
STATUTORY INSTRUMENTS

2006 No. 599

HEALTH AND SAFETY

**The Railways and Other Guided Transport Systems
(Safety) Regulations 2006 (as amended)(a)**

<i>Made</i>	- - - -	9 th March 2006
<i>Laid before Parliament</i>		17 th March 2006
<i>Coming into force</i>		
<i>Except for regulations</i>		
<i>18A, 19, 23 to 26, 29, 34 and 34A</i>		10 th April 2006
<i>regulations 19, 23 to 26, 29, and 34</i>		1 st October 2006
<i>regulations 18A and 34A</i>		26 th August 2011

CONTENTS

**PART 1
INTRODUCTION**

1. Citation and commencement
2. Interpretation and application

**PART 2
SAFETY MANAGEMENT, CERTIFICATION AND AUTHORISATION**

3. Use of infrastructure on the mainline railway
4. Use of infrastructure on other transport systems
5. Safety management system for the mainline railway
6. Safety management system for other transport systems
7. Safety certificate
8. Amended safety certificate
9. Further safety certificate
10. Safety authorisation
11. Amended safety authorisation
12. Further safety authorisation
13. Notice of changes by holder of a safety certificate or a safety authorisation
14. Direction to apply for an amended safety certificate or safety authorisation
15. Revocation of safety certificate

(a) Amended by S.I. 2011/1860 (Green and red strikethrough text), S.I. 2011/3066, S.I. 2010/439, S.I. 2007/3531 and S.I. 1057/2006 and proposed amendments (Dark red double underlined and light blue strikethrough text) by the Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2012.

16. Revocation of safety authorisation
17. General provisions relating to safety certificates and safety authorisations
18. Notification to the European Railway Agency regarding safety certificates and safety authorisations relating to the mainline railway
- 18A. Maintenance of vehicles on the mainline railway

PART 3 GENERAL DUTIES

19. Risk assessment
20. Annual safety reports
21. Sending, issuing, and keeping of documents and making them available for public inspection
22. Co-operation

PART 4 SAFETY CRITICAL WORK

23. Interpretation and application of Part 4
24. Competence and fitness
25. Fatigue
26. Co-operation requirements for safety critical work

PART 5 MISCELLANEOUS

27. Appeals
28. Offences
29. Transitional provisions and savings
30. Exemptions
31. Defence of due diligence
32. Amendment of ROTS
33. Consequential amendments
34. Revocation
- 34A. Review

-
- SCHEDULE 1 — SAFETY MANAGEMENT SYSTEM
 - SCHEDULE 2 — APPLICATION FOR A SAFETY CERTIFICATE
 - PART 1 — INFORMATION TO BE INCLUDED FOR A MAINLINE APPLICATION
 - PART 2 — INFORMATION TO BE INCLUDED FOR A NON-MAINLINE APPLICATION
 - SCHEDULE 3 — COMMON SAFETY INDICATORS
 - SCHEDULE 4 — WRITTEN SAFETY VERIFICATION SCHEME REQUIREMENTS
 - SCHEDULE 5 — TRANSITIONAL PROVISIONS AND SAVINGS-SAFETY CERTIFICATES AND SAFETY AUTHORISATIONS
 - SCHEDULE 6 — CONSEQUENTIAL AMENDMENTS
 - SCHEDULE 7 — REVOCATION

The Secretary of State, in exercise of the powers conferred upon him by sections 15(1), (2), (3)(a) and (c), (4), (5), (6), 18(2), 43(2) to (6), 47(2), 52(2), 80, 82(3)(a) of, and paragraphs 1(1)(a) and (c), 1(2), 4(1), 6, 7, 8(1), 9, 14, 15(1), 16, 18(a) and 20 of Schedule 3 to, the Health and Safety at Work etc. Act 1974(a) (“the 1974 Act”) –

- (a) for the purpose of giving effect without modifications to proposals submitted to him by the Health and Safety Commission under section 11(2)(d) of the 1974 Act after the carrying out by the said Commission of consultations in accordance with section 50(3) of that Act; and
- (b) it appearing to him that the modifications in paragraph 4 of Schedule 6 are expedient and it also appearing to him not to be appropriate to consult bodies in respect of such modifications in accordance with section 80(4) of the 1974 Act,

hereby makes the following Regulations:

PART 1

INTRODUCTION

Citation and commencement

1. These Regulations may be cited as the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and shall come into force—

- (a) as respects all regulations except for regulations 19, 23 to 26, 29, and 34 on 10th April 2006; and
- (b) as respects regulations 19, 23 to 26, 29 and 34 on 1st October 2006.

Interpretation and application

2.—(1) In these Regulations—

“building operation” means the—

- (a) construction, structural alteration, repair or maintenance of a building and “maintenance” shall include repointing, redecoration and external cleaning of the structure;
- (b) demolition of a building; or
- (c) preparation for and laying the foundation of an intended building,

but does not include any operation which is a work of engineering construction;

“bus” means a motor vehicle which is designed or adapted to travel along roads and to carry more than eight passengers but which is not a tramcar;

“cableway installation” means an installation made up of several components that—

(a) 1974 c.37; sections 15 and 50 were amended by the Employment Protection Act 1975 (c.71), section 116 and Schedule 15, paragraphs 6 and 16 respectively; the general purposes of Part I referred to in section 15(1) were extended by section 117 of the Railways Act 1993 c.43; section 15(1) was amended by S.I. 2002/794, article 5(2) and Schedule 2; section 43(3) was amended by the Employment Protection Act 1975, Sections 116 and 125(3) and Schedule 15, paragraph 12 and Schedule 18; section 43(6) was substituted by the Employment Protection Act 1975, section 116 and Schedule 15, paragraph 12; Section 43(6) was amended by S.I. 2002/794, article 5(2) and Schedule 2; Sections 80(4) and (5) were substituted for subsections (4) to (6) as originally enacted by the Employment Protection Act 1975, section 116 and Schedule 15, paragraph 19; section 80(4) was amended by S.I. 2002/794, article 5(2) and Schedule 2; there are amendments to the Act not relevant to these Regulations.

- (a) is used or intended to be used for the purpose of providing an operational system for carrying persons in vehicles, on chairs or by towing devices;
- (b) uses cables positioned along the line of travel to provide suspension or traction or both; and
- (c) is one of the following—
 - (i) cable car (including a gondola and chair lift) where the cabins or chairs are lifted or displaced by one or more carrier cables;
 - (ii) drag lift, where users with appropriate equipment are dragged by means of a cable; or
 - (iii) funicular railway or other installation with vehicles mounted on wheels or on other suspension devices where traction is provided by one or more cables; but does not include cable operated tramways, rack railways or lifts;

“carriageway” has the same meaning as in the Highways Act 1980(a), or in Scotland the Roads (Scotland) Act 1984(b);

“certification body” has the same meaning as in the ECM Regulation;

“common safety methods” (“CSMs”) means the methods, developed pursuant to article 6 of the Directive, to describe how—

- (a) safety levels;
- (b) achievement of safety targets; and
- (c) compliance with other safety requirements,

are assessed, as revised and reissued from time to time;

“common safety targets” (“CSTs”) means the safety levels, developed pursuant to article 7 of the Directive, that must be reached by—

- (a) different parts of the mainline railway system; and
- (b) that system as a whole,

expressed in risk acceptance criteria, as revised and reissued from time to time;

“competent person” means, except for the purposes of Part 4, a person who—

- (a) has sufficient skills, knowledge, experience and resources to undertake the safety verification in relation to which he is appointed;
- (b) has not borne such responsibility in relation to any of the matters he has to consider in undertaking that safety verification that might compromise his objectivity; and
- (c) is sufficiently independent of a management system, or a part thereof, which has borne responsibility for any of the matters he has to consider in undertaking the safety verification, to ensure that he will be objective in carrying out the safety verification for which he is appointed;

“conventional Directive” means Council Directive 2001/16 of the European Parliament and of the Council on the interoperability of the conventional rail system(c);

(a) 1980 c.66, to which there are amendments not relevant to these Regulations.

(b) 1984 c.54, to which there are amendments not relevant to these Regulations.

(c) O.J. No. L110, 20.04.2001, p1, as amended by Directive 2004/50/EC of the European Parliament and the Council of 29th April 2004 (O.J. No. L164, 30.04.2004, p114).

~~“deemed safety authorisation” shall be construed in accordance with paragraph 1(b) of Schedule 5;~~

~~“deemed safety certificate” shall be construed in accordance with paragraph 1(a) of Schedule 5;~~

~~“the Directive” means Directive 2004/49/EC of the European Parliament and of the Council on safety on the Community’s railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of infrastructure capacity and the levying of charges for the use of infrastructure and safety certification;~~

“the Directive” means Directive 2004/49/EC(a) of the European Parliament and of the Council on safety on the Community’s railways as amended by the Interoperability Directive, Directive 2008/110/EC(b) of the European Parliament and of the Council on safety on the Community’s railways and Commission Directive 2009/149/EC(c) on Common Safety Indicators and common methods to calculate accident costs;

“ECM certificate” means a certificate issued in accordance with the ECM Regulation to an entity in charge of maintenance for the purpose of Article 14a(4) of the Directive;

“ECM Regulation” means Commission Regulation 445/2011 on a system of certification of entities in charge of maintenance for freight wagons(d);

“engineering possession” means a section of track which is closed to normal traffic and where the closure is for the purpose of carrying out maintenance which shall include any repair alteration, reconditioning, examination or testing of infrastructure;

“entity in charge of maintenance” means an entity in charge of maintenance of a vehicle, and includes a transport undertaking, an infrastructure manager or a keeper;

“European Railway Agency” means the Community agency for railway safety and interoperability established by Regulation (EC) No. 881/2004 of the European Parliament and of the Council establishing a European Railway Agency(e);

“factory” means a factory within the meaning of section 175 of the Factories Act 1961(f) and premises to which section 123(1) or (2) or 125(1) of that Act applies;

“freight wagon” means a vehicle that is not self-propelled and which is designed for transporting freight or other materials to be used for activities such as construction or infrastructure maintenance;

“guided bus system” means a system of transport, used wholly or mainly for the carriage of passengers, that employs buses which for some or all of the time when they are in operation—

- (a) travel along roads; and
- (b) are guided (whether while on the road or at other times) by means of—
 - (i) apparatus, a structure or other device which is fixed and not part of the bus; or
 - (ii) a guidance system which is automatic;

(a) O.J. No. L164 of 30.04.04, p.44.

(b) O.J. No. L345, 23.12.2008, p62.

(c) O.J. No. L313, 28.11.2009, p65.

(d) O.J. No. L122, 11.05.2011, p22.

(e) OJ No. L164 of 30.04.04, p1.

(f) 1961 c.34; subsection (2)(n) of section 175 was amended by the Factories Act 1961 etc. (the Metrication Regulations 1983 (S.I. 1983/978), regulation 3(1) and Schedule 1; section 123(2) was amended by S.I. 1974/1941, regulation 2(a) and Schedule 1; there are amendments to the Act not relevant to these Regulations.

“guided transport” means a system of transport, used wholly or mainly for the carriage of passengers, employing vehicles which for some or all of the time when they are in operation are guided by means of—

- (a) rails, beams, slots, guides or other apparatus, structures or devices which are fixed and not part of the vehicle; or
- (b) a guidance system which is automatic;

“harbour” and “harbour area” have the meanings assigned to them by regulation 2(1) of the Dangerous Substances in Harbour Areas Regulations 1987(a);

~~“heritage railway” means a railway which is operated to—~~

- ~~(a) preserve, re-create or simulate railways of the past; or~~
 - ~~(b) demonstrate or operate historical or special types of motive power or rolling stock;~~
- ~~and is exclusively or primarily used for tourist, educational or recreational purposes;~~

“high-speed Directive” means Council Directive 96/48/EC on the interoperability of the trans-European high-speed rail system(b);

“infrastructure” means fixed assets used for the operation of a transport system which shall include, without prejudice to the generality of the foregoing—

- (a) its permanent way or other means of guiding or supporting vehicles;
- (b) any station; and
- (c) plant used for signalling or exclusively for supplying electricity for operational purposes to the transport system;

“infrastructure manager” means the person who—

- (a) in relation to infrastructure other than a station, is responsible for developing and maintaining that infrastructure or, in relation to a station, the person who is responsible for managing and operating that station, except that it shall not include any person solely on the basis that he carries out the construction of that infrastructure or station or its maintenance, repair or alteration; and
- (b) manages and uses that infrastructure or station, or permits it to be used, for the operation of a vehicle;

“Interoperability Directive” means Directive 2008/57/EC of the European Parliament and of the Council of 17th June 2008 on the interoperability of the rail system within the Community (Recast)(c);

“Interoperability Regulations” means the Railways (Interoperability) Regulations 2011~~2006~~(d);

“keeper” means the person who, being the owner of a vehicle or having the right to use it, exploits the vehicle as a means of transport and is registered as being the keeper in the National Vehicle Register;

“mainline application” means an application for—

- (a) a safety certificate or an amended safety certificate; or

(a) S.I. 1987/37 to which there are amendments not relevant to these Regulations.
(b) O.J. No. L235, 17.09.97, p6, corrected by O.J. L262, 16.10.96, p8 and as amended by Directive 2004/50/EC of the European Parliament and the Council of 29th April 2004 (O.J. No. L164, 30.04.2004, p114).
(c) O.J. No. L191, 18.7.2008, p1, as amended by Commission Directive 2009/131/EC (O.J. No. L273, 17.10.2009, p12).
(d) S.I. 2011/3066~~2006/397~~ Inserted by S.I. 2011/3066. Date in force: 16 January 2012.

(b) a safety authorisation or an amended safety authorisation, made in relation to an operation on the mainline railway;

~~“mainline railway” means any railway except for any railway or part of a railway—~~

~~(a) the infrastructure and rolling stock of which are reserved strictly for—~~

~~(i) a local use; or~~

~~(ii) the operating of a heritage railway; or~~

~~(iii) the purposes of tourism; or~~

~~(b) the infrastructure of which is functionally separate from any other railway which does not fall within sub-paragraph (a);~~

“mainline railway” means any railway except for any railway or part of a railway—

(a) that the Office of Rail Regulation determines in accordance with regulation 2A (determination of mainline railway) falls within one of the categories listed in paragraph (1) of that regulation; or

(b) which is privately owned infrastructure that exists solely for use by the infrastructure owner for its own freight operations;

“mainline railway system” means the mainline railway and the management and operation of the mainline railway as a whole;

“maintenance file” means the written file that contains all the technical and management information that is necessary to carry out the maintenance of a vehicle;

“maintenance rules” means any rules, applicable to the whole of Great Britain, which set out requirements relating to the maintenance of vehicles;

“material” includes plant;

“military establishment” means an establishment intended for use for naval, military or air force purposes or for the purposes of the Department of the Secretary of State responsible for defence;

“mine” has the meaning assigned to it by section 180 of the Mines and Quarries Act 1954(a);

“national safety rules” means any legislation and other requirements—

(a) applicable to the whole of Great Britain; and

(b) which contains requirements (including common operating rules) relating to railway safety which are imposed on more than one transport undertaking operating on the mainline railway;

~~(b) which contain requirements (including common operating rules) relating to railway safety which are imposed on more than one railway undertaking, except that where the requirements in sub-paragraph (b) consist of common operating rules of the mainline railway it shall not include such rules which regulate matters which are covered by a TSI;~~

“National Vehicle Register” means the register of vehicles authorised in Great Britain, required by regulation 36~~33~~ of the Interoperability Regulations(a);

(a) 1954 c.70; section 180(1) was substituted by S.I. 1993/1897, regulation 41(2) and Schedule 3, Part II; section 180(2) was repealed by S.I. 1999/2024, regulation 47(1) and Schedule 2, Part I; section 180(3)(b) was repealed by S.I. 1999/2024 regulation 47(1) and Schedule 2, Part 1 and amended by S.I. 1999/2024, regulation 47(2) and Schedule 2, Part II; section 180(4) was amended by S.I. 1999/2024, regulation 47(2) and Schedule 2, Part II and S.I. 1974/2013, regulation 2(1)(b) and Schedule 2, paragraph 3; section 180(5) was amended by S.I. 1999/2024, regulation 47(2) and Schedule 2, Part II and by S.I. 1974/2013, regulation 2(1)(b) and Schedule 2, paragraph 3.

