
STATUTORY INSTRUMENTS

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TRANSPORT

RAILWAYS

The Railways (Interoperability) Regulations 2012

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CONTENTS

PART 1

Interpretation and Application

1. Citation, commencement and extent
2. Interpretation
3. Application

PART 2

Subsystems

4. Requirement for authorisation
5. Application for authorisation
6. Authorisation for a vehicle already authorised for another Member State
7. Authorisation decision
8. Determination of type
9. Type authorisation
10. Type authorisation: changes to TSIs etc.
11. Revocation of authorisations
12. List of projects for the renewal or upgrading of subsystems
13. Authorisation requirements for the renewal or upgrading of subsystems
14. Exemption from need to conform with TSIs (derogations)
15. Essential requirements for project subsystems
16. Role of project manager
17. Project subsystems: verification assessment procedure
18. Project subsystems: verification declaration
19. Retention of documents

20. Duty on operator to ensure essential requirements are met
21. Fees payable to the Safety Authority
22. Fees payable to the Competent Authority

PART 3 Interoperability Constituents

23. Prohibition on placing interoperability constituents on the market
24. Assessment procedure for interoperability constituents
25. EC declaration of conformity or suitability for use
26. Effect of conformity and suitability declarations
27. Duties on operators
28. Recognition of assessments of other Member States
29. Notification to the Commission of incorrect declaration

PART 4 Notified and Designated Bodies

30. Notified bodies
31. Appointment of notified bodies and designated bodies
32. Notified bodies and designated bodies: certificates etc.
33. Fees of notified bodies and designated bodies
34. Fees of the Secretary of State

PART 5 Registers

35. Register of infrastructure
36. National vehicle register

PART 6 Appeals and Enforcement

37. Appeals in Great Britain
38. Appeals in Northern Ireland
39. Enforcement in Great Britain
40. Enforcement in Northern Ireland
41. Notices relating to interoperability constituents not meeting the essential requirements
42. Notice of improper drawing up of the EC declaration of conformity or suitability for use for an interoperability constituent
43. Defence of due diligence

PART 7 Supplementary

44. Deemed authorisation
45. Accessibility for people with reduced mobility
46. Dispensations
47. Revocation and savings

- 48. Amendments to legislation
- 49. Review

SCHEDULE — Amendments to legislation

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of, read with paragraph 1A of Schedule 2 to, the European Communities Act 1972(a) and section 247 of the Transport Act 2000(b).

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for certain references to provisions of EU instruments(c) to be construed as a reference to those provisions as amended from time to time.

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to railways and railway transport(d).

PART 1

Interpretation and Application

Citation, commencement and extent

- 1.—(1) These Regulations may be cited as the Railways (Interoperability) Regulations 2012.
- (2) These Regulations come into force on [] February 2012.

Interpretation

- 2.—(1) In these Regulations—
 - “the 1974 Act” means the Health and Safety at Work etc. Act 1974(e);
 - “certificate of verification” means a certificate drawn up by a notified body or a designated body as part of the verification assessment procedure for a structural subsystem;
 - “the Channel Tunnel system” has the meaning given by section 1(7) of the Channel Tunnel Act 1987(f) to the words “the tunnel system”;
 - “the Commission” means the Commission of the EU;
 - “Competent Authority” means—
 - (a) in Great Britain, the Secretary of State; and
 - (b) in Northern Ireland, the DRDNI;

(a) 1972 c.68; section 2(2) is amended, and paragraph 1A of Schedule 2 is inserted, by the Legislative and Regulatory Reform Act 2006 (c.51, sections 27(1)(a) and 28) and both are amended by the European Union (Amendment) Act 2008 (c.7, Part I of the Schedule).

(b) 2000 c.38.

(c) See definition of trans-European rail system in regulation 2(1) and regulations 35(3)(b) and 36(7).

(d) S.I. 1996/266, to which there are amendments not relevant to these Regulations.

(e) 1974 c.37.

(f) 1987 c.53.

“conformity or suitability for use assessment procedures” means the procedures specified in regulation 24;

“contracting entity” means the person who contracts or intends to contract with another person for that other person to design, construct, renew or upgrade a subsystem;

“Conventional Directive” means Directive 2001/16/EC of the European Parliament and the Council of 19th March 2001 on the interoperability of the trans-European conventional rail system(a);

“the 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)(b)

“designated body” means a person appointed under regulation 31 as a designated body;

“determination of type” means a determination made by the Safety Authority pursuant to regulation 8;

“DRDNI” means the Department for Regional Development established by article 3(1) of the Departments (Northern Ireland) Order 1999(c);

“EC declaration of conformity or suitability for use” is a declaration drawn up in accordance with regulation 25;

“essential requirements” means all the conditions set out in Annex III to the Directive that must be met by the rail system, subsystems and interoperability constituents, including interfaces;

“European Railway Agency” means the agency for railway safety and interoperability established by Regulation (EC) No. 881/2004 of the European Parliament and the Council of 29th April 2004 establishing a European Railway Agency(d);

“European specification” means a common technical specification, a European technical approval or a national standard transposing a European standard, the terms used in this definition having the meaning given in Annex XXI to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors(e);

“European vehicle number” has the meaning given in regulation 36;

“functional subsystem” means a functional subsystem as specified in section 1(b) of Annex II to the Directive;

“functional TSI” means a TSI applying to a functional subsystem;

“High-Speed Directive” means Council Directive 96/48/EC of 23rd July 1996 on the interoperability of the trans-European high-speed rail system(f);

“infrastructure register” means a register kept in accordance with regulation 35;

“Intergovernmental Commission” has the same meaning as in the Channel Tunnel Act 1987;

“interoperability” has the meaning given in article 2 of the Directive;

“interoperability constituent” means any elementary component, group of components, sub-assembly or complete assembly of equipment that is incorporated or intended to be incorporated into a subsystem upon which the interoperability of the rail system depends directly or indirectly; and the concept of a “constituent” covers both tangible objects and intangible objects such as software;

“National Vehicle Register” has the meaning given in regulation 36;

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- (a) O.J. No. L 110, 20.4.2001, p.1. This Directive was repealed with effect from 19th July 2010 by the Directive.
(b) O.J. No. L191, 18.7.2008, p1, as amended by Commission Directive 2009/131/EC (O.J. No. L 273, 17.10.2009, p12) and Commission Directive 2011/18/EU (O.J. No. L 57, 2.3.2011, p21).
(c) S.I. 1999/283 (N.I.1).
(d) O.J. No. L 164 30.4.2004, p1.
(e) O.J. No. L 134, 30.4.2004, p1 (Annex XXI has not been amended).
(f) O.J. No. L 235 17.9.1996, p. 6. This Directive was repealed with effect from 19th July 2010 by the Directive.

“network” means the lines, stations, terminals, and all kinds of fixed equipment needed to ensure safe and continuous operation of the rail system;

“notified body” has the meaning given in regulation 30;

“notified national technical rules” means the standards, technical specifications and technical rules in use in the United Kingdom which have been notified by the Secretary of State to the Commission pursuant to article 17(3) of the Directive or Article 16(3) of the High-Speed Directive or Article 16(3) of the Conventional Directive, including any variations from time to time notified;

“Official Journal” means the Official Journal of the EU;

“operator”, in relation to the use of an interoperability constituent or a project subsystem, means the infrastructure manager or railway undertaking having the management of that interoperability constituent or project subsystem for the time being;

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

“placing in service” means all the operations by which a subsystem is put into its design operating state; and cognate expressions shall be construed accordingly;

“place on the market” means making an interoperability constituent available for purchase with a view to its use on the rail system; and cognate expressions shall be construed accordingly;

“project” means a scheme for the construction or upgrading or renewal of the whole or part of any subsystem of the rail system, and where it is intended to carry out that construction, upgrading or renewal in parts, each of which are to be placed in service on a permanent basis independently of the other parts, it means any such part;

“project manager” means, in relation to a project, a contracting entity or manufacturer or the authorised representative established in the EU of a contracting entity or manufacturer;

“project subsystem” means—

- (a) the whole of a structural subsystem which is subject to the requirement for authorisation under these Regulations, other than when the structural subsystem is subject to the requirement because part of it is being upgraded or renewed,
- (b) in the case of a structural subsystem which is subject to the requirement for authorisation under these Regulations because part of it is being upgraded or renewed, that part of the subsystem, or
- (c) a structural subsystem in respect of which a person has voluntarily made an application for authorisation under these Regulations;

“put into use” has the meaning given in regulation 4(2);

“rail system” has the same meaning as in the Directive(a);

“registration entity” means the person designated under regulation 36(11);

“renewal” means any major substitution work on a subsystem or part subsystem which does not change the overall performance of the subsystem; and cognate words shall be construed accordingly;

“safety assessment report” means a report provided in accordance with Article 7 of Commission Regulation 352/2009 of 24th April 2009 on the adoption of a common safety method on risk evaluation and assessment(b);

“Safety Authority” means the Office of Rail Regulation(c) except—

- (a) in relation to Northern Ireland, where it means the DRDNI, and

(a) The term includes the trans-European rail system.

(b) O.J. No. L. 108, 29.4.2009, p.4.

