. EARR Regulation 5: construction work</b>	<b>30</b>
ORR's enforcement role	30
HSE's enforcement role	31
Gas safety	31
Complex construction examples	32

# 1. Introduction

- 1.1 This document provides guidance on the interpretation of The Health and Safety (Enforcing Authority for Railways and Other Guided Transport systems) Regulations 2006 (EARR) (as amended). EARR made the Office of Rail and Road (ORR) the health and safety Enforcing Authority (EA) for the operation of railways, tramways, and other systems of guided transport in place of the Health and Safety Executive (HSE).
- 1.2 This guidance outlines HSE’s and ORR’s agreed interpretation of EARR and is designed to help determine the EA for different situations. The guidance refers to inspectors, as they and operational colleagues are likely to be principal users of the document. The document will also be of use to others, such as duty holders. The document does not cover every situation – where further clarity is required, inspectors should follow the process on [collaborative working](#) (Chapter 2).

## Demarcation of enforcement responsibility

- 1.3 The EA for any given situation is determined by the activity taking place, and will normally require consideration of the circumstances to establish the correct EA.
- 1.4 EARR generally reflects some overarching principles which were agreed when railway safety functions were transferred from HSE to ORR as follows:

### EARR overarching principles

ORR delivers enforcement formerly delivered within HSE by HMRI, unless there are overriding reasons otherwise.

Where possible, there should be a single EA for duty holders / stakeholders.  
Where both ORR and HSE have enforcement duties, respective responsibilities are set out in EARR.

The EA is determined by the activity causing the risk, rather than where the impact of risks materialise.

- 1.5 Under EARR, ORR is the EA for the operation of a railway, tramway or any other system of guided transport system (subject to regulations 4 and 5 of EARR). The term ‘operation of a railway’ is defined in regulation 2 of EARR by reference to a non-exhaustive list of activities, but includes:
- railway infrastructure integrity and its use;
  - railway vehicle or rolling stock safe design, maintenance and use;
  - train preparation;
  - train movements and carriage of goods; and

- the operation of stations or light maintenance depots.
- 1.6 However, the definition of ‘operation of a railway’ also includes reference to activities that are specifically excluded from the definition – readers should refer to Regulation 2 of EARR for further information.
- 1.7 In all other cases, HSE will be the EA, except where enforcement is allocated to local authorities (LAs) under the Health and Safety (Enforcing Authority) Regulations 1998 (EA 98), or alternative EAs under other regulations made under section 15(3)(c) of the Health and Safety at Work etc. Act 1974 (HSWA).
- 1.8 Where ORR or HSE is the EA, they will normally be the EA in respect of all health and safety legislation.

## Use of terminology in the document

- 1.9 References to the ‘operation of a railway’ can be read to include the ‘operation of a tramway’ and ‘operation of any other system of guided transport system’ where applicable and the context so requires. ‘Operation of a railway’, ‘operation of a tramway’ and ‘operation of any other system of guided transport’ each have the meaning as set out in EARR [regulation 2](#) (subject to regulations [4](#) and [5](#) of EARR).

## Activity areas

- 1.10 Chapters 3 – 5 outline the EA responsibilities for different situations. If a situation is not covered, inspectors should firstly refer to the section that most closely relates to the activity in question. Where further clarity is required, inspectors should speak with their Central Contact Point, as per the section on [collaborative working](#).
- 1.11 ORR and HSE both have a Central Contact Point, whose role is to facilitate contact, support, and effective communication between the two organisations. Inspectors in ORR should contact the Railway Safety Policy Manager who acts as the Central Contact Point. Inspectors in HSE should contact their Head of Transport Sector.
- 1.12 In instances where inspectors work together to reach a shared understanding over enforcing responsibility, the duty holder should be informed (by the EA) of the relevant EA at the earliest opportunity.

Activity / situation	EARR regulation	Page	Activity / situation	EARR regulation	Page
<a href="#">Asbestos</a>	Reg. 4	21	<a href="#">Mines</a>	Reg. 4	26
<a href="#">Bridges spanning the railway or occupational premises</a>	Reg. 5	33	<a href="#">Miniature railways</a>	Reg. 4	26
<a href="#">British Transport Police</a>	Reg. 3	11	<a href="#">Military establishments</a>	Reg. 3	15
<a href="#">Bus substitution services</a>	Reg. 4	21	<a href="#">Museums and heritage centres, railway demonstrations and shows</a>	Reg. 3	16
<a href="#">Cableway installations</a>	Reg. 4	22	<a href="#">New-build railways and connection to an existing, operational railway</a>	Reg. 5	32
<a href="#">Channel Tunnel UK Concession Area</a>	Reg. 3	12	<a href="#">Non-operational railway-related premises</a>	Reg. 3	16
<a href="#">Construction work on existing infrastructure</a>	Reg. 5	34	<a href="#">Other systems of guided transport</a>	Reg. 4	27
<a href="#">Construction work on existing operational premises</a>	Reg. 5	34	<a href="#">Pier railways and tramways</a>	Reg. 4	27
<a href="#">Dangerous goods</a>	Reg. 3	12	<a href="#">Premises whose primary function is not related to operation of a railway</a>	Reg. 5	36
<a href="#">Entities in charge of maintenance (ECM)</a>	Reg. 3	13	<a href="#">Quarries</a>	Reg. 4	28
<a href="#">Factories</a>	Reg. 3	14	<a href="#">Radiation – use of ionising radiation</a>	Reg. 3	17
<a href="#">Fairground equipment</a>	Reg. 4	22	<a href="#">Railway-related occupational road safety</a>	Reg. 4	29
<a href="#">Gas Safety</a>	Reg. 5	31	<a href="#">Railway security services</a>	Reg. 3	17
<a href="#">Guided buses</a>	Reg. 4	23	<a href="#">Signalling, electrical and operational control centres</a>	Reg. 3	17
<a href="#">Harbours</a>	Reg. 4	23	<a href="#">Stations</a>	Reg. 3	17
<a href="#">Inter-modal depots</a>	Reg. 4	24	<a href="#">Testing railway components</a>	Reg. 3	18
<a href="#">Level crossings</a>	Reg. 4	24	<a href="#">Training activities</a>	Reg. 3	19
<a href="#">Lifts</a>	Reg. 4	25	<a href="#">Work in the permanent way</a>	Reg. 3	19
<a href="#">Light maintenance</a>	Reg. 3	14			

## 2. Practical information

- 2.1 This guide is *not* a legal interpretation of EARR. It supports the HSE and ORR [Memorandum of Understanding](#) (MoU), by providing guidance on the demarcation of enforcement vires according to EARR.

### Purpose

- 2.2 This document outlines HSE and ORR’s shared interpretation of EARR and provides guidance on the demarcation of enforcement responsibilities between HSE and ORR, according to Regulations 3, 4 and 5 of EARR. Note: this document does **not** set out the demarcation of responsibility between HSE and other enforcing authorities (e.g., local authorities).
- 2.3 The guidance is principally aimed at inspectors and operational colleagues, but will also be of use to others, such as duty holders (i.e., those with duties under health and safety legislation) and wider stakeholders.

Who is the guidance document for?		
HSE / ORR inspectors	Duty holders	Other stakeholders
To help inspectors determine the enforcing authority for any given activity or situation	To provide clarity on who the enforcing authority will be in any given situation and so duty holders know who to contact	To aid understanding of which organisation has enforcement authority for activities relating to the operation of the railway

### Legislation

- 2.4 Section 2 and Schedule 3 of [The Railways Act 2005](#) give ORR regulatory responsibility for all ‘railway safety purposes’. This includes developing policy to secure the proper construction of transport systems, locomotives, rolling stock or other vehicles to be used, on such systems. It also gives ORR responsibility over the safety critical software side of railway equipment and systems, except for cyber security, which remains with the Department for Transport.
- 2.5 EARR makes ORR the EA for the operation of: a railway, tramway and any other system of guided transport.
- 2.6 ‘Operation of a railway, tramway or any other system of guided transport’ are not limited to specific premises and may extend beyond the physical boundary of a railway. For example, the unloading of goods from lorries on the public highway for use on the railway, would be within the meaning of ‘operation of a railway’.

- 2.7 EARR regulation 4 lists exceptions to activities for which ORR is the EA. In most cases, HSE is the EA for these excepted activities, other than where LAs are the EA under EA 98.

### Overview of Regulations 2 – 5 of EARR 2006

Regulation 2 Interpretation	Regulation 3 Enforcing Authority	Regulation 4 Exceptions	Regulation 5 Construction work
Definitions and interpretations of the key words and phrases used within EARR.	Sets out those situations in which ORR will be the relevant EA.	Situations where ORR is not the EA. In those situations, HSE / LA will likely be the EA.	What is and is not included within the definition of construction work.

## Collaborative working

- 2.8 The [HSE and ORR MoU](#) outlines how collaboration, advice and sharing of support will take place between the two organisations. Both organisations will actively cooperate in areas of shared interest and agree to support each other with specialist advice in their respective areas of expertise.
- 2.9 EARR does **not** allow enforcement functions to be allocated or transferred between HSE and ORR. Where ambiguity exists about the EA for a situation, inspectors should follow the process in Annex 1. The starting point will be the EARR definition of ‘operation of a railway’ and the non-exhaustive list of examples in chapters 3 to 5. Full details of the process to be followed, including details of the Central Contact Point, is on the intranet of HSE and ORR respectively.
- 2.10 EA functions are principally based on the nature of the activity, meaning that sometimes there will be more than one EA at a premises (e.g., in light maintenance depots). In some instances, it can be beneficial for regulators to work together and undertake joint site visits and inspections. Where applicable, coordination of enforcement activity will also help to ensure a joined-up enforcement strategy.

## Recording decisions

- 2.11 Determining the EA should be based on the facts and circumstances of the individual case. There will be occasions where HSE and ORR need to come to a shared understanding as to who has enforcing responsibility.
- 2.12 Where HSE and ORR reach a shared interpretation of who has enforcing responsibility, both organisations should keep a written record of the decision agreed and the reasons why. Where necessary, the outcome should be

communicated to the relevant duty holder (by the organisation that will have enforcing responsibility).