“new” in relation to regulations 5 and 6 means new to the transport system in question;

“non-mainline application” means an application for—

- (a) a safety certificate or an amended safety certificate; or
- (b) a safety authorisation or an amended safety authorisation,

made in relation to an operation on a transport system other than the mainline railway;

“operator of last resort” means a transport operator appointed by the Secretary of State to provide transport services in accordance with section 30 of the Railways Act 1993;

“owner”, in relation to a vehicle, means any person who has an estate or interest in, or a right over, that vehicle, and whose permission is needed before another may use it;

“Part A of a safety certificate” means that part of a safety certificate certifying the matters set out in regulation 7(4)(b)(i) and related expressions shall be construed accordingly;

“Part B of a safety certificate” means that part of a safety certificate certifying the matters set out in regulation 7(4)(b)(ii) and related expressions shall be construed accordingly;

~~“placed in service” means when a vehicle or infrastructure, having been constructed, upgraded or renewed, is first operated in the transportation of passengers or freight, and in ascertaining when this takes place no regard shall be had to any trials or testing that takes place to the relevant vehicle or infrastructure, and cognate expressions shall be construed accordingly;~~

“placed in service” means when a vehicle or infrastructure, having been constructed, upgraded or renewed, is first operated in the provision of a transport service, and in ascertaining when this takes place no regard shall be had to any trials or testing that take place to the vehicle or infrastructure, and cognate expressions shall be construed accordingly;

“quarry” has the meaning assigned to it by regulation 3 of the Quarries Regulations 1999**(b)**;

“railway” means a system of transport employing parallel rails which—

- (a) provide support and guidance for vehicles carried on flanged wheels; and
- (b) form a track which either is of a gauge of at least 350 millimetres or crosses a carriageway (whether or not on the same level),

but does not include a tramway;

“relevant infrastructure manager” means the infrastructure manager for any infrastructure used in relation to the operation in question;

“relevant infrastructure or vehicle” means any new or altered—

- (a) infrastructure; or
- (b) vehicle, falling within regulation 5(4) or 6(4) and related expressions shall be construed accordingly;

“responsible person” means in relation to any relevant infrastructure or vehicle, any person who—

(a) S.I. 2011/3066~~2006/397, to which there are amendments not relevant to these Regulations.~~ Inserted by S.I. 2011/3066. Date in force: 16 January 2012.

(b) S.I. 1999/2024, to which there are amendments not relevant to these Regulations.

- (a) has contracted with another person for the manufacture or construction by that other person of that infrastructure or vehicle; or
- (b) manufactures or constructs that infrastructure or vehicle for his own use, or for sale to, or use by, another person but not where he is contracted to do so by a person falling under sub-paragraph (a),

and includes an authorised representative established in Great Britain of such a person.

“risk” means in Parts 1 and 2 a risk to the safety of a person;

“road” means in the definition of “guided bus system” and “tramway” –

- (a) in England and Wales, any length of highway or of any other road to which the public has access, and includes bridges over which a road passes; and
- (b) in Scotland, has the same meaning as in the Roads (Scotland) Act 1984;

“rolling stock” has the meaning in section 83(1) of the Railways Act 1993(a);

“ROTS” means the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994(b);

“safety authorisation” means a safety authorisation issued by the Office of Rail Regulation in accordance with regulation 10 or 12;

“safety authority” means—

- (a) as regards a member State other than the United Kingdom, the authority established in that State in accordance with article 16.1 of the Directive;
- (b) as regards Great Britain, the Office of Rail Regulation; or
- (c) as regards Northern Ireland, the Department for Regional Development established by article 3(1) of the Departments (Northern Ireland) Order 1999(c);

“safety certificate” means a safety certificate issued by the Office of Rail Regulation in accordance with regulation 7 or 9;

“safety management system” means the organisation and arrangements established by a transport operator to ensure the safe management of its operation;

“significant safety risk” means, in relation to new or altered infrastructure or a new or altered vehicle the design or construction of which incorporates significant changes compared to any infrastructure or vehicle already in use on the transport system, the capability of significantly increasing an existing safety risk or creating a significant safety risk to—

- (a) passengers on the transport system in question; or
- (b) members of the public on roads and any other location where the transport system in question operates and to which the public have access (including a place to which the public has access only on making a payment), except a location which is a crossing subject to an Order made under section 1 of the Level Crossings Act 1983(d);

(a) 1993, c.43, to which there are amendments not relevant to these Regulations.

(b) S.I. 1994/157 as amended by SIs 1997/553, 2002/1166 and S.I. 2004/129.

(c) S.I. 1999/283 (N.I. 1) as amended by the Industrial Development (Northern Ireland) Act 2002, c. 1 (N.I.), section 5(4) and Schedule 4.

(d) 1983 c.16; sections 1(1A), (4A), (10A) and (10B) were inserted, section 1(3) was repealed and sections 1(6) and (6A) were substituted for section 1(6) as originally enacted by S.I. 1997/487, regulations 3(6), 4(2) to (4) and (7) and section 1(7) and (9) were substituted by S.I. 1997/487, regulation 4(5) and (6), section 1(11) was amended by the Local Government (Wales) Act 1994 (c. 19), sections 22(1), 66(8) and Schedule 7, paragraph 31 and Schedule 18, the Local Government Act 1985 (c.51), section 102 and Schedule 17, the Local Government etc.

“station” means a passenger stop, station or terminal on a transport system but does not include any permanent way or other means of guiding or supporting vehicles or plant used for signalling or exclusively for supplying electricity for operational purposes to a transport system;

“subsystem” has the same meaning as in the Interoperability Directive;

“technical specifications for interoperability” (“TSIs”) means technical specifications for interoperability which are published in the Official Journal of the European Communities pursuant to—

- (a) Article 6.1 of the high-speed Directive; ~~or~~
- (b) Article 6.1 of the conventional Directive; ~~or~~
- (c) Article 6.1 of the Interoperability Directive,

and in force;

“train” includes any rolling stock;

“tramway” means a system of transport used wholly or mainly for the carriage of passengers—

- (a) which employs parallel rails which—
 - (i) provide support and guidance for vehicles carried on flanged wheels;
 - (ii) are laid wholly or partly along a road or in any other place to which the public has access (including a place to which the public has access only on making a payment); and
- (b) on any part of which the permitted maximum speed is such as to enable the driver to stop a vehicle in the distance he can see to be clear ahead;

“transport operator” means any transport undertaking or infrastructure manager;

“transport system” means a railway, a tramway, or any other system using guided transport where that other system is used wholly or mainly for the carriage of passengers but a transport system does not include—

- (a) a guided bus system;
- (b) a trolley vehicle system;
- (c) any part of a transport system—
 - (i) within a harbour or harbour area or which is part of a factory, mine or quarry;
 - (ii) used solely for the purpose of carrying out a building operation or work of engineering construction;
 - (iii) within a maintenance or goods depot;
 - (iv) within a siding except where Part 4 applies; or
 - (v) which is within a military establishment;
- (d) any fairground equipment;
- (e) any cableway installation; or
- (f) any transport system where the track forms a gauge of less than 350mm except where such a track crosses a carriageway (whether or not on the same level),

(Scotland) Act 1994 (c. 39), section 180(1), Schedule 13, paragraph 131, the Transport and Works Act 1992, section 51 (c.42), S.I. 1997/487, regulation 4(8), and the Road Traffic Regulation Act 1984 (c. 27), section 146 and Schedule 13

except where the transport system in question forms part of the mainline railway;
“transport undertaking” means any person who operates a vehicle in relation to any infrastructure but shall not include a person who operates a vehicle solely within an engineering possession;

“trolley vehicle system” means a system of transport by vehicles constructed or adapted for use on roads without rails under electric power transmitted to them by overhead wires (whether or not there is in addition a source of power on board the vehicles);

~~“vehicle” includes a mobile traction unit;~~

“vehicle”—

- (a) includes a mobile traction unit; and
- (b) in respect of the mainline railway, means a vehicle that runs on its own wheels on railway lines of a gauge of at least 350 millimetres, with or without traction, and is composed of one or more structural and functional subsystems or parts of such subsystems;

“work of engineering construction” means the—

- (a) construction of any line or siding otherwise than on an existing transport system; and
- (b) construction, structural alteration, repair (including repointing and repainting) or demolition of any tunnel, bridge or viaduct except where carried on upon a transport system; and

“writing” apart from its usual meaning includes any text transmitted using electronic communications that is received, or accessible by the person to whom it is sent, in legible form.

(2) Any reference in these Regulations to a person who operates a train or a vehicle is a reference to the person operating the train or vehicle for the time being in the course of a business or other undertaking carried on by him, whether for profit or not, but it does not include a self-employed person by reason only that he drives or otherwise controls the movement of a train or vehicle.

(3) Parts 2 and 3 of these Regulations shall not apply to or in relation to the operation of a train or the management or use of infrastructure in the tunnel system within the meaning of section 1(7) of the Channel Tunnel Act 1987(a).

Determination of mainline railway

2A.—(1) A railway or part of a railway is not mainline railway if the Office of Rail Regulation determines that it falls within one or more of these categories—

- (a) metros and other light rail systems;**
- (b) networks that are functionally separate from the rest of the mainline railway system and intended only for the operation of local, urban or suburban passenger services, as well as transport undertakings operating solely on these networks;**
- (c) heritage, museum or tourist railways that operate on their own networks.**

(a) 1987 c.53, to which there are amendments not relevant to these Regulations.

(2) The Office of Rail Regulation may determine that a heritage vehicle which operates on the mainline railway and complies with national safety rules is deemed not to operate on mainline railway for the purposes of these Regulations.

(3) A person may make an application to the Office of Rail Regulation for a determination under paragraph (1) or (2) and the Office of Rail Regulation must consider any such application.

(4) The Office of Rail Regulation must maintain and publish a list of—

(a) railways or parts of railways that are not mainline railway; and

(b) vehicles which operate on both mainline railway and heritage railway and are deemed not to operate on mainline railway,

by virtue of determinations made under paragraph (1) or (2).

PART 2

SAFETY MANAGEMENT, CERTIFICATION AND AUTHORISATION

Use of infrastructure on the mainline railway

3.—(1) After 30th September 2006 no person shall operate a train in relation to any infrastructure on the mainline railway unless—

- (a) he has established and is maintaining a safety management system which meets the requirements set out in regulation ~~5(1) to (3)~~^{5(1) to (4)}; and
- (b) he holds a current safety certificate in relation to the operation in question,

except to the extent that he is doing so within an engineering possession.

(2) After 30th September 2006 no person who is responsible for developing and maintaining infrastructure other than a station or who is responsible for managing and operating a station on the mainline railway shall manage and use it, or permit it to be used, for the operation of trains unless—

- (a) he has established and is maintaining a safety management system which meets the requirements referred to in regulation ~~5(4)(5)(7)~~;
- (b) he holds a current safety authorisation in relation to the infrastructure in question; and
- (c) where he is using it or permitting such use, the person who is to use the infrastructure has complied with paragraph (1)(b).

Use of infrastructure on other transport systems

4.—(1) After 30th September 2006 no person shall operate a vehicle in relation to any infrastructure on a transport system other than the mainline railway unless—

- (a) he has established and is maintaining a safety management system which meets the requirements set out in regulation 6; and
- (b) subject to paragraph (3), he holds a current safety certificate in relation to the operation in question,

except to the extent that he is doing so within an engineering possession.

(2) After 30th September 2006 no person who is responsible for developing and maintaining infrastructure, other than a station, or who is responsible for managing and operating a station on a transport system other than the mainline railway shall manage and use it, or permit it to be used, for the operation of a vehicle unless—

- (a) he has established and is maintaining a safety management system which meets the requirements set out in regulation 6; and
- (b) subject to paragraph (3)—
 - (i) he holds a current safety authorisation in relation to the infrastructure in question; and
 - (ii) where he is using it or permitting such use, the person who is to use the infrastructure has complied with paragraph (1)(b).

(3) Paragraphs (1)(b) and (2)(b) shall not apply to the extent that the operation in question is only carried out—

- (a) on a tramway; or
- (b) on a transport system on no part of which there is a permitted maximum speed exceeding 40 kilometres per hour.

(4) Where the operation in question falls within paragraph (3)(a) or (b), the requirement in paragraphs (1)(a) and (2)(a) shall be read as if the date was, in each case, after 31st March 2007.

Safety management system for the mainline railway

5.—(1) The requirements for a safety management system referred to in regulation 3(1)(a) are that—

- (a) subject to paragraph (2), it is established to ensure that the mainline railway system—
 - (i) can achieve the CSTs; and
 - (ii) is in conformity with relevant national safety rules and relevant safety requirements laid down in TSIs;
- (b) it applies the relevant parts of CSMs;
- (c) it meets the requirements and contains the elements set out in Schedule 1, adapted to the character, extent and other characteristics of the operation in question;
- (d) subject to paragraph (2), it ensures the control of all categories of risk including new or existing risks associated with the operation in question which, without prejudice to the generality of the foregoing, shall include such risks relating to the—
 - (i) supply of maintenance and material; **and**
 - (ii) Use of contractors; **and**
 - ~~(iii) placing in service of new or altered vehicles the design or construction of which incorporates significant changes compared to any vehicle already in use on the transport system and which changes would be capable of significantly increasing an existing risk or creating a significant safety risk;~~
- (e) it takes into account, where appropriate and reasonable, the risks arising as a result of activities carried on by other persons; and
- (f) all parts of it are documented.

(2) The requirements in paragraphs (1)(a) and (d) shall be met where the safety management system of a transport operator or of an applicant for a safety certificate or

a safety authorisation (“the first operator”) taken with that of any relevant transport operator is capable of meeting the requirements of the paragraph in question.

(3) In paragraph (2), “relevant transport operator” means another transport operator whose operation is capable of materially affecting the safety of the operation carried on by the first operator.

