

Title: Post implementation review of the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 [S.I. 2006/557]	Post Implementation Review
PIR No: DfTPIR0065	Date: 21/05/2023
Original IA/RPC No: N/A	Type of regulation: Domestic
Lead department or agency: Department for Transport	Type of review: Statutory
Other departments or agencies: Office of Rail and Road	Date measure came into force: 01/04/2006
	Recommendation: Amend
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1. What were the policy objectives of the measure?

1. The Railways Act 2005 transferred safety policy functions under the Health and Safety at Work etc. Act 1974 from the then Health and Safety Commission (“HSC”) to the then Office of Rail Regulation (“ORR”) (now the Office of Rail and Road) in relation to regulating the safety of railways, tramways and other systems of guided transport. Secondary legislation in the form of the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (S.I. 2006/557) (“EARR”) was introduced to make ORR the enforcing authority for health and safety legislation in respect of railways, tramways and certain other systems of guided transport.
2. The original policy objectives of EARR were to:
 - a. Allocate health and safety enforcement functions to the Office of Rail Regulation to support the transfer of railway safety functions from the Health and Safety Executive (HSE) to ORR; and
 - b. Clarify the respective responsibilities of ORR and HSE for the enforcement of health and safety law in relation to railways, tramways and other guided transport systems.
3. Alongside the original policy objectives, EARR also had the following intended effects:
 - a. To make ORR the enforcing authority for health and safety law in relation to the operation of railways, tramways and other systems of guided transport, instead of HSE;
 - b. To make HSE the enforcing authority for health and safety in relation to the operation of cableways, guided buses, other road-based systems of guided transport (except tramways), and lifts (except where they are used in the operation of a railway, tramway or other system of guided transport), as well as for railway activities within certain premises; and
 - c. To make amendments to various pieces of legislation to substitute ORR for HSE in exercising certain functions for purposes that relate to health and safety of transport systems enforced by the relevant authority.

4. EARR has been amended several times since it was introduced in 2006, including by the following pieces of legislation:
 - a. The Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) (Amendment) Regulations 2008 (S.I. 2008/2323), which clarified the detailed allocation of responsibilities between the ORR and HSE in a few places;
 - b. The Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/950), which extended the powers of ORR inspectors so that they can inspect and enforce in railway premises where an entity in charge of maintenance ("ECM") may have maintenance facilities. It also introduced a five-year review clause into EARR;
 - c. The Energy Act 2013 (Office for Nuclear Regulation) (Consequential Amendments, Transitional Provisions and Savings) Order 2014 S.I. 2014/469), which introduced a provision allowing the Office of Nuclear Regulation (ONR) and ORR to assign enforcement responsibilities between them by agreement and in cases where there is uncertainty; and
 - d. The Ionising Radiations Regulations 2017 (S.I. 2017/1075), which stated that ORR has no responsibility for enforcement of the Ionising Radiations Regulations 2017.
5. The policy objectives and intended effects of EARR remain the same as when the legislation was originally introduced in 2006.

2. What evidence has informed the PIR?

6. Regulation 8 of EARR, inserted by the Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013, requires a review of EARR every five years. The last PIR of EARR was published on 21 May 2018 (the 2018 PIR¹), therefore the next PIR is due for publication by 21 May 2023. Under Regulation 8 of EARR, the Secretary of State is required to:
 - a. Carry out a review of EARR;
 - b. Set out the conclusions of the review in a report; and
 - c. Publish that report.
7. In addition, Regulation 8 states that the report must:
 - a. Set out the objectives that were intended to be achieved by the regulatory system established by EARR;
 - b. Assess the extent to which the objectives have been achieved; and
 - c. Assess whether the objectives remain appropriate and, if so, whether they could be achieved by a system which imposes less regulation.
8. The 2018 PIR concluded that consideration should be given to removing the requirement for a PIR of EARR, as it was determined that the review provision under Regulation 8 should not have been introduced. This is because EARR is secondary legislation that impacts public authorities (HSE, ORR and ONR) as opposed to private businesses, and does not make a regulatory provision in relation to a qualifying activity as per the Small Business, Enterprise and Employment Act 2015. Regulation 8 of EARR still remains in the regulations, as there has been no legislative opportunity to address the conclusion from 2018 on this point. Therefore, a PIR is still required, and a report must be published by 21 May 2023.