(c) Established under section 15 of the Railways and Transport Safety Act 2003 (c.20).

(b) in relation to the Channel Tunnel system, where it means the Intergovernmental Commission;

“structural subsystem” means a structural subsystem as specified in section 1(a) of Annex II to the Directive;

“subsystem” means the whole, or, as the context requires, part of a subdivision of the rail system as specified in sections 1(a) and 1(b) of Annex II to the Directive, namely structural subsystems and functional subsystems and includes a structural or functional subsystem that is intended to become the whole or part of a subdivision of the rail system;

“trans-European rail system” means the trans-European conventional and high-speed rail systems as set out in sections 1 and 2 of Annex I to the Directive, as those sections are amended from time to time;

“TSI” means technical specifications for interoperability adopted by the Commission, including any variations from time to time adopted, in accordance with the Directive or the Conventional Directive or the High Speed Directive and in force by which each subsystem or part subsystem is covered in order to meet the essential requirements and ensure the interoperability of the rail system;

“TSI conform authorisation” means an authorisation given for a vehicle which was in conformity with all applicable TSIs when it was placed in service and where those TSIs covered a significant part of the essential requirements and included a TSI on rolling stock;

“upgrading” means any major modification work on a subsystem or part of a subsystem which improves the overall performance of the subsystem; and cognate words shall be construed accordingly;

“vehicle” means—

(a) a railway vehicle that runs on its own wheels on railway lines with or without traction and is composed of one or more structural and functional subsystems or parts of such subsystems, or

(b) in the case of such a railway vehicle which can only be operated as part of a fixed formation multiple unit, the whole of that unit;

“verification assessment procedure” means the procedure referred to in regulation 17;

“verification declaration” means—

(a) an EC declaration of verification in relation to a structural subsystem drawn up by a project manager pursuant to regulation 16(3); or

(b) in the case of an application for an authorisation under regulation 5(1)(c), the declaration made by an applicant under regulation 6(9);

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

(2) Other expressions used in these Regulations have the same meaning as in the Directive.

(3) Except for the references to the EU in the definitions of “the Commission” and “Official Journal”, a reference to the EU includes a reference to the European Economic Area, and a reference to a Member State includes a reference to an EEA state.

Application

3.—(1) Subject to paragraphs (2) and (5), these Regulations apply to—

(a) the parts of the rail system located in the United Kingdom;

(b) subsystems located, operated or intended to be operated in the United Kingdom; and

(c) interoperability constituents.

(2) These Regulations do not apply to any part of the rail system that the Secretary of State determines falls within one or more of these categories—

(a) metros, trams and other light rail systems;

(b) networks that are functionally separate from the rest of the rail system and intended only for the operation of local, urban or suburban passenger services, as well as railway undertakings operating solely on these networks;

(c) infrastructure and vehicles reserved for a strictly local, historical or touristic use.

(3) A person may make an application to the Secretary of State for a determination under paragraph (2) and the Secretary of State must consider any such application.

(4) The Secretary of State must publish and keep up to date a list of the parts of the rail system that are excluded from the scope of these Regulations by virtue of determinations made under paragraph (2).

(5) These Regulations do not apply to—

(a) privately owned railway infrastructure and vehicles exclusively used on such infrastructure that exist solely for use by the owner for its freight operations; or

(b) railways the lines of which have a gauge of less than 350 millimetres and vehicles running on such lines.

(6) Paragraphs (2) and (5)(a) are subject to the voluntary arrangements provided for in regulation 5(1)(b) and (c).

(7) References in this regulation to the Secretary of State shall in their application to Northern Ireland have effect as references to DRDNI.

PART 2

Subsystems

Requirement for authorisation

4.—(1) No person is to put into use any structural subsystem unless—

(a) the Safety Authority has given an authorisation under these Regulations for the placing in service of that subsystem;

(b) the Competent Authority has decided under regulation 13 that for the upgrading or renewal of the subsystem, an authorisation is not required for the subsystem to be put into use; or

(c) in the case of a vehicle, an authorisation—

(i) has been granted in accordance with the Directive in another Member State, or

(ii) was granted before 19th July 2008 and pursuant to article 21(12) of the Directive remains valid in another Member State.

(2) A structural subsystem is put into use when, having been constructed, upgraded or renewed, it is first used on or as part of the rail system in the United Kingdom for the transportation of passengers or freight or for the purpose for which it was designed.

(3) For the purposes of paragraph (2) use of a structural subsystem does not include any testing or trials conducted in the verification assessment procedure or for additional checks required by the Safety Authority.

Application for authorisation

5.—(1) A person may apply for an authorisation in respect of any structural subsystem to be placed in service if—

(a) the authorisation is required under regulation 4(1);

(b) an authorisation is not required under regulation 4(1) because regulation 3(2) or (5)(a) applies, but the person nevertheless wants an authorisation; or

- (c) an authorisation is not required under regulation 4(1) because regulation 4(1)(c) applies, but the person nevertheless wants an authorisation.
- (2) In order for an application to be valid it must be made in writing to the Safety Authority and be accompanied by—
 - (a) the technical file compiled in accordance with regulation 17; and
 - (b) the verification declaration.
- (3) Subject to paragraph (4), in considering an application the Safety Authority must not require checks carried out under the verification assessment procedure to be carried out again.
- (4) The Safety Authority may require such additional checks which the Safety Authority considers necessary in relation to the project subsystem if that subsystem appears to the Safety Authority not to meet the essential requirements in accordance with regulation 15.
- (5) Where additional checks are required under paragraph (4) the Safety Authority must—
 - (a) inform the applicant that the application cannot be determined before the additional checks are carried out; and
 - (b) notify the Secretary of State in writing forthwith of the additional checks it requires and the reasons for requiring those checks.
- (6) Paragraphs (2) and (4) are subject to regulations 6, 9 and 10.
- (7) Paragraph (5)(b) does not apply to DRDNI.
- (8) Paragraph (1)(c) does not apply in relation to the Channel Tunnel system.

Authorisation for a vehicle already authorised for another Member State

- 6.**—(1) This regulation applies when an application is made pursuant to regulation 5(1)(c).
- (2) When this regulation applies paragraph (3) applies instead of regulation 5(2) and paragraph (4) applies instead of regulation 5(4).
 - (3) In order for the application to be valid the application must be made in writing to the Safety Authority and accompanied by—
 - (a) a copy of the authorisation referred to in regulation 4(1)(c) (“the first authorisation”);
 - (b) if the first authorisation is a TSI conform authorisation, a technical file containing—
 - (i) a copy of the technical file from the first authorisation;
 - (ii) for a vehicle equipped with a data recorder not required by an applicable TSI, information on the procedures for collecting and evaluating the data;
 - (iii) the documentation relating to the maintenance history and any technical modifications undertaken after the first authorisation;
 - (iv) evidence on technical and operational characteristics that shows that the vehicle is compatible with the infrastructures and fixed installations, including climate conditions, energy supply system, control-command and signalling system, track gauge and infrastructure gauges, maximum permitted axle load and other constraints of the network; and
 - (v) any certificate of verification in relation to notified national technical rules;
 - (c) if the first authorisation is not a TSI conform authorisation a technical file containing—
 - (i) information on the procedure followed in relation to the first authorisation in order to show that vehicle complied with the safety requirements in force and information on any derogation that applies;
 - (ii) the technical data and information on the maintenance programme and operational characteristics, including, for a vehicle equipped with a data recorder, information on the procedures for collecting and evaluating the data;
 - (iii) the documentation relating to the maintenance and operational history and any technical modifications undertaken after the first authorisation;

- (iv) evidence on technical and operational characteristics that shows that the vehicle is compatible with the infrastructures and fixed installations, including climate conditions, energy supply system, control-command and signalling system, track gauge and infrastructure gauges, maximum permitted axle load and other constraints of the network; and
 - (v) any certificate of verification in relation to notified national technical rules;
 - (d) if the first authorisation was made, in accordance with Article 26 of the Directive, on the basis of a declaration of conformity to type, a copy of the declaration; and
 - (e) any verification declaration from the project manager made under paragraph (9).
- (4) If the first authorisation is a TSI conform authorisation the Safety Authority may, after consultation with an applicant, require the applicant, by notice in writing, to carry out additional tests on the network concerned or risk analysis and to provide any additional information which the Safety Authority considers necessary in order to check—
- (a) technical compatibility between the vehicle and the network concerned, including the notified national technical rules applicable to the open points needed to ensure such compatibility; and
 - (b) compatibility with any notified national technical rules applicable to any specific case identified in any applicable TSI.
- (5) If the first authorisation is not a TSI conform authorisation the Safety Authority may, after consultation with an applicant, require the applicant, by notice in writing, to carry out additional tests on the network concerned or risk analysis and to provide any additional information which the Safety Authority considers necessary in order to verify that—
- (a) if there is a substantial safety risk, matters covered by the information referred to in paragraph (3)(c)(i) and (ii); and
 - (b) matters covered by the information referred to in paragraph (3)(c)(iii) and (iv),
- comply with any applicable notified national technical rules.
- (6) The infrastructure manager must, if requested by the applicant, make reasonable efforts to enable any tests required under paragraphs (4) and (5) to be completed before the date which is three months after the date on which the infrastructure manager received the request.
- (7) If there are any applicable notified national technical rules that must be assessed against in order to comply with requirements made by the Safety Authority under paragraphs (4) or (5), the project manager must, in order for the application to proceed, engage a designated body, or if the engagement is made before [] February 2013 either a designated body or a notified body, to assess conformity with those rules.
- (8) A notified body engaged to assess conformity with notified national technical rules may only continue to carry out that function on and after [] February 2013 if it has also been appointed as a designated body under regulation 31 (whether or not the appointment as a notified body remains in place).
- (9) If a body is engaged in accordance with paragraph (7), in order for the application to proceed, the project manager must draw up a declaration in relation to the project subsystem after the body appointed under paragraph (7) has, in accordance with Annex VI to the Directive, drawn up a certificate of verification and compiled a technical file.
- (10) The Safety Authority may only require additional information, risk analysis and tests under paragraphs (4) and (5) to the extent they are necessary for verifying compatibility with national rules that are classified as Group B or Group C in the reference document.
- (11) “Group B” and “Group C” have the same meaning as in Annex VII to the Directive and the reference document means the document adopted and updated from time to time by the Commission in accordance with Articles 27(4) and 29(3) of the Directive.
- (12) This regulation does not apply in relation to the Channel Tunnel system.

