

**EXPLANATORY MEMORANDUM TO
THE HEALTH AND SAFETY (ENFORCING AUTHORITY FOR RAILWAYS
AND OTHER GUIDED TRANSPORT SYSTEMS) (AMENDMENT)
REGULATIONS 2008**

2008 No. 2323

1. This explanatory memorandum has been prepared by the Office of Rail Regulation and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 This Instrument is made under the powers conferred by sections 15(1) and (3)(c) and 82(3)(a) of the Health and Safety at Work etc Act 1974. It amends the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (EARR), altering the detailed allocation of responsibility between the Office of Rail Regulation (ORR) and the Health and Safety Executive (HSE) in the light of experience in applying the provisions of the 2006 Regulations.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Background**
 - 4.1 This Instrument makes amendments to EARR with regard to the respective health and safety enforcing authority responsibilities of ORR and the HSE.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to England, Scotland and Wales.
6. **European Convention on Human Rights**
 - 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.
7. **Policy background**
 - 7.1 The Secretary of State, in amending EARR, has decided, following proposals made by ORR under paragraph 2(5) of Schedule 3 to the Railway Act 2005, to amend those regulations in the light of experience in applying the provisions of EARR for the benefit of duty holders and health and safety inspectors. While the Regulations are for the greater part effective, there are some rail-related operations and activities which, over time, it has become

clear would benefit from alterations to the enforcement boundaries between ORR or HSE.

7.2 The amendments relate to: the operation of miniature railways; the alignment of definitions in EARR and the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS) in respect of 'harbours'; the operation of pier railways; the provision of bus substitution services; construction activities relating to the extension of the railway; and construction activities specifically at operational premises.

Consultation

7.3 Consultation on these proposals took place between 2 May 2008 and 25 July 2008. Sixteen organisations commented in writing on the proposed amendments, including other enforcing authorities, rail industry duty holders, industry associations and representative bodies. Generally, the proposals were welcomed by those who responded. A number of comments were received on aspects of the regulations not directly covered by the consultation. These could not be addressed through changes to the proposed amendments and will be addressed through guidance.

Guidance

7.4 Guidance on these amendments will be included in a revision to the annex of the memorandum of understanding between the HSE and ORR.

8. Impact

8.1 As the amendments do not create costs or savings to business, the public sector or the third sector, an Impact Assessment has not been prepared.

9. Contact

9.1 Mark Clapham at the Office of Rail Regulation, tel: 020 7282 2131 or e-mail: mark.clapham@orr.gsi.gov.uk can answer any queries regarding the instrument.