## Monitoring and sharing information

- 2.13 The [HSE and ORR MoU](#) outlines monitoring and information sharing between the two organisations. Key points are:
- (a) HSE enable ORR to access the notifiable construction projects database (see para. (c) below). This database is for projects that need to be notified to the relevant EA under the Construction (Design and Management) Regulations 2015. Notifications to the HSE database will be regarded as having been made to the relevant EA as required by CDM 2015.
  - (b) For statutory enforcement purposes, HSE will provide ORR's Information and Analysis team (by emailing [rail.stats@orr.gov.uk](mailto:rail.stats@orr.gov.uk)) with case details of railway workers who are suspended from working with lead by a doctor appointed by HSE under the Control of Lead at Work Regulations 2002. HSE will share details in accordance with the provisions of the UK General Data Protection Regulation and the Data Protection Act 2018 – Annex A contains a Data Protection Declaration between HSE and ORR.
  - (c) HSE will provide ORR with access to HSE's database for reports on Notifiable Non-Licensed work (NNLW) with asbestos on railway infrastructure. ORR have access to the NNLW and CDM databases via Citrix Access Gateway (CAG), which provides remote access. ORR will have a small number of logins to be able to use the system.
  - (d) HSE will report all railway-related occupational road fatalities to ORR's Information and Analysis team (by emailing [rail.stats@orr.gov.uk](mailto:rail.stats@orr.gov.uk)).

## Matters of evident concern

- 2.14 As per the HSE and ORR MoU, should either HSE or ORR inspectors observe *matters of evident concern* in the course of their duties for which they are not the EA, they will follow the agreed mechanism to promptly bring these matters to the attention of the correct EA. Where inspectors are unsure of the agreed mechanism, they should contact their Central Contact Point for further guidance.

## Document ownership, review and further advice

- 2.15 This document is jointly owned by HSE and ORR. It is a standalone document – content that is queried, or a gap that is identified, will be reviewed and if necessary, amended by agreement between the single points of contact at ORR and HSE. The latest version will be published on the websites of HSE and ORR.

- 2.16 Both organisations have a Central Contact Point responsible for maintaining the good working relationship between ORR and HSE. If colleagues have queries about the document, they should contact their Central Contact Point.
- 2.17 Where inspectors need technical support at short notice (i.e., in less than 24 hours), they should consider contacting their Central Contact Point who will advise accordingly. Where this is not possible, they should contact their own Out-of-Hours Duty Officer. ORR and HSE Out-of-Hours Duty Officers hold each other's contact details and can communicate as necessary.

## Agency agreements

- 2.18 For road vehicle incursions that could affect the safe operation of the railway, EARR is not clear as to who has enforcing authority. HSE and ORR have an [agency agreement](#), under which ORR assumes HSE's enforcement functions.
- 2.19 HSE and ORR also have an agreement relating to the [design of railways, tramways and other systems of guided transport](#). Under EARR, HSE is the EA for new-build railways. The agency agreement gives ORR certain enforcement functions during the design stage of railway infrastructure, enabling ORR to regulate safety by design on new infrastructure projects.
- 2.20 Further information on the road vehicle incursion agreement can be found [here](#), and further information on the design agreement is [here](#).

# 3. EARR Regulation 3

## Introduction and legislation

- 3.1 Under EARR, the EA is principally determined by the nature of the activity and whether it relates to the operation of a railway, rather than where it takes place.
- 3.2 [EARR Regulation 3\(1\)](#) makes ORR the enforcing authority for all relevant statutory provisions under HSWA, in relation to: the operation of a: *railway*; *tramway*; and any *other system of guided transport*.
- 3.3 This is the case even if the activities take place at premises where HSE or the LA is normally the enforcing authority, including activities taking place at premises owned by the Crown ([Regulation 4\(3\)\(h\) of EA 98](#)).
- 3.4 The operation of a railway includes mainline railway, metro and light railway systems, and minor railways. Guided transport includes monorails and people movers but does **not** include guided bus systems. ORR's enforcement remit is subject to exceptions in EARR regulations 4 and 5.

## Regulations 3(3) – 3(6) of EARR

### EARR Regulation 3(3) – General duties of manufacturers etc.

- 3.5 ORR is the EA for subsections (1), (2), (4) and (5) of [HSWA section 6](#), relating to articles and substances manufactured, imported, or supplied for use exclusively or primarily in the construction or operation of a railway or a system of transport. For articles, this also includes their design.
- 3.6 ORR enforce railway-related design and supply issues. ORR and HSE also have an [agency agreement](#) relating to design matters.

#### Example

A vehicle designed as road construction equipment but adapted for use on railway infrastructure:

- ORR is the EA for issues related to how it is used on the railway.
- HSE is the EA for issues related to its original design as road construction equipment, including when equipment fails while in use on the railway.

### EARR Regulation 3(4) – Erection or installation of articles

- 3.7 ORR is EA for [HSWA section 6\(3\)](#), but only relating to the erection or installation of an article for use at work and which is to be used in the operation of a railway or system of transport.

### Example

ORR is the EA for a roof inspection platform (to allow railway staff to monitor, inspect and repair the top of vehicles) is installed within a light maintenance depot.

## EARR Regulation 3(6) – Effect of EARR on provisions in the Enforcing Authority Regulations 1998

- 3.8 EARR regulation 3 has effect, regardless of anything to the contrary in the following provisions of the EA 98 regulations:
- (a) Regulation 3; Regulation 4(1) and 4(2); and Regulation 4(4)(a) and 4(4)(b).
- 3.9 ORR enforces relevant statutory provisions in respect of county councils, local authorities and the Crown, and their premises, to the extent that they relate to the operation of a railway.

### Example

Under [EA98](#), the LA is the EA for office-based activities. However, under EARR Reg. 2 ORR is the EA for railway offices within the same premises, such as signalling control centres or centres used for operation of communications systems or for monitoring the 'operation of the railway'.

## Effect of Regulation 3 on activities

- 3.10 Below sets out how EARR Regulation 3 impacts on enforcement responsibilities. Activities are covered alphabetically.

### British Transport Police (BTP)

- 3.11 HSE is the EA for BTP, even when carrying out duties on the operational railway.

EA	Situation / example	Legislation	Note
HSE	BTP carrying out duties on operational railway	<a href="#">EARR Reg. 2</a> on 'operation of a railway' <a href="#">EA 98 Reg. 4</a> para. (3)(d) on exceptions	<a href="#">EA 98 (Reg. 4)</a> makes HSE the EA for police authorities. Police stations on railway premises are <b>not</b> part of the 'operation of a railway'. <a href="#">Private security companies</a> are not reserved to HSE under EA 98, so they are part of 'operation of a railway' and ORR is EA.

- 3.12 The EA for Border Force officials carrying out inspections is determined by the nature of the inspection activity and if it is part of ‘operation of a railway’ (Border Force is not reserved to HSE under EA 98).

## Channel Tunnel UK Concession Area

- 3.13 ORR is the EA for activities relating to the operation of a railway in the UK Concession Area. HSE or the LA is the EA for activities which do not relate to the operation of a railway in the UK Concession Area.

### Background information – UK Concession Area

The UK Concession Area includes the terminal and three tunnels up to the mid-point of the channel tunnel between Britain and France. ORR and HSE have no jurisdiction for the ‘UK-control zone’ in France. The UK Concession Area operates under specific arrangements authorised by the Intergovernmental Commission for the Channel Tunnel (IGC). The Channel Tunnel Safety Authority (CTSA) provides advice and assistance to the IGC on all matters concerning safety.

Safety inspections in relation to the UK Concession Area are carried out by inspectors using their national powers. ORR and HSE will keep each other informed where they carry out an inspection, or use their enforcement powers.

### ElecLink

ORR and HSE have entered into an Agency Agreement which delegates enforcement responsibilities for ElecLink within the UK half of the Channel Tunnel Fixed Link to ORR. Inspectors should refer to the [Agreement](#) for more details.

EA	Situation / example	Legislation	Note
ORR	Activities relating to the operation of a railway in UK Concession Area	<a href="#">EARR Reg. 2</a> on ‘operation of a railway’	N/A
HSE / LA	Activities in UK Concession Area not related to the operation of a railway	<a href="#">EA Reg. 3</a> para. (5)(a) on Channel tunnel <a href="#">EA Schedule 1</a> activities for which LA is the EA	

## Dangerous goods

- 3.14 Under the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (CDG), HSE is EA for carriage of dangerous goods. ORR is EA for matters relating to operation of a railway, including, but not limited to, those duties on the parties involved in the carriage of dangerous goods, and duties on the infrastructure manager. The Office for Nuclear Regulation (ONR) is EA for class 7 radioactive material.

3.15 Where dangerous goods are held in an operational railway premises (e.g., a freight depot), HSE is EA for the packaging and consignment of the dangerous goods. ORR is EA for matters pertaining to the operation of a railway. ONR is the EA where the goods are class 7 radioactive material. The [Radiation \(Emergency Preparedness and Public Information\) Regulations 2019 \(REPIR\)](#) outlines the duties around premises which hold radioactive substances over certain thresholds.

EA	Situation / example	Legislation	Note
HSE	Dangerous goods carried by railway ( <b>excluding</b> Class 7 radioactive material) – e.g., petrol carried as freight	<a href="#">CDG Reg. 25</a> para. 2	HSE is the principal EA for the carriage of dangerous goods. Where carried by rail, HSE is the EA for the packaging and consignment of the dangerous goods / materials.
ORR	Railway related matters where dangerous goods are carried ( <b>excluding</b> Class 7 radioactive material) – e.g., freight trains carrying goods	<a href="#">EARR Reg. 3</a> paras. (1), (2) and (5) <a href="#">CDG Reg. 32</a> para. (3)	ORR is EA for operation of the railway – e.g., issues relating to trains or infrastructure. Further information on ORR’s enforcement role can be found in ORR’s <a href="#">guidance on dangerous goods</a> . HSE is EA for the actual dangerous goods
ONR	The carriage or transportation of Class 7 radioactive material	<a href="#">CDG Reg. 25</a> para. 3(A)	ONR is the EA for class 7 material, including how it is packaged and attached to the wagon. ORR is the EA for matters related to the railway.

### Example – dangerous goods

Where a train is carrying non-class 7 dangerous goods, ORR is EA for matters pertaining to ‘operation of the railway’ (e.g., issues relating to vehicles or rail infrastructure). This would include, for example, that rolling stock is safe and not overloaded, and parties involved in the carriage of dangerous goods have appointed a relevant safety advisor. Details on the scope of ORR’s enforcement remit can be found [here](#).

