

## **Transport Safety Commission – Supplementary Questions**

### **1. Under what legislation or other legal framework your organisation is set up;**

The Office of Rail Regulation (ORR) is an independent, non-ministerial government department led by a Board, having been established as such under the Railways and Transport Safety Act 2003. ORR has responsibility for both the safety and economic regulation of Britain's railway network and other key aspects of rail service. We also have consumer and competition law powers in respect of the railways.

The functions of the independent health and safety regulator for the railway industry were transferred to ORR from the Health & Safety Executive in 2006 following the implementation of the Railways Act 2005. As well as the mainline railway network in Britain, we regulate health and safety on London Underground and other rail systems including metro, light rail, trams and the heritage sector. It's our responsibility to ensure that those responsible comply with health and safety and other legislation to make Britain's railways safe for passengers and provide a safe place for staff to work. Our role includes:

- providing health and safety guidance and ensuring the industry conducts appropriate research to promote continuous improvement;
- publishing reports on the railway industry's health and safety performance;
- carrying out inspections to ensure that the train and freight operating companies and infrastructure managers, such as Network Rail manage both health and safety for passengers and the public and the health, safety and well-being risks to their staff appropriately;
- investigating breaches of health and safety regulation on the railways; and
- taking informal and formal enforcement action where appropriate and in the public interest, including improvement and prohibition notices as well as prosecutions in the courts.

### **2. Your organisation's principal legal duties with respect to transport safety (or which might be taken to include transport safety);**

ORR must exercise its safety powers in accordance with a number of statutory duties. Section 1 of the Health and Safety at Work etc Act 1974 ('HSWA') sets out general health and safety objectives. These include "securing the health, safety and welfare of persons at work" and "protecting [others] against risks to health or safety arising out of or in connection with the activities of persons at work". These objectives are known as HSWA's general purposes.

Schedule 3 of the Railways Act 2005 sets out the purposes under HSWA for which ORR are responsible. These are termed the “railway safety purposes” and are so much of HSWA’s general purposes as relate to the risks relevant to or connected with:

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

It is the railway safety purposes which we have to further by the use of our safety functions including doing such things and making such arrangements as we consider appropriate for such purposes and to assist and encourage persons concerned with matters relevant to any of those purposes to further them (see paragraph 2, Schedule 3 of the Railways Act 2005). They also extend to health and welfare of workers.

### **3. Your organisation’s principal legal powers in respect of transport safety (or which might be taken to include transport safety);**

ORR’s safety powers are mainly found in the Railways Act 2005 and in the Health and Safety at Work etc Act 1974 (HSWA).

In summary, we are the enforcing authority for the HSWA, for the Railways and Other Guided Transport System Regulations 2006 and for various other pieces of railway specific legislation. We are also the National Safety Authority in the context of the European Railway Safety Directive.

As the health and safety authority for Britain’s railways, we make arrangements for protecting the health, safety and welfare of workers, and for protecting others against health or safety risks relating to the activities of people at work.

The main responsibility for managing work-related health and safety risks rests with employers and the self-employed (known as ‘duty holders’). We decide how effective they are at doing this by assessing their actions to get rid of or reduce the risks their activities may create. We do this by investigating incidents and complaints, inspecting samples of safety-management systems, and examining arrangements for managing risks. We use the information we gather to assess the effectiveness of the safety-management system and the organisation’s management abilities and attitude.

The Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (EARR) set out the enforcement responsibilities of ORR. EARR was amended in 2008 to improve clarity in the division of enforcement responsibility. Activities or premises not allocated to

ORR for enforcement under EARR Activities are subject to enforcement by either the Health & Safety Executive or Local Authorities according to the Health and Safety (Enforcing Authority) Regulations 1998.

Where we find significant failings, we use our powers to bring about improvement, including taking formal enforcement action. Inspections, audits, investigations and any associated enforcement (including prosecutions) are led by our inspectors. Inspectors are appointed and they carry a warrant as evidence of that appointment.