Approach to the PIR

9. Ordinarily, a PIR would seek to establish the impact of legislation on businesses. However, given the negligible impact of EARR on businesses described below, this PIR focuses on the views of ORR, HSE and ONR (as the three regulators directly involved). The PIR considers EARR (as amended) and is based on the following evidence:
 - a. A survey sent to colleagues in ORR, HSE and ONR (thereafter referred to as “ORR, HSE and ONR PIR survey”). A total of 20 responses were received;
 - b. Evaluation of the 2018 EARR PIR conclusions, which were used as comparator evidence;
 - c. Analysis of seven² cases which required ORR and HSE to reach a shared interpretation as to who has enforcing responsibility under EARR. The cases were analysed to identify any recurring themes, and to establish how well EARR has met its objectives and intended effects. A further two cases were also considered. One related to ORR being legally challenged on its vires to bring about a prosecution. The

¹ The 2018 PIR of EARR can be found on legislation.gov: <https://www.legislation.gov.uk/uksi/2006/557/resources>

² ORR's rail safety policy team are aware of seven cases (since the 2018 PIR) where ORR and HSE have needed to agree on an interpretation as to who has enforcing responsibility under EARR. There have been no such cases between ORR and ONR since the 2018 PIR.

second related to a situation where inspectors wanted to formally document how EARR applied in a specific situation; and

- d. ORR's 2014 consultation³ on Revising Railway Safety Regulations, where stakeholders were asked for their views on introducing an enforcement flexibility provision to EARR (which would allow ORR and HSE to agree to assign enforcement functions to one another in cases where there is uncertainty). Responses to that question were used as comparator evidence.

10. The sample size of 20 respondents out of approximately 106 invited to participate in the survey reflected a response rate of approximately 19%. ORR invited 99 members from its Railway Safety Directorate and three members from its Legal Directorate to complete the survey. The survey was also shared with two colleagues from HSE and two colleagues from ONR, with those colleagues in HSE and ONR invited to undertake similar evidence gathering within their organisations before submitting a survey response. The survey was sent to those bodies with direct regulatory responsibilities under EARR, given that there is negligible impact on business. The survey was considered proportionate and representative in obtaining views on the regulations.

11. In addition to the point raised above (i.e. the 2018 PIR report's conclusion that Regulation 8 should be amended to remove the requirement for a PIR), a low evidence-based PIR for the 2023 report is also deemed the correct approach for the following reasons:

- a. An original objective of EARR was to "*allocate health and safety enforcement functions to the Office of Rail Regulation to support the transfer of railway safety functions to ORR from HSE*". Although ongoing, this objective was met when EARR was introduced.
- b. The original Regulatory Impact Assessment for EARR did not identify costs to businesses from transferring enforcing functions to ORR under EARR other than small additional costs related to familiarising themselves with the new regulations, and understanding the implications of changes to the enforcing authority arrangements. These potential costs were not quantified, but as EARR was introduced over 16 years ago, it can be reasonably assumed that any such costs to businesses will no longer exist.
- c. Similarly, the original Regulatory Impact Assessment⁴ for EARR did not identify any additional obligations or duties to businesses as a result of EARR.
- d. EARR has not been amended since before 2018. That 2018 PIR used a low evidence approach and concluded that EARR should remain in place (with amendments) as the original objectives remained valid.
- e. The 2018 PIR included a survey to 311 industry stakeholders, but with only nine responses received. That low response rate, coupled with the fact that EARR does not impose additional duties or obligations on businesses, means a stakeholder survey was not considered proportionate for this PIR.