~~(4) In paragraph (1)(d)(iii) where such new or altered vehicles are intended to be placed in service, then before that placing in service the transport operator shall ensure that he has—~~

- ~~(a) an established written safety verification scheme which meets the requirements and contains the elements set out in Schedule 4; and~~
- ~~(b) appointed a competent person to undertake that safety verification, and the competent person has undertaken that safety verification in relation to the new or altered vehicles.~~

~~(5) Where a new or altered vehicle has been authorised under regulation 4(1)(a) of the Interoperability Regulations for the placing in service on the mainline railway, that authorisation shall be treated as satisfying the requirements of paragraph (4).~~

~~(6) Paragraph (5) does not apply in respect of an authorisation deemed to be given under the Interoperability Regulations by operation of regulation 44 of those Regulations.~~~~(a)~~

~~(6) In this regulation placing in service shall mean first placed in service for the provision of a transport service, and in ascertaining when this takes place no regard shall be had to any trials or testing that takes place to the relevant vehicle.~~

(7) The requirements for a safety management system referred to in regulation 3(2)(a) are the requirements in paragraphs ~~(1) to (3)~~(1) to (6) ~~save that any reference to new or altered vehicles in those paragraphs shall be replaced with a reference to new or altered infrastructure~~ and that—

- ~~(a) it ensures the control of all categories of risk associated with the placing in service of new or altered infrastructure the design or construction of which incorporates significant changes compared to any infrastructure already in use on the transport system and which changes would be capable of significantly increasing an existing risk or creating a significant safety risk;~~
- (b) it takes into account the effects of operations of transport undertakings; and
- (c) it contains provisions to ensure that the way in which the infrastructure manager carries out his operation makes it possible for any transport undertaking to operate in accordance with—
 - (i) relevant TSIs and national safety rules; and
 - (ii) the means adopted by the transport undertaking to meet the requirements referred to in regulation 7(4), of which the Office of Rail Regulation accepted that there was sufficient evidence upon issue or amendment of its safety certificate pursuant to these Regulations; and
- (d) it aims to co-ordinate the emergency procedures of the infrastructure manager or of the applicant for a safety authorisation with those of transport undertakings,

and in each case the requirements in sub-paragraphs ~~(b) to (d)~~~~(a) to (d)~~ shall only apply in relation to transport undertakings that operate or will operate a train in relation to the infrastructure of the infrastructure manager or of the applicant for a safety authorisation in question.

(a) Inserted by S.I. 2011/3066. Date in force: 16 January 2012

Safety management system for other transport systems

6.—(1) The requirements for a safety management system referred to in regulation 4(1)(a) and 4(2)(a) are that—

- (a) it is adequate to ensure that the relevant statutory provisions which make provision in relation to safety will be complied with in relation to the operation in question;
- (b) subject to paragraph (7), it meets the requirements and contains the elements set out in Schedule 1, adapted to the character, extent and other characteristics of the operation in question;
- (c) subject to paragraph (2), it ensures the control of all categories of risk associated with the operation in question which, without prejudice to the generality of the foregoing, shall include such risks relating to the—
 - (i) supply of maintenance and material;
 - (ii) use of contractors; and
 - (iii) placing in service of new or altered vehicles or infrastructure the design or construction of which incorporates significant changes compared to any vehicles or infrastructure already in use on the transport system and which changes would be capable of significantly increasing an existing risk or creating a significant safety risk;
- (d) it takes into account, where appropriate and reasonable, the risks arising as a result of activities carried on by other persons; and
- (e) all parts of it are documented.

(2) The requirement in paragraph (1)(c) shall be met where the safety management system of a transport operator or an applicant for a safety certificate or a safety authorisation (“the first operator”) taken with that of any relevant transport operator is capable of meeting the requirements of the paragraph in question.

(3) In paragraph (2), “relevant transport operator” means another transport operator whose operation is capable of materially affecting the safety of the operation carried on by the first operator.

(4) In paragraph (1)(c)(iii) where such new or altered vehicles or infrastructure are intended to be placed in service, then before that placing in service the transport operator shall ensure that he—

- (a) has an established written safety verification scheme which meets the requirements and contains the elements set out in Schedule 4; and
- (b) has appointed a competent person to undertake that safety verification and the competent person has undertaken that safety verification in relation to the new or altered vehicle or infrastructure.

~~(5) In this regulation placed in service shall mean first placed in service for the provision of a transport service, and in ascertaining when this takes place no regard shall be had to any trials or testing that takes place to the relevant vehicle or infrastructure.~~

(6) In this regulation the requirements of paragraph (4) shall apply in the absence of a transport operator to a responsible person as they would apply to a transport operator.

(7) Paragraph 2(c) of Schedule 1 shall apply in relation to transport systems other than the mainline railway as if it read as follows—

“(c) procedures—

- (i) to meet relevant technical specifications; and

(ii) relating to operations or maintenance,
insofar as they relate to the safety of persons, and procedures for ensuring that the procedures in sub-paragraphs (i) and (ii) are followed throughout the life-cycle of any relevant equipment or operation;”.

Safety certificate

7.—(1) An application for a first safety certificate in respect of an operation shall—

- (a) be made to the Office of Rail Regulation;
- (b) subject to regulation 17(1) and (2), include the information set out in—
 - (i) Part 1 of Schedule 2 in respect of a mainline application; and
 - (ii) Part 2 of Schedule 2 in respect of a non-mainline application; and
- (c) if it is a mainline application, clearly indicate in respect of which part of the safety certificate any information is provided.

(2) Where—

- (a) an applicant sends to the Office of Rail Regulation in relation to a mainline application the matters specified in paragraphs 1(a) and 1(b)(i) of Schedule 2; and
- (b) the Office of Rail Regulation is satisfied that the certificate in question is for an equivalent operation to that in respect of which the application is made,

then that certificate shall be deemed to be Part A of the safety certificate for the operation in respect of which the application is made.

(3) Subject to regulation 17(7), within four months of the date of receipt of the application, the Office of Rail Regulation shall—

- (a) issue a safety certificate for the operation in question; or
- (b) notify the applicant that it has refused the application,

and in either case shall give reasons for its decision.

(4) A safety certificate shall—

- (a) specify the type and extent of the operation in respect of which it is issued; and
- (b) certify acceptance by the Office of Rail Regulation that the applicant has provided sufficient evidence—
 - (i) subject to paragraph (2), to demonstrate that the safety management system of the applicant meets the requirements set out in regulations 5(1) to (4) in respect of a mainline application or regulation 6 in respect of a non-mainline application; and
 - (ii) of the provisions adopted by the applicant to meet the requirements that are necessary to ensure safe operation on the transport system in question, and reference the information on which such acceptance is based; and
- (c) be valid for no longer than five years from the date of issue and the period of validity shall be indicated in the safety certificate and where Part A of the certificate is deemed to be such a Part A in accordance with regulation 7(2) that period shall expire on or before the date of expiry of the certificate which is deemed to be the Part A.

(5) In paragraph (4)(b)(ii) “requirements” means in relation to—

- (a) a mainline application, the TSIs, national safety rules and other safety requirements referred to in paragraph 2(a) of Schedule 2; and
- (b) a non-mainline application, the relevant statutory provisions, technical specifications and procedures referred to in paragraph 5 of Schedule 2.

Amended safety certificate

8.—(1) Where it is proposed that the type or extent of an operation in respect of which a safety certificate has been issued is to be substantially changed then the holder of the safety certificate shall apply to the Office of Rail Regulation for the safety certificate to be amended accordingly and the substantial change shall not be made until the safety certificate is so amended.

(2) An application for an amended safety certificate under this regulation shall—

- (a) provide details of the change proposed;
- (b) provide details of any consequential changes to any information sent to the Office of Rail Regulation in respect of the operation in question which remains relevant to that operation; and
- (c) if it is a mainline application, clearly indicate in respect of which part of the safety certificate any information is provided.

(3) Where Part A of a safety certificate in respect of which an application is made is deemed to be such a Part A in accordance with regulation 7(2) then the Office of Rail Regulation shall—

- (a) consider whether the Part A in question would still be for an equivalent operation if the change were made; and
- (b) if it considers that it would not be equivalent, notify the applicant in accordance with paragraph (4) that it has refused the application and that he should apply for a new safety certificate under regulation 7 if he wants to make the proposed change, except that, in relation to Part B of the safety certificate, he only need provide the details set out in paragraph (2) above.

(4) Subject to regulation 17(7), within four months of the date of receipt of the application the Office of Rail Regulation shall—

- (a) issue a notice making any necessary amendments to the matters set out in the safety certificate; or
- (b) notify the applicant that it has refused the application,

and in either case shall give reasons for its decision.

Further safety certificate

9.—(1) Before the expiry of a safety certificate the holder of that safety certificate may apply to the Office of Rail Regulation for a further safety certificate to be issued for the operation in question.

(2) An application for a further safety certificate shall set out particulars of any changes to any information sent to the Office of Rail Regulation in respect of the operation in question which remains relevant to that operation.

(3) Regulations 7(1)(c) and 7(2) to (4) shall apply to an application for and the issuing of a further safety certificate as they apply to an application for and the issuing of a first safety certificate under regulation 7.

Safety authorisation

10.—(1) An application for a first safety authorisation in respect of infrastructure shall—

- (a) be made to the Office of Rail Regulation;
- (b) subject to regulation 17(1) and (2), set out particulars of—
 - (i) the infrastructure in question;
 - (ii) how the safety management system of the applicant meets the requirements in regulation 5(7) in relation to a mainline application or in regulation 6 in relation to a non-mainline application; and
 - (iii) how the provisions adopted by the applicant meet any requirements which are necessary for the safe design, maintenance and operation of the infrastructure in question.

(2) Subject to regulation 17(7), within four months of the date of receipt of the application the Office of Rail Regulation shall—

- (a) issue a safety authorisation in relation to the infrastructure in question; or
- (b) notify the applicant that it has refused the application; and
- (c) in either case shall give reasons for its decision.

(3) A safety authorisation shall—

- (a) specify the infrastructure in respect of which the authorisation is issued;
- (b) accept that the applicant has provided sufficient evidence to demonstrate that the safety management system of the applicant meets the requirements—
 - (i) referred to in regulation 5(7) in relation to a mainline application; or
 - (ii) in regulation 6 in relation to a non-mainline application;
- (c) accept that the applicant has provided sufficient evidence of the provisions adopted by the applicant to meet any requirements that are necessary for the safe design, maintenance and operation of the infrastructure in question;
- (d) reference the information on which the acceptance referred to in sub-paragraphs (b) and (c) is based; and
- (e) be valid for no longer than five years from the date of issue and the period of validity shall be indicated in the safety authorisation.

Amended safety authorisation

11.—(1) Where it is proposed that a substantial change is to be made to—

- (a) the infrastructure in respect of which a safety authorisation has been issued;
- (b) any energy supply, not falling within sub-paragraph (a), which is used in connection with the infrastructure in question; or
- (c) the principles of operation and maintenance of such infrastructure or energy supply,

then the holder of the safety authorisation shall apply to the Office of Rail Regulation for the safety authorisation to be amended accordingly and the substantial change shall not be made until the safety authorisation is so amended.

(2) An application for an amended safety authorisation under this regulation shall provide details of—

- (a) the substantial changes proposed; and

- (b) any consequential changes to any information sent to the Office of Rail Regulation in respect of the operation in question which remains relevant to that operation.

(3) Subject to regulation 17(7), within four months of the date of receipt of the application the Office of Rail Regulation shall—

- (a) issue a notice making any necessary amendments to the matters set out in the safety authorisation; or
- (b) notify the applicant that it has refused the application,

and in either case shall give reasons for its decision.

Further safety authorisation

12.—(1) Before the expiry of a safety authorisation the holder of that safety authorisation may apply to the Office of Rail Regulation for a further safety authorisation to be issued for the infrastructure in question.

(2) An application for a further safety authorisation shall set out particulars of any changes to any information sent to the Office of Rail Regulation in respect of the operation in question which remains relevant to that operation.

(3) Regulations 10(2) and 10(3) shall apply to an application for and the issuing of a further safety authorisation as they apply to an application for and the issuing of a first safety authorisation under regulation 10.

Notice of changes by holder of a safety certificate or a safety authorisation

13. The holder of a safety certificate or a safety authorisation shall, without delay, notify the Office of Rail Regulation—

- (a) of any major changes—
 - (i) to the means by which he meets the requirements relating to the safety management system as set out in—
 - (aa) regulation 5(1) to (4) in relation to an operation of a transport undertaking on the mainline railway;
 - (bb) regulation 5(7) in relation to an operation of an infrastructure manager on the mainline railway; or
 - (cc) regulation 6 in relation to an operation which is not carried out on the mainline railway;
 - (ii) in the case of a transport undertaking, to the provisions adopted by him to meet any requirements necessary to ensure safe operation on the transport system in relation to the operation in question; or
 - (iii) in the case of an infrastructure manager, to the provisions adopted by him to meet any requirements that are necessary for the safe design, maintenance and operation of the infrastructure in question;
- (b) when persons first commence work directly relating to the operation which is of a type which has not previously been carried out in relation to that operation; or
- (c) when types of vehicle which are new to the operation in question are first introduced.

Direction to apply for an amended safety certificate or safety authorisation

14.—(1) Where there is a substantial change to any of the relevant statutory provisions which make provision in relation to the safety of the transport system in question, then the Office of Rail Regulation may direct the holder of a safety certificate or a safety

authorisation to apply to the Office of Rail Regulation for an amendment to its safety certificate or safety authorisation.

(2) A direction issued under paragraph (1) shall—

(a) state the reasons why the Office of Rail Regulation considers that it is necessary for the transport operator to apply for an amended safety certificate or safety authorisation;

(b) identify the information—

(i) on the basis of which the Office of Rail Regulation's acceptance referred to in regulation 7(4) or 10(3) was made upon issue or amendment of the safety certificate or safety authorisation; or

(ii) notified to the Office of Rail Regulation under regulation 13, which it considers will have to be changed; and

(c) specify the period, being not less than 28 days from the date of issue of the direction, within which the application shall be sent to the Office of Rail Regulation.

(3) An application for an amended safety certificate or safety authorisation pursuant to this regulation shall provide details of any changes to any information—

(a) sent to the Office of Rail Regulation in respect of the operation in question which remains relevant to that operation; and

(b) which is consequential upon the relevant change to the relevant statutory provisions.

(4) Regulations 8(2)(c) and 8(4) shall apply to an application for and the issuing of a notice of amendment to a safety certificate under this regulation as they apply to an application for and issuing of an amendment to a safety certificate under regulation 8.

(5) Regulation 11(3) shall apply to an application for and the issuing of a notice of amendment to a safety authorisation under this regulation as it applies to an application for and issuing of an amendment to a safety authorisation under regulation 11.

Revocation of safety certificate

15.—(1) The Office of Rail Regulation shall revoke—

(a) either Part A or Part B of a safety certificate if it is satisfied that the holder is no longer satisfying the conditions of that part of the safety certificate and that there is a significant risk arising as a result;

(b) a safety certificate if it is satisfied that the holder—

(i) is no longer satisfying the conditions of that safety certificate and that there is a significant risk arising as a result; or

(ii) is not operating a vehicle in relation to any infrastructure on a transport system as intended pursuant to that safety certificate and has not done so throughout the period of one year commencing with the date of issue of the safety certificate by the Office of Rail Regulation,

except that this paragraph shall not apply in relation to Part A of a safety certificate where it is deemed to be such a Part A in accordance with regulation 7(2).

