

What changes has the Act made to the law?

Under the Employment Rights Act, the Office of Rail and Road (ORR) and the Health and Safety Executive (HSE) have a statutory duty to publish guidance setting out the circumstances in which 14-16 year olds who are volunteering on heritage railways in Great Britain are, or are not, to be regarded as being employed in 'an industrial undertaking' for the purposes of section 1 of the Employment of Women, Young Persons and Children Act 1920 (the 1920 Act). The guidance will clarify what sorts of activities are likely to be safe, appropriate and suitable for young volunteers, offering a clear benchmark for reasonable activities and assisting inspectors with enforcement decisions.

In producing the guidance, the ORR and HSE have offered to work closely with the Heritage Railway Association (HRA). This guidance will have an equivalent status to that of other similar material published by both ORR and HSE. It will provide an authoritative benchmark for heritage railways of what are considered by the regulators to be reasonable activities for 14-16 year olds to undertake. Importantly, this will also provide a benchmark for regulatory inspectors when making enforcement decisions. HSE and ORR will make it clear in the published document that following the guidance is not compulsory and organisations are free to take other action. But if they follow the guidance, they would normally be doing enough to satisfy the law.

How is this different from the previous legislation?

The 1920 Act prohibits the employment of children in 'industrial undertakings'. In the 1920 Act the term 'Industrial Undertakings' specifically includes some activities on railways. Volunteering is considered to be employment in such circumstances. In practice regulators use more modern legislation such as the Health and Safety at Work Act 1974 and the Management of Health and safety at Work Regulations 1999 which make provision for assessing and managing risk for young people, particularly in high risk work environments. However, the provisions of the 1920 Act remain in force, therefore, many heritage railway operators were concerned over their legal responsibilities, and were reluctant to employ 14-16 year old volunteers in their organisations, for fear of prosecution.

The Employment Rights Act provides greater clarity on this issue. By working with the HRA and those heritage railways that are already operating successful volunteering programmes for children, the regulators will publish clear and practical guidance that will not only provide reassurance for heritage railway operators, but also protect the health, safety and wellbeing of young people interested in volunteering on heritage railways.

When will these changes come into force?

Within 12 months of the ERA coming into force. However, ORR, HSE and the Heritage Railway Association (HRA) all agree that this is a priority and intend to work together aiming to publish the guidance by 31 March 2026.