Authorisation decision

- 7.—(1) The Safety Authority must determine an application by—
- (a) authorising the placing in service of the structural subsystem; or
 - (b) refusing the application for authorisation.
- (2) The Safety Authority must, and may only, issue an authorisation for the placing in service of a structural subsystem, where it is satisfied that—
- (a) the verification declaration, if required, has been drawn up in accordance with Annex V to the Directive;
 - (b) the project subsystem is technically compatible with the rail system into which it is being integrated; and
 - (c) the project subsystem has been so designed, constructed and installed as to meet the essential requirements in accordance with regulation 15 relating to that subsystem when placed in service.
- (3) The Safety Authority may include conditions in an authorisation.
- (4) In this regulation “conditions” means—
- (a) restrictions or limitations on the use of the structural subsystem; or
 - (b) requirements that must be met by a time specified in the authorisation.
- (5) The Safety Authority must consider an application under regulation 5(1)(c) submitted in accordance with regulation 6 as soon as possible and make the decision as to whether to issue an authorisation on or before—
- (a) in the case of a vehicle with a TSI conform authorisation from another Member State, the later of—
 - (i) the date falling two months after the Safety Authority receives the technical file; and
 - (ii) if the applicant receives a notice under regulation 6(4) before the date referred to in (i), the date falling one month after the provision of all the information, risk analysis and results of the checks required by the notice; and
 - (b) in the case of a vehicle with an authorisation from another Member State which is not a TSI conform authorisation, the later of—
 - (i) the date falling four months after the Safety Authority receives the technical file; and
 - (ii) if the applicant receives a notice under regulation 6(5) before the date referred to in (i), the date falling two months after the provision of all the information, risk analysis and results of the checks required by the notice.
- (6) Where paragraph (5) applies and the Safety Authority fails to make a decision by the date required, the vehicle is deemed to be authorised with effect on a from the date which is three months after that date.

Determination of type

- 8.—(1) If the Safety Authority issues an authorisation for the placing in service of a vehicle, the Safety Authority must issue a determination of type in relation to the vehicle.
- (2) If the Safety Authority issues an authorisation for the placing in service of a structural subsystem that is not a vehicle, the Safety Authority may, with the consent of the person who applied for the authorisation, issue a determination of type in relation to that subsystem.
- (3) The person who applied for the authorisation may make an application to the Safety Authority requesting the Safety Authority to make a determination of type under paragraph (2) and the Safety Authority must consider any such application.
- (4) A determination of type must describe the basic design characteristics of the structural subsystem in the same manner and to the same extent as an EC-type examination certificate issued in accordance with the procedures of Module B in Annex II to Decision 768/2008/EC of

the European Parliament and of the Council of 9th July 2008 on a common framework for the marketing of products^(a).

(5) If the Safety Authority considers it necessary as a result of changes to TSIs or notified national technical rules it may modify, suspend or withdraw a determination of type.

(6) The Safety Authority must notify the European Railway Agency of a determination of type for the placing in service of any vehicle and of any modification, suspension or withdrawal of such a determination.

(7) Following an authorisation under regulation 9 the Safety Authority is not required to make a further determination under this regulation.

(8) The Safety Authority must publish an up to date list of the determination of types for structural subsystems that are not vehicles.

Type authorisation

9.—(1) A person who proposes the placing in service of a structural subsystem that conforms to the description in a determination of type, as modified under regulation 8(5) if applicable, may make an application for an authorisation to the Safety Authority.

(2) An application must be in writing and be accompanied by—

- (a) a declaration by the project manager that the structural subsystem conforms to the description set out in the determination of type;
- (b) a statement as to whether there have been any changes to the applicable TSI or notified national technical rules since the Safety Authority made or modified the determination of type; and
- (c) if there are any such changes, a description of them.

(3) The Safety Authority must consider any application made under and in accordance with paragraphs (1) and (2) and must, and may only, issue an authorisation where it is satisfied that—

- (a) the project subsystem conforms to the description set out in the determination of type;
- (b) there have been no changes since the Safety Authority made or modified the determination of type which are material to the application; and
- (c) the project subsystem has been so designed, constructed and installed as to meet the essential requirements in accordance with regulation 15 relating to that subsystem when placed in service.

(4) Subject to regulation 10, regulations 5(2) and (4) and 7(2) do not apply to an application for an authorisation under this regulation.

(5) The declaration referred to in paragraph (2)(a) must be consistent with Commission Regulation (EU) No. 201/2011 of 1st March 2011 on the model of declaration of conformity to an authorised type of railway vehicle^(b).

(6) In this regulation “conforms” means conforms in all the respects which materially affect compliance with the applicable essential requirements.

Type authorisation: changes to TSIs etc.

10.—(1) If in the Safety Authority’s opinion there have been changes to the applicable TSI or notified national technical rules that are material to an application made under regulation 9 the Safety Authority must give a notice in writing to the applicant specifying the changes that the Safety Authority considers to be material to the application.

(a) O.J. No. L218, 13.8.2008, p82.

(b) O.J. No. L 57, 2.3.2011, p8.

(2) If having received a notice issued by the Safety Authority under paragraph (1) the applicant wishes to continue with the application, the applicant must provide to the Safety Authority the documentation referred to in regulation 5(2)(a) and (b).

(3) If the Safety Authority has received the further material referred to in paragraph (2), the Safety Authority may require additional tests in accordance with regulation 5(4) and (5).

(4) If paragraph (2) applies, regulation 7(2) applies.

(5) For the purposes of paragraphs (2), (3) and (4) the documentation to be provided, the additional checks to be carried out and the authorisation to be issued must relate only to the changes to the applicable TSI or notified national technical rules.

Revocation of authorisations

11.—(1) The Safety Authority may revoke an authorisation before a structural subsystem is put into use if it is satisfied that the conditions of that authorisation are no longer met and that there is a significant safety risk arising as a result.

(2) Before revoking an authorisation the Safety Authority must give notice in writing to the person to whom the authorisation was issued (“the holder”) that—

- (a) it is considering revoking that authorisation and the reasons why; and
- (b) within a period specified in the notice, which must be not less than 28 days from the date of the notice, the holder may make representations in writing to the Safety Authority or, if the holder so requests, may make oral representations to the Safety Authority.

(3) The Safety Authority must not revoke the authorisation unless the Safety Authority has considered the representations (if any) from the holder made during the period specified in the notice.

(4) Where the Safety Authority revokes an authorisation, it must give notice in writing of the revocation to the holder and include reasons for the revocation in the notice.

List of projects for the renewal or upgrading of subsystems

12.—(1) The Competent Authority may publish a list (a “regulation 12 list”) under this regulation in relation to a TSI that names or describes each project or type of project that—

- (a) is potentially within the scope of the TSI, and
- (b) is, in the opinion of the Competent Authority, a project or type of project for the renewal or upgrading of an existing structural subsystem.

(2) In deciding whether a project or type of project is a renewal or upgrade factors to be taken into account by the Competent Authority must include—

- (a) the scale of the project assessed by reference to its economic cost and benefits;
- (b) the impact of the project on the rail system having regard to its effect on safety, reliability and availability, health, environmental protection and technical compatibility^(a); and
- (c) the impact of the application of the TSI to the subsystem and any interfacing subsystems.

(3) If the Competent Authority has published a regulation 12 list for a TSI, the Competent Authority must keep the regulation 12 list up to date.

Authorisation requirements for the renewal or upgrading of subsystems

13.—(1) Subject to paragraph (2), in relation to a project for the renewal or upgrading of an existing structural subsystem that is potentially within the scope of a TSI, the contracting entity or, if there is no contracting entity, the manufacturer may apply in writing to the Competent Authority for a decision as to whether an authorisation is required.

(a) See the general requirements listed in annex III to the Directive.

(2) If the Competent Authority has published a regulation 12 list for a TSI, paragraph (1) only applies in relation to that TSI if the project is named or is of a type described in the regulation 12 list.