³ ORR's 2014 consultation on Revising Railway Safety Regulations can be found at: <https://www.orr.gov.uk/sites/default/files/om/revising-railway-safety-regulations.pdf>. Note: the consultation was not related to EARR, but the opportunity was taken to ask consultees one question about introducing an enforcement flexibility provision to EARR.

⁴ The explanatory memorandum and original impact assessment for EARR can be found at: https://www.legislation.gov.uk/uksi/2006/557/pdfs/uksiem_20060557_en.pdf

3. To what extent have the policy objectives been achieved?

Policy objectives

- a) To allocate health and safety enforcement functions to the Office of Rail Regulation to support the transfer of railway safety functions to ORR from HSE
12. The ORR, HSE and ONR PIR survey responses indicate that EARR has successfully allocated health and safety enforcement functions to ORR from HSE in relation to railways, tramways and other systems of guided transport. This has been proven by the fact that EARR has been in force since 2006 with functions discharged accordingly. This reflects the 2018 PIR findings, where two thirds of respondents to the 2018 PIR survey found that EARR were very successful or somewhat successful in achieving their objectives. Comments were made in both the 2018 PIR survey and the 2022 ORR, HSE and ONR PIR survey that a mechanism to allow flexibility in the allocation of enforcement responsibilities between ORR and HSE would be beneficial. Another comment was that further success could be achieved if EARR provided legal certainty over whether ORR or HSE has the power to take enforcement action in cases where there is doubt.
13. *Overall, the evidence indicates that EARR has successfully allocated health and safety enforcement functions to ORR to support the transfer of railways safety function to ORR.*
- b) To clarify the respective responsibilities of ORR and HSE for the enforcement of health and safety law in relation to railways, tramways and other guided transport systems
14. Eleven (55%) out of the 20 respondents to the ORR, HSE and ONR PIR survey indicated that some aspects of EARR were unclear, with 10% stating that they didn't know. The following areas were given as examples of where greater clarity would be welcome: maintenance depots; factories; the definition (or lack of) of 'heavy maintenance'; quarries; small heritage / minor railways; fairgrounds; ports; new nuclear build constructions sites; and tramways operating in public spaces. Some respondents also noted that the ORR and HSE Memorandum of Understanding (MoU) is often used in addition to EARR to bring clarity to situations.
15. There were seven cases (since the 2018 PIR) where ORR and HSE needed to reach a shared interpretation as to who was the enforcing authority according to EARR⁵. There was no common theme, with cases covering a diverse range of activities / locations as follows: sidings / yard; a miniature railway; a freight terminal; a maintenance depot; some areas of the Channel Tunnel; and rail-related gas safety. In all cases, ORR and HSE reached a shared interpretation as to who was enforcing authority under EARR.
16. As EARR is principally based on the activity taking place (rather than being based on premises or location), it is acknowledged that there will be instances where a degree of interpretation is required to determine who the correct enforcing authority is in a particular scenario. ORR and HSE will publish a new, joint, guidance document in 2023 which will help bring further clarity to respective enforcement allocations. This guidance draws on ORR and HSE experience of applying EARR over the past 16 years.
17. Overall, the evidence suggests that EARR has not fully clarified the respective responsibilities of ORR and HSE, with some areas where a lack of clarity exists. This is consistent with the findings from the 2018 PIR. However, as EARR is based on the principle

⁵ It is possible that there have been other cases (which ORR's policy team is not aware of) where ORR and HSE inspectors have liaised at a working level to reach an agreed interpretation as to who has enforcing responsibility under EARR.

that the enforcing authority is determined by the activity taking place rather than physical location, we do not believe it would be possible to amend EARR to remove all uncertainty, without a resource intensive exercise of listing specific activities. This would need to be updated regularly to keep pace with new or changed activities.