The decision to investigate an incident is normally taken by a principal inspector who, in doing so, will have regard to ORR's guidance on mandatory investigations. Whilst investigating, inspectors are able to exercise the coercive powers (e.g. enter premises, take measurements and photos, ask questions, require documents to be produced etc) under section 20 of the Health and Safety at Work etc Act 1974.

Under HSWA, inspectors have powers to serve improvement (where there is a breach of certain legislation) and enforcement (where there is a risk of serious personal injury) notices and in making such a decision must have regard to ORR's Health and Safety Enforcement Policy (HSEP) and the Enforcement Management Model (EMM).

Where a prosecution is being considered, the investigating inspector will consider the evidence s/he has gathered against the two tests set out in the Code for Crown Prosecutors:

- Is there sufficient evidence to provide a realistic prospect of a conviction; and
- Is a prosecution in the public interest?

The Inspector will also consider the HSEP and EMM, along with a usual review by our legal team, and then ORR will if appropriate commence and conduct proceedings in the criminal courts.

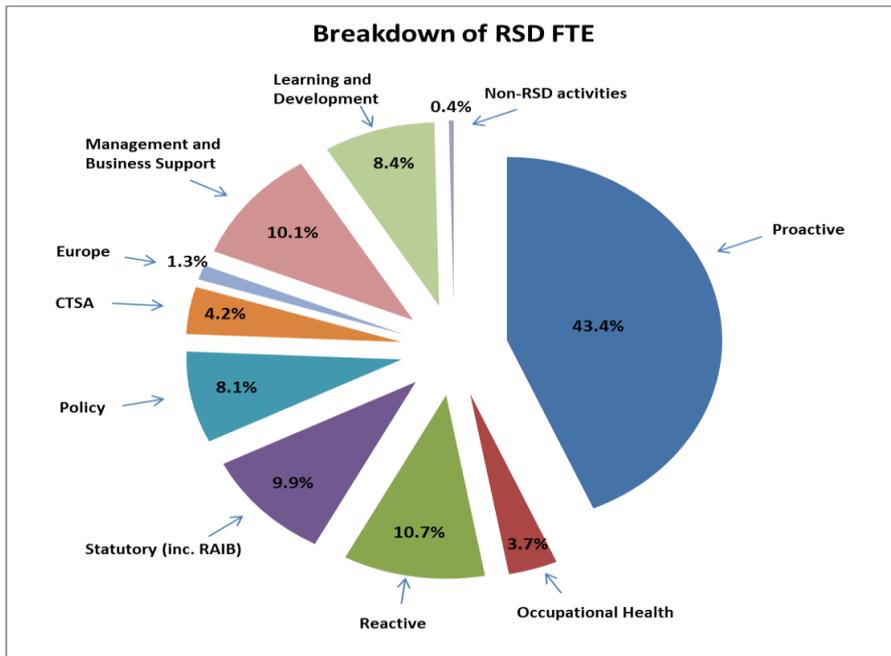
**4. Please outline any transport safety targets or similar performance metrics that your organisation either sets for itself or has set for it by others. Please specify who the others are, if applicable.**

Our response to objectives and targets on 18 November 2014 provides details of our and the rail industry's approach to transport safety targets.

**5. If your powers and/or duties include investigation, please provide indicative costs of such work, for different types (e.g. near miss, injury, fatal) and scales of investigation, where applicable.**

ORR's health and safety powers / duties include investigation, however we do not analyse our costs in the way that you define. As advised in our initial submission on 18 November 2014 our health and safety budget for 2014-15 is

£16.6m and will be £16.4m in 2015-16. Our resource utilisation in 2015-16 is defined in the pie chart below, where 43.4% of our resources will be proactive inspection (focusing on key risks within the industry) and 10.7% of our resources (£1.75m) is expected to be utilised on reactive inspection (response to health and safety incidents where an incident has occurred and there is evidence that health and safety has not been managed effectively, and/or there has been an injury and/or a fatality. Our focus is therefore on ensuring that duty holders prevent incidents leading to injury or death.



Our proactive inspection is split as defined in the next pie chart as informed by our risk profiles for each sector.

