

RAILWAYS ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SCHEDULES

Schedule 3: Transfer of safety functions

207. [Paragraph 1](#) sets out those purposes of Part 1 of the 1974 Act for which the ORR will be responsible. These are termed the "railway safety purposes" and are defined in sub-paragraphs (1)-(3) and (7). Sub-paragraph (4) provides a power for the Secretary of State, through regulations, to modify the definition of the railway safety purposes. This power is subject to the negative resolution procedure (sub-paragraph (6)) and would allow for the inclusion or exclusion of certain transport systems from the definition of railway safety purposes in line with the development of those systems or the regulatory regime.
208. [Paragraph 2](#) makes provision in relation to the duties of the ORR with respect to railway safety purposes, which in the most part replicate those of the HSC as set out at sections 11(1) and (2) and sections 50(1), (2) and (3) of the 1974 Act.
209. [Paragraph 3](#) amends the 1974 Act such that HSC no longer has responsibility for those railway safety functions conferred on the ORR by virtue of paragraph 2.
210. [Paragraph 4](#) confers on the ORR the power to authorise a person to investigate and make a special report in respect of the railway safety purposes. Paragraph 5 concerns transitional provisions in this regard and allows the ORR to assume responsibility for the furtherance of any special report or investigation previously directed or authorised by HSC (under s.14(2)(a) of the 1974 Act) which is ongoing at the time of transfer. The ORR's powers do not extend to the directing of an inquiry in respect of the railway safety purposes, as the Rail Accident Investigation Branch has been established for these purposes. Furthermore, the Secretary of State will retain his prerogative powers to call an inquiry should he see fit to do so. However, paragraph 6 necessarily provides for the ORR to assume responsibility for any inquiry which has been formally commenced by HSC at the time of transfer.
211. [Paragraph 7](#) provides that agency agreements may be made between the ORR and the Secretary of State enabling the ORR to perform in connection with the carrying out of its safety functions those functions of the Secretary of State. It also provides for similar agreements to be made between the ORR and a government department or other public authority that the Secretary of State may deem appropriate. These powers correspond to that at s.13(1)(b) of the 1974 Act.
212. [Paragraph 8](#) provides that agency agreements may be made between the ORR and a government department or other public authority for the department or authority to perform, as the ORR may consider appropriate, certain safety functions of the ORR on its behalf. This power corresponds to that at s.13(1)(a) of the 1974 Act.
213. [Paragraph 9](#) restricts HSC from issuing codes of practice (under s.16 of the 1974 Act) in so far as they relate exclusively to the safety of the railways and other guided transport systems.

*These notes refer to the Railways Act 2005 (c.14)
which received Royal Assent on 7 April 2005*

214. [Paragraph 10](#) places a duty on the ORR and the HSC to enter into an agreement with each other for the purposes of co-operation and the exchange of information in relation to the carrying out of safety functions. It provides that the ORR will not be bound by guidance issued by the HSC.
215. [Paragraph 11](#) provides the ORR with the power to serve a notice, with the Secretary of State's consent, requiring a person to furnish it with any information it needs for the discharge of its safety functions. Paragraph 11(8) makes it an offence for a person to contravene a requirement imposed by a notice under the paragraph or to use disclosed information otherwise than for the purposes of the ORR's safety functions. These powers correspond to those of HSC at s.27 of the 1974 Act.
216. [Paragraph 12](#) provides for the Secretary of State to make regulations to provide for a levy to be paid to the ORR in respect of railways safety activities undertaken by it.
217. [Paragraph 13](#) removes the statutory requirement for consultation with HSC in the making of regulations by the Secretary of State, so far as they are made for or in connection with the railway safety purposes.