(2) In this regulation, "conditions" means in relation to—

(a) Part A of a safety certificate, any part of the requirements relating to the safety management system set out in—

(i) regulation 5(1) to (4) in relation to an operation carried out on the mainline railway; or

- (ii) regulation 6 in relation to an operation carried out on a transport system other than the mainline railway;
 - (b) Part B of a safety certificate, that the provisions adopted by the applicant are sufficient to meet any requirements that are necessary to ensure safe operation on the transport system in question in relation to the operation in question; or
 - (c) a safety certificate, the matters referred to in sub-paragraphs (a) and (b).
- (3) Before revoking any safety certificate or Part A or B of it, the Office of Rail Regulation shall—
- (a) notify the holder that—
 - (i) it is considering revoking that safety certificate or Part A or B of it and the reasons why;
 - (ii) within a period specified in the notice, which shall be not less than 28 days, the holder may make representations in writing to the Office of Rail Regulation or, if the holder so requests, may make oral representations to the Office of Rail Regulation; and
 - (b) consider any representations which are duly made and not withdrawn.
- (4) Where the Office of Rail Regulation revokes a safety certificate or Part A or B of it, it shall send to the holder with the notice of revocation a statement of the reasons why.
- (5) Where—
- (a) the Office of Rail Regulation revokes Part B of a safety certificate; and
 - (b) Part A of that safety certificate is deemed to be Part A of a safety certificate pursuant to regulation 7(2) and was issued by the safety authority in another member State or in Northern Ireland,

then the Office of Rail Regulation shall notify that safety authority as soon as reasonably possible of that revocation.

Revocation of safety authorisation

16.—(1) The Office of Rail Regulation shall revoke a safety authorisation if it is satisfied that the holder is no longer satisfying the conditions of that safety authorisation and there is a significant risk arising as a result.

- (2) In this regulation, “conditions” means—
- (a) any part of the requirements relating to the safety management system—
 - (i) referred to in regulation 5(7) in relation to an operation carried out on the mainline railway; or
 - (ii) in regulation 6 in relation to an operation carried out on a transport system other than the mainline railway; or
 - (b) that the provisions adopted by the applicant are sufficient to meet any requirements that are necessary for the safe design, maintenance and operation of the infrastructure in question.
- (3) Before revoking any safety authorisation, the Office of Rail Regulation shall—
- (a) notify the holder that—
 - (i) it is considering revoking that safety authorisation and the reasons why;
 - (ii) within a period specified in the notice, which shall be not less than 28 days, the holder may make representations in writing to the Office of Rail Regulation or, if the holder so requests, may make oral representations to the Office of Rail Regulation; and

(b) consider any representations which are duly made and not withdrawn.

(4) Where the Office of Rail Regulation revokes a safety authorisation, it shall send to the holder with the notice of revocation a statement of the reasons why.

General provisions relating to safety certificates and safety authorisations

17.—(1) Where an application is made under these Regulations for a safety certificate or safety authorisation or for an amended safety certificate or safety authorisation which relates to an operation on the mainline railway and on a transport system other than the mainline railway then—

- (a) one application may be made for that operation but it shall be split into separate parts for the mainline railway and the other transport system; and
- (b) these Regulations shall apply to those parts as if they were a mainline application and a non-mainline application,

except that where the same information is required it need not be stated twice.

(2) A transport operator may make one application for an operation in relation to which he requires both a safety certificate and a safety authorisation or an amended safety certificate and an amended safety authorisation but—

- (a) such application shall be split into separate parts relating to the safety authorisation and the safety certificate; and
- (b) these Regulations shall apply to those parts as if they were an application for a safety authorisation and a safety certificate or an amended safety authorisation and an amended safety certificate,

except that where the same information is required it need not be stated twice.

(3) Where—

- (a) an applicant sends—
 - (i) an application for a safety certificate or safety authorisation, an amended safety certificate or safety authorisation; or
 - (ii) further information to the Office of Rail Regulation pursuant to paragraph (5); or
- (b) the holder of a safety certificate or a safety authorisation sends a notice pursuant to regulation 13 ~~or paragraph 9 of Schedule 5,~~

then he shall at the same time either copy it to any affected party or notify any affected party without delay that the application or further information has been sent and of the address of the website where those documents may be accessed and how they may be accessed and, in either case, shall notify such a party, where the document in question is an application, of the time for making representations to the Office of Rail Regulation pursuant to paragraph (6).

(4) Where the Office of Rail Regulation issues a—

- (a) safety certificate or safety authorisation, other than to an operator of last resort;
- (b) notice amending a safety certificate or safety authorisation;
- (c) notice refusing an application for a safety certificate or a safety authorisation or an amended safety certificate or safety authorisation;
- (d) direction to apply for an amended safety certificate or safety authorisation;
- (e) notice that it is considering revoking a safety certificate or a safety authorisation;
or
- (f) notice revoking a safety certificate or a safety authorisation,

then the Office of Rail Regulation shall at the same time either copy it and the reasons given for the Office of Rail Regulation's decision to any affected party or notify any affected party that the relevant document has been issued and of the address of the website where those documents and the reasons given for the decision may be accessed and how they may be accessed and, in either case, shall notify such a party, where the document in question is a notice that it is considering revocation as mentioned in subparagraph (e), of the time for making representations to the Office of Rail Regulation pursuant to paragraph (6).

(5) The Office of Rail Regulation may upon receipt of—

- (a) an application for a safety certificate or safety authorisation;
- (b) an application for an amended safety certificate or safety authorisation;
- (c) any further information requested under this paragraph,

request as soon as reasonably possible such further information as it may reasonably require and the applicant shall provide such information as soon as reasonably possible ~~except that in a case falling within paragraph (7)(c) the Office of Rail Regulation may request such information as soon as reasonably possible after the date at which the 4 month period starts to run as specified in that paragraph.~~

(6) Where an affected party receives a copy of an application or a notice relating to revocation pursuant to paragraph (3)(a) or (4)(e) then—

- (a) he may make any representations in writing to the Office of Rail Regulation, which are relevant to the application or notice, within 28 days of the date of issue of the application or notice in question; and
- (b) the Office of Rail Regulation shall consider any such representations in making its decision.

~~(7) If a request for information is made under paragraph (5), the period of 4 months for the Office of Rail Regulation to make a decision referred to in regulations 7(3), 8(4), 10(2) and 11(3) shall not start to run until the date of receipt of the last information requested.~~

~~(7) The period of 4 months for the Office of Rail Regulation to make a decision referred to in regulations 7(3), 8(4), 10(2) and 11(3) shall not start to run—~~

- ~~(a) until the expiry of the 28 day period referred to in paragraph (6);~~
- ~~(b) until the date of receipt of the last information requested pursuant to paragraph (5); or~~
- ~~(c) where the application is made in respect of an operation for which the applicant holds a deemed safety certificate or deemed safety authorisation, until the date which falls 9 months before the date of expiry of that certificate or authorisation in accordance with paragraph 5 of Schedule 5 which shall apply as if paragraph 5(a) of that Schedule were omitted,~~

~~whichever is the later and in any event shall not start to run until 30th June 2006.~~

~~(8) Paragraph (7)(c) shall apply to an application in relation to a safety certificate or a safety authorisation made before 1st October 2006 in respect of which the applicant has an accepted safety case pursuant to the Railways (Safety Case) Regulations 2000(a) as if Schedule 5 were already in force.~~

(9) An employer who makes an application for a safety certificate or safety authorisation, an amended safety certificate or safety authorisation or sends a notice to the Office of

(a) S.I. 2000/2688, as amended by S.I. 2000/2482, 2001/2626, 2001/3291, 2002/2099 and 2003/579.

Rail Regulation under regulation 13 ~~or paragraph 9 of Schedule 5~~ shall, in relation to its preparation, consult—

- (a) safety representatives within the meaning of regulation 2(1) of the Safety Representatives and Safety Committees Regulations 1977~~(a)~~; and
- (b) such other employees as he is required to consult by virtue of regulation 3 of the Health and Safety (Consultation with Employees) Regulations 1996~~(b)~~.

(10) In this regulation, “affected party” means for a document sent or issued in relation to—

- (a) a safety certificate or an application for a safety certificate—
 - (i) any relevant infrastructure manager;
 - (ii) a trade union which is a recognised trade union within the meaning of regulation 2(1) of the Safety Representatives and Safety Committees Regulations 1977 in relation to employees of the operator or applicant employed in relation to the operation in question; and
 - (iii) the ~~Rail Passengers’ Council~~ [Passengers’ Council\(c\)](#) and the London Transport Users’ Committee where, in each case, it represents passengers’ interests in relation to the operation in question; and
- (b) a safety authorisation or an application for a safety authorisation—
 - (i) any transport undertaking who is or will be operating on the infrastructure of the applicant or infrastructure manager in question;
 - (ii) any infrastructure manager who manages infrastructure which interfaces or will interface with the infrastructure of the infrastructure manager in question; and
 - (iii) any person falling within paragraph (10)(a)(ii) or (iii).

Notification to the European Railway Agency regarding safety certificates and safety authorisations relating to the mainline railway

18.—(1) The Office of Rail Regulation shall notify the European Railway Agency of the issuing, amendment or revocation of—

- (a) Part A of a safety certificate; or
- (b) a safety authorisation, pursuant to these Regulations in relation to an operation on the mainline railway within one month of such issue, amendment or revocation.

(2) A notice under paragraph (1) shall include the following information in relation to the safety certificate or safety authorisation—

- (a) the name and address of the holder;
- (b) its date of issue and period of validity;
- (c) the operation or infrastructure in relation to which it was issued; and
- (d) where it relates to a revocation, the reasons for that decision.

(a) S.I. 1977/500 as amended by S.I. 1996/1513 and 1999/860 and to which there are other amendments not relevant to these Regulations.

(b) S.I. 1996/1513 as amended by S.I. 1997/1840 and 1999/3242.

(c) [Substituted by SI 2010/439. Date in force: 25 February 2010](#)

Maintenance of vehicles on the mainline railway

~~18A.— (1) No person may place in service or use a vehicle on the mainline railway unless that vehicle has an entity in charge of maintenance assigned to it, and that entity in charge of maintenance is registered as such in the National Vehicle Register.~~

(1) No person may place in service or use a vehicle on the mainline railway unless that vehicle has an entity in charge of maintenance assigned to it, and that entity in charge of maintenance—

(a) is registered in relation to that vehicle in the National Vehicle Register; and

(b) holds an ECM certificate if the vehicle is a freight wagon.

(2) Each entity in charge of maintenance must ensure, by means of a system of maintenance, that a vehicle for which it is in charge of maintenance is in a safe state of running.

(3) The requirement for a system of maintenance referred to in paragraph (2) is that a vehicle must be maintained in accordance with—

- (a) the maintenance file for the vehicle;
- (b) applicable maintenance rules; and
- (c) applicable TSIs.

PART 3

GENERAL DUTIES

Risk assessment

19.—(1) A transport operator shall—

- (a) make a suitable and sufficient assessment of the risks to the safety of any persons for the purpose of identifying the measures he needs to take to ensure safe operation of the transport system in question insofar as this is affected by his operation; and
- (b) implement the measures referred to in sub-paragraph (a).

(2) When carrying out an assessment or a review under paragraph (1) or (3), a transport operator shall apply the CSMs to the extent that the operation is carried out on the mainline railway.

(3) Any assessment under paragraph (1) shall be reviewed by the transport operator who made it if—

- (a) there is a reason to suspect that it is no longer valid; or
- (b) there has been a significant change in the matters to which it relates and where as a result of any such review changes to an assessment are required,

the transport operator concerned shall make them, and implement any changes to the measures identified pursuant to paragraph (1) as a result of the review.

(4) The transport operator shall record in relation to any assessment or review under this regulation—

- (a) the assessment process undertaken, the methods of any calculation used and any assumptions made; and
- (b) the significant findings of the risk assessment including the measures in place and any further measures the transport operator intends to take to ensure safe operation of the transport system in relation to his operation.

(5) Every transport operator shall make and give effect to such arrangements as are appropriate, having regard to the nature of his activities and the extent of the undertaking, for the effective planning, organisation, control, monitoring and review of the measures identified pursuant to paragraph (1) or (3) and shall record such arrangements.

Annual safety reports

20.—(1) Subject to paragraph (2), any transport operator who carries out operations on the mainline railway shall send to the Office of Rail Regulation an annual safety report in respect of its operations on the mainline railway relating to the previous calendar year, which shall contain—~~(1) Subject to paragraph (2), any transport operator who is subject to the prohibition in regulations 3(1)(b), 3(2)(b), 4(1)(b) or 4(2)(b) shall send to the Office of Rail Regulation an annual safety report relating to the previous calendar year which shall contain—~~

- (a) information on how the transport operator's safety targets, referred to in paragraph 2(b) of Schedule 1, are met;
- (b) the results achieved through putting the transport operator's safety plans, referred to in paragraph 2(b) of Schedule 1, into effect;
- (c) statistics for the common safety indicators listed in Schedule 3 insofar as they are relevant to the operations in question;
- ~~(c) statistics for the common safety indicators listed in Schedule 3 insofar as they are relevant to the operation in question except, to the extent the operation is carried out on a transport system other than the mainline railway, no statistics are required in relation to the indicators in paragraphs 1(1)(a)(vii), 1(1)(b)(v) and 3 2(1)(a)(vi), 2(1)(b)(v) and 6 of Part 1 (common safety indicators) of that Schedule;~~
- (d) the findings of safety auditing carried out pursuant to the procedures referred to in paragraph 2(k) of Schedule 1; and
- (e) comments on any deficiencies or malfunctions relating to the running of vehicles or the management of infrastructure relating to the operation in question that may be relevant to the safety of that transport system,

and where an operation is carried out in part on the mainline railway and in part on another transport system the report shall include only information in respect of the part carried out on the mainline railway.

~~and where an operation is carried out in part on the mainline railway and in part on another transport system the report shall clearly indicate the information which relates to the part carried out on the mainline railway.~~

(2) The first annual report required under paragraph (1) shall be sent by 30th June 2007 and subsequent reports by 30th June in each subsequent calendar year.

(3) Subject to paragraph (4), the Office of Rail Regulation shall publish and send to the European Railway Agency an annual report relating to the previous calendar year which shall contain information on the following in relation to the mainline railway—

- (a) the development of railway safety including an aggregation of all the statistics reported to the Office of Rail Regulation for the relevant calendar year pursuant to paragraph (1)(c) which relate to an operation or part of an operation which is carried out on the mainline railway;
- (b) any important changes in relation to the regulation of railway safety;

(c) the development of the system for safety certification and authorisation; and
(d) the results of and experience relating to the supervision of transport operators,
in Great Britain.

(4) The first annual report required under paragraph (3) shall be sent to the European Railway Agency by 30th September 2007 and subsequent reports by 30th September in each subsequent calendar year.

(5) Where the Office of Rail Regulation discovers, after sending an annual report, that there were errors or omissions in it then it shall send a corrected report for that year to the European Railway Agency at the first convenient opportunity and in any event by no later than the time the next annual report is due to be sent.

Sending, issuing, and keeping of documents and making them available for public inspection

21.—(1) Any application, notice, report or any other information sent to the Office of Rail Regulation or records made pursuant to these Regulations shall be in writing and in English.

(2) Any certificate, authorisation, notice, direction, request for information, statement or report issued by the Office of Rail Regulation pursuant to these Regulations shall be in writing and in English.