## Entities in charge of maintenance (ECM)

3.16 ORR is EA for maintenance work carried out by an ECM on a vehicle to be put into service on the mainline railway (regardless of location). [ROGS 2006 \(Reg. 2\)](#) defines an ECM as an ‘entity in charge of maintenance of a vehicle, and includes a transport undertaking, an infrastructure manager or a keeper’. ORR has a separate [guidance document](#) for further information on ECMs.

EA	Situation / example	Legislation	Note
ORR	Maintenance work by an ECM on a vehicle to	<a href="#">EARR Reg. 4</a> para. 4A (4A is found in <a href="#">ROGS</a> )	ORR is the EA for maintenance work by an ECM, wherever the work is carried out, including at:

EA	Situation / example	Legislation	Note								
	be put into service on the mainline railway	<a href="#">2013 as an amendment to EARR</a> )	<table border="1"> <tr> <td>Harbours</td> <td>Factories</td> </tr> <tr> <td>Mines</td> <td>GB nuclear sites</td> </tr> <tr> <td>Quarries</td> <td>Warehouse premises</td> </tr> <tr> <td colspan="2">Sites where the Control of Major Accident Hazards Regulations (COMAH) 2015 apply</td> </tr> </table>	Harbours	Factories	Mines	GB nuclear sites	Quarries	Warehouse premises	Sites where the Control of Major Accident Hazards Regulations (COMAH) 2015 apply	
Harbours	Factories										
Mines	GB nuclear sites										
Quarries	Warehouse premises										
Sites where the Control of Major Accident Hazards Regulations (COMAH) 2015 apply											

## Factories

3.17 HSE is the EA for factories, (except for activities of ECMs, for which ORR is EA), regardless of whether the site is occupied by a railway undertaking or connected to the network. Factories is defined in section 175 of the [Factories Act 1961](#) (see also the note in the table below for a summary of exclusions). HSE is also EA for warehouse premises and COMAH sites.

EA	Situation / example	Legislation	Note
HSE	<p>A factory builds / renovates railway vehicles or rolling stock</p> <p>A factory manufactures and repairs components for use on the railway</p>	<p><a href="#">EARR Reg. 4</a> para. 3(d) on excluded premises</p> <p><a href="#">EARR Reg. 2</a> on 'operation of a railway'</p>	<p>Factory does not include:</p> <ul style="list-style-type: none"> <li>light maintenance depot</li> <li>premises which form part of the heritage railway / heritage tramway and are used exclusively or primarily for the reconstruction, renovation, refurbishment or repair of vehicles for use on the heritage railway / heritage tramway</li> <li>premises owned / operated for the SoS of Defence</li> <li>power stations producing power exclusively for use in a system of transport</li> </ul> <p>ORR has vires over the fitness to travel of vehicles and can therefore prohibit vehicles from entering the network. ORR is also EA for <a href="#">ECM activities</a> regardless of location.</p>

## Light maintenance

3.18 ORR is EA for light maintenance depots, even where the depot is not connected to the network, or is owned or operated by a railway undertaking. Light maintenance depots cover a range of activities, so will often require joint working and inspections between regulators (see paragraphs 2.10 – 2.13).

EA	Situation / example	Legislation	Note
ORR	Light maintenance depots	<a href="#">EARR Reg. 2</a> 'light maintenance depot'; 'light maintenance services'; and 'operation of a railway'	Light maintenance services include: refuelling, cleaning / maintenance of vehicles at regular intervals of up to 12 months. Maintenance includes detection / rectification of faults.
	Parking, sheltering, maintenance and repair of a vehicle including inspection, cleaning, fuelling and preparation for use.		The EA is often determined by the type of maintenance activities primarily being carried out at the depot. At light maintenance depots, ORR is likely to lead inspections, but in some cases, it may be desirable for joint working and inspections between regulators.

### **Further information – light maintenance vs. heavy maintenance**

Heavy maintenance is not defined in EARR, but includes significant, non-routine activities (e.g., complete rebuilding / renovation of a railway vehicle) that typically takes place in a factory. An example is Acton Town train depot – it is used primarily for heavy overhaul of components and entire vehicles so is classed as heavy maintenance, with HSE being the EA. Light maintenance includes more routine activities that take place on a regular of frequent basis – however it can still include significant engineering works.

Where light and heavy maintenance activities are carried out at the same depot, ORR and HSE may need to communicate, on a case-by-case basis, as to who is the EA.

## **Military establishments**

3.19 ORR is EA for railways in military establishments, except at nuclear sites and certain naval dockyards, where ONR is EA. Military establishments include sites under control of the Ministry of Defence (MOD) or run by companies on their behalf. Sites where ONR also have enforcing vires can be complex – in these situations inspectors are encouraged to speak with their Central Contact Point.

EA	Situation / example	Legislation	Note
ORR	- Railways in a military establishment - Condition and distribution of wagon loading <b>except</b> at nuclear sites and naval dockyards located	<a href="#">EARR Reg. 2</a> 'operation of a railway' <a href="#">EARR Reg. 4</a> para. (3)	ORR is usually the EA for activities in a military establishment covered by the definition of 'operation of a railway' in EARR (see para. 3.20 above for more information)  ORR is the EA for condition and distribution of wagon loading where it could affect the safe running of a train or introduce risk to the railway.
ORR	Activities of an ECM at a nuclear site ( <b>including</b> naval	<a href="#">EARR Reg. 4</a> para. 4A ( <i>note – 4A is found in <a href="#">ROGS 2013</a></i> )	ORR is the EA for any ECM work on a vehicle to be put into service on

EA	Situation / example	Legislation	Note
	dockyards located in the nuclear site)	<i>as an amendment to EARR)</i>	the mainline railway, regardless of the location of the work (see para. 3.20 above for more information)
ONR	Railways in nuclear sites, including in naval dockyards located in the nuclear site	<a href="#">Energy Act 2013, part 3</a> nuclear regulation	ONR is the EA within a nuclear site, including in respect of the operation of a railway (except for the activities of an ECM, for which ORR is EA)
HSE	Loading / unloading of goods on or from trains at premises owned or operated by, or on behalf of, the SoS for Defence	<a href="#">EARR Reg. 2</a> 'operation of a railway'	Loading / unloading of goods from these premises is not part of the definition of 'operation of a railway'

## Museums, heritage centres, railway demonstrations and shows

3.20 HSE is EA for government (central or local) owned museums or heritage centres. The LA is EA for privately owned museums or heritage centres. If a railway is operated at the site, ORR is EA for operation of the railway. ORR is EA at railway demonstrations and shows where exhibits are moved or prepared for movement.

EA	Situation / example	Legislation	Note
ORR	A railway operated at a museum, demonstration, or show, including running vehicles exhibited and moved on a railway system – e.g., moving vehicles at Rail Live	<a href="#">EARR Reg. 2</a> 'operation of a railway'	ORR is EA for activities associated with the running vehicles, where they form part of 'operation of a railway'.  If a railway vehicle is prepared for movement, or is moved as part of a railway system, then it is part of the 'operation of a railway'.  ORR is the EA for seasonally operated railways even when dormant.
	A seasonal museum railway		
	The preparation of a railway vehicle for movement		
HSE / LA	Static exhibits which are not operated / do not move	<a href="#">EARR Reg. 2</a> 'operation of a railway'	If engines / equipment are used, but only to demonstrate the equipment, with no movement, then HSE / LA is the EA.
	Demonstrations to show how equipment works – e.g., turning on an engine to show the engine (but no vehicle movement)		

## Non-operational railway-related premises

3.21 Local Authorities are the EA for office activities related to the railway (e.g., administrative activities) that take place at non-operational premises.

EA	Situation / example	Legislation	Note
LA	Railway-related activities carried out in office buildings separate from a station	<a href="#">EARR Reg. 2</a> 'operation of a railway'	This does not apply to signalling control centres, centres for the operation of communications systems or systems used for monitoring the operation of the railway – see <a href="#">signalling</a> section

## Radiation – use of ionising radiation

3.22 HSE is EA regarding the use and application of ionising radiation, regardless of location. ORR has no enforcing responsibility under the [Ionising Radiations Regulations 2017](#) (IRR 2017).

EA	Situation / example	Legislation	Note
HSE	A contractor using back-scatter x-ray to examine the structural integrity of a railway arch in a bridge	<a href="#">IRR 2017</a> <a href="#">EARR Reg. 3</a> para. 4A on ionising radiation (added by <a href="#">IRR 2017, Schedule 9, para. 7</a> )	HSE is the regulator for ionising radiation and is the EA for its use and application. ORR has no powers under IRR 2017. ORR's only interest would be for any safety management decisions used to determine that ionising radiation needs to be used.

## Railway security services

3.23 ORR is the EA for private security companies operating on the railways. They are considered as part of the 'operation of a railway' under [EARR Reg.2](#), as unlike the police, they are not a matter reserved for HSE under EA 98.

3.24 Police forces are not part of 'operation of a railway' – see [British Transport Police](#).

## Signalling, electrical and operational control centres

3.25 ORR is EA for signalling, electrical and operational control centres, or for systems used for monitoring the operation of the railways, regardless of their location. Under EARR Reg.2, they are considered as part of the 'operation of a railway'.

## Stations

3.26 ORR is the EA for stations as related to 'operation of a railway' or 'operational premises'. HSE or the LA is the EA for areas not related to 'operation of a railway'.

EA	Situation / example	Legislation	Note
ORR	Common station parts; station car parks; railway offices; ticket offices; left luggage; and lost property facilities	<a href="#">EARR Reg. 2</a> 'operation of a railway'	Under EARR, stations are 'operational premises'. The list of activities / areas of a station considered 'operational premises' is not exhaustive. 'Operation of a railway' includes loading / unloading goods on / from vehicles at operational premises.
	Activities of non-railway duty holders such as movement of goods across a station for loading / unloading of a train	<a href="#">EARR Reg. 2</a> 'operational premises'	
LA / HSE	Business engaged in office, retail, or other consumer services – e.g., a newsagent within a railway station	<a href="#">EARR Reg. 2</a> 'operational premises'	Non-railway activities carried out at 'operational premises' are not part of the operational railway premises.
	Dry-cleaning establishments, radio and TV repairs, and walk-in health centres	<a href="#">EA, Sch. 1, para. (6)</a>	

## Testing railway components

3.27 HSE is the EA for:

- (a) Test sites that undertake static testing; or
- (b) A test track part of a factory and only limited final tests (involving movement) are undertaken.

3.28 ORR is the EA for:

- (a) A business that has a test site and provides test services (involving movement) to multiple clients; or
- (b) Activities that are preparing vehicles to enter service.

