



# Our rail and road duties

## Summary

How ORR exercises its functions is governed by various statutory duties which we must take into account when making decisions. Different duties apply depending on whether ORR is exercising its economic or safety functions. These duties are listed below.

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## Economic duties

For economic regulation our duties are set out under section 4 of the Railways Act 1993. These duties include the duty to:

- promote improvements in railway service performance;
- otherwise to protect the interests of users of railway services;
- promote the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of that railway network, to the greatest extent that it considers economically practicable;
- contribute to the development of an integrated system of transport of passengers and goods;
- contribute to the achievement of sustainable development;
- promote efficiency and economy on the part of persons providing railway services;
- promote competition in the provision of railway services for the benefit of users of railway services;
- promote measures designed to facilitate the making by passengers of journeys which involve use of the services of more than one passenger service operator;
- impose on the operators of railway services the minimum restrictions which are consistent with the performance of ORR's functions under Part 1 RA 1993 or the RA 2005 that are not safety functions;

- enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance;
- protect the interests of users and potential users of services for the carriage of passengers by railway provided by a private sector operator, otherwise than under a franchise agreement, in respect of the prices charged for travel by means of those services, and the quality of the service provided;
- protect the interests of persons providing services for the carriage of passengers or goods by railway in their use of any railway facilities which are for the time being vested in a private sector operator, in respect of the prices charged for such use and the quality of the service provided;
- in exercising functions that are not safety functions:
  - take into account the need to protect all persons from dangers arising from the operation of railways;
  - have regard to the effect on the environment of activities connected with the provision of railway services;
  - have regard to any general guidance given to ORR by the Secretary of State about railway services or other matters relating to railways;
  - have regard to any general guidance given by the Scottish Ministers about railway services wholly or partly in Scotland or about other matters in or as regards Scotland that relate to railways;
  - in having regard to guidance given by Scottish Ministers, give what appears to ORR to be appropriate weight to the extent to which the guidance relates to matters in respect of which expenditure is to be or has been incurred by the Scottish Ministers;
  - act in a manner which ORR considers will not render it unduly difficult for persons who are holders of network licences to finance any activities or proposed activities of theirs in relation to which ORR has functions;
  - have regard to the funds available to the Secretary of State for the purposes of his functions in relation to railways or railway services;
  - have regard to any notified strategies and policies of the National Assembly for Wales, so far as they relate to Welsh services or to any other matter in or as regards Wales that concerns railways or railway services;
  - have regard to the ability of the National Assembly for Wales to carry out the functions conferred or imposed on them by or under any enactment;

- have regard to the ability of the Mayor of London and Transport for London to carry out the functions conferred or imposed on them by or under any enactment;
- in exercising its safety functions, other than its functions as an enforcing authority for the purposes of the Health and Safety at Work etc Act 1974, to have regard to any general guidance given to it by the Secretary of State;
- have regard to the interests, in securing value for money, of the users or potential users of railway services, of persons providing railway services or of the persons who make available the resources and funds and of the general public;
- have regard, in particular, to the interests of persons who are disabled in relation to services for the carriage of passengers by railway or to station services.

## Safety duties

Schedule 3 of the Railways Act 2005 gives ORR a general duty to do such things and make such arrangements as it considers appropriate for the purposes of railway safety, and to assist and encourage persons concerned with matters relevant to those purposes to further those purposes.

Section 1 of the Health and Safety at Work etc. Act 1974 (HSWA) also gives ORR a general duty to secure the health, safety and welfare of persons at work, and of those who might be put at risk as a result of the activities of persons at work. These objectives are called HSWA's general purposes. The railway safety purposes are so much of HSWA's general purposes as relate to the risks relevant to or connected with:

- securing the proper construction and safe operation of railways, tramways etc;
- securing the proper construction and safe operation of locomotives, rolling stock or other vehicles used, or to be used, on such systems;
- protecting the public (whether or not they are passengers) from personal injury and other risks arising from the construction and operation of such systems;
- protecting persons at work from personal injury and other risks so arising

## Other railway duties

Section 21 of the Channel Tunnel Rail Link Act 1996 provides that ORR shall have an overriding duty to exercise its regulatory functions in such a manner as not to impede the performance of any development agreement.

Section 22 of the Crossrail Act 2008 provides that section 4(1) of the Railways Act 1993 shall be treated as including the objective of facilitating the construction of Crossrail. It also provides that ORR shall consult the Secretary of State about this aspect of the duty.

Regulation 31 of The Railways (Infrastructure Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016 sets out the various duties to which ORR must have regard when carrying out its functions under these Regulations.

## General duties

Section 72 of the Regulatory Enforcement and Sanctions Act 2008 requires us to keep our functions under review and ensure that in exercising these functions we do not:

- impose burdens which we consider to be unnecessary, or
- maintain burdens which we consider to have become unnecessary.

We also have an equalities duty under section 149 of the Equality Act 2010 which requires us to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (relevant protected characteristics are – age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation);
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

## Our road duties

The Infrastructure Act 2015 (IA 2015) gives ORR functions in relation to monitoring and enforcing in its role as Monitor for Highways England (HE).

Our monitoring function requires us to carry out activities to monitor how Highways England exercises its functions. Our enforcement function enables us to take enforcement action against Highways England: this is a discretionary function and it is for ORR to determine whether or not to exercise its enforcement powers under the IA 2015.

How we exercise our monitoring and enforcement functions is governed by general statutory duties which we must take into account when making decisions. These duties are set out in sections 12 of the IA 2015. The duties are listed below:

## General road duties

- ORR must exercise its functions in the way we consider most likely to promote the performance and efficiency of Highways England;
- In exercising our functions, we must also have regard to the following factors:
  - the interests of users of highways;
  - the safety of users of highways;
  - the economic impact of the way in which HE achieves its objectives;
  - the environmental impact of the way in which HE achieves its objectives;
  - the long-term maintenance and management of highways;
  - that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; and
  - regulatory activities should be targeted only at cases in which action is needed.

ORR must also have regard to Statutory Guidance, issued by the Secretary of State and HM Treasury as to the manner in which we carry out our monitoring and enforcement functions.



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