18. *The imminent release of a new HSE and ORR joint guidance document will help to provide clarity on many of the areas where there is a degree of interpretation required. This is a proportionate non-legislative solution which will assist inspectors in applying EARR.*

Enforcement flexibility provision

19. When EARR was introduced in 2006, the decision was made not to include a provision allowing ORR and HSE to agree to assign enforcement functions to one another in cases where there is uncertainty. It was noted at the time that ORR and HSE could enter into Agency Agreements in order to delegate specific enforcement functions following agreement. There are two such Agency Agreements in place at the current time. A third Agency Agreement, to be published in 2023, will bring legal clarity to the enforcement of ElecLink at the Channel Tunnel Fixed Link.
20. Sixteen (80%) of the respondents to the 2022 ORR, HSE and ONR PIR survey were in favour of introducing an enforcement flexibility provision to EARR⁶. Comments from respondents noted that:
- a. An enforcement assignment provision would bring clarity to unclear areas.
 - b. It would allow formalisation of what had previously been agreed between ORR and HSE.
 - c. It would allow allocation to the enforcing authority with the best knowledge and expertise.
 - d. As new systems and technology arise, it would provide flexibility where those new systems do not necessarily fit within the existing areas and definitions within EARR.
21. The introduction of an enforcement assignment provision to EARR can only be achieved through primary legislation because there is currently no existing provision within primary legislation which provides the enabling power for this change. However, it is not clear when such an opportunity may arise. Such a provision could be drafted to allow ORR and HSE to agree to assign enforcement responsibilities in situations where there is uncertainty, but it would not add clarity to the existing allocation of responsibilities within EARR. As such, the PIR is not recommending that an enforcement flexibility provision is introduced at this time, but should the opportunity arise, then it should be given due consideration at that time, including an appraisal of the costs and benefits. This same recommendation was made in the 2018 PIR.
22. The comments provided by respondents to the 2022 ORR, HSE and ONR PIR survey in relation to an enforcement flexibility/assignment provision are noted, and the forthcoming joint guidance document will help to address the points raised.

The intended effects of EARR

⁶ The 2018 PIR recommended that consideration be given to introducing an enforcement flexibility provision to EARR at the earliest available opportunity.

23. EARR had three intended effects when it was introduced. The first of those related to the first policy objective of EARR. The third related to amending legislation to substitute ORR for HSE. As such, only the second intended effect is considered here.
- a) To make HSE the enforcing authority for health and safety in relation to the operation of cableways, guided buses, other road-based systems of guided transport (except tramways), and lifts (except where they are used in the operation of a railway, tramway or other system of guided transport), as well as for railway activities within certain premises.
24. Half (50%) of respondents to the 2022 ORR, HSE and ONR PIR survey indicated that EARR leaves HSE with the appropriate enforcement functions. Comments from these respondents included the following:
- a. if the activity does not relate to the operation of a railway, tramway or other system of guided transport, then HSE retains the enforcement function;
 - b. the purpose of EARR is to precisely identify the correct legal body to undertake enforcement.
25. However, 40% of respondents to the 2022 ORR, HSE and ONR PIR survey indicated that they didn't know if EARR leaves HSE with the appropriate enforcement functions (10% stated that EARR does not leave HSE with the appropriate functions). Comments from those who responded 'didn't know' included a statement on a lack of clarity when it comes to construction activities. Another stated that it might be beneficial for anything rail-related to be allocated to ORR.
26. Additionally, a reflection was made about the current arrangements relating to guided bus systems. Presently, the Railways Act 2005 excludes guided bus systems from ORR's remit. This decision was based on the position reached at the time, namely that railway safety functions were transferred to ORR and that guided buses should not be included with railways and other guided transport systems. ORR and HSE will continue to work together to share expertise and other support in this area as required, as set out in ORR and HSE's recently refreshed MoU⁷.
27. *The evidence suggests that EARR has effectively made HSE the enforcing authority for cableways, guided buses, other road-based systems of guided transport, and lifts, as well as for railway activities within certain premises – this was as intended when EARR was introduced in 2006.*

What should happen to EARR?