EA	Situation / example	Legislation	Note
HSE	A test track forms part of a factory and is used for limited final tests of vehicles after assembly at the factory	<a href="#">Factories Act 1961</a> <a href="#">EARR Reg. 4</a> para. 3(d) on excluded premises	Vehicles manufactured in a factory which then have limited testing to ensure fitness before delivery to customers, are considered to be part of the manufacturing process.
	A site has separate facilities for static testing of vehicle components	<a href="#">EARR Reg. 2</a> 'operation of a railway'	
ORR	A test track provides test services to multiple clients / businesses	<a href="#">EARR Reg. 2</a> 'operation of a railway'	ORR is EA for operation of the test track and the vehicles tested on it.
	Activities to prepare vehicles for testing and adjustments made after testing		Activities to prepare and ensure vehicles are fit to enter service are part of the 'operation of a railway'

EA	Situation / example	Legislation	Note
	Facilities at a site for the control of movements and any power supply to the test track		Power supply to the test track is considered as part of the operation of a railway so ORR will be the EA

## Training activities

3.29 ORR is the EA for training of railway staff in operational premises, signalling control centres, or centres for the operation of communications systems or for monitoring the operation of the railway, including railway offices within the same premises.

EA	Situation / example	Legislation	Note
ORR	Railway staff training in an operational premises – e.g., personal track safety in a depot	<a href="#">EARR Reg. 2</a> paras. (f) and (g) of 'operation of a railway'	Railway staff trained in operational premises, signalling control centres, or centres for the operation of communications systems or for monitoring the operation of the railway <b>is</b> considered as part of the 'operation of a railway'.
	Railway staff training at a centre for operation of a communications system – e.g., communications training		
HSE / LA	Railway staff training at a non-operational premises – e.g., first aid training in an office building	<a href="#">EARR Reg. 2</a> para. (g) of 'operation of a railway'	Where training content relates to 'operation of a railway' (e.g., signal training), then ORR will be the EA for that actual content. This would be picked up as part of the Safety Management System of an operator, infrastructure manager or duty holder.

## Work in the permanent way

3.30 ORR is EA for incidents and activities that occur on the permanent way, i.e., within the boundaries of the railway, and constitute part of 'operation of a railway'. The exception to this is for [asbestos related activities](#).

3.31 The 'permanent way' is defined in [EARR Regulation 2](#), but in simple terms can be thought of as the area containing railway infrastructure within a boundary fence (see photo below). However, readers should refer to Regulation 2 of EARR for a full definition of 'permanent way'. The 'permanent way' constitutes part of 'operational premises' which is also defined in [Regulation 2 of EARR](#).

3.32 For activities and incidents outside of the 'permanent way' (railway boundary), HSE (or LA) will ordinarily be the EA. Incidents occurring at the interface of the 'permanent way' may require discussions at local principal inspector level to determine and agree enforcement roles and responsibilities.

EA	Situation / example	Legislation	Note
ORR	Removal of weeds near a railway track (within the boundaries of the permanent way)	<a href="#">EARR Reg. 2</a> 'operation of a railway'; 'operational premises'; 'permanent way'	Where possible, there should be a single EA for duty holders and stakeholders.
	A crane operating within the boundary of the permanent way		Where both HSE and ORR have enforcement responsibilities at the same site, ORR is the EA for activities related to 'operation of a railway' and HSE (or the LA) is EA for all other work activities.
HSE	Pesticide, herbicide and tree management activities outside the boundary of the permanent way		Under The Railway Safety (Miscellaneous Provisions) Regulations 1997, railway fencing is the obligation of the railway.
	A crane operating outside the boundary of the permanent way, but importing risk onto the permanent way		

**Photo showing demarcation of responsibility at the permanent way**



# 4. EARR Regulation 4: exceptions

## Introduction and legislation

- 4.1 Regulation 4 of EARR outlines exceptions to ORR's remit and enforcement responsibilities under EARR.

## Effect of Regulation 4 on activities and situations

- 4.2 This chapter sets out the impact of EARR Regulation 4 on enforcing responsibilities. Activities are covered alphabetically – if a situation is not covered, or further clarity is required, inspectors should contact their respective Central Contact Point for further guidance.
- 4.3 Level crossings impact on the enforcing vires for many of the activities covered in this chapter. It is recommended that readers refer to the section on [level crossings](#) first, before then considering the topic of relevance.

## Asbestos

- 4.4 HSE is the EA for any work with asbestos that requires a licence under the [Control of Asbestos Regulations 2012](#) (CAR), regardless of location, and regardless of whether the work is also 'construction work' as defined in [CDM 2015](#). HSE is always the arbiter of the licence – i.e., who can and cannot have a licence.
- 4.5 ORR is EA for work with asbestos that does not require a licence and is carried out at 'operational premises' or forms part of 'operation of a railway' ([EARR Reg. 4\(5\)](#)). ORR is EA for the duty on occupiers of railway premises to manage the presence of asbestos in their buildings.
- 4.6 HSE has agreed to continue providing ORR with access to HSE's database for reports on Notifiable Non-Licensed work (NNLW) with asbestos on the railway infrastructure. ORR has access to the NNLW database via Citrix Access Gateway (CAG), which provides remote access. Where ORR is unable to access the database, HSE will send regular reports (as agreed by operational colleagues) to ORR's Information and Analysis team with the required information.

## Bus substitution services

- 4.7 ORR is EA for bus substitution services when the bus is on operational railway premises. In all other instances (e.g., a bus travelling on a road outside of operational premises), road traffic safety laws apply and will be enforced by the relevant authority (e.g., the police).

EA	Situation / example	Legislation	Note
ORR	A bus substitution service picking up passengers from a railway station on operational premises	<a href="#">EARR Reg. 4 (1)(d)</a> amendment added by <a href="#">ROGS 2008 Reg. 4</a> , relating to bus substitution services	ORR's enforcement role is confined to: - ensuring railway operators select a suitable bus company - ensuring railway operators safely manage embarkation / disembarkation of passengers from buses within railway operational premises
Police / other EA	A bus substitution service travelling between stations	<a href="#">Road Traffic Act 1988</a> general road enforcement	Road traffic safety laws apply when the bus is travelling on a public road (i.e., no longer on operational railway premises).

## Cableway installations

- 4.8 HSE is the EA for cableway installations. Under the [Cableway Installations Regulations 2018](#), a cableway installation has the meaning given in [Article 3\(1\) of Regulation 2016/424/EU](#), and covers the following: 'Cableway installations are mainly lift systems, such as funicular railways, aerial ropeways (cable cars, gondolas, chairlifts) and drag lifts. Transport by cable and the transport passenger function are the essential criteria in determining whether a cableway installation is covered by this Regulation'. Under EARR, operation of a railway does not include a cableway installation.
- 4.9 Under EARR, rack railways are not 'cableway installations', and ORR is the EA for these. ORR and HSE should co-operate as necessary where systems use both railway and cable technologies.

### Great Orme Tramway – an exception

The Great Orme Tramway is a funicular railway consisting of two trams linked together by a cable. Whilst it operates as a cableway installation, and enforcement would ordinarily sit with HSE, the Great Orme Tramways Act 1898 specified the transport system as a 'tramway'. Under EARR, ORR is EA for 'operation of a tramway' – as an exception, ORR is the EA for the Great Orme Tramway, even though its operation involves a cable.

## Fairground equipment

- 4.10 HSE is the EA for fairground equipment as defined by [HSWA \(section 53\)](#). ORR has no health and safety enforcing responsibility for fairground equipment ([the Railways Act 2005 \(Amendment\) Regulations 2006](#) removed 'fairground equipment' from the reference to transport system in Sch. 3 of the [RA 2005](#)).

EA	Situation / example	Legislation	Note
HSE	Rides in a park, such as rollercoasters, designed for entertainment purposes	<a href="#">HSWA Section 53</a> 'fairground equipment' <a href="#">EARR Reg. 4(1)(b)</a> 'fairground equipment'	HSE is EA for rides, but the LA may be EA for other activities
ORR	A railway or system of guided transport designed to: <ul style="list-style-type: none"> <li>carry passengers from one part of a park to another;</li> <li>take passengers to see exhibits, and begins and ends at the same location.</li> </ul>	<a href="#">HSWA Section 53</a> 'fairground equipment' <a href="#">EARR Reg. 2</a> 'guided transport' and 'railway'	ORR is EA, because even if similar to a fairground ride, it was designed as a transport system. ORR will be EA, even if passengers do not disembark from the vehicle.

## Guided buses

- 4.11 HSE is the EA for guided buses in relation to health and safety issues outside of specific road safety legislation. HSE is the EA for guided buses that operate both on the road (under guidance of a driver), or by means of external guidance (e.g., tracks, buried cables etc.) ([EARR Reg. 4\(2\)](#)). Guided buses look and operate like buses, rather than trains, and are subject to road traffic legislation.
- 4.12 DfT are policy lead for guided buses. The EA for road traffic legislation is either the police, DVLA, Traffic Commissioners, or the relevant highway authority.

## Harbours

- 4.13 ORR is the EA for harbours in the following circumstances:
- where a railway operates only in a harbour area for the carriage of the public;
  - where a railway is connected to a system outside the harbour and is used for transporting goods or passengers to and from the harbour.
- 4.14 In all other cases, HSE will be the EA for harbour areas. For level crossings in a harbour, readers should also consult the section on [level crossings](#).