(3) In order for an application made under paragraph (1) to be valid it must be accompanied by the following information—

- (a) a file setting out details of the project;
- (b) the contracting entity's or manufacturer's assessment of whether there are any new or changed safety risks resulting from the works envisaged and how any such risks will be managed;
- (c) identification of any TSI, or part of a TSI, for which derogations may or will be sought pursuant to regulation 14; and
- (d) an indication of any TSI, or part of a TSI, which it is proposed should not apply if the Competent Authority determines that the subsystem requires authorisation.

(4) The Competent Authority may give notice in writing to the applicant requiring the applicant to provide, by a specified date, additional information that the Competent Authority considers necessary in order to make a decision.

(5) The applicant must provide the Competent Authority with such additional information requested under paragraph (4) as the applicant is reasonably able to supply and the applicant must give an explanation in writing where the information requested is not supplied.

(6) In making a decision as to the requirement for authorisation, factors to be taken into account by the Competent Authority must include—

- (a) the implementation strategy provided in relation to any applicable TSI; and
- (b) the extent of the proposed works.

(7) Except where the Competent Authority and the Safety Authority are the same person, the Competent Authority may only decide authorisation is not required if it has consulted the Safety Authority.

(8) If it appears to the Competent Authority that the proposed works may adversely affect the overall safety of the subsystem the Competent Authority must decide that the subsystem requires authorisation.

(9) Where the Competent Authority determines that the subsystem requires an authorisation the Competent Authority, subject to any derogations under regulation 14 must decide to what extent TSIs must apply to the project subsystem.

(10) The Competent Authority must make the decisions not later than four months after the submission of the information required by paragraph (3).

Exemption from need to conform with TSIs (derogations)

14.—(1) The Competent Authority may determine that, in the circumstances or cases specified in paragraph (2), the whole or part of a relevant TSI is not to apply in relation to a subsystem (“a derogation”).

(2) The circumstances or cases are—

- (a) any project which—
 - (i) is for a proposed new subsystem;
 - (ii) is for the renewal or upgrading of an existing subsystem; or
 - (iii) concerns any element referred to in Article 1(1) of the Directive, and the project is at an advanced stage of development having regard to the impact that a change in technical specification would have on the project or the project is the subject of a contract in the course of performance when the applicable TSI is published;

- (b) any project concerning the renewal or upgrading of an existing subsystem, where the loading gauge, track gauge, space between tracks or electrification voltage in the applicable TSI is not compatible with those of the existing subsystem;
- (c) a proposed new subsystem or a proposed renewal or upgrading of an existing subsystem where the rail network is separated or isolated by the sea or separated as a result of special geographical conditions from the rail network of the rest of the EU;
- (d) any proposed renewal, extension or upgrading of an existing subsystem when the application of an applicable TSI would compromise the economic viability of the project or the compatibility of the project with rail system in the United Kingdom;
- (e) following an accident or natural disaster, where the conditions for the rapid restoration of the network do not economically or technically allow for partial or total application of an applicable TSI; and
- (f) vehicles coming from or going to countries outside the EU the track gauge of which is different from that of the main rail network within the EU.

(3) The Competent Authority is not to make a derogation from the application of a TSI or part of a TSI unless the Secretary of State has first forwarded a file to the Commission containing the information set out in Annex IX to the Directive.

(4) Save for matters concerning the loading gauge and the track gauge and subject to paragraph 6, a derogation in relation to the circumstances or cases set out in paragraph (2)(b) has no effect unless the derogation has been permitted by the Commission by a decision in accordance with Articles 9(5) and 29(3) of the Directive.

(5) Subject to paragraph (6), in the circumstances or cases set out in paragraph (2)(d) and (f) a derogation is to have no effect unless the derogation has been permitted by the Commission by a decision in accordance with Articles 9(5) and 29(3) of the Directive.

(6) For the purposes of paragraphs (4) and (5) the Commission is deemed to have permitted the derogation if it has made no decision within six months of receiving the file referred to in paragraph (3).

Essential requirements for project subsystems

15.—(1) For the purposes of regulations 5(4), 7(2) and 9(3), the essential requirements for a project subsystem are deemed to be met if the project subsystem conforms with —

- (a) all applicable TSIs; and
 - (b) where paragraph (2) applies, the requirements of all applicable notified national technical rules.
- (2) This paragraph applies to a project subsystem where—
- (a) there are no applicable TSIs;
 - (b) a relevant TSI does not govern all elements of the project subsystem;
 - (c) a derogation from conformity with the whole or part of a relevant TSI has been granted under regulation 14 in respect of that subsystem; or
 - (d) the Competent Authority has determined under regulation 13(9) that the whole or part of a TSI does not apply to that subsystem.

Role of project manager

16.—(1) In order for an application for an authorisation to be valid a project manager must—

- (a) engage a notified body to act in carrying out the verification assessment procedure, other than in relation to notified national technical rules, in accordance with regulation 17;
- (b) ensure that a notified body (whether that originally engaged or another) continues to be engaged until authorisation under these Regulations is given or refused; and

(c) if there are applicable notified national technical rules, engage a designated body, or if the engagement is made before [] February 2013 either a designated body or a notified body, to carry out the verification assessment procedure in relation to the notified national technical rules in accordance with regulation 17.

(2) The engagement of a notified body under paragraph (1)(a) must be made—

(a) before completion of the design stage of the project subsystem; or

(b) before commencement of the manufacture stage of the project subsystem,

whichever is the earlier.

(3) A project manager must not draw up a verification declaration in relation to that project subsystem unless—

(a) the project manager is satisfied the essential requirements are met in accordance with regulation 15 (including interfaces with the rail system);

(b) the verification assessment procedure has been carried out by a notified body, and if applicable the body engaged under paragraph (1)(c), in accordance with regulation 17;

(c) a certificate of verification has been drawn up by a notified body, and if applicable the body engaged under paragraph (1)(c), in accordance with Annex VI to the Directive; and

(d) a technical file has been prepared containing the information and documents specified in regulation 17(2) and, if applicable, regulation 17(5).

(4) A notified body engaged to assess conformity with notified national technical rules may only continue to carry out that function on and after [] February 2013 if it has also been appointed as a designated body under regulation 31 (whether or not the appointment as a notified body remains in place).

(5) This regulation and regulation 17 do not apply where an authorisation is being applied for under regulation 5(1)(c).

(6) Where regulations 9 or 10 applies, this regulation and regulation 17 only apply to the extent necessary to satisfy the Safety Authority that an authorisation must be granted under these Regulations.

Project subsystems: verification assessment procedure

17.—(1) The verification assessment procedure for a notified body carrying out an assessment other than in relation to notified national technical rules is—

(a) in so far as that subsystem is required to conform with all or part of a TSI, the procedures specified in the TSI or part of the TSI with which that subsystem is required to conform; and

(b) the applicable procedure set out in Annex VI to the Directive.

(2) The notified body carrying out an assessment other than in relation to notified national technical rules must—

(a) compile a technical file containing:

(i) the items required by section 2.4 of Annex VI to the Directive, including the certificate of verification;

(ii) documents relating to the conditions and limits of use of the project subsystem;

(iii) documents relating to the characteristics of the project subsystem;

(iv) manuals and instructions relating to the servicing, constant or routine monitoring, adjustment and maintenance of the project subsystem;

(v) documentation or records of notifications to the Commission pursuant to regulation 13(9) identifying to what extent TSIs apply to the project subsystem; and

(vi) documentation or records of notifications to the Commission in relation to a derogation, pursuant to regulation 14; and

(b) assess the interface between the project subsystem and the rail system to the extent that such an assessment is possible based on the available information referred to in paragraph (3).

(3) The assessment under paragraph (2)(b) must be only based on information available in the relevant TSI and in any registers kept in accordance with Article 34 (European register of authorised types of vehicles) and Article 35 (register of infrastructure) of the Directive.

(4) The verification assessment procedure for a body carrying out an assessment in relation to notified national technical rules is the applicable procedure set out in Annex VI to the Directive.

(5) The body carrying out an assessment in relation to notified national technical rules must compile a technical file in accordance with Annex VI to the Directive.

Project subsystems: verification declaration

18.—(1) A project subsystem in relation to which a verification declaration has been drawn up is to be taken to meet the essential requirements in accordance with regulation 15 unless there are reasonable grounds for believing that it does not so conform.

(2) Paragraph (1) does not apply where a person fails or refuses to make available to the Safety Authority the documentation which the person is required to retain by the verification assessment procedure applying to the project subsystem or pursuant to regulation 19, or a copy of that documentation.

Retention of documents

19.—(1) From the time a project subsystem authorised under these Regulations is placed in service until it is permanently withdrawn from service (whether such service is in the United Kingdom or another Member State), the project manager who made the verification declaration must—

(a) keep the following documents—

(i) the technical file compiled in accordance with regulations 6(3)(b), 17(2)(a) or (5) (where there is more than one file the project manager must combine the files and keep them as one);

(ii) the verification declaration; and

(iii) any declaration made in accordance with regulation 9(2)(a); and

(b) provide a copy of the technical file to any other Member State that requests one.