28. Finally, 15% of the respondents to the 2022 ORR, HSE and ONR PIR survey said that EARR should be kept as it is (no changes), whilst 75% said it should be kept with changes. No respondents felt that EARR should be removed or replaced. As mentioned in the body of the report above, the suggested changes to EARR included:
- a. Introducing an enforcement flexibility/assignment provision.
 - b. Greater clarity or improved definitions in some areas, (e.g., construction work and maintenance depots etc).
 - c. Providing further examples on areas of enforcement.
29. The comment at (a) about enforcement flexibility is considered in detail above. With regards to points (b) and (c) concerning clarity and further examples of enforcement, we consider that the shortly to be published joint ORR and HSE guidance document will help provide the clarity and examples requested.

⁷ The ORR and HSE Memorandum of Understanding can be found here: [HSE ORR Memorandum of Understanding, May 2022](#)

30. Whilst no respondents suggest EARR should be removed or replaced, it is important to note that EARR was introduced to make ORR the enforcing authority for health and safety legislation in respect of the operation of railways, tramways, and other guided transport systems. So, if EARR were to be removed, ORR would lose its enforcement functions and would be unable to enforce health and safety legislation in respect of railways, tramways, and other guided transport systems. These enforcement functions would revert to HSE.
31. *Overall, the evidence suggests that EARR should be retained, albeit with some changes. As noted in this report, we have made suggestions to address the comments which would not require legislative change to EARR.*

Overall conclusions and recommendations

32. Based on the evidence above and in the further information sheet below, the following conclusions can be made:
- a. EARR continues to meet the first of its policy objectives (i.e. allocation of enforcement duties from HSE to ORR). The second objective (i.e. clarifying responsibilities) is met to some extent, but further clarity would be beneficial on some of the respective responsibilities for HSE and ORR. We expect the new joint HSE and ORR guidance document will improve clarity in the absence of an opportunity to amend EARR and that the guidance is a proportionate response.
 - b. EARR has left HSE with the functions as originally intended.
 - c. The introduction of an enforcement flexibility/assignment provision would be welcomed by many respondents. This could provide legal certainty where ORR and HSE's respective responsibilities, especially in any areas where uncertainty persists. Should a legislative opportunity for this materialise then it will be given due consideration at that time, including an appraisal of any benefits and drawbacks of introducing it.
 - d. The PIR has not identified any material costs to duty holders (those organisations with duties and responsibilities in relation to the railway – e.g., infrastructure managers and operators) or businesses arising from EARR.

This PIR recommends the following:

- a. That EARR remains in place because the objectives remain valid and the evidence suggests that EARR has proved largely effective in meeting them.
- b. Consideration is given to removing the requirement for a review (PIR) of the legislation every five years (Regulation 8 of EARR). EARR is secondary legislation impacting on public authorities, and it does not make a regulatory provision in relation to a qualifying activity as per the Small Business, Enterprise and Employment Act 2015, so it is contended that a review clause was not required within the 2013 amendments to EARR.

Next Steps

33. The Department for Transport will consider opportunities to consult on any proposed amendments to EARR if there are structural changes to the industry in the future, which have an impact on the enforcement of health and safety law. This is consistent with

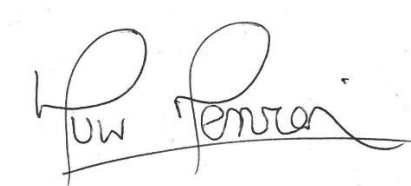
commitments made by the William-Shappps Review to review safety roles and functions within the rail industry in due course, so that they are appropriate for the future.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: ***Kourosh Amini (Head of Strategic Analysis)***

Date: ***06/03/2023***

A handwritten signature in black ink, appearing to read 'Kourosh Amini', with a stylized flourish at the end.