EA	Situation / example	Legislation	Note								
HSE	A railway in a harbour is <b>not</b> connected to the mainline, and the harbour is within one of the following premises: <table border="1" data-bbox="263 1848 874 2027"> <tr> <td>Harbours</td> <td>Factories</td> </tr> <tr> <td>Mines</td> <td>GB nuclear sites</td> </tr> <tr> <td>Quarries</td> <td>Warehouse premises</td> </tr> <tr> <td colspan="2">Sites where the Control of Major Accident Hazards Regulations (COMAH) 2015 apply</td> </tr> </table>	Harbours	Factories	Mines	GB nuclear sites	Quarries	Warehouse premises	Sites where the Control of Major Accident Hazards Regulations (COMAH) 2015 apply		<a href="#">EARR Reg. 4(3)</a> on 'harbour areas' amended by <a href="#">EARR 2008 Reg. 4</a> <a href="#">EARR Reg. 2</a> 'operation of a railway'	If the railway just carries the public, ORR will be the EA.  Where HSE is EA, it will often be EA for all activities in the harbour, including
Harbours	Factories										
Mines	GB nuclear sites										
Quarries	Warehouse premises										
Sites where the Control of Major Accident Hazards Regulations (COMAH) 2015 apply											

EA	Situation / example	Legislation	Note
	A harbour railway <b>not</b> connected to the mainline, and <b>not</b> carrying members of the public		loading / unloading of trains
ORR	A railway that also operates outside of a harbour, and operation within the harbour is for transporting goods or passengers to and from the harbour	<a href="#">EARR Reg. 4(3)(b)(i) and 4(3)(b)(ii)</a> on 'harbour areas' amended by <a href="#">EARR 2008 Reg. 4</a>	Railways moving goods / passengers to and from harbours and onto the mainline network are part of the transport network, and involve significant railway movements, often using level crossings
	A railway operates solely within a harbour (not connected to an external railway) and is for carriage of the public		
ORR	ECM activities within a harbour area	<a href="#">EARR Reg. 4(4A)</a> on ECM added by <a href="#">ROGS 2013</a>	See section on <a href="#">ECMs</a>

## Inter-modal depots

- 4.15 In an inter-modal depot, ORR is the EA for the 'operation of a railway'. HSE is EA for the loading and unloading on or from trains at intermodal depots.
- 4.16 Inter-modal depots are normally part of docks or connected to mainline networks by short sidings or road freight-handling facilities. They handle freight containers which are transferred to and from rail vehicles and different modes of transport.
- 4.17 For level crossings in inter-modal depots, see the section on [level crossings](#).

EA	Situation / example	Legislation	Note
HSE	The loading / unloading on or from trains at inter-modal depots	<a href="#">EARR Reg. 2</a> 'operation of a railway'	Under EARR, loading / unloading of goods at intermodal depots is <b>not</b> part of 'operation of a railway'.  Goods handling and transfer facilities which are a part of railway operations (e.g., transferring materials from road to trains during possessions) are part of 'operation of a railway' and ORR is the EA.
	Non-railway issues related to other work activities at an inter-modal depot		
ORR	All other 'operation of a railway' activities within an inter-modal depot.		

## Level crossings

- 4.18 ORR is the EA where a railway crosses public roads, public rights of way, or private land such as private roads or footpaths (except in certain industrial premises and nuclear sites). ORR is the EA where a level crossing order exists, or

an application for a level crossing order is being made (under the [Level Crossings Act 1983 \(LCA\)](#)), regardless of the crossing location.

- 4.19 HSE is EA for crossings (without a level crossing order) in certain industrial premises, including factories, mines, quarries, warehouses and certain harbour railways. ONR is EA for crossings (without a level crossing order) in GB nuclear sites.
- 4.20 ORR is the EA for private level crossings which are operated by the user (e.g., a farm with a crossing between two fields). When considering enforcement action, ORR inspectors should speak with the legal team to discuss whether all aspects of the case relate to operation of the railway. There may be aspects which relate to management of risks to employees who use a level crossing in the course of their work and for which HSE may be the EA.
- 4.21 ORR’s level crossing team should be contacted where further guidance is needed.

EA	Situation / example	Legislation	Note								
ORR	An in-force level crossing order or application for a level crossing order (regardless of the level crossing location)	<a href="#">EARR Reg. 4(4)</a> on level crossing orders  <a href="#">LCA 1983</a>	Where a level crossing order is in place, ORR enforces the provisions of the order.								
	A level crossing (without a level crossing order) on a public road, public right of way or private land (except in locations listed below)	<a href="#">EARR Reg. 2</a> ‘operation of a railway’	ORR’s guidance on <a href="#">Level Crossing Orders</a> provides further information.								
HSE	Level crossings (without a level crossing order) in the following industrial premises: <table border="1" data-bbox="263 1361 837 1556"> <tr> <td>Harbours</td> <td>Factories</td> </tr> <tr> <td>Mines</td> <td>GB nuclear sites</td> </tr> <tr> <td>Quarries</td> <td>Warehouse premises</td> </tr> <tr> <td colspan="2">Sites where the Control of Major Accident Hazards Regulations (COMAH) 2015 apply</td> </tr> </table>	Harbours	Factories	Mines	GB nuclear sites	Quarries	Warehouse premises	Sites where the Control of Major Accident Hazards Regulations (COMAH) 2015 apply		<a href="#">EARR Reg. 4(3)</a> locations where the EARR definition of ‘operation of a railway’ does not apply	If a level crossing order exists, or an application for a level crossing order is being made, then ORR is the EA, even in the locations opposite. In those instances, close cooperation between ORR and HSE (or ONR) will be needed.
Harbours	Factories										
Mines	GB nuclear sites										
Quarries	Warehouse premises										
Sites where the Control of Major Accident Hazards Regulations (COMAH) 2015 apply											
ONR	A level crossing (without a level crossing order) in a nuclear site										

## Lifts

- 4.22 HSE or the LA is the EA for lifts, unless they are used in the operation of a railway, in which case ORR will be the EA.

EA	Situation / example	Legislation	Note
HSE / LA	A lift within a shop, where the shop is located in a station	<a href="#">EARR Reg. 4(2)</a> para. (c) on 'lifts'	Generally, modes of "access" in a station are considered part of the 'operation of a railway' – e.g., an escalator, bridge over a platform, lifts to a platform.  'Operation of a railway' includes use of fixed assets of the transport system located within operational premises and that are used in its operation.
ORR	A station lift used to take passengers to the platform concourse  A lift in a station car park, where the lift is part of the operation of a railway – e.g., taking the lift from the car park to the station concourse	<a href="#">EARR Reg. 2</a> 'operation of a railway'	

## Mines

- 4.23 HSE is the EA for railways within a mine's curtilage. ORR is the EA for a railway outside of a mine's curtilage, but that nonetheless serves the mine.
- 4.24 Within a mine's curtilage, ORR is responsible for ensuring the fitness of a train to enter service on the mainline.
- 4.25 For level crossings in mines, see the section on [level crossings](#).

EA	Situation / example	Legislation	Note
HSE	A railway inside a mine's curtilage	<a href="#">EARR Reg. 4(3)</a> para. (e) on a 'mine'	Railways owned by, and serving, a mine, but outside the mine's curtilage, are <b>not</b> deemed part of the mine.  ORR is the EA for a railway outside a mine's curtilage, including for any specialist mine regulations which apply to the railway.
ORR	A railway owned by, and serving, a mine, but the section in question is outside the mine's curtilage	<a href="#">Mine and Quarries Act 1954</a> section 18 – meaning of 'mine'  <a href="#">EARR Reg. 2</a> definition of a 'mine'	
	ECM activities in a mine	<a href="#">EARR Reg. 4(4)(A)</a> on ECM added by <a href="#">ROGS 2013</a>	
	Checking the fitness of a train (within a mine's curtilage) to enter service on the mainline	<a href="#">EARR Reg. 2</a> 'operation of a railway'	

## Miniature railways

- 4.26 HSE or the LA is the EA for miniature railways. ORR is the EA for miniature railways that cross a carriageway, or those with a track gauge of 350mm or wider.

EA	Situation / example	Legislation	Note
HSE / LA	A miniature railway (track gauge < 350mm)	<a href="#">EARR Reg. 2</a> para. on 'miniature railway' – added by <a href="#">EARR 2008 Reg. 4</a>	ORR is the EA where a miniature railway crosses a carriageway, whether or not on the same level – i.e., the miniature railway crosses above, below, or at the same level.
ORR	A miniature railway (track gauge > 350mm)	<a href="#">EARR Reg. 4(1)</a> para. (c) on 'miniature railway' added by <a href="#">EARR 2008 Reg. 4</a>	Carriageway is defined in the Highways Act 1980 (England & Wales) and Road (Scotland) Act 1984 for Scotland. In the Highways Act, carriageway is a way (other than a cycle track) over which the public have access for the passage of vehicles.
	A miniature railway (of any track width) crosses a carriageway		

## Other systems of guided transport

- 4.27 ORR is the EA for operation of other systems of guided transport, **except** where they travel along roads for some or all the time they are in operation.
- 4.28 HSE is EA for [guided buses](#) that travel along roads for some or all the journey.
- 4.29 ORR is the EA for operation of a tramway – EARR considers tramways separately and they are not included in the definition of 'other systems of guided transport'.
- 4.30 Guided transport is defined in [EARR Reg. 2](#) and in section 67 of the [Transport and Works Act 1992](#). 'Road' is defined in [EARR Reg. 2](#).

EA	Situation / example	Legislation	Note
ORR	A railway, vehicle or guided transport system on an entirely segregated route – e.g., people mover at an airport	<a href="#">EARR Reg. 3</a> para. (2) on 'operation of a railway, tramway or other system of guided transport' <a href="#">EARR Reg. 4(2)</a> para. (b) on 'guided transport' <a href="#">EARR Reg. 2</a> 'operation of any other system of guided transport'	Some airport people movers are cableway installations, for which HSE is the EA.  If a system of guided transport remains on a segregated off-road route for the entirety of its journey, then ORR will be the EA.

## Pier railways and tramways

- 4.31 ORR is the EA for railways and tramways on a pier that are used as a means of transport. HSE is the EA for the pier itself.

EA	Situation / example	Legislation	Note
ORR	A railway / tramway on a pier used for transporting the public	<a href="#">EARR Reg. 2</a> 'operation of a railway';	ORR is EA for the railway / tramway under 'operation of a railway' / 'operation of a tramway'.

EA	Situation / example	Legislation	Note
HSE	A pier (that may or may not have a railway / tramway on it)	'operation of a tramway', and 'infrastructure'	HSE is EA for the pier. A pier would likely exist even without a railway or tramway on it, and its primary purpose is unlikely to be to support a railway. The pier would not be 'infrastructure' or part of 'operation of a railway' under EARR.

## Quarries

4.32 HSE is the EA for the operation of a railway in a quarry. ORR is the EA where the railway line is exclusively under the control of either:

- (a) A railway company, or
- (b) A person who carries on an undertaking and the main (or one of the main) activities is the management of a network.

4.33 Within a quarry, ORR is also responsible for ensuring the fitness of a train to enter service on the mainline.

4.34 For level crossings in mines, see the section on [level crossings](#).

4.35 There can be significant movement of freight trains between quarries and the mainline network – quarry inspectors and ORR's freight team are encouraged to communicate and cooperate when enforcing matters in relation to quarries.