(3) An applicant who makes an application in respect of a safety certificate or a safety authorisation pursuant to regulations 7, 9, 10 or 12 shall when sending the application, notify the Office of Rail Regulation of an address in Great Britain for the purposes of this regulation (“notified address”).

(4) Subject to paragraphs (5) and (6), a transport operator shall keep at the notified address in relation to the operation in question—

- (a) the safety certificate or safety authorisation issued in response to his application for such certificate or authorisation and the documentation referenced in that safety certificate or safety authorisation;
- (b) any notice of amendment issued pursuant to Part 2 of these Regulations ~~or any revision made pursuant to paragraph 8 of Schedule 5~~ in relation to his safety certificate or safety authorisation;
- (c) any records he is required to make pursuant to regulation 19(4) and (5);
- (d) any annual safety report sent to the Office of Rail Regulation under regulation 20(1);
- (e) any notification of changes or of a revision notified to the Office of Rail Regulation under regulation 13 ~~or paragraph 9 of Schedule 5~~; and
- (f) a record of any findings of internal safety auditing carried out pursuant to the procedures referred to in paragraph 2(k) of Schedule 1 and of any action taken in consequence of such auditing,

or a hard or electronic copy of such documents.

(5) The documents referred to in paragraph (4) shall be kept as long as they—

- (a) are or are a copy of the current safety certificate or safety authorisation or a notice of amendment thereof;
- (b) are or are a copy of a notification of a major change or a revision which is relevant to the current operation of the transport undertaking;

(c) relate to the information on the basis of which the Office of Rail Regulation's acceptance referred to in regulation 7(4) or 10(3), as the case may be, was made in relation to a current safety certificate or safety authorisation; or

(d) relate to a risk assessment, as reviewed from time to time, carried out pursuant to regulation 19.

(6) The documents kept pursuant to paragraph (4)(d) or (4)(f) shall be kept for 5 years and the documents kept pursuant to sub-paragraphs (a), (b), (d) and (e) of paragraph (4) shall, subject to paragraph (7), be made available for public inspection at the notified address at reasonable times and on reasonable notice.

(7) Nothing in paragraph (6) shall require the disclosure of any information—

(a) relating to a named individual;

(b) which is commercially confidential; or

(c) which is detrimental to national security or to the security of the transport system in question.

(8) A person who has a notified address may subsequently notify the Office of Rail Regulation of a different address in Great Britain and in this case references in this regulation to the notified address shall be construed as a reference to the last address notified under this paragraph.

Co-operation

22.—(1) Every person to whom this paragraph applies shall co-operate as far as is necessary with a transport operator to enable him to comply with the provisions of these Regulations.

(2) Paragraph (1) applies to—

(a) any transport operator whose operations may affect or may be affected by operations carried out by the duty holder; and

(b) an employer of persons or a self-employed person carrying out work on or in relation to premises or plant owned or controlled by the duty holder.

(3) Every transport operator shall co-operate, insofar as is reasonable, with any other transport operator who operates on the same transport system where that other transport operator is taking action to achieve the safe operation of that transport system.

(4) In paragraph (2) "duty holder" means a transport operator referred to in paragraph (1).

PART 4

SAFETY CRITICAL WORK

Interpretation and application of Part 4

23.—(1) In this Part—

"assessor" means any person who is competent to make an impartial and objective assessment of another person's competence or fitness to carry out safety critical work, and related expressions shall be construed accordingly;

"controller of safety critical work" means any person controlling the carrying out of safety critical work on a transport system or in relation to a vehicle used on a transport system;

“fitness” means physical and mental fitness, and related expressions shall be construed accordingly;

“installation” includes the installation, examination or testing of components;

“maintenance” includes repair work, reconditioning, examination, testing or alteration;

“operator” means any person carrying on an undertaking which includes a transport system or any part of it or the provision of transport services on such a system;

“safety critical task” means—

(a) in relation to a vehicle used on a transport system—

- (i) driving, dispatching or any other activity which is capable of controlling or affecting the movement of that vehicle;
- (ii) signalling, and signalling operations, the operation of level crossing equipment, receiving and relaying of communications or any other activity which is capable of controlling or affecting the movement of that vehicle;
- (iii) coupling or uncoupling;
- (iv) installation of components, other than where the installation of those components is subject to supervision and checking by a safety critical worker or a controller of safety critical work;
- (v) maintenance, other than where the carrying out of that maintenance is subject to supervision and checking by a safety critical worker or a controller of safety critical work; or
- (vi) checking that that vehicle is working properly and, where carrying goods, is correctly loaded before being used;

(b) in relation to a transport system—

- (i) installation or maintenance of any part of it or of the telecommunications system relating to it or used in connection with it, or of the means of supplying electricity directly to that transport system or to any vehicles using it or to the telecommunications system other than where the carrying out of that task is subject to supervision and checking by a safety critical worker or a controller of safety critical work;
- (ii) controlling the supply of electricity directly to it or to any vehicles used on it;
- (iii) receiving and relaying of communications; or
- (iv) any person ensuring the safety of any persons working on or near to the track, whether or not the persons working on or near to the track are carrying out safety critical work;

(c) in relation to training, any practical training or the supervision of any such training in any of the tasks set out in sub-paragraphs (a) to (b),

which could significantly affect the health or safety of persons on a transport system;

“safety critical work” means any safety critical task carried out by any person in the course of their work ~~or voluntary work~~ on or in relation to a transport system and related expressions shall be construed accordingly; ~~and~~

“telecommunications system” means any telecommunications system provided by a transport operator or its associated equipment, which is capable of controlling or affecting the movement of a vehicle, or which is provided by a transport operator for purposes which include calling the emergency services; ~~and~~

“work” includes voluntary work.

(2) Any reference in this Part to a safety critical worker or a controller of safety critical work supervising and checking the work of another person is to a safety critical worker or a controller of safety critical work who has been assessed as competent in the tasks to which that supervision and checking relates.

(3) Any reference in this Part to a person controlling the carrying out of safety critical work is a reference to a person managing, supervising or controlling that work in connection with the carrying on by him of a trade, business or other undertaking (whether or not for profit).

(4) This Part shall not apply to or in relation to—

- (a) the police, ambulance or fire service when they are carrying out their emergency functions on or in relation to a transport system; and
- (b) any voluntary worker for a period of twelve months from the date of the coming into force of this Part.

Competence and fitness

24.—(1) Every controller of safety critical work shall, so far as is reasonably practicable, ensure that a person under his management, supervision or control, with the exception of where that person is receiving practical training in a safety critical task, only carries out safety critical work where—

- (a) that person has been assessed as being competent and fit to carry out that work following an assessment by an assessor;
- (b) there is an accurate and up to date record in writing of that person's competence and fitness which references any criteria for determining competence and fitness against which that assessment of competence was made;
- (c) the record, or an accurate summary of the record referred to in sub-paragraph (b) is available for inspection, on reasonable request, by any other controller of safety critical work or any operator who may be affected by any safety critical work carried out or to be carried out by that person, for the purposes of establishing that person's competence and fitness to carry out safety critical work; and
- (d) there are in place suitable and sufficient arrangements for monitoring the competence and fitness of that person.

(2) Every controller of safety critical work shall without unreasonable delay review any person's competence or fitness assessment where—

- (a) they have reason to doubt the competence or fitness of a person to carry out that safety critical work; or
- (b) there has been a significant change in the matters to which the assessment relates,

and where, as a result of any such review a reassessment of competence or fitness is required, that reassessment of competence or fitness shall be carried out to ensure that the requirements of paragraph (1) are met.

(3) Where a reassessment of competence or fitness under paragraph (2) is required, the controller of safety critical work shall, so far as is reasonably practicable ensure that, as a result, the health and safety of persons on a transport system is not prejudiced.

Fatigue

25.—(1) Every controller of safety critical work shall have in place arrangements to ensure, so far as is reasonably practicable, that a safety critical worker under his management, supervision or control does not carry out safety critical work in circumstances where he is so fatigued or where he would be liable to become so fatigued that his health or safety or the health or safety of other persons on a transport system could be significantly affected.

(2) The arrangements in paragraph (1) shall be reviewed by the controller of safety critical work where he has reason to doubt the effectiveness of those arrangements.

Co-operation requirements for safety critical work

26.—(1) Every controller of safety critical work to whom this Part applies shall co-operate as far as is necessary with any other controller of safety critical work or any operator to enable that other controller of safety critical work to comply with the provisions of this Part.

(2) Every person carrying out safety critical work shall, as regards any requirement imposed on any controller of safety critical work under this Part, co-operate with that controller of safety critical work so far as is necessary to enable that requirement to be performed or complied with.

PART 5

MISCELLANEOUS

Appeals

27.—(1) A person who is aggrieved by a—

(a) decision of the Office of Rail Regulation to refuse his application for—

(i) a safety certificate, a safety authorisation or an ECM certificate;

~~(i) a safety certificate or safety authorisation;~~

(ii) an amended safety certificate or safety authorisation;

(b) direction of the Office of Rail Regulation to make an application to amend his safety certificate or safety authorisation; ~~or~~

(c) decision of the Office of Rail Regulation to revoke his—

(i) safety certificate or part of it; or

(ii) safety authorisation; or

(d) decision of the Office of Rail Regulation pursuant to Articles 7(3), (4) or (7) of the ECM Regulation concerning his ECM certificate,

may appeal to the Secretary of State.

(1A) A person who is aggrieved by a decision of a certification body accredited or recognised in Great Britain for the purposes of the ECM Regulation either to refuse an application for an ECM certificate or taken by that body pursuant to Articles 7(3), (4) or (7) of the ECM Regulation, may—

(a) appeal to the Secretary of State; and

(b) for the purposes of such appeal, references to the Office of Rail Regulation in this regulation shall be construed as references to that certification body, except for paragraph (7) which does not apply to such appeal.

(2) For the purposes of paragraph (1) and (1A) the Secretary of State may, in such cases as he considers it appropriate to do so, having regard to the nature of the questions which appear to him to arise, direct that an appeal under that paragraph shall be determined on his behalf by a person appointed by him for that purpose.

(3) Before the determination of an appeal the Secretary of State shall ask the appellant and the Office of Rail Regulation whether they wish to appear and be heard on the appeal and—

(a) The appeal may be determined without a hearing of the parties if both of them express a wish not to appear and be heard as aforesaid;

(b) The Secretary of State shall, if either of the parties expresses a wish to appear and be heard, afford to both of them an opportunity of doing so.

(4) The Tribunals and Inquiries Act 1992 shall apply to a hearing held by a person appointed in pursuance of paragraph (2) to determine an appeal as it applies to a statutory inquiry held by the Secretary of State, but as if in section 10(1) of that Act (statement of reasons for decisions) the reference to any decision taken by the Secretary of State included a reference to a decision taken on his behalf by that person.

(4A) A hearing held by a person appointed in pursuance of paragraph (2) shall be a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007(a) (Administrative Justice and Tribunals Council).

(5) A person who determines an appeal under this regulation on behalf of the Secretary of State and the Secretary of State, if he determines such an appeal, may give such directions as he considers appropriate to give effect to his determination.

(6) The Secretary of State may pay to any person appointed to hear or determine an appeal under paragraph (2) on his behalf such remuneration and allowances as the Secretary of State may with the approval of the ~~Minister for the Civil Service~~ Treasury determine.

(7) For the purposes of paragraph (1)(a), a failure by the Office of Rail Regulation to make a decision on whether or not to issue or amend a safety certificate or safety authorisation within the four month period for making a decision calculated in accordance with regulation 17(7) shall be treated as a refusal of the application.

(8) The Health and Safety Licensing Appeals (Hearing Procedure) Rules 1974(b), as respects England and Wales, and the Health and Safety Licensing Appeals (Hearing Procedure)(Scotland)(c) Rules 1974, as respects Scotland, shall apply to an appeal under paragraph (1) as they apply to an appeal under ~~sub-section (1) of the said section 44~~ section 44(1) of the Health and Safety at Work etc. Act 1974(d), but with the modification that references to a licensing authority are to be read as references to the Office of Rail Regulation.

(9) Where an appeal is made under paragraphs (1)(a) or (1)(c), the decision in question shall be suspended pending the final determination of the appeal.

(a) 2007 c.15.

(b) S.I. 1974/2040.

(c) S.I. 1974/2068 [Scots.]

(d) 1974 c.37; section 44(1) was amended by the Employment Protection Act 1975 (c.71), sections 116 and 125(3), Schedule 15, paragraph 13 and Schedule 18.

Offences

28. A failure to discharge a duty placed on the Office of Rail Regulation by these Regulations shall not be an offence under section 33(1)(c) of the Health and Safety at Work etc. Act 1974.

Transitional provisions and savings

29.—(1) Any competence and fitness assessments made pursuant to regulation 3 of the Railways (Safety Critical Work) Regulations 1994^(a) shall have effect as if they were made under Part 4, provided that the assessment would, at the time it was made, have met the requirements for impartiality and objectivity in that Part.

(2) Notwithstanding the revocation of ROTS pursuant to regulation 34, and subject to paragraph (6) ROTS shall, up to and including 1st October 2008, continue in force as they had effect on 30th September 2006 for the purposes of—

- (a) determining applications for approval made;
- (b) issuing a written consent for the purposes set out in regulation 4(4)(b) of ROTS in relation to new or altered works, plant or equipment for which an application for approval has been made;
- (c) making notices dispensing with or requiring compliance with certain provisions of ROTS under regulation 10(1)(a) or 11(1)(a) of ROTS in relation to new or altered works, plant or equipment, for which an application for approval has been made,

to the Office of Rail Regulation in relation to a relevant transport system before 1st October 2006.

(3) Where an approval is issued by the Office of Rail Regulation in response to an application for approval made in relation to a transport system —

- (a) before 1st October 2006 but where the new or altered works, plant or equipment are placed in service within the meaning of regulation 5(6) and 6(5) on or after that date; or
- (b) on or before 1st October 2008 pursuant to paragraph (2),

in relation to new or altered works, plant or equipment that is relevant infrastructure or a vehicle then such works, plant or equipment shall be deemed to satisfy the requirements of regulations 5(4) and 6(4).

(4) Where a written consent is issued by the Office of Rail Regulation in relation to new or altered works, plant or equipment which is relevant infrastructure or a vehicle in relation to a transport system—

- (a) under regulation 4(4)(b)(i) of ROTS on or before 1st October 2008 pursuant to paragraph (2) then such relevant infrastructure or vehicle shall be deemed to satisfy the requirements of regulations 5(4) and 6(4); or
- (b) under regulation 4(4)(b)(ii) of ROTS on or before 1st October 2008 pursuant to paragraph (2) then no regard shall be taken of the use of such relevant infrastructure or vehicle for the purposes for which the written consent relates when determining whether the relevant infrastructure or vehicle has been placed in service in accordance with regulations 5(6) and 6(5).

(a) S.I. 1994/299 as amended by SIs 1996/1592, 1999/2024 and 2000/2688.

(5) In this regulation—

- (a) “application for approval” means an application for approval made under regulation 5, 6 or 7 of ROTS;
- (b) “altered works, plant or equipment” shall have the meaning in regulation 2(a) of ROTS; and
- (c) “relevant transport system” shall have the meaning in regulation 2(a) of ROTS.

(6) For the purposes of heritage railways and tramways, all references in this regulation to 1st October 2006 shall be read as if those references were in each case to 1st October 2008, and all references to 1st October 2008 shall be read as if those references were in each case to 1st October 2010.