Date: ***10/05/2023***

Further information sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions?

34. The Explanatory Memorandum⁸ to EARR assumed that EARR would make ORR the enforcing authority for health and safety law in relation to the operation of railways, tramways and other systems of guided transport. At the same time, HSE would be confirmed as enforcing authority in relation to guided buses, other road-based systems of guided transport (except tramways), and trolley vehicle systems.
35. The 2004 White Paper on 'the Future of Rail' sought to create a more simplified industry structure and organisation. The Railways Act 2005 transferred safety functions from HSE to ORR, whilst EARR was introduced to transfer enforcement functions to ORR using powers in the Health and Safety at Work etc Act 1974. It was assumed that transferring health and safety enforcement functions to ORR would help simplify the regulatory structure of the railway industry and encourage cultural change across it. It was assumed that transferring enforcement functions to ORR would benefit policy making by bringing economic and safety regulation together when decisions are made. If health and safety enforcement was not transferred to ORR, the then Government's aim of streamlining the regulatory system, and bringing together safety, cost, and performance issues to be considered as a whole, would be jeopardised.
36. The original Regulatory Impact Assessment identified transitional costs for both ORR and HSE from the introduction of EARR. For years 1 to 3, these were expected to total £6.5m for ORR (£5.3m in year 1, £0.6m in year 2 and £0.6m in year 3) and £1.47m for HSE (£0.22m in year 1, £1.0m in year 2 and £0.25m in year 3). The Regulatory Impact Assessment assumed that transfer of enforcement responsibilities to ORR would impact all businesses equally and there were not expected to be disproportionate costs on smaller businesses. The only costs to businesses were likely to be those associated with understanding the new regulations and the implications of a change in enforcing authority. There were not expected to be any competition issues.

5. Were there any unintended consequences?

37. Out of all respondents to the 2022 ORR, HSE and ONR PIR survey, 15% stated that EARR had led to unintended effects, 20% stated that there had not been any unintended effects and 65% of respondents stated that they did not know if there had been unintended effects. Comments from respondents included the following:
- a. Whilst Regulation 5 of EARR focuses on construction activity, the situation can be unclear. The enforcing authority can switch between ORR and HSE as a construction project progresses, depending upon how access to the construction site is gained.
 - b. The enforcing authority can change where it becomes apparent that the initial enforcing authority was not the correct one. This can have implications for the business or duty holder.
 - c. In those rare cases where the enforcing authority is unclear, it can often require greater time and resource expenditure to resolve the issue and determine the correct enforcing authority.

⁸ The Explanatory Memorandum to EARR can be found here: https://www.legislation.gov.uk/uksi/2006/557/pdfs/uksiem_20060557_en.pdf

- d. Whilst Schedule 3 of the Railways Act 2005 specifically excluded the transfer of guided bus systems to ORR, there was a point made about the most appropriate enforcing authority for these systems.