EA	Situation / example	Legislation	Note
HSE	A railway line in a quarry, but: - not under the control of a railway company, and - not under the control of an undertaking, whose main activity is to manage a network	<a href="#">EARR Reg. 4(3)</a> para. (g) on a 'quarry' <a href="#">Quarries Regulations 1999 Reg. 3(2)(c)</a> on what a quarry does not include	Where HSE is the EA, it is the EA for health and safety matters relating to the railway within the quarry.
ORR	Railway line in a quarry exclusively under the control of a railway company	<a href="#">Quarries Regulations 1999 Reg. 2</a> definition of 'railway company'	
	Railway line in a quarry exclusively under the control of an undertaking, one of the main activities of which is to manage a railway network	<a href="#">Railways Act 1993 section 83(1)</a> definition of a 'network'	
	ECM activities in a quarry	<a href="#">EARR Reg. 4(4)(A)</a> on ECM added by <a href="#">ROGS 2013</a>	
	Checking the fitness of a train to enter service on the mainline	<a href="#">EARR Reg. 2</a> 'operation of a railway'	

## Reactivation of railway lines into quarries

In some locations, old quarries may be developed, and the land converted for new uses (e.g., housing). As the use of the land changes, enforcing vires may also change. Old railway lines may be reactivated and reused as part of the process. In such instances, there should be regular communication between ORR and HSE to determine the enforcing authority, noting that it may change several times during the development.

## Railway-related occupational road safety

- 4.36 The police lead in investigating road traffic incidents. ORR is EA for any serious railway-related health and safety management failures which may have contributed to the incident.
- 4.37 ORR’s [guidance document](#) on fatigue risks associated with work-related road driving provides further details, whilst ORR’s approach to work-related road safety is guided by HSE’s [enforcement policy](#).

EA	Situation / example	Legislation	Note
ORR	A traffic incident occurs, and police identify serious management failures relating to the operation of a railway business contributed to the incident e.g., driver fatigue due to work pattern / hours worked	<a href="#">EARR Reg. 2</a> 'operation of a railway' <a href="#">Road Traffic Act 1988</a> general road enforcement <a href="#">HSWA Section 2</a> 'General duties of employers to their employees'	ORR only enforce where railway-related health and safety failures contributed to the incident – i.e., in relation to 'operation of a railway'
Police	A traffic incident occurs, and although it involves railway staff / vehicles, there were NO serious railway related management failures that contributed to the incident e.g., the vehicle in question was hit by another and wasn't at fault	<a href="#">HSWA Section 3</a> 'General duties of employers and self-employed to persons other than their employees'	Further information can be found in ORR's <a href="#">guidance document on fatigue risks and work-related road driving</a> .

## Road vehicle incursions

There is the potential for road vehicle incursions onto the railway to cause a serious accident. With EARR not clear on who has enforcing responsibility, ORR and HSE entered into an agency agreement to clarify enforcing responsibility for road vehicle incursion risks. Under the agreement, ORR assumes HSE’s enforcement functions relating to road vehicle incursions. ORR exercises these enforcement functions in line with its published Enforcement Policy. HSE and ORR keep each other informed of issues arising from road vehicle incursion events, and share information to encourage improvements in the management of risk.

# 5. EARR Regulation 5: construction work

- 5.1 EARR regulation 5 outlines construction work included within the definition 'operation of a railway' and therefore enforced by ORR. Construction work is defined by Regulation 2(1) of the [Construction \(Design and Management\) Regulations 2015](#) (CDM). HSE is the EA for construction work not included within the term 'operation of a railway'.
- 5.2 Determining the EA for construction work normally requires communication between HSE and ORR inspectors. Where the EA is clarified following collaboration, the agreed enforcement roles should be recorded and communicated to the duty holders involved.
- 5.3 Duty holders are encouraged to use HSE's on-line construction work notification form (F-10 form) for projects that require notification to the relevant EA under [CDM 2015](#). ORR has an agreement for access to HSE's F10-notifiable construction projects database, so such notifications will be regarded as having been made to the relevant EA as required by CDM 2015.

## ORR's enforcement role

- 5.4 ORR will normally be the EA for construction work in the following circumstances:
- (a) The maintenance, repair, renewal or improvement of existing infrastructure.
  - (b) The extension or enlargement of infrastructure, where construction work is so close to the operation of the railway that there is risk to workers engaged in that work from the railway.
  - (c) Construction work carried out within an operational premises and the work relates to the maintenance, repair, renewal or improvement of any fixed asset (other than the infrastructure) of a railway.
- 5.5 Infrastructure is defined by [Regulation 2 of EARR](#), and includes:
- (a) The permanent way
    - (i) Track and level crossings;
    - (ii) Viaducts, tunnels, culverts and bridges (or other structures) used for the support of, or otherwise in connection with, the permanent way;
    - (iii) Boundary walls or fences

- (b) Bridges and structures spanning the permanent way which are maintained by the owner, or the operator / manager of the railway (or someone working on their behalf).
  - (i) This includes bridges over the railway maintained by Network Rail, London Underground Limited, any other infrastructure manager, or someone acting on their behalf e.g. a contractor.
- (c) Electrical and mechanical installations used for signalling and electrical installations used for supplying power to vehicles and any other plant, equipment or electrical or mechanical installation.
  - (i) For a tramway this does not include road lighting or traffic signals / signs unless they are used for the operation of the tramway and maintained by the owner / operator / manager of the tramway or someone acting on their behalf.

## HSE's enforcement role

5.6 HSE is the EA for construction work in relation to:

- (a) A structure or premises whose primary function is unrelated to the operation of a railway, such as retail premises in a station.
- (b) A bridge, or other structure spanning, or adjacent to operational premises and the work is carried out by someone other than the railway owner, operator or manager, or someone working on their behalf.
- (c) Situations where normal activities in operational premises have been suspended, the work is physically segregated from the railway infrastructure and members of the public can be excluded from the construction area.
- (d) Situations where railway activity in operational premises continues, but in addition to the segregation and exclusion points in (c), there is only emergency access between the segregated area and operational premises.
- (e) New-build railways up to the point that they become 'operational'. HSE and ORR should agree a handover point for when this occurs.
- (f) The extension or enlargement of existing infrastructure, where there is no risk to construction workers from the operation of a railway. The proximity of construction work to the operational railway will be a key consideration.

## Gas safety

5.7 HSE is the principal regulator for [gas safety](#) and is the EA for gas safety in relation to construction work as defined in the [Construction \(Design and Management\) Regulations 2015 \(CDM 2015\)](#). ORR is the EA for gas safety in relation to the 'operation of a railway' or 'operational premises'.

5.8 Under EARR, ORR is the EA for the operation of a railway – however, where construction work (including maintenance and repair) on gas equipment is taking place, HSE will be the EA for the construction work. ORR will remain the EA for all other elements related to the operation of the railway.

EA	Situation / example	Legislation	Note
HSE	Gas equipment in non-operational premises – e.g., gas heating in a Network Rail office	<a href="#">EARR Reg. 2</a> 'operation of a railway'; 'operational premises' and 'construction work'	HSE is the EA as it is not related to 'operation of a railway'
	<p><b>Construction work taking place on gas appliances</b></p> <p>Gas equipment in operational premises or part of the operation of a railway – e.g.,</p> <p>- maintenance of gas central heating in a ticket office</p>	<p><a href="#">The Gas Safety (Installation and Use) Regulations 1998</a></p> <p><a href="#">CDM 2015 Reg. 2</a></p>	Construction work is defined in <a href="#">CDM 2015</a> , and includes installation, commissioning, repair and maintenance of gas services fixed within or to a structure.
ORR	<p><b>No construction work taking place on gas equipment</b></p> <p>Gas equipment in operational premises or part of the operation of a railway – e.g.,</p> <p>- gas heating in a ticket office</p>	<p><a href="#">EARR Reg. 2</a> 'operational premises', 'operation of a railway' and 'construction work'</p> <p><a href="#">CDM 2015 Reg. 2</a></p>	<p>Under EARR, construction work does <b>not</b> include installation, commissioning, maintenance, repair or removal of gas services.</p> <p>If no construction work, and the equipment is part of 'operation of a railway' or 'operational premises', then ORR is the EA</p>
	Gas powered catering facilities in a catering carriage (with or without construction work taking place on the gas appliance)		ORR is the EA, even with construction work. Catering carriages are not a 'structure' under <a href="#">CDM 2015</a> , so the CDM definition of construction work does not apply

## Complex construction examples

5.9 This section provides guidance on enforcement roles for complex situations. Determining the EA will require consideration of the circumstances. Collaboration between HSE and ORR inspectors may be needed to reach an agreed consensus.

### New-build railways and connection to an existing, operational railway

5.10 HSE is the EA for the construction of new-build railways, up to the point at which the system becomes an operational railway, when ORR then becomes the EA.

5.11 HSE and ORR will need to agree in advance when a system will become an operational railway for the purposes of EARR – enforcing vires will switch from HSE to ORR at the point it becomes operational. Normally this is when a functional connection is made between the new-build railway and existing system,

or when testing of trains begins before connection to the existing system. The agreed transfer point should be recorded and explained to duty holders.

### Design of railways, tramways, and other systems of guided transport

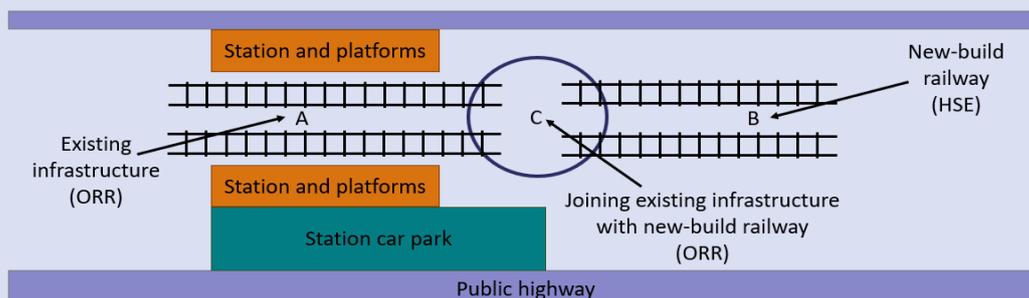
ORR and HSE have an [agency agreement](#) relating to design of railways, tramways, and other systems of guided transport. Under the agreement ORR is EA for aspects of the design of railway infrastructure, which could impact on safe operation of a railway once in use. The objective is to ensure that designs eliminate or reduce health and safety risks which could otherwise arise during the operation of the railway, or which could adversely affect the safe operation of the railway.