~~(7) Schedule 5 shall have effect.~~

Exemptions

30.—(1) Subject to paragraphs (2) and (3), the Office of Rail Regulation may, by certificate in writing, exempt any person or class of persons or any transport system or part of a transport system from any requirement or prohibition imposed by these Regulations.

(2) The Office of Rail Regulation shall not grant any such exemption in relation to any requirement or prohibition imposed by Part 2 or 3 in relation to an operation carried out on the mainline railway other than an exemption to an operator of last resort from the requirement to copy the documents referred to in regulation 17(3)(a)(i) and (ii) to an affected party or to notify an affected party as the case may be.

(3) The Office of Rail Regulation shall not grant any such exemption unless, having regard to the circumstances of the case, and in particular to—

- (a) the conditions, if any, which it proposes to attach to the exemption; and
- (b) any other requirements imposed by or under any enactment which applies to the case,

it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it.

(4) The Secretary of State for Defence may, in the interests of national security, by a certificate in writing exempt any person or class of persons from any requirement or prohibition imposed by these Regulations.

(5) An exemption granted pursuant to paragraph (1), (2) or (4) may be granted subject to conditions and to a limit of time.

(6) An exemption granted pursuant to—

- (a) paragraph (1) or (2) may be revoked by the Office of Rail Regulation; and
- (b) paragraph (4) may be revoked by the Secretary of State for Defence,

at any time by a further certificate in writing.

Defence of due diligence

31.—(1) Subject to the following provisions of this regulation, in any proceedings against any person for an offence under ~~regulation 5(4) or 6(4)~~ regulation 5(4), 6(4) or 18A(2) it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against any person for such an offence the defence provided in paragraph (1) involves an allegation that the commission of the offence was due to—

- (a) the act or default of another; or
- (b) reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless, within a period ending seven clear days before the hearing of the proceedings (or in Scotland, the trial diet), he has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying, or assisting in the identification of, the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) A person shall not be entitled to rely on the defence provided by paragraph (1) by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied upon the information, having regard in particular—

- (a) to the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether he had any reason to disbelieve the information.

Amendment of ROTS

32. In regulation 4 of ROTS—

- (a) for paragraph (2A) substitute—

“(2A) Approval shall not be required in relation to any interoperability constituent or any subsystem to the extent that the interoperability constituent or subsystem, as the case may be, has been authorised before 2nd April 2006 under regulation 14 of the Railways (Interoperability) (High-Speed) Regulations 2002 or is subject to the requirement for authorisation under regulation 4(1)(a) of the Railways Interoperability Regulations 2006.”

- (b) for paragraph (5) substitute—

“(5) In this regulation, “interoperability constituent” and “subsystem” have the same meaning as in the Railways (Interoperability) Regulations 2006.”

Consequential amendments

33. The Regulations referred to in Schedule 6 shall be amended as set out in that Schedule.

Revocation

34. The Regulations referred to in column (1) of Schedule 7 are revoked to the extent specified in column (3) of that Schedule.

Review

34A.—(1) Before the end of each review period, the Secretary of State must—

- (a) carry out a review of these Regulations;

- (b) set out the conclusions of the review in a report; and
 - (c) publish the report.
- (2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive is implemented in other member States.
- (3) The report must in particular—
- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
 - (b) assess the extent to which those objectives are achieved; and
 - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (4) “Review period” means—
- (a) the period of five years beginning with the day on which the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011 come into force; and
 - (b) subject to paragraph (5), each successive period of five years.
- (5) If a report under this regulation is published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.

Signed by authority of the
Secretary of State for Transport

9th March 2006

Derek Twigg
Parliamentary Under Secretary of State,
Department for Transport

SCHEDULE 1 Regulations 5(1)(c), and 6(1)(b)

SAFETY MANAGEMENT SYSTEM

(This Schedule substantially reproduces the provisions of Annex III to the Directive)

Requirements on the safety management system

1. The safety management system shall—

- (a) describe the distribution of responsibilities, within the operation, for the safety management system;
- (b) show how control of the safety management system by the management on different levels is secured;
- (c) show how persons carrying out work or voluntary work directly in relation to the operation and their representatives on all levels are involved with the safety management system; and
- (d) show how continuous improvement of the safety management system is ensured.

Basic elements of the safety management system

2. The basic elements of a safety management system are—

- (a) a statement of the safety policy which has been approved by the chief executive and communicated to all persons carrying out work or voluntary work directly in relation to the operation;
- (b) qualitative and quantitative targets for the maintenance and enhancement of safety and plans and procedures for reaching those targets;
- (c) procedures to meet relevant technical and operational standards or other requirements as set out in—
 - (i) TSIs;
 - (ii) national safety rules;
 - (iii) other relevant safety requirements; and
 - (iv) decisions of the Office of Rail Regulation addressed to the transport operator in question,

and procedures to ensure compliance with the requirements listed in this paragraph throughout the life-cycle of any relevant equipment or operation which is subject to the requirement in question.

- (d) procedures and methods for carrying out risk evaluation and implementing risk control measures when—
 - (i) there is a change in the way in which the operation in question is carried out; or
 - (ii) new material is used in the operation in question,

which gives rise to new risks in relation to any infrastructure or the operation being carried out;

- (e) provision of programmes for training of persons carrying out work or voluntary work directly in relation to the operation and systems to ensure that the

competence of such persons is maintained and that they carry out tasks accordingly;

- (f) arrangements for the provision of sufficient information relevant to safety—
 - (i) within the operation in question; and
 - (ii) between the operator in question and any other transport operator or an applicant for a safety certificate or a safety authorisation who carries out or who intends to carry out operations on the same infrastructure;
- (g) procedures and formats for the documentation of safety information;
- (h) procedures to control the lay out of, and changes to, vital safety information;
- (i) procedures to ensure that accidents, incidents, near misses and other dangerous occurrences are reported, investigated and analysed and that necessary preventative measures are taken;
- (j) provision of plans for action, alerts and information in the case of an emergency which are to be agreed with any public body, including the emergency services, that may be involved in such an emergency; and
- (k) provisions for recurrent internal auditing of the safety management system.

SCHEDULE 2

Regulation 7(1)(b)

APPLICATION FOR A SAFETY CERTIFICATE

PART 1

INFORMATION TO BE INCLUDED FOR A MAINLINE APPLICATION

1. The following information shall be included in relation to Part A of a safety certificate—

- (a) particulars of the type and extent of the operation in respect of which the application is made; and
- (b) either—
 - ~~(i) a copy of a current certificate issued to the applicant by the Office of Rail Regulation, other than a deemed safety certificate, or a safety authority in another member State or in Northern Ireland under provisions giving effect to article 10(2)(a) of the Directive which relates to an equivalent railway operation; or~~
 - (i) a copy of a current certificate issued to the applicant by—
 - (aa) the Office of Rail Regulation, other than a deemed safety certificate;
 - (bb) a safety authority in another member State;
 - (cc) a safety authority in Northern Ireland; or

(dd) the safety authority for the tunnel system within the meaning of section 1(7) of the Channel Tunnel Act 1987(a), under provisions giving effect to article 10(2)(a) of the Directive which relates to an equivalent railway operation; or(b)

(ii) particulars of how the safety management system of the applicant meets the requirements set out in regulation 5(1) to (4).

2. The following information shall be included in relation to Part B of a safety certificate—

- (a) information on the TSIs, national safety rules and other safety requirements relevant to the applicant's operation including those relevant to persons carrying out work in relation to the operation and the applicant's vehicles and an explanation of how compliance with these requirements is ensured by the safety management system;
- (b) information on the different types of work being carried out by persons directly in relation to the operation including evidence of how the applicant ensures that when such persons are carrying out such work that they are doing so in accordance with the requirements of any relevant TSIs and national safety rules; and
- (c) information on the different types of rolling stock used for the operation in question including evidence that they meet any relevant TSIs and national safety rules,

and where information is submitted concerning an interoperability constituent or a subsystem which is subject to and complies with the requirements of the ~~Railways (Interoperability) (High-Speed) Regulations 2002(c)~~ ("~~2002 Regulations~~") ~~Interoperability Regulations~~ then only brief details need be supplied concerning compliance of such constituents or subsystems with relevant TSIs and other requirements of those Regulations and in this paragraph "interoperability constituent" and "subsystem" shall have the same meaning as in the ~~2002 Regulations~~ ~~Interoperability Regulations~~.

PART 2

INFORMATION TO BE INCLUDED FOR A NON-MAINLINE APPLICATION

3. Particulars of the type and extent of the operation in respect of which the application is made.

4. Particulars of how the safety management system of the applicant meets the requirements set out in regulation 6.

5. Information on the—

- (a) relevant statutory provisions which make provision in relation to safety which are applicable to the operation; and
- (b) technical specifications and procedures relating to operations and maintenance that are relevant to the safety of the transport system which the applicant proposes to follow,

and an explanation of how compliance with these requirements is ensured by the safety management system.

(a) [1987 c. 53.](#)

(b) [Substituted by SI 2007/3531. Date in force: 4 July 2008](#)

(c) S.I. 2002/1166.

6. Information on the different types of work or voluntary work being carried out by persons directly in relation to the operation including evidence of how the applicant ensures that when such persons are carrying out work or voluntary work in relation to the operation that they are doing so in accordance with relevant requirements of the relevant statutory provisions referred to in paragraph 5(a).

7. Information on the different types of rolling stock used for the operation including evidence that they meet relevant requirements of the relevant statutory provisions referred to in paragraph 5(a).

SCHEDULE 3

Regulation 20(1)(c)

COMMON SAFETY INDICATORS

(This Schedule substantially reproduces the provisions of Annex I to the Directive)

Indicators relating to accidents

~~1.—(1) Total and relative, to vehicle kilometres, number of—~~

~~(a) accidents and a break-down of the following types of accidents—~~

~~(i) collisions of vehicles, including collisions with obstacles within the loading gauge;~~

~~(ii) derailments of vehicles;~~

~~(iii) level-crossing accidents which shall include accidents involving persons at level-crossings;~~

~~(iv) accidents to persons caused by vehicles in motion except for suicides;~~

~~(v) suicides;~~

~~(vi) fires in vehicles; and~~

~~(vii) any other types of accidents,~~

~~and each such accident shall be reported under the heading of the primary accident even where the consequences of any secondary accident are more severe such as where a fire follows a derailment.~~

~~(b) persons seriously injured or killed by type of accident divided into the following categories—~~

~~(i) passengers;~~

~~(ii) persons carrying out work or voluntary work directly in relation to the operation;~~

~~(iii) level crossing users;~~

~~(iv) unauthorised persons on premises of the transport system; and~~

~~(v) any other types of person,~~

~~and the number of passengers seriously injured or killed shall also be indicated in relation to the total number of passenger kilometres.~~

~~(2) The provisions of Regulation 91/2003 of the European Parliament and the Council on rail transport statistics(a) shall be applied to any information provided under this paragraph.~~

~~Indicators relating to incidents and near-misses~~

~~2. Total and relative, to vehicle kilometres, number of—~~

- ~~(a) broken rails;~~
- ~~(b) buckled rails;~~
- ~~(c) wrong-side signalling failures;~~
- ~~(d) signals passed at danger; and~~
- ~~(e) broken wheels and axles on vehicles in service.~~

~~Indicators relating to consequences of accidents~~

~~3.—(1) Total and relative—~~

- ~~(a) to train kilometres, cost in Euros of all accidents, which shall include, where it is possible to provide such figures, the cost of the following—~~
 - ~~(i) deaths and injuries of persons;~~
 - ~~(ii) compensation for loss of or damage to the property of passengers, persons carrying out work directly in relation to the operation or to third parties including damage caused to the environment;~~
 - ~~(iii) replacement or repair of damaged rolling stock and railway installations; and~~
 - ~~(iv) delays, disturbances and re-routing of traffic including any additional costs to persons carrying out work directly in relation to the operation and the loss of future revenue;~~
- ~~(b) to number of hours worked, number of working hours of persons carrying out work directly in relation to the operation which have been lost as a consequence of accidents.~~

~~(2) In calculating the costs under sub-paragraph (1)(a), the amount of any indemnity or compensation recovered or expected to be recovered from third parties shall be deducted except for any relevant compensation recovered under insurance policies held by transport operators.~~

~~Indicators relating to technical safety of infrastructure and its implementation~~

~~4. The—~~

- ~~(a) percentage of tracks with a train protection system, within the meaning of regulation 2(1) of the Railway Safety Regulations 1999(b), in operation;~~
- ~~(b) percentage of train kilometres with a train protection system falling within paragraph (a) in operation;~~
- ~~(c) number of level crossings (total and total per kilometre of line); and~~
- ~~(d) percentage of level crossings with automatic or manual protection.~~

~~(a) OJ No. L14 of 21.1.03, p. 1.~~

~~(b) S.I. 1999/2244.~~

Indicators relating to the management of safety

~~5. Internal audits carried out by transport operators pursuant to the procedures referred to in paragraph 2(k) of Schedule 1 and the number of such audits which have been carried out and that number expressed as a percentage of the audits which were planned for that year.~~

SCHEDULE 3

Regulation 20(1)(c)

COMMON SAFETY INDICATORS

(This Schedule substantially reproduces, with minor modifications, the provisions of Annex I to the Directive and its Appendix)

Part 1

COMMON SAFETY INDICATORS

Interpretation

1. In this Part, the definitions for the common safety indicators and the methods used to calculate the economic impact of accidents in Part 2 apply.

Indicators relating to accidents

2.—(1) Total and relative, to train-kilometres, number of—

(a) significant accidents and a break-down of the following types of accidents—

- (i) collisions of trains, including collisions with obstacles within the clearance gauge;
- (ii) derailments of trains;
- (iii) level crossing accidents which includes accidents involving persons at level crossings;
- (iv) accidents to persons caused by rolling stock in motion, except for suicides;
- (v) fires in rolling stock; and
- (vi) any other types of accidents,

and each significant accident shall be reported under the heading of the primary accident even where the consequences of any secondary accident are more severe, such as where a fire follows a derailment;

(b) persons seriously injured or killed by type of accident divided into the following categories—

- (i) passengers;
- (ii) persons carrying out work or voluntary work directly in relation to the operation;
- (iii) level crossing users;
- (iv) unauthorised persons on premises of the transport system; and
- (v) any other types of person,

and the number of passengers seriously injured or killed shall also be indicated in relation to the total number of passenger-kilometres.

(2) The provisions of Regulation 91/2003 of the European Parliament and the Council on rail transport statistics(a) shall be applied to any information provided under this paragraph.

Indicators relating to dangerous goods

3. Total and relative, to train-kilometres, number of accidents involving the transport of dangerous goods—

- (a) involving at least one vehicle transporting dangerous goods; and
- (b) number of such accidents in which dangerous goods are released.

Indicators relating to suicides

4. Total and relative, to train-kilometres, number of suicides.

Indicators relating to precursors of accidents

5. Total and relative, to train-kilometres, number of—

- (a) broken rails;
- (b) buckled rails;
- (c) wrong-side signalling failures;
- (d) signals passed at danger; and
- (e) broken wheels and axles on vehicles in service,

and all such precursors are to be reported, whether or not they result in accidents and where they result in a significant accident, they shall be reported under paragraph 2 of this Part of Schedule 3.