(2) The project manager must ensure that—

(a) any alterations made to the project subsystem are documented;

(b) the documentation recording any alterations and any maintenance manuals in relation to the project subsystem are added to and kept as part of the technical file; and

(c) any safety assessment report is added to and kept as part of the technical file.

(3) Where the project manager is not the owner of the project subsystem when it is authorised under these Regulations, the project manager must within 60 days of the date of authorisation transfer the documents referred to in paragraphs (1) and (2) to the owner of the subsystem, and once this is done for the purpose of paragraphs (1) and (2) the owner is to be regarded for the purposes of this regulation as the project manager.

(4) Where an owner of the project subsystem disposes of the owner's interest in it, the owner must within 60 days of the disposal transfer the documents referred to in paragraphs (1) and (2) to the person acquiring that interest, and once this is done for the purpose of paragraphs (1) and (2) and this paragraph, the person acquiring that interest is to be regarded for the purposes of this regulation as the project manager.

(5) The project manager must make the technical file, or the documents kept in accordance with paragraph (7)(b), available to the Safety Authority on demand.

(6) The duties of the project manager, or an owner of a project subsystem, under paragraphs (1), (2)(b) and (c) and (3) to (5) do not apply in respect of an authorisation deemed to be given under these Regulations by the operation of regulation 44.

(7) In respect of a project subsystem authorised under regulation 9 the duties of the project manager under paragraphs (1) and (2) are limited to keeping—

- (a) the declaration made in accordance with regulation 9(2)(a); and
- (b) documentation recording any alterations and any maintenance manuals in relation to the project subsystem.

Duty on operator to ensure essential requirements are met

20.—(1) This regulation applies where a project subsystem is in use on, or is part of, the rail system with an authorisation under these Regulations.

(2) Subject to paragraph (3), the operator of the project subsystem must ensure that the project subsystem is operated and maintained—

- (a) subject to paragraph (b), in conformity with the TSIs and notified national technical rules against which the subsystem was assessed for that authorisation;
- (b) where a TSI or notified national technical rule referred to in paragraph (a) has been varied and replacement parts which conform to the TSI or notified national technical rule against which the subsystem was assessed are no longer available, in conformity with that varied TSI or rule;
- (c) in conformity with any functional TSI applying to that subsystem; and
- (d) in accordance with any condition in the authorisation to the extent that the condition still applies.

(3) Where—

- (a) the notified national technical rules against which a project subsystem was assessed for authorisation were the Rail Vehicle Accessibility Regulations 1998^(a) as in force when the project was assessed, and
- (b) an exemption order made or treated as having been made under section 183 of the Equality Act 2010^(b) has effect in relation to that project subsystem,

the duty in paragraph (2)(a) to ensure that the project subsystem is operated and maintained in conformity with those Regulations is a duty to do so save to the extent the order exempted it from those Regulations, even though the order may include a provision for the expiry of such exemption.

(4) Paragraph (2) is without prejudice to regulation 45.

(5) In this regulation—

- (a) “project subsystem” includes a vehicle deemed to be authorised under these Regulations by the operation of regulation 44; and
- (b) the reference in paragraph (3)(a) to the Rail Vehicle Accessibility Regulations 1998 is, in its application to Northern Ireland, to have effect as a reference to the Rail Vehicle Accessibility Regulations (Northern Ireland) 2001^(c).

Fees payable to the Safety Authority

21.—(1) The Safety Authority may charge a person applying for an authorisation a fee that must—

(a) S.I. 1998/2456, amended by S.I. 2000/3215 and S.I. 2008/1746 and revoked by S.I. 2010/432.
(b) 2010 c.15. See article 21(1) and schedule 7 of S.I. 2010/2317 for saving provisions.
(c) S.R. (N.I.) 2001 No. 264.

- (a) not exceed the sum of the costs reasonably incurred by the Safety Authority in carrying out the work relating to the application; and
 - (b) be set out in an invoice that includes a statement of the work done and the costs reasonably incurred and specifies the period to which the statement relates.
- (2) The Safety Authority must give at least 30 days for payment of a fee charged under this regulation from the date of the invoice that the Safety Authority has sent or given to the person who is required to pay the fee.
- (3) A fee payable under this regulation is recoverable as a civil debt.
- (4) Failure to pay a fee does not constitute an offence.
- (5) This regulation does not apply where the Intergovernmental Commission is the Safety Authority.

Fees payable to the Competent Authority

- 22.**—(1) The Competent Authority may charge such reasonable fee in connection with, or incidental to, carrying out its functions under regulations 13 and 14, as it may determine.
- (2) This regulation does not apply where the Intergovernmental Commission is the Competent Authority.

PART 3

Interoperability Constituents

Prohibition on placing interoperability constituents on the market

- 23.**—(1) Subject to regulation 28, no person may place an interoperability constituent on the market for which there is an applicable TSI with a view to its use on the rail system unless—
- (a) the interoperability constituent meets the essential requirements that are relevant to an interoperability constituent of that type;
 - (b) the appropriate procedure for assessing the conformity or suitability for use of the interoperability constituent has been carried out; and
 - (c) an EC declaration of conformity or suitability for use in relation to that interoperability constituent has been drawn up.
- (2) Nothing in these Regulations shall preclude a person from placing an interoperability constituent on the market for a purpose other than use on the rail system.

Assessment procedure for interoperability constituents

- 24.**—(1) The procedures for assessing the conformity or suitability for use of an interoperability constituent must be carried out by a notified body, which at all the relevant times complies with the relevant requirements set out in Annex VIII to the Directive.
- (2) The appropriate procedures for assessing the conformity or suitability for use of an interoperability constituent are subject to paragraph (3), the procedures specified in the applicable TSI.
- (3) Spare parts for subsystems that were placed in service before the applicable TSI came into force are not subject to the procedures referred to in paragraph (2).

EC declaration of conformity or suitability for use

25.—(1) Where an EC declaration of conformity or suitability for use has not been drawn up by the manufacturer or the manufacturer's authorised representative established in the EU, an EC declaration of conformity or suitability for use must be drawn up by any person who—

- (a) places that interoperability constituent on the market; or
- (b) uses that interoperability constituent, or any part of it, in any interoperability constituent that the person is manufacturing or assembling, or in any project subsystem that the person is constructing, upgrading or renewing

before the person places the interoperability constituent on the market or uses it or any part of it as referred to in sub-paragraph (b).

(2) An EC declaration of conformity or suitability for use must be drawn up in accordance with the requirements of Annex IV to the Directive.

(3) A person may only draw up an EC declaration of conformity or suitability for use if satisfied that the interoperability constituent satisfies the relevant conditions—

- (a) of the applicable TSI, or
- (b) of European specifications developed to comply with the conditions of the applicable TSI.

(4) If an interoperability constituent is subject to other requirements of an EU Directive, a person may only draw up an EC declaration of conformity or suitability for use if satisfied that the interoperability constituent meets those other requirements and the person must state in the declaration that the interoperability constituent meets those other requirements.

Effect of conformity and suitability declarations

26.—(1) An interoperability constituent in relation to which an EC declaration of conformity or suitability for use has been drawn up is to be taken to—

- (a) meet such of the essential requirements as relate to an interoperability constituent of that type; and
- (b) conform to the applicable TSI,

unless there are reasonable grounds for believing that it does not so conform.

(2) Paragraph (1) does not apply where a person fails or refuses to make available to the Safety Authority the documentation which the person is required to retain by any of the procedures for assessing the conformity or suitability for use of that interoperability constituent or a copy of that documentation.

Duties on operators

27. The operator of any interoperability constituent for which there is an applicable TSI that is in use on, or is part of, the rail system located in the United Kingdom must ensure that it is—

- (a) correctly installed for the purpose for which it is intended to be used;
- (b) not used for any purpose other than the purpose for which it was designed; and
- (c) maintained in effective working order and good repair.

Recognition of assessments of other Member States

28. Nothing in these Regulations shall preclude any person from placing on the market relating to the rail system an interoperability constituent that has successfully completed all the requirements of any scheme in force in another Member State for the purpose of implementing the Directive.

Notification to the Commission of incorrect declaration

29.—(1) Where it appears to the Safety Authority that an interoperability constituent in relation to which an EC declaration of conformity or suitability for use has been drawn up fails to meet the essential requirements relating to it, it must immediately give notice of that fact in writing to the Commission and the other Member States.

(2) That notice must specify—

- (a) whether the failure to comply was due to the inadequacy of a TSI; and
- (b) if it was not—
 - (i) the steps taken to prohibit or restrict the use of that interoperability constituent or withdraw or recall the interoperability constituent;
 - (ii) the reasons for taking those steps; and
 - (iii) any measures taken against a person who drew up the declaration.

PART 4

Notified and Designated Bodies

Notified bodies

30. For the purposes of these Regulations, a notified body is a body which has been—

- (a) appointed by the Strategic Rail Authority^(a) as a notified body and notified to the Commission and other Member States pursuant to regulation 5 of the Railways (Interoperability) (High-Speed) Regulations 2002^(b);
- (b) appointed by the Secretary of State as a notified body and notified to the Commission and other Member States pursuant to regulation 25 of the Railways (Interoperability) Regulations 2006^(c) or regulation 31 of these Regulations;
- (c) appointed by a Member State other than the United Kingdom, and notified by the Member State concerned to the Commission and the other Member States pursuant to Article 20(1) of the Conventional Directive or Article 20(1) of the High-Speed Directive; or
- (d) appointed by a Member State other than the United Kingdom, and notified by the Member State concerned to the Commission and the other Member States pursuant to Article 28(1) of the Directive,

unless the appointment has terminated.