38. In 2019 railway inspectors wanted to formally agree enforcement allocations between HSE and ORR for a particular scenario (a specific maintenance facility). ORR's policy team advised that EARR does not contain a provision for agreeing or allocating enforcement functions in this way. Whilst of course no such formal agreement was pursued, the case highlights an unintended effect of EARR (i.e., seeking to codify for future reference).
39. During the coronavirus pandemic, HSE operated an important Covid-19 spot check programme to monitor business compliance with Covid-19 regulations. There were a small number of instances where checks were undertaken by a third party on behalf of HSE at sites for which ORR is the enforcing authority under EARR. Whilst the third party did not have enforcement powers, and the checks were undertaken in good faith, it does highlight an unintended consequence of EARR, especially where third parties perhaps unfamiliar with the regulations undertake work. Both HSE and ORR quickly identified and jointly resolved the small number of instances when this occurred. Additionally, it should be noted that coronavirus represented unprecedented times, with rules and circumstances changing on a frequent basis.
40. The 2018 PIR highlighted the potential for legal challenge as an unintended effect of EARR. In 2019 there was a legal challenge to ORR on its vires to bring about a prosecution against a defendant⁹ in a prosecution case relating a company's failures to manage workforce fatigue. The defendant argued that the deaths (and fatigue) were not related to the 'maintenance, repair and renewal of the infrastructure'. The judge dismissed the defendant's case, stating that it was within ORR's enforcing remit to bring about a prosecution. However, the fact that ORR were legally challenged highlights an unintended effect of EARR where there is uncertainty over enforcing responsibilities.
41. *Overall, due to the small number of responses to the 2022 ORR, HSE and ONR PIR survey, and the limited number of case studies to examine since the last PIR, it is not clear if EARR has had any significant unintended consequences, making it difficult to draw definitive conclusions. However, we have highlighted a few very specific areas where EARR has had unintended effects.*

6. Has the evidence identified any opportunities for reducing the burden on business?

42. 60% of respondents to the 2022 ORR, HSE and ONR PIR survey were not aware of any costs (monetary or non-monetary) to businesses as a result of EARR. 25% of respondents said that EARR did create costs for businesses, with 3 of these 5 respondents noting that where businesses are regulated by HSE under EARR, they will potentially be subject to HSE's Fee For Intervention (FFI). We do not consider the FFI¹⁰ model to be relevant to a review of EARR, as it part of the Health and Safety and Nuclear (Fees) Regulations 2021(S.I. 2021/33). ORR has a different model, but is still funded from the industry it regulates (via a levy on the railway industry for health and safety related activities).

⁹ The case related to two welders who died in a traffic collision in the early hours of 19th June 2013, whilst on their way back from an overnight job. Further information can be found here: <https://www.orr.gov.uk/search-news/contractor-renown-consultants-ltd-guilty-after-two-died>

¹⁰ HSE charge a Fee for Intervention. Information on HSE's FFI can be found here: <https://www.hse.gov.uk/fee-for-intervention/index.htm>. ORR does not charge a FFI – ORR's health and safety activities are funded through a safety levy, which is based on the turnover of each railway service provider: <https://www.orr.gov.uk/about/how-we-are-funded>

43. 25% of respondents felt EARR had created benefits to businesses, 40% were unsure and 35% felt EARR has not created benefits to businesses. Comments from respondents included:

- a. EARR should provide businesses with clarity on who their regulator is.
- b. Businesses should be regulated by the regulator with the best understanding of the issues being inspected.

44. 50% of survey respondents did not think that EARR has a disproportionate impact on smaller businesses (those employing 50 employees or less), with 45% indicating that they didn't know. Comments from respondents noted the following:

- a. The rail industry does not contain many smaller sized businesses, but the risks of operating in the industry are not related to business size.
- b. Health and safety legislation applies to all businesses, regardless of the enforcing authority. EARR should simply inform businesses of who their regulator is and there should be no cost associated with knowing this.

45. Overall, the evidence indicates that there should be little to no costs for businesses resulting from EARR. In fact, evidence indicates that there may be benefits, such as being regulated by the regulator with the best understanding of the industries being regulated.

7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements?

46. EARR was partially made using section 2(2) powers under the European Communities Act 1972 and therefore meets the technical definition of retained EU law. However, EARR did not transpose any EU derived legislation as its primary objective was to transfer functions and responsibilities from the HSE to the ORR. A comparison with EU or international competitors, which in this case would be equivalent safety regulators, is not considered relevant or proportional as the costs associated with assigning the functions of regulators are negligible and, in any case, necessary for the regulation of the system. Moreover, as EARR was introduced over 16 years ago, it can be reasonably assumed that any costs to the three stakeholders with the transfer of duties under EARR have been absorbed and no longer exist.