Indicators to calculate the economic impact of accidents

6.—(1) Total in Euros and relative, to train-kilometres—

- (a) number of deaths and serious injuries multiplied by the Value of Preventing a Casualty (VPC);
- (b) cost of damage to the environment;
- (c) cost of material damage to rolling stock or infrastructure;
- (d) cost of delays as a consequence of accidents.

(2) Each annual safety report submitted by the Office of Rail Regulation in accordance with regulation 20(3) shall include the economic impact of significant accidents only.

(3) The VPC is the value society attributes to the prevention of a casualty but is not intended to be used as a reference for the assessment of compensation between parties involved in accidents.

Indicators relating to technical safety of infrastructure and its implementation

7. The—

- (a) percentage of tracks with a train protection system, within the meaning of regulation 2(1) of the Railway Safety Regulations 1999(a), in operation;

(a) O.J. No. L14, 21.1.2003, p1.

- (b) percentage of train-kilometres with a train protection system falling within paragraph (a) in operation;
- (c) number of (total per line-kilometre and per track-kilometre)—
 - (i) active level crossings with—
 - (aa) automatic user-side warning;
 - (bb) automatic user-side protection;
 - (cc) automatic user-side protection and warning;
 - (dd) automatic user-side protection and warning, and rail-side protection;
 - (ee) manual user-side warning;
 - (ff) manual user-side protection;
 - (gg) manual user-side protection and warning; and
 - (ii) passive level crossings.

Indicators relating to management of safety

8. Internal audits carried out by transport operators pursuant to the procedures referred to in paragraph 2(k) of Schedule 1 and the number of such audits which have been carried out and that number expressed as a percentage of the audits which were planned for that year.

PART 2

COMMON DEFINITIONS AND METHODS TO CALCULATE THE ECONOMIC IMPACT OF ACCIDENTS

Indicators relating to accidents

1.—(1) “Significant accident” means any accident involving at least one rail vehicle in motion, resulting in at least one killed or seriously injured person, or in significant damage to stock, track, other installations or environment, or extensive disruptions to traffic. Accidents in workshops, warehouses and depots are excluded.

(2) “Significant damage to stock, track, other installations or environment” means damage that is equivalent to €150,000 or more.

(3) “Extensive disruptions to traffic” means that train services on a main railway line are suspended for six hours or more.

(4) “Train” means one or more railway vehicles hauled by one or more locomotives or railcars, or one railcar travelling alone, running under a given number or specific designation from an initial fixed point to a terminal fixed point. A light engine, i.e. a locomotive travelling on its own, is considered to be a train.

(5) “Collision of trains, including collisions with obstacles within the clearance gauge” means a front to front, front to end or a side collision between a part of a train and a part of another train, or with—

- (a) shunting rolling stock; or

(a) S.I. 1999/2244 as amended by S.I. 2001/3291, S.I. 2006/557 and S.I. 2006/599.

(b) objects fixed or temporarily present on or near the track (except at level crossings if lost by a crossing vehicle or user).

(6) "Train derailment" means any case in which at least one wheel of a train leaves the rails.

(7) "Level crossing accidents" means accidents at level crossings involving at least one railway vehicle and one or more crossing vehicles, other crossing users such as pedestrians or other objects temporarily present on or near the track if lost by a crossing vehicle/user.

(8) "Accidents to persons caused by rolling stock in motion" means accidents to one or more persons who are either hit by a railway vehicle or by an object attached to, or that has become detached from, the vehicle. Persons who fall from railway vehicles are included, as well as persons who fall or are hit by loose objects when travelling on board vehicles.

(9) "Fires in rolling stock" means fires and explosions that occur in railway vehicles (including their load) when they are running between the departure station and the destination, including when stopped at the departure station, the destination or intermediate stops, as well as during re-marshalling operations.

(10) "Other types of accidents" means all accidents other than those already mentioned (train collisions, train derailments, at level crossing, to persons caused by rolling stock in motion and fires in rolling stock).

(11) "Passenger" means any person, excluding members of the train crew, who makes a trip by rail. For accident statistics, passengers trying to embark/disembark onto/from a moving train are included.

(12) "Employees (staff of contractors and self-employed contractors are included)" means any person whose employment is in connection with a railway and is at work at the time of the accident. It includes the crew of the train and persons handling rolling stock and infrastructure installations.

(13) "Level crossing users" means all persons using a level crossing to cross the railway line by any means of transport or by foot.

(14) "Unauthorised persons on railway premises" means any person present on railway premises where such presence is forbidden, with the exception of level crossing users.

(15) "Others (third parties)" means all persons not defined as "passengers", "employees including the staff of contractors", "level crossing users" or "unauthorised persons on railway premises".

(16) "Deaths (killed person)" means any person killed immediately or dying within 30 days as a result of an accident, excluding suicides.

(17) "Injuries (seriously injured person)" means any person injured who was hospitalised for more than 24 hours as a result of an accident, excluding attempted suicides.

Indicators relating to dangerous goods

2.—(1) "Accident involving the transport of dangerous goods" means any accident or incident that must be reported in accordance with RID section 1.8.5., as revised or reissued from time to time.

(2) "Dangerous goods" means those substances and articles the carriage of which is prohibited by RID, or authorised only under the conditions prescribed therein.

(3) In this paragraph “RID” means the Regulations concerning the International Carriage of Dangerous Goods by Rail(a) as adopted under Directive 2008/68/EC(b) of the European Parliament and of the Council of 24th September 2008 on the inland transport of dangerous goods.

Indicators relating to suicides

3. “Suicide” means an act to deliberately injure oneself resulting in death, as recorded and classified by the Railway Safety and Standards Board.

Indicators relating to precursors of accidents

4.—(1) “Broken rails” means any rail which is separated in two or more pieces, or any rail from which a piece of metal becomes detached, causing a gap of more than 50mm in length and more than 10mm in depth on the running surface.

(2) “Track buckles” means faults related to the continuum and the geometry of track, requiring track obstruction or immediate reduction of permitted speed to maintain safety.

(3) “Wrong side signalling failure” means any failure of a signalling system (either to infrastructure or to rolling stock), resulting in signalling information less restrictive than that demanded.

(4) “Signal passed at danger (SPAD)” means any occasion when any part of a train proceeds beyond its authorised movement to an unauthorised movement;

“unauthorised movement” means to pass—

(a) a trackside colour light signal or semaphore at danger, order to STOP, where an Automatic Train Control System (ATCS) or train protection system (as described in paragraph 7(a) of Part 1 of this Schedule) is not operational;

(b) the end of a safety related movement authority provided in an ATCS or train protection system;

(c) a point communicated by verbal or written authorisation laid down in regulations; or

(d) stop boards (buffer stops are not included) or hand signals,

but excludes cases in which—

(e) vehicles without any traction unit attached or a train that is unattended run away past a signal at danger; or

(f) for any reason, the signal is not turned to danger in time to allow the driver to stop the train before the signal.

(The Office of Rail Regulation may report separately on items (a) to (d) and shall report at least an aggregate indicator containing data on all four items).

(5) “Broken wheels and broken axles” means a break affecting the essential parts of the wheel or the axle and creating a risk of accident (derailment or collision).

Common methodologies to calculate the economic impact of accidents

5.—(1) The Value of Preventing a Casualty (VPC) is composed of—

(a) value of safety *per se*: Willingness to Pay (WTP) values based on stated preference studies carried out in Great Britain;

(b) direct and indirect economic costs, appraised in Great Britain, composed of—

(a) ISBN 9788086206394, 2009 edition.

(b) O.J. No. L260, 30.9.2008, p13.

- (i) medical and rehabilitation costs;
- (ii) legal and court costs, police, private crash investigations and emergency service costs and administrative costs of insurance;
- (iii) production losses: value to society of goods and services that could have been produced by the person if the accident had not occurred.

(2) Common principles to appraise the value of safety *per se* and direct / indirect economic costs—

- (a) for the value of safety *per se*, the assessment of whether available estimates are appropriate or not shall be based on the following considerations—
 - (i) estimates shall relate to a system for valuation of mortality risk reduction in the transport sector and follow a WTP approach according to stated preference methods;
 - (ii) the respondent sample used for the values shall be representative of the population concerned. In particular, the sample has to reflect the age / income distribution along with other relevant socio-economic / demographic characteristics of the population;
 - (iii) method for eliciting WTP values: survey design shall be such that questions are clear / meaningful to respondents;
- (b) direct and indirect economic costs shall be appraised on the basis of the real costs borne by society.

(3) “Cost of damage to environment” means costs that are to be met by transport undertakings or infrastructure managers, appraised on the basis of their experience, in order to restore the damaged area to its state before the railway accident.

(4) “Cost of material damage to rolling stock or infrastructure” means the cost of providing new rolling stock or infrastructure, with the same functionalities and technical parameters as that damaged beyond repair, and the cost of restoring repairable rolling stock or infrastructure to its state before the accident. Both are to be estimated by transport undertakings or infrastructure managers on the basis of their experience. Also includes costs related to leasing rolling stock, as a consequence of non availability due to damaged vehicles.

(5) “Cost of delays as a consequence of accidents” means the monetary value of delays incurred by users of rail transport (passengers and freight customers) as a consequence of accidents, and is calculated by the following model—

VT = monetary value of travel time savings

Value of time for a passenger of a train (an hour)

$$VT_p = [VT \text{ of work passengers}] * [\text{Average percentage of work passengers per year}] + [VT \text{ of non-work passengers}] * [\text{Average percentage of non-work passengers per year}]$$

VT measured in EUR per passenger per hour

Value of time for a freight train (an hour)

$$VT_F = [VT \text{ of freight trains}] * [(Tonne-Km)/(Train-Km)]$$

VT is measured in EUR per freight tonne per hour

$$\text{Average tonnes of goods transported per train in one year} = (Tonne-Km)/(train-Km)$$

C_m = Cost of 1 minute of delay of a train

Passenger train

$$C_{MP} = K_1 * (VT_p/60) * [(Passenger-Km)/(Train Km)]$$

Average number of passengers per train in one year = (Passenger-Km)/(Train Km)

Freight train

$$C_{MF} = K_2 * (VT_f/60)$$

Factors K_1 and K_2 are between the value of time and the value of delay, as estimated by stated preference studies, to take into account that the time lost as a result of delays is perceived significantly more negatively than normal travel time.

Cost of delays of an accident = C_{MP} *(Minutes of delay of passenger trains) + C_{MF} *(Minutes of delay of freight trains)

Scope of the model

Cost of delays is to be calculated for all accidents, both significant and non-significant.

Delays are to be calculated as follows:

- real delays on the railway lines where accidents occurred,
- real delays or, if not possible, estimated delays on the other affected lines.

Indicators relating to technical safety of infrastructure and its implementation

- 6.**—(1) “Automatic Train Protection” means a system that enforces obedience to signals and speed restrictions by speed supervision, including automatic stop at signals.
- (2) “Level crossing” means any level intersection between the railway and a passage, as recognised by the infrastructure manager and open to public or private users. Passages between platforms within stations are excluded, as well as passages over tracks for the sole use of employees.
- (3) “Passage” means any public or private road, street or highway, including footpaths and bicycle paths, or other route provided for the passage of people, animals, vehicles or machinery.
- (4) “Active level crossing” means a level crossing where the crossing users are protected from or warned of the approaching train by the activation of devices when it is unsafe for the user to traverse the crossing, as follows—
- (a) protection by the use of physical devices, including half or full barriers or gates;
 - (b) warning by the use of fixed equipment at level crossings, including lights, audible devices such as bells, horns or klaxons and physical devices such as vibration due to road bumps;

active level crossings are classified as—

- (c) “level crossing with crossing-user-side automatic protection and/or warning” which means a level crossing where the crossing protection and/or warning are activated by the approaching train. These level crossings are classified as—
 - (i) automatic user-side warning;
 - (ii) automatic user-side protection;
 - (iii) automatic user-side protection and warning;
 - (iv) automatic user-side protection and warning, and rail-side protection;

“rail-side protection” means a signal or other train protection system that only permits a train to proceed if the level crossing is user-side protected and free from incursion; such freedom from incursion to be achieved by means of surveillance and/or obstacle detection;

- (d) “level crossing with crossing-user-side manual protection and/or warning” which means a level crossing where protection and/or warning is manually activated and there is not an interlocked railway signal showing, to the train, a running aspect only when protection and/or warning of level crossing are activated. These level crossings are classified as—
- (i) manual user-side warning;
 - (ii) manual user-side protection;
 - (iii) manual user-side protection and warning.

(5) “Passive level crossing” means a level crossing without any form of warning system and/or protection activated when it is unsafe for the user to traverse the crossing.

Indicators relating to the management of safety

7. “Audit” means a systematic, independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to which audit criteria are fulfilled.

Definitions of the scaling bases

8.—(1) “Train-kilometre” (train-km) means the unit of measure representing the movement of a train over one kilometre. The distance used is the distance actually run, if available, otherwise the standard network distance between the origin and destination shall be used.

(2) “Passenger-kilometre” (passenger-km) means the unit of measure representing the transport of one passenger by rail over a distance of one kilometre.

(3) “Line-kilometre” (line-km) means the length measured in kilometres of the railway to which these Regulations apply. For multiple-track railway lines, only the distance between origin and destination is to be counted.

(4) “Track-kilometre” (track-km) means the length measured in kilometres of the railway, to which these Regulations apply. Each track of a multiple-track railway line is to be counted.

SCHEDULE 4 Regulation ~~5(4)(a)~~ and 6(4)(a)

WRITTEN SAFETY VERIFICATION SCHEME REQUIREMENTS

INFORMATION TO BE INCLUDED IN A SAFETY VERIFICATION SCHEME

- 1.—(1) The arrangements for the selection, appointment and retention of the competent person, which arrangements should at least provide for:
- (a) the appointment of the competent person at an early stage in the design selection process;
 - (b) the involvement of the competent person in the establishing of the criteria to be applied in the verification process and the design selection process; and
 - (c) the communication to the competent person of information necessary for the proper implementation, or revision, of the verification scheme and which information is necessary in order for the competent person to undertake the verification.

- (2) The arrangements for the examination and testing of new or altered vehicles or infrastructure, which arrangements should at least provide for:
- (a) the means of controlling risks that arise during the carrying out of any testing or trials prior to placing in service; and
 - (b) the standards and criteria to be applied in the verification process.
- (3) The arrangements for the review and revision of the verification scheme.
- (4) The arrangements for the making and preservation of records showing—
- (a) the examination and testing carried out to the new or altered vehicles or infrastructure prior to its being placed in service;
 - (b) the findings of that examination and testing;
 - (c) any remedial action recommended as a result of that examination and testing; and
 - (d) any remedial action performed.
- (5) The arrangements for communicating the matters contained in sub-paragraphs (1) to (4) of this Schedule to an appropriate level in the management system of the transport operator or responsible person as the case may be.