Appointment of notified bodies and designated bodies

31.—(1) The Secretary of State may from time to time appoint by notice in writing (an “appointment”) such persons as the Secretary of State thinks fit to be a notified body or a designated body for the purposes of these Regulations.

(2) The Secretary of State must not appoint any person as a notified body or a designated body in accordance with paragraph (1) unless the Secretary of State is satisfied that the person is capable of meeting the criteria specified in Annex VIII to the Directive.

(3) For the purposes of this regulation Annex VIII to the Directive applies to a designated body as it applies to a notified body.

(a) Established under section 201 of the Transport Act 2000 c.38 and abolished by S.I. 2006/2925.

(b) S.I. 2002/1166, revoked with savings by S.I. 2006/397.

(c) S.I. 2006/397.

- (4) An appointment—
 - (a) relates to such descriptions of structural subsystems and interoperability constituents of the rail system as the Secretary of State may specify; and
 - (b) is subject to such conditions as the Secretary of State may specify, including such conditions as are to apply upon or following termination of the appointment.
- (5) Subject to paragraphs (6)(b) and (c), (7) and (8), an appointment is for such period as may be specified in the appointment.
- (6) An appointment terminates—
 - (a) upon the expiry of any period specified in the appointment pursuant to paragraph (4);
 - (b) upon the expiry of 90 days notice in writing given by the notified body or the designated body to the Secretary of State; or
 - (c) on any date specified for the termination of the appointment in accordance with paragraphs (7) or (8),

whichever is the earliest.

(7) If at any time it appears to the Secretary of State in relation to a notified body appointed by the Secretary of State or the Strategic Rail Authority or in relation to a designated body that—

- (a) any of the conditions of the appointment of that body are not being complied with; or
- (b) the body is not meeting the criteria specified in Annex VIII to the Directive,

the Secretary of State may, by notice in writing to that body, specify a date on which the appointment of that person as a body is to terminate.

(8) If at any time it appears to the Secretary of State in relation to a designated body that any of the conditions of the appointment of that designated body are not being complied with the Secretary of State may, by notice in writing to that designated body, specify a date on which the appointment of that person as a designated body is to terminate.

(9) Before terminating the appointment of a person as a notified body or designated body pursuant to the grounds specified in paragraphs (7) or (8) the Secretary of State must—

- (a) notify the notified body or designated body in writing that—
 - (i) the Secretary of State is considering terminating the appointment and the reasons why; and
 - (ii) the notified or designated body may make representations in writing within 14 days beginning with the day on which such notice is given; and
- (b) consider any representations made within that period by the notified body or the designated body before making a decision.

(10) When the appointment of a notified body is terminated in accordance with paragraph (6) the Secretary of State may—

- (a) give such directions as the Secretary of State considers appropriate, to that notified body or to another notified body, for the purpose of making such arrangements as may be necessary or expedient for the determination of any matters which would, apart from the termination, have fallen to be determined by the notified body whose appointment has terminated; and
- (b) without prejudice to the generality of sub-paragraph (a), authorise another notified body, to take over the functions of the notified body whose appointment has terminated, in respect of such matters as the Secretary of State may specify.

(11) When the appointment of a designated body is terminated in accordance with paragraph (6) the Secretary of State may—

- (a) give such directions as the Secretary of State considers appropriate, to that designated body or to another designated body, for the purpose of making such arrangements as may be necessary or expedient for the determination of any matters which would, apart from

the termination, have fallen to be determined by the designated body whose appointment has terminated; and

- (b) without prejudice to the generality of sub-paragraph (a), authorise another designated body, to take over the functions of the designated body whose appointment has terminated, in respect of such matters as the Secretary of State may specify.

Notified bodies and designated bodies: certificates etc.

32.—(1) Where a notified body or designated body proposes to decline to draw up a certificate of verification or an ISV in relation to a project subsystem, or proposes to decline to confirm that an EC declaration of conformity or suitability for use can be drawn up in respect of an interoperability constituent, it must—

- (a) give notice in writing to the relevant person of the reasons why it proposes to do so;
- (b) give the relevant person the opportunity to make representations in writing within a period of 28 days beginning with the day on which such notice is given; and
- (c) consider any representations made within that period by the relevant person before making its decision.

(2) A notified body must not draw up a certificate of verification other than in relation to notified national technical rules unless satisfied the subsystem conforms to all applicable TSIs.

(3) A notified body must not confirm that an EC declaration of conformity or suitability for use can be drawn up in respect of an interoperability constituent unless satisfied that that constituent conforms to such of the European specifications or TSIs as are required by regulation 25.

(4) A body must not draw up a certificate of verification in relation to notified national technical rules unless satisfied the subsystem conforms to all applicable notified national technical rules.

(5) “ISV” means an intermediate statement of verification issued by a notified body in relation to the design stage or the production stage of a subsystem in accordance with section 2 of Annex VI to the Directive.

(6) The “relevant person” means the person who engaged the notified body or designated body for the relevant matter.

Fees of notified bodies and designated bodies

33.—(1) Subject to paragraph (2), a notified body or a designated body may charge such a fee in connection with, or incidental to, carrying out its functions in relation to these Regulations as it may determine.

(2) The fee charged pursuant to paragraph (1) must not exceed the sum of the following—

- (a) the costs incurred or to be incurred by the notified body or the designated body in carrying out relevant work; and
- (b) an amount of profit which is reasonable in the circumstances having regard to—
 - (i) the character and extent of the work carried out by the notified body or the designated body on behalf of the person commissioning the work; and
 - (ii) the commercial rate normally charged on account of profit for that work or similar work.

(3) Subject to paragraph (4) the power in paragraph (1) includes the power to require the payment of a fee, or a reasonable estimate of the fee, in respect of the work commissioned in advance of carrying out that work.

(4) Unless the parties otherwise agree, an amount charged in accordance with paragraph (3) must not exceed a reasonable estimate of the fee for the work for the three months subsequent to the request for the advance payment.

Fees of the Secretary of State

34. The Secretary of State may charge such reasonable fee in connection with, or incidental to, carrying out the Secretary of State's functions under regulation 31 as the Secretary of State may determine.

PART 5

Registers

Register of infrastructure

35.—(1) An owner of infrastructure must keep a register of its infrastructure or procure that the register is kept.

(2) The owner must ensure that in relation its infrastructure—

- (a) the infrastructure register is maintained in accordance with the infrastructure specifications, subject to the transitional arrangements set out in Article 5 of the specifications Decision;
- (b) refer in the infrastructure register to any rules or restrictions that have been notified to the owner in accordance with regulation 46(2); and
- (c) the infrastructure register is available on a publicly accessible website.

(3) In this regulation—

- (a) “infrastructure” means any structural subsystem within the scope of the infrastructure specifications;
- (b) “the infrastructure specifications”, means the specifications set out in the Annex to the specifications Decision, as that Annex is amended from time to time; and
- (c) “the specifications Decision” means the Commission Implementing Decision 2011/633/EU of 15th September 2011 on the common specifications of the register of railway infrastructure^(a)

National vehicle register

36.—(1) This regulation applies to a vehicle for which there is an authorisation under these Regulations for it to be placed in service.

(2) If the Safety Authority issues an authorisation, the person who applied for the authorisation must apply to the registration entity for it to assign a European vehicle number before the vehicle is placed in service.

(3) The registration entity must assign a unique alphanumeric identification code (a “European vehicle number”) to each vehicle for which an application is made and maintain a register of vehicles (“National Vehicle Register”).

(4) In the case of a vehicle—

- (a) which is operated or intended to be operated from or to third countries the track gauge of which is different from that of the main rail network within the EU, and
- (b) which is clearly identified by a different coding system,

the registration entity may assign to it a European vehicle number that is the same as that by which it is identified under the different coding system.

(5) Any person who places in service a vehicle must ensure it is marked with the European vehicle number assigned to it.

(a) O.J. No. L.256, 1.10.2011, p.1.

(6) The person who applied for the authorisation must, no later than 14 days after the date of authorisation, provide particulars to the registration entity to enable the registration entity to enter the information on the National Vehicle Register that is necessary to conform to the common specifications referred to in paragraph (8), and such further information as the registration entity may reasonably require.

(7) In respect of a vehicle authorised the registration entity must ensure that the National Vehicle Register conforms to the common specifications as set out in the Annex to Commission Decision 2007/756/EC(a) as amended from time to time.

(8) Where there is a material change to any of the particulars provided under paragraph (7) or to any of the particulars provided under regulation 33(7) of the Railways (Interoperability) Regulations 2006(b), the owner of the vehicle must ensure that the registration entity is given the particulars of the change and the registration entity must alter the National Vehicle Register accordingly.