ORR and HSE have arrangements in place which means that both EAs take a consistent approach to enforcement under HSWA. ORR and HSE also co-ordinate enforcement activities at the design stage of railway infrastructure projects and ensure that their roles are clear to the duty-holder. The agreement also clarifies that ORR has an enforcement role in respect of the design of infrastructure, operational premises (e.g., stations) or other fixed assets relating to or on the existing railway.

Clause 5 of the agency agreement requires terms of the agreement to be reviewed at least annually. ORR and HSE agreed that a comprehensive review will take place every three years, with lighter touch reviews taking place in the intervening years.

### Example – joining a new-build railway to an already operational railway

ORR is EA for existing infrastructure (point A in the diagram). HSE is EA for the new-build railway (point B in the diagram). ORR is EA for joining together existing infrastructure with the new-build railway (point C in the diagram) ([Regulation 5\(1\)\(b\) of EARR 2008](#)).



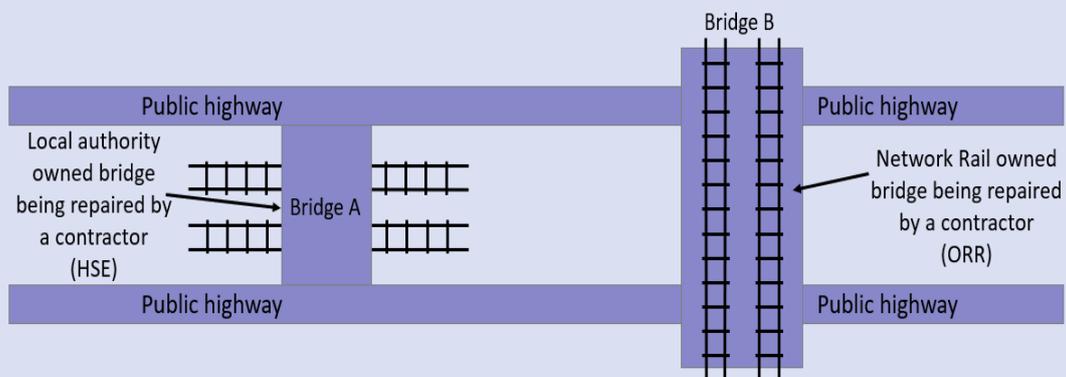
## Bridges spanning the railway or occupational premises

5.12 For construction activity on a bridge spanning or adjacent to the railway, the EA is likely to be determined by who is carrying out the work. ORR is EA if work is carried out by the owners, operator or manager of the railway, or persons acting on their behalf – if not, then HSE will be the EA.

- 5.13 Where there is no construction activity, but concerns about the structure of a bridge, the EA is determined by whether the bridge is considered ‘use of the infrastructure’. Where it is, it forms part of ‘operation of a railway’ and ORR will be EA. To be covered by “use of the infrastructure”, a bridge needs to be part of the “permanent way”. Under EARR, a bridge is part of the permanent way if it spans the permanent way and is maintained by the railway owner, operator, or manager, or someone on their behalf.

**Example – bridge spanning a railway / operational premises with construction**

HSE is EA for construction work on Bridge A (in the diagram), as the bridge is owned by the LA and work is conducted by a contractor on their behalf. ORR is EA for construction work on Bridge B (in the diagram), as it is owned by Network Rail (owner / manager of the railway) and the work is being conducted on their behalf ([EARR 2008 Reg. 5\(3\)\(b\)](#)).



**Construction work on existing infrastructure**

- 5.14 ORR is the EA where construction work takes place on existing infrastructure. As per [Regulation 5\(1\)\(a\) of EARR](#) ‘operation of a railway’ includes ‘construction work relating to the maintenance, repair, renewal or improvement of infrastructure’

**Construction work on existing operational premises**

- 5.15 For construction work at existing operational premises, the EA will principally be determined by whether normal activities in the premises have been suspended and whether the construction work is physically segregated from the infrastructure.

5.16 HSE is the EA where:

- (a) activities at the operational premises have been suspended,
- (b) the work is physically segregated from the infrastructure, and
- (c) only persons undertaking construction work can access the segregated area.

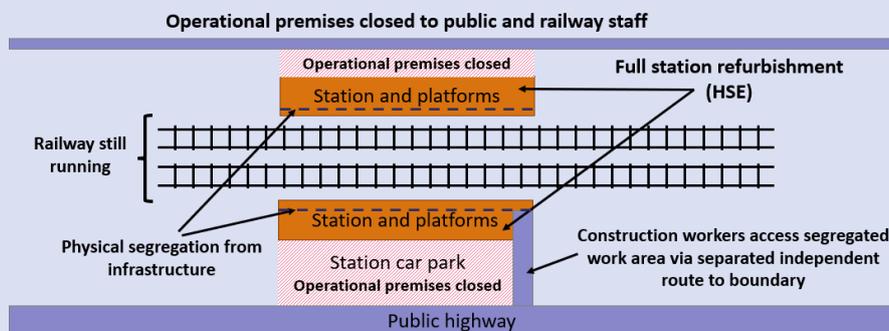
5.17 HSE is also the EA where activities at the operational premises continue, but:

- (a) the work is physically segregated from the infrastructure,
- (b) only those doing construction work can access the segregated area, and
- (c) there is only emergency access between the segregated area and operational premises

5.18 In all other cases, ORR will be the EA.

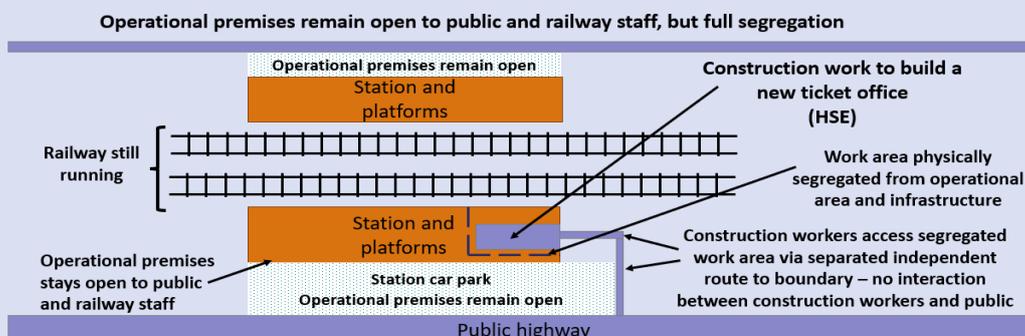
### Example – activities at operational premises suspended

HSE is the EA for the construction work refurbishing the stations. Activities at operational premises (station, platform, and car park) are suspended and closed to the public / railway staff. The infrastructure still operates (trains pass through) but is physically segregated from the construction work. Access to the construction site is via a segregated (fenced) walkway that only construction workers have access to ([Regulation 5\(3\)\(c\) of EARR 2008](#)).



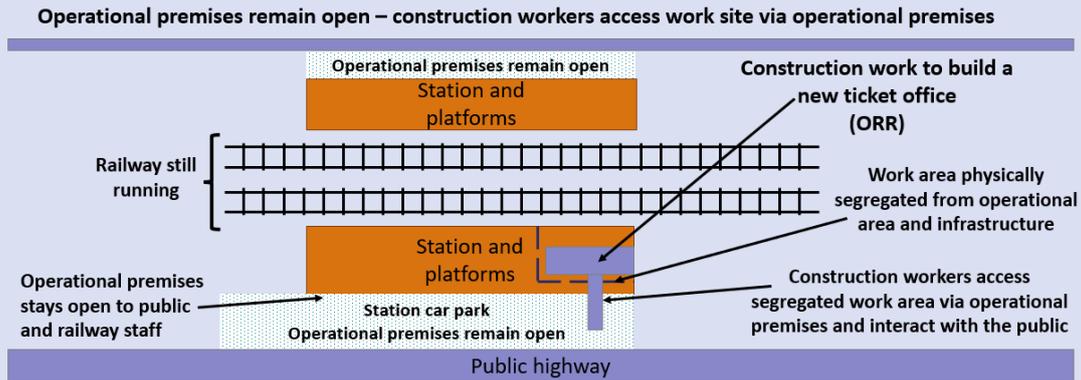
### Example – activities at operational premises continue, but construction work is physically segregated

HSE is the EA for construction work building a new ticket office. Activities at operational premises (station, platform, and car park) remain open. The construction site is physically segregated from the rest of the operational premises and infrastructure. Access to the work site is physically segregated from the operational premises and only construction workers have access. There is an emergency access door from the segregated work site to the operational premises ([Regulation 5\(3\)\(d\) of EARR 2008](#)).



**Example – activities at operational premises continue, but access to the construction work is through the operational premises**

ORR is the EA for construction work building a new ticket office where access to the site is through the operational premises (station, platform, and car park) and the operational premises have remained open to the public and railway staff. Even though the construction site is physically segregated from the rest of the operational premises and infrastructure, access through the operational premises means construction workers and the public are not physically segregated ([Regulation 5\(3\)\(d\) of EARR 2008](#)).