~~SCHEDULE 5~~ ~~Regulation 29(7)~~

~~TRANSITIONAL PROVISIONS AND SAVINGS SAFETY~~

~~CERTIFICATES AND SAFETY AUTHORISATIONS~~

~~1. Subject to the following paragraphs of this Schedule—~~

~~(a) a notification of acceptance by the Office of Rail Regulation of a safety case in relation to the operation of trains pursuant to regulation 5(7)(a) of the 2000 Regulations in relation to a safety case—~~

~~(i) which is current immediately before 1st October 2006; or~~

~~(ii) which is issued pursuant to paragraph 3,~~

~~shall be deemed to be a safety certificate for that operation;~~

~~(b) a notification of acceptance by the Office of Rail Regulation of a safety case in relation to the use of railway infrastructure pursuant to regulation 4(4), or the operation of a station pursuant to regulation 5(7)(a), of the 2000 Regulations in relation to a safety case—~~

~~(i) which is current immediately before 1st October 2006; or~~

~~(ii) which is issued pursuant to paragraph 3,~~

~~shall be deemed to be a safety authorisation for the infrastructure in question, and the holder of a deemed safety certificate shall also be deemed to have met the applicable requirements of regulations 3(1)(a) and 4(1)(a) and the holder of a deemed safety authorisation shall also be deemed to have met the applicable requirements of regulations 3(2)(a) and 4(2)(a).~~

~~2. In paragraph 1 a notification of acceptance shall be construed as including the original notification referred to in paragraph 1(a) or 1(b) together with any notification of acceptance of a revision of the safety case in question by the Office of Rail Regulation~~

~~pursuant to regulation 7(7) of the 2000 Regulations or that regulation as saved by paragraph 3 in relation to the operation in question.~~

~~3. Notwithstanding their revocation the 2000 Regulations shall continue in force as they had effect on 30th September 2006 for the purposes of—~~

- ~~(a) the consideration, acceptance or refusal of acceptance of safety cases and revisions to safety cases submitted to the Office of Rail Regulation for acceptance before 1st October 2006 under regulations 4, 5, 7 or 8 of the 2000 Regulations;~~
- ~~(b) the making and determination of appeals under regulation 15 of the 2000 Regulations in relation to—~~
 - ~~(i) the determination of any such appeals made before but not determined on 30th September 2006; and~~
 - ~~(ii) the making and determination of any such appeals in relation to decisions on submissions falling within paragraph (a).~~

~~4. A deemed safety certificate or safety authorisation shall—~~

- ~~(a) in the case of a deemed safety certificate or safety authorisation falling within paragraph 1(a)(i) or 1(b)(i), be deemed to be issued on 1st October 2006;~~
- ~~(b) in the case of a deemed safety certificate or safety authorisation falling within paragraph 1(a)(ii) or 1(b)(ii), be deemed to be issued on the date of the notification of acceptance in question; and~~
- ~~(c) be deemed to be held by the person to whom the notification of acceptance in question was addressed or, in the case of a deemed safety certificate or authorisation falling within paragraph 1(a)(i) or 1(b)(i), the person who is a successor of that person or a previous successor pursuant to regulation 2(7) of the 2000 Regulations on 30th September 2006.~~

~~5. A deemed safety certificate or safety authorisation shall be valid until—~~

- ~~(a) in the case of a deemed—~~
 - ~~(i) safety certificate, the holder has applied for a safety certificate under regulation 7 for the operation in question and the Office of Rail Regulation has issued a safety certificate in response to that application; or~~
 - ~~(ii) safety authorisation, the holder has applied for a safety authorisation for the operation in question under regulation 10 and the Office of Rail Regulation has issued a safety authorisation in response to that application;~~
- ~~(b) subject to paragraph 6, the date by which the periodic review of the safety case to which the deemed safety certificate or deemed safety authorisation relates would have been required under regulation 6 of the 2000 Regulations had it still been in force; or~~

~~(c) 1st October 2008,~~

~~whichever is the first to occur.~~

~~6. Where the date of the periodic review referred to in paragraph 5(b) would fall on or before 1st April 2007 then a deemed safety certificate or safety authorisation shall be valid up to and including 1st April 2007.~~

~~7. Where a transport operator—~~

- ~~(a) holds a deemed safety certificate or deemed safety authorisation; and~~

~~(b) the control of the operation in question is transferred to another person after 1st October 2006 so that regulation 2(7) of the 2000 Regulations would have operated to treat that other person as a successor had it still been in force,~~

~~then that other person may rely upon the deemed safety certificate or safety authorisation and if he does so rely shall comply with the provisions of these Regulations as though he were the holder of that deemed safety certificate or safety authorisation for a period of 6 months from the date he becomes a successor and may do so notwithstanding the prior expiry of such a certificate or authorisation in accordance with paragraph 5.~~

~~8. The holder of a deemed safety certificate or safety authorisation shall revise the contents of the safety case to which the deemed safety certificate or safety authorisation relates whenever it is appropriate to do so.~~

~~9. Where the revision referred to in paragraph 8 renders the safety case materially different from that accepted in the deemed safety certificate or safety authorisation then the holder of the deemed safety certificate or authorisation shall, without delay, notify the Office of Rail Regulation of such revision.~~

~~10. Where a holder of a deemed safety certificate or safety authorisation proposes a change to the operation to which a deemed safety certificate or safety authorisation relates which would have been a change falling within regulation 8(1) or 11(1) if those regulations had applied, then he shall not make such a change until he has applied for and the Office of Rail Regulation has issued a new safety certificate or safety authorisation for that operation pursuant to regulation 7 or 10 as the case may be.~~

~~11. Where a person—~~

~~(a) was granted an exemption, which has not been revoked, from the prohibition relating to the holding of an accepted safety case in regulation 4(1) or 5(1) of the 2000 Regulations; or~~

~~(b) was not subject to the requirements of the 2000 Regulations immediately before 1st October 2006 by virtue of their operation falling wholly within sub-paragraphs (a) to (c) of the definition of “railway” in the 2000 Regulations or because they were carrying out an operation on a transport system other than a railway,~~

~~then notwithstanding the revocation of the 2000 Regulations, that person shall not be required to comply with the provisions of Part 2 of these Regulations until 1st April 2007.~~

~~12. The 2000 Regulations shall apply in relation to—~~

~~(a) a deemed safety certificate as if regulations 8, 9 and 15 did not apply; and~~

~~(b) a deemed safety authorisation as if regulation 11, 12 and 16 did not apply;~~

~~(c) a deemed safety certificate or a deemed safety authorisation as if—~~

~~(i) regulations 13, 14 and 18 did not apply;~~

~~(ii) sub-paragraphs (a) and (b) of regulation 20(1) did not apply;~~

~~(iii) regulation 20(1)(d) referred to “the findings of an audit carried out pursuant to the arrangements referred to in paragraph 5(d) of Schedule 1 to the 2000 Regulations;”;~~ and

~~(iv) regulation 21(4)(a) and 21(5)(a) referred to a deemed safety certificate or a deemed safety authorisation and the safety case to which it relates and as if the notified address referred to in regulation 21(3) were that notified in relation to the safety case in question under regulation 14 of the 2000 Regulations.~~

~~13. Notwithstanding the revocation of the 2000 Regulations, regulation 10 of the 2000 Regulations shall continue in effect in relation to the safety case to which a deemed safety certificate or deemed safety authorisation relates as it had effect on 30th~~

~~September 2006 except that for the purposes of this Schedule the references in that regulation to—~~

- ~~(a) “any revision” shall be construed to include a revision pursuant to paragraph 8; and~~
- ~~(b) regulations 7 and 11 shall be construed as a reference to paragraph 8 of this Schedule and regulation 22(1) respectively.~~

~~14. For the purposes of this Schedule “the 2000 Regulations” means the Railways (Safety Case) Regulations 2000.~~

SCHEDULE 6

Regulation 33

CONSEQUENTIAL AMENDMENTS

Amendment to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995

1.—(1) The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995(a) shall be amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “factory” insert—

““guided bus system” has the meaning assigned to it by regulation 2(1) of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;”;

(b) for the definition of “guided transport system” substitute—

““guided transport” has the meaning assigned to it by regulation 2(1) of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;”;

(c) for the definition of “railway” substitute—

““railway” has the meaning assigned to it by regulation 2(1) of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;”;

(d) for the definition of “relevant transport system” substitute—

““relevant transport system” means a railway, a tramway, a trolley vehicle system or any other system using guided transport but does not include a guided bus system or a trolley vehicle system when it operates on a road;”;

(e) for the definition of “tramway” substitute—

““tramway” has the meaning assigned to it by regulation 2(1) of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;”.

Amendment to the Railway Safety (Miscellaneous Provisions) Regulations 1997

2.—(1) The Railway Safety (Miscellaneous Provisions) Regulations 1997(b) shall be amended as follows.

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- (a) S.I. 1995/3163 as amended by S.I. 1997/2776, 1999/437, 1999/2024, 1999/2244 and 2004/568; there are other amendments not relevant to these Regulations.
 - (b) S.I. 1997/553, as amended by S.I. 1999/2024.

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “factory” insert—

““guided bus system” and “guided transport” have the meanings assigned to them by regulation 2(1) of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;”;

(b) omit the definition of “prescribed system of guided transport”;

(c) for the definition of “tramway” substitute—

““tramway” has the meaning assigned to it by regulation 2(1) of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;”;

(d) in the definition of “transport system” for the words before sub-paragraph (a) substitute—

““transport system” means a railway, a tramway, a trolley vehicle system or any other system using guided transport except that it does not include a guided bus system or any part of any of those systems which—;”;

(e) after the definition of “transport system” insert—

““trolley vehicle system” has the meaning assigned to it by regulation 2(1) of Railways and Other Guided Transport Systems (Safety) Regulations 2006;”.

Amendment to the Railway Safety Regulations 1999

3.—(1) The Railway Safety Regulations 1999(a) shall be amended as follows.

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) for the definition of “infrastructure controller” substitute—

““infrastructure controller” means a person who controls railway infrastructure;”;

(ii) after the definition of “railway” insert—

““railway infrastructure” means fixed assets used for the operation of a railway including its permanent way and plant used for signalling or exclusively for supplying electricity for operational purposes to the railway, but it does not include a station;”;

(iii) after the definition of “speed restriction” insert—

““station” means a railway passenger station or terminal, but does not include any permanent way or plant used for signalling or exclusively for supplying electricity for operational purposes to the railway;”;

(b) after paragraph (4) add—

“(4A) Any reference in these Regulations to a person who controls railway infrastructure is a reference to a person who—

(a) in the course of a business or other undertaking carried on by him (whether for profit or not);

(b) is in operational control of that infrastructure,

(a) S.I. 1999/2244, as amended by S.I. 2000/2688 and 2001/3291.

except that where such control is for the time being exercised by a person undertaking maintenance, repair or alteration work on the infrastructure, it is a reference to a person who would be in operational control of the infrastructure if such work were not being undertaken.”.

(3) In paragraph 2 to the Schedule (meaning of railway), for the definition of “tramway” substitute—

““tramway” means a system of transport used wholly or mainly for the carriage of passengers—

(a) ` which employs parallel rails which—

(i) ` provide support and guidance for vehicles carried on flanged wheels; and

(ii) ` are laid wholly or partly along a road or in any other place to which the public has access (including a place to which the public only has access on making payment); and

(b) ` on any part of which the permitted speed is such as to enable the driver to stop a vehicle in the distance he can see to be clear ahead;”.

Amendment to the Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003

4.—(1) The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003(a) shall be amended as follows.

(2) In Schedule 4 (subordinate legislation specified for the purposes of section 241(3) (statutory functions) of the Enterprise Act 2002)—

(a) at the end, add “Parts 2 and 3 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006”;**(b)**

(b) omit “Railways (Safety Case) Regulations 2000.”**(c)**

SCHEDULE 7

Regulation 34

REVOCATION

<i>(1)</i> <i>Regulations revoked</i>	<i>(2)</i> <i>References</i>	<i>(3)</i> <i>Extent of revocation</i>
ROTS	S.I. 1994/157	The whole Regulations
The Railways (Safety Critical Work) Regulations 1994	S.I. 1994/299	The whole Regulations
The Railways (Safety Case)	S.I. 2000/2688	The whole Regulations

(a) S.I. 2003/1400.

(b) Inserted by S.I. 1057/2006. Date in force: 10 April 2006

(c) Inserted by S.I. 1057/2006. Date in force: 1 October 2006

Regulations 2000 The Railway Safety (Miscellaneous Amendments)	S.I. 2001/3291	Regulations 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16
Regulations 2001 The Railways (Safety case) (Amendment) Regulations 2003	S.I. 2003/579	The whole Regulations
The Cableway Installations Regulations 2004	S.I. 2004/129	Regulation 31

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations impose prohibitions and requirements in relation to safety on railways and other guided transport systems.

Part 2 and regulation 20 of the Regulations implement, insofar as they apply to the mainline railway, in relation to Great Britain, Directive 2004/49/EC (O.J. No. L164, 30.04.04 p.44) of the European Parliament and the Council on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of transport undertakings and Directive 2001/14/EC on the allocation of infrastructure capacity and the levying of charges for use of infrastructure and safety certification ("the Rail Safety Directive"), except in relation to access to training facilities, placing in service of in-use rolling stock and accident and incident investigation.

Part 1 contains the interpretation provisions. Part 2 contains prohibitions in relation to the operation of trains or vehicles on railways and other guided transport systems and the management and use of infrastructure unless a person has established and is maintaining a safety management system and in specified cases has a safety certificate in relation to the operation of vehicles or a safety authorisation in relation to the management and use of infrastructure. Part 2 also makes provision in relation to the requirements for a safety management system and the issuing, amendment and revocation of safety certificates and authorisations by, and for the giving of notices to, the Office of Rail Regulation.

Part 3 provides for general duties on transport operators subject to the duties in Part 2 to carry out risk assessment, co-operate with each other and certain other persons and to prepare an annual safety report to the Office of Rail Regulation. It makes provision in relation to annual reports to the European Railway Agency and for the issuing, keeping and public inspection of documents.

Part 4 makes provision in relation to the carrying out of safety critical work on guided transport systems. It imposes obligations on those controlling the carrying out of such work to ensure that it is only carried out by fit and competent persons, and that safety critical workers do not carry out such work when fatigued, and it imposes related co-operation requirements.

Part 5 makes provision for appeals in relation to decisions relating to safety certificates and authorisations, for transitional provisions and savings in relation to compliance with the provisions of Parts 2 and 4, for the granting of exemptions and for a defence in relation to the safety verification requirements in regulations 5 and 6. Regulation 32 amends the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations (ROTS) (S.I. 1994/157). Regulation 33 makes consequential amendments and regulation 34 revokes ROTS, the Railways (Safety Critical Work) Regulations 1994 (S.I. 1994/299), the Railways (Safety Case) Regulations 2000 (S.I. 2000/2688), regulations 2 to 16 of the Railway Safety (Miscellaneous Amendments) Regulations 2001 (S.I. 2001/3291), the Railways (Safety Case) (Amendment) Regulations 2003 (S.I. 2003/579) and regulation 31 of the Cableways Installations Regulations 2004 (S.I. 2004/129).

Technical Specifications for Interoperability are published in the Official Journal of the European Communities. Common Safety Methods and Common Safety Targets are to be developed pursuant to the Rail Safety Directive and will be published in the Official Journal of the European Communities.

A copy of the regulatory impact assessment and of the transposition note for Directive

2004/49/EC prepared in respect of these Regulations can be obtained from the Office of Rail Regulation, One Kemble Street, London WC2B 4AN. A copy of each has been placed in the library of each House of Parliament.