(9) Where a vehicle is also registered in another Member State the registration entity must, unless the registers are linked, notify the entity responsible for the national vehicle register in the other Member State of any relevant changes to the National Vehicle Register.

(10) The registration entity must make the National Vehicle Register available for inspection—

(a) by the Safety Authority or any other safety authority or investigating body designated under Articles 16 and 21 of Directive 2004/49/EC of the European Parliament and of the Council of 29th April 2004 on safety of the Community's railways(c); and

(b) in response to a reasonable request by—

(i) the Office of Rail Regulation, DRDNI, the Intergovernmental Commission or any other regulatory body designated in article 30 of Directive 2001/14/EC(d) of the European Parliament and of the Council of 21st February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification;

(ii) the European Railway Agency;

(iii) railway undertakings;

(iv) infrastructure managers; or

(v) owners of project subsystems.

(11) In Great Britain the Secretary of State and in Northern Ireland the DRDNI must designate a person, who must be independent of any railway undertaking, to be the registration entity from time to time; and different persons may be designated to maintain the register in different parts of the United Kingdom.

(a) O.J. No. L305, 23.11.2007, p30, as amended by Commission Decision 2011/107/EU (O.J. No. L43, 17.2.2011, p33).

(b) S.I. 2006/397, as amended by S.I. 2007/3386 and by regulation 4 of S.I. 2008/1746.

(c) O.J. No. L164, 30.4.2004, p44, as amended by Directive 2008/57/EC of the European Parliament and of the Council (O.J. No. L 191, 18.7.2008, p1), and by Directive 2008/110/EC of the European Parliament and of the Council (O.J. No. L345, 23.12.2008, p62).

(d) O.J. No. L75, 15.3.2001, p. 29, as amended by Commission Decision 2002/844/EC (O.J. No. L289, 26.10.2002, p30, Directive 2004/49/EC of the European Parliament and of the Council (O.J. No. L164, 30.4.2004 and Directive 2007/58/EC of the European Parliament and of the Council (O.J. No. L315, 3.12.2007, p44).

PART 6

Appeals and Enforcement

Appeals in Great Britain

37.—(1) A person who is aggrieved by a decision of the Safety Authority under regulations 5 to 11 may appeal to the Secretary of State.

(2) The Secretary of State may, in such cases as the Secretary of State considers it appropriate to do so, having regard to the nature of the questions which appear to the Secretary of State to arise, direct that an appeal under this regulation is determined on the Secretary of State's behalf by a person appointed by the Secretary of State for that purpose.

(3) Before the determination of an appeal the Secretary of State must ask the appellant and the Safety Authority 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;
- (b) the Secretary of State must, 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(a) applies 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 the Secretary of State's behalf by that person.

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

(6) Without prejudice to the right of any person to make an application for judicial review—

- (a) a determination by the Secretary of State, or by a person appointed to make a determination on the Secretary of State's behalf, on an appeal brought under this regulation is binding on all parties affected by that determination;
- (b) the Secretary of State, or person so appointed, may give such directions as they consider appropriate to give effect to the determination; and
- (c) it is the duty of any person to whom a direction is given under this regulation to comply with and give effect to that direction.

(7) The Secretary of State may pay to any person appointed to determine an appeal under paragraph (2) on the Secretary of State's behalf such remuneration and allowances as the Secretary of State may with the approval of the Treasury determine.

(8) Where under paragraph (3)(b) a party expresses a wish to appear and be heard, the Health and Safety Licensing Appeals (Hearing Procedure) Rules 1974(c), as respects England and Wales, and the Health and Safety Licensing Appeals (Hearing Procedure)(Scotland)Rules 1974(d), as respects Scotland, apply to an appeal under paragraph (1) as they apply to an appeal under section 44(1) of the 1974 Act, but with the modification that references to a licensing authority are to be read as references to the Safety Authority.

(9) Where an appeal is made under this regulation, the decision in question is suspended pending the final determination of the appeal.

(10) This regulation does not apply to a decision of DRDNI under regulations 5 to 11.

(a) 1992 c.53.
(b) 2007 c.15.
(c) S.I. 1974/2040.
(d) S.I. 1974/2068.

Appeals in Northern Ireland

38. (1) A person who is aggrieved by a decision of the Safety Authority in Northern Ireland under regulations 5 to 11, may appeal to DRDNI.

(2) The appellant must lodge the appeal by way of an application in such form or manner as DRDNI may decide.

(3) DRDNI must within two months of the date of receipt of all relevant information—

- (a) make a determination; and
- (b) where DRDNI considers it appropriate in order to give effect to the determination—
 - (i) arrange for the Safety Authority to take any necessary action; and
 - (ii) give directions.

(4) Without prejudice to the right of any person to make an application for judicial review—

- (a) a determination by DRDNI on appeal brought under this regulation is binding on all parties affected by that determination; and
- (b) it is the duty of any person to whom a direction is given under this regulation to comply with and give effect to that direction.

(5) Where an appeal is made under this regulation, the decision in question is suspended pending the final determination of the appeal.

Enforcement in Great Britain

39.—(1) It is the duty of the Office of Rail Regulation to make adequate arrangements for the enforcement of these Regulations in Great Britain.

(2) Subject to paragraph (5), the provisions of the 1974 Act specified in paragraph (3) (the “specified provisions”) apply for the purposes of the enforcement of these Regulations in Great Britain as if in the specified provision—

- (a) a reference to the “enforcing authority” was a reference to the Office of Rail Regulation;
- (b) a reference to the “relevant statutory provisions” was a reference to these Regulations and to the specified provisions; and
- (c) a reference to “health and safety regulations” was a reference to these Regulations.

(3) The provisions of the 1974 Act referred to in paragraph (2) are—

- (a) sections 19 and 20 (appointment and powers of inspectors)(**a**), excluding section 20(3);
- (b) sections 21 and 22 (improvement and prohibition notices)(**b**);
- (c) section 23 (provisions supplementary to sections 21 and 22)(**c**), excluding section 23(3) and (6);
- (d) section 24 (appeal against improvement and prohibition notices)(**d**);
- (e) section 26 (power to indemnify inspectors);
- (f) section 28 (restrictions on disclosure of information);(**e**)
- (g) sections 33(1)(c), (e) to (h), (j) to (o), 34(2) to (5), 36(1) and (2), 37 to 41 and 42(1) to (3) (provision as to offences)(**f**); and

(a) Section 20(7) was amended by the Civil Partnership Act 2004 (c.33), Schedule 27, paragraph 49.

(b) Section 22(1) and (2) were amended by, and section 22(4) was substituted by, the Consumer Protection Act 1987 (c.43), Schedule 3.

(c) Section 23(4) was amended for England and Wales by the Fire and Rescue Services Act 2004 (c.21), Schedule 1, paragraph 44, and by S.I. 2005/1541. Corresponding amendments were made for Scotland by S.S.I. 2005/383 and S.S.I. 2006/475.

(d) Section 24(2) and (4) were amended by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 1(2) (a).

(e) Section 28(4) was substituted by S.I. 2008/960. Section 28(5) was amended by S.I. 2004/3363. Section 28(9) was inserted by the Employment Protection Act 1975 (c.71), Schedule 15, paragraph 9. There are other amendments to section 28 not relevant to these Regulations.

(f) Section 33(1)(c) was amended by the Employment Protection Act 1975 (c.71), Schedule 15, paragraph 11, and Schedule 18. Section 33(1)(m) was amended by the Forgery and Counterfeiting Act 1981 (c.45), the Schedule, Part 1.

(h) section 46 (service of notices).

(4) The mode of trial and maximum penalty applicable to each offence under section 33 of the 1974 Act so applied and listed in the first column of the following table are set out opposite that offence in the subsequent columns of the table.

<i>Offence</i>	<i>Mode of trial</i>	<i>Penalty on summary conviction</i>	<i>Penalty on conviction on indictment</i>
An offence under section 33(1)(c), (e), (f), (g), (j), (k), (l), (m) or (o).	Summarily or on indictment.	Imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the standard scale as it has effect from time to time (as if the offence was triable only summarily), or both.	Imprisonment for a term not exceeding two years, or a fine, or both.
An offence under section 33(1)(h).	Summarily only.	Imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the standard scale as it has effect from time to time, or both.	
An offence under section 33(1)(n).	Summarily only.	A fine not exceeding level 5 on the standard scale as it has effect from time to time.	

(5) A failure to discharge a duty placed on the Office of Rail Regulation, the Secretary of State, or the Intergovernmental Commission by these Regulations is not an offence under section 33(1)(c) of the 1974 Act.

Enforcement in Northern Ireland

40.—(1) It is the duty of the Health and Safety Executive for Northern Ireland^(a) to make adequate arrangements for the enforcement of these Regulations in Northern Ireland.

(2) Subject to paragraph (5), the provisions of the Health and Safety at Work (Northern Ireland) Order 1978^(b) (“the 1978 Order”) specified in paragraph (3) (the “specified provisions”) apply for the purposes of the enforcement in Northern Ireland of these Regulations as if in the specified provision—

- (a) a reference to the “enforcing authority” was a reference to the Health and Safety Executive for Northern Ireland;
- (b) a reference to the “relevant statutory provisions” was a reference to these Regulations and to the specified provisions; and

^(a) Formerly known as the Health and Safety Agency for Northern Ireland which was established under Article 12 of the Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/ 1039 (N.I. 9)). Article 3(1) of the Health and Safety at Work (Amendment) (Northern Ireland) Order 1998 (S.I. 1998/ 2795 (N.I. 18)) changed its name to the Health and Safety Executive for Northern Ireland.