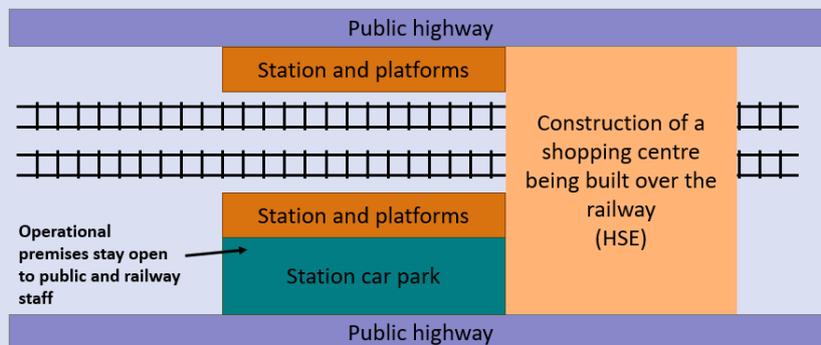


**Premises whose primary function is not related to operation of a railway**

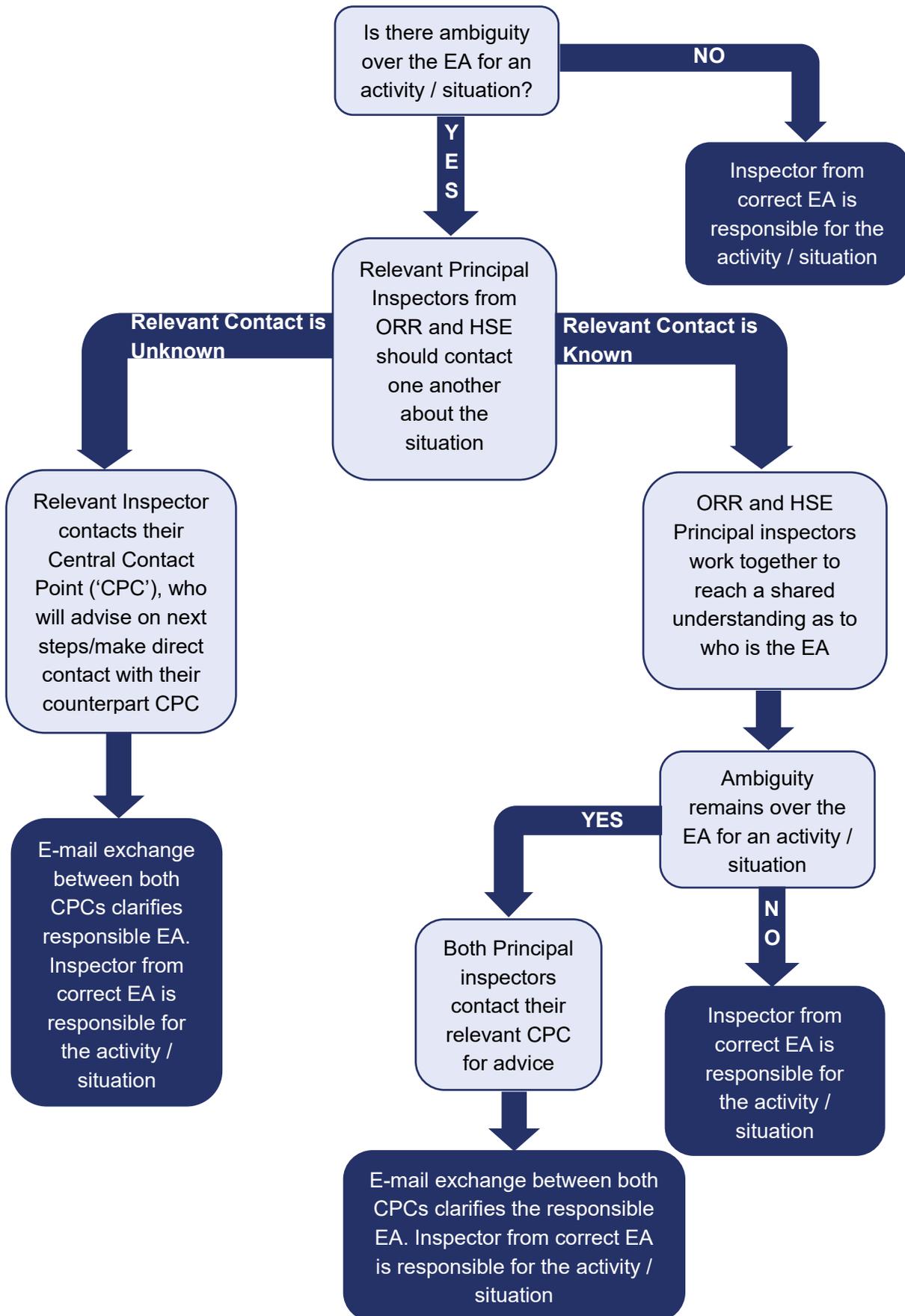
5.19 HSE is the EA for construction work at a premises where the primary function of that premises is not related to the operation of a railway.

**Example – primary function not related to operation of a railway**

HSE is the EA for construction work on a new shopping centre over the railway. As per [Reg. 5\(3\)\(a\) of EARR 2008](#), construction work does not include work relating to premises / property whose primary function is not related to the operation of the system of transport.



## Annex 1: Determining the enforcing authority where ambiguity exists



## **Annex 2: Data Protection Declaration**

### **Purpose**

1. The purpose of this annex is to explain the respective roles that the Office of Rail and Road (ORR) and the Health and Safety Executive (HSE) will play in managing the processing of personal data associated with;
  - The Control of Lead at Work Regulations 2002, HSE will provide ORR with the case details relating to railway employees, in accordance with the provisions of the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 DPA 2018;
  - Employers making use of other HSE processes, such as appeals against a doctor's decision under the Control of Substances Hazardous to Health Regulations 2002, HSE may inform ORR of the appeal and its outcome.

ORR and HSE are considered independent controllers of the data collected, as both parties separately determine the means and purpose of processing personal data as part of the functions defined in the joint HSE and ORR MoU.

### **Data Protection**

2. ORR and HSE will comply with all relevant provisions of the DPA 2018 and UK GDPR. ORR and HSE will act as Independent data controllers, in respect of any personal data pursuant to the joint HSE and ORR MoU; they will only process such personal data to the extent defined in the relevant regulatory framework.
3. Neither ORR nor HSE will transfer any personal data it is processing outside of the European Economic Area, unless appropriate legal safeguards are in place, such as an adequacy decision or International Data Transfer Agreement.
4. ORR and HSE will ensure that they have appropriate technical and organisational procedures in place to protect any personal data they are processing. This includes any unauthorised or unlawful processing, and against any accidental disclosure, loss, destruction or damage. ORR will promptly inform HSE, and vice versa, of any unauthorised or unlawful processing, accidental disclosure, loss, destruction or damage to any such personal data. Both parties will also take reasonable steps to ensure the suitability of their staff having access to such personal data.

### **Specific ORR Responsibilities**

5. ORR has the following specific responsibilities:
  - i. Carrying out any required Data Protection Impact Assessment for any element of business or process change
  - ii. Following ORR Data Security Guidance to ensure that the necessary measures are taken to protect personal data.
  - iii. Ensuring ORR staff are appropriately trained in how to use and look after personal data and follow approved processes for data handling.
  - iv. Ensuring ORR staff have appropriate security clearance to handle personal information collected as part of this process.

- v. Secure transfer of personal data to HSE as necessary for fulfilment of HSE's regulatory functions.
- vi. Responding to Data Subject Access Requests when and where required.
- vii. Reporting any data breaches within ORR to their Data Protection Officer and the ICO (where appropriate).
- viii. Maintaining any Article 30 processing records for data held on ORR systems

### Specific HSE Responsibilities

6. HSE has the following specific responsibilities:

- i. Carrying out any required Data Protection Impact Assessment for any element of business or process change
- ii. Following HSE Data Security Guidance to ensure that the necessary measures are taken to protect personal data.
- iii. Ensuring HSE staff are appropriately trained in how to use and look after personal data and follow approved processes for data handling.
- iv. Ensuring HSE staff have appropriate security clearance to handle personal information collected as part of this process.
- v. Secure transfer of personal data to ORR as necessary for fulfilment of ORR's regulatory functions
- vi. Responding to Data Subject Access Requests when and where required in relation to personal data being processed as part of the regulatory function
- vii. Reporting any data breaches to their Data Protection Officer and the ICO (where appropriate)
- viii. Maintaining any Article 30 processing records for data held on HSE systems

### **Individual Rights**

7. The UK GDPR provides individual data subjects with a number of important rights regarding their personal data. The ORR and HSE privacy notices set out these rights and explain how an individual can exercise them.

### **Data breach**

- 8. ORR is responsible for reporting any breach occurring within their authority to their Data Protection Officer and the ICO (where appropriate). ORR will also inform HSE of the breach if there is any direct impact on their staff or wider interests.
- 9. HSE are responsible for reporting any data breaches within their Authority to their Data Protection Officer and ICO (where appropriate), as well as to ORR if there is any direct impact on their staff or wider interests.
- 10. If financial penalties are imposed by the Information Commissioner on a party in relation to any data processed under this agreement and if in the view of the Information Commissioner, one party is responsible for the imposition of those penalties, that party shall be responsible for the payment of the penalties imposed.

11. If the Information Commissioner expresses no view as to responsibility, then each party shall bear responsibility for half of the penalty imposed.
12. If either HSE or ORR are the defendant in a legal claim before a court of competent jurisdiction by a third party in respect of data processed under this agreement, then the party determined by the final decision of the court to be responsible for the damage shall be liable for the losses arising from such damage. Where both parties are liable, the liability will be apportioned between the parties in accordance with the decision of the court. If the court does not apportion liability between the parties then each party shall bear responsibility for half of the penalty imposed, unless it can prove that it is not in any way responsible for the event giving rise to the damage.
13. The provisions of this clause do not prevent the parties coming to a mutual agreement as to the apportionment of financial responsibility for any losses, cost claims or expenses arising from the processing of data under this agreement.

### **Data retention**

14. Each party is responsible for ensuring appropriate technical and procedural functions are in place to ensure the secure and timely destruction of the personal data covered by the joint HSE and ORR MoU.

### **Information Disclosure**

15. Either party to the joint HSE and ORR MoU may receive a request for information from a member of the public or any other person under the various pieces of information disclosure legislation UK GDPR and DPA 2018, Environmental Information Regulations 2004 (EIRs), the Freedom of Information Act 2000 (FOIA) etc.).
16. The recipient party to any request for information is ultimately responsible for making the final decision on disclosure. All requests for information will be considered on case-by-case basis, and all resulting disclosures must be lawful. Where the recipient party wishes to apply a qualified exemption (as defined by the appropriate legislation) to all or part of a request, they must ensure this is validated by a documented public interest test.
17. If a party receives a request for information that has been supplied by the other party ("the information supplier"), the party that has received the request for information will consult the information supplier as early as possible and before any information is disclosed in response to the request to enable sufficient time for the views of the information supplier, including any objections to disclosure, to be taken into account when determining whether the information is to be disclosed or withheld.

## Data Protection Officers

The contact details of the parties Data Protection Officers are:

<i>[name of third party]</i>	HSE
Data Protection Officer Office of Rail and Road 25 Cabot Square London E14 4QZ  Email: <a href="mailto:dpo@orr.gov.uk">dpo@orr.gov.uk</a>	Data Protection Officer Health and Safety Executive 1.3 Redgrave Court Merton Road, Bootle Liverpool L20 7HS  Email: <a href="mailto:Data.Protection@hse.gov.uk">Data.Protection@hse.gov.uk</a>



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