^(b) S.I. 1978/ 1039 (N.I. 9). Article 24 was amended by S.I. 1987/2049 (N.I. 20), Article 28 and Schedule 2, paragraph 3. Article 26 was amended by S.I. 1984/1159 (N.I. 9), Article 35 and Schedule 4. Article 31 was amended by: S.I. 1987/2049 (N.I. 20), Article 28 and Schedule 2 paragraph 7; S.I. 1988/595 (N.I. 3), Article 10(1)(c); S.I. 1986/1883 (N.I. 15), Article 13(3) and Schedule 5; S.I. 1992/1728 (N.I. 17), article 6(1), (3), (4), (5), (7), Article 8 and Schedule 2; S.I. 1998/2795 (N.I. 18), Article 6 and Schedule 1, paragraph 15, and Schedule 2, Forgery and Counterfeiting Act 1981 (c. 45) section 30 and Schedule and the Health and Safety (Offences) Act 2008 (c.20) section 1(3). There are other amendments to the 1978 Order not relevant to these Regulations.

- (c) a reference to “health and safety regulations” was a reference to these Regulations.
- (3) The provisions of the 1978 Order referred to in paragraph (2) are—
- (a) articles 21 and 22 (appointment and powers of inspectors), excluding article 22(3);
 - (b) articles 23 and 24 (improvement and prohibition notices);
 - (c) article 25 (provisions supplementary to articles 23 and 24), excluding article 25(3);
 - (d) article 26 (appeal against improvement and prohibition notices);
 - (e) article 28 (power to indemnify inspectors);
 - (f) article 30 (restrictions on disclosure of information); and
 - (g) articles 31(1)(c), (e) to (h), (j) to (o), 32(2) to (4), 34 (1) and (2), 34A to 38 and 39(1) to (3) (provision as to offences).
- (4) The mode of trial and maximum penalty applicable to each offence under article 31 of the 1978 Order so applied and listed in the first column of the following table are set out opposite that offence in the subsequent columns of the table.

<i>Offence</i>	<i>Mode of trial</i>	<i>Penalty on summary conviction</i>	<i>Penalty on conviction on indictment</i>
An offence under article 31(1)(c), (e), (f), (g), (k), (j), (l), (m) or (o).	Summarily or on indictment.	Imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the standard scale as it has effect from time to time (as if the offence was triable only summarily), or both.	Imprisonment for a term not exceeding two years, or a fine, or both.
An offence under article 31(1)(h).	Summarily only.	Imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the standard scale as it has effect from time to time, or both.	
An offence under article 31(1)(n).	Summarily only.	A fine not exceeding level 5 on the standard scale as it has effect from time to time.	

(5) A failure to discharge a duty placed on the Health and Safety Executive for Northern Ireland or DRDNI by these Regulations is not an offence under article 31(1)(c) of the 1978 Order.

Notices relating to interoperability constituents not meeting the essential requirements

41.—(1) If the Office of Rail Regulation or the Health and Safety Executive for Northern Ireland is of the opinion that an interoperability constituent in relation to which an EC declaration of conformity or suitability for use has been drawn up is unlikely when used as intended to meet the essential requirements relating to it, the Office of Rail Regulation or the Health and Safety Executive for Northern Ireland may serve a notice in writing on any person who is using or intending to use that interoperability constituent in a project subsystem—

- (a) prohibiting the use of or restricting the area of use of that interoperability constituent; or
- (b) where there is a serious safety risk, requiring the recall or withdrawal of the interoperability constituent.

- (2) The information to be contained in a notice served under paragraph (1) is—
- (a) a statement that the Office of Rail Regulation or the Health and Safety Executive for Northern Ireland is of the opinion referred to in paragraph (1);
 - (b) the reasons for that opinion;
 - (c) a direction that the interoperability constituent to which that notice relates must not be used, or that its area of use shall be restricted, or that it must be recalled or withdrawn; and
 - (d) the date by which the person must comply with the notice.

(3) Any notice served under paragraph (1) may be withdrawn by the Office of Rail Regulation or the Health and Safety Executive for Northern Ireland by serving notice of the withdrawal on the person.

(4) Where a notice has been served on a person (“P”) in accordance with this regulation P must—

- (a) comply with that notice; and
- (b) notify the person (if any) who supplied P with the interoperability constituent in relation to which the notice under paragraph (1) was served—
 - (i) that a notice under paragraph (1) has been served;
 - (ii) of what the notice says; and
 - (iii) that P requires that person in turn to notify the supplier (if any) with the same information contained in the notice from P.

Notice of improper drawing up of the EC declaration of conformity or suitability for use for an interoperability constituent

42.—(1) Where the Office of Rail Regulation or the Health and Safety Executive for Northern Ireland has reasonable grounds for suspecting that the EC declaration of conformity or suitability for use has not been drawn up in accordance with the requirements of regulation 25, it may give notice in writing to any person who made the declaration.

(2) A notice which is given under paragraph (1) must—

- (a) state that the Office of Rail Regulation or the Health and Safety Executive for Northern Ireland considers that the EC declaration of conformity or suitability for use has not been properly drawn up in accordance with regulation 25;
- (b) specify the respect in which it is so considered and give particulars;
- (c) require the person who made the declaration to—
 - (i) secure that any interoperability constituent to which the notice relates conforms as regards the provisions concerning the proper drawing up of the declaration within such period as may be specified in the notice; and
 - (ii) provide evidence within that period, to the satisfaction of the Office of Rail Regulation or the Health and Safety Executive for Northern Ireland, as the case may be, that the declaration has been properly drawn up; and
- (d) inform the relevant person that if the non-conformity continues (or if satisfactory evidence of conformity has not been provided) within the period specified in the notice, further action may be taken in respect of that non-conformity under these Regulations.

(3) Where a notice has been served under this regulation on a person, the person served must comply or secure compliance with the notice.

Defence of due diligence

43.—(1) Subject to the following provisions of this regulation, if proceedings are brought against a person (“P”) for an offence under these Regulations it is a defence for P to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

- (2) Where P's defence 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,

P is not, without the leave of the court, entitled to rely on the defence unless, within a period ending 7 clear days before the commencement of the hearing of the proceedings (or in Scotland, the trial diet), P has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph must 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 P serving the notice at the time it is served.

(4) P is not entitled to rely on the defence provided by paragraph (1) by reason P's reliance on information supplied by another, unless P shows that it was reasonable in all the circumstances to have relied on the information, having regard in particular—

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

PART 7

Supplementary

Deemed authorisation

- 44.**—(1) Subject to paragraph (5), a vehicle to which this paragraph applies is deemed—
- (a) to have been authorised under these Regulations; and
 - (b) to have been assessed against the requirements of Part 1 of Schedule 1 to the Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010(a), as notified national technical rules, for the purposes of that authorisation.
- (2) Subject to paragraph (3), paragraph (1) applies to a vehicle which—
- (a) is constructed or adapted to transport passengers; and
 - (b) was first brought into use after 31st December 1998 and before 1st August 2006; and
 - (c) is used in the provision of a service for the carriage of passengers on the trans-European rail system located in the United Kingdom.
- (3) Paragraph (1) does not apply to—
- (a) a vehicle to the extent that immediately before 7th July 2008 the vehicle—
 - (i) was authorised or treated as having been authorised under the Railways (Interoperability) Regulations 2006(b); and
 - (ii) had been assessed against the Rail Vehicle Accessibility Regulations 1998(c) as in force when the unit was assessed, or the Rail Vehicle Accessibility Regulations (Northern Ireland) 2001(d), for that authorisation; or

(a) S.I. 2010/432.

(b) S.I. 2006/397, as amended by S.I. 2007/3386. S.I. 2006/397 was also amended by the Rail Vehicle Accessibility (Interoperable Rail System) Regulations 2008 (S.I. 2008/1746), but as those amendments came into force on 7th July 2008 they are not relevant to paragraph (3)(a)(i). Regulation 40(6) of S.I. 2006/397 provides for authorisations under the Railways (Interoperability)(High-Speed) Regulations 2002 (2002/1166) to be treated as an authorisation under S.I. 2006/397. Consequently the reference in paragraph (3)(a)(i) to a unit being authorised under the Railways (Interoperability) Regulations 2006 does not include a unit deemed to be authorised by virtue of regulation 4A of those Regulations, but does include a unit that was previously authorised under the Railways (Interoperability)(High-Speed) Regulations 2002.

(c) S.I. 1998/2456, amended by S.I. 2000/3215 and S.I. 2008/1746 and revoked by S.I. 2010/432.

(d) S.R. (N.I.) 2001 No. 264.

(b) a vehicle which belongs to a class of vehicles first brought into use on or before 31st December 1998.

(4) In its application to Northern Ireland the reference in paragraph (1)(b) to Part 1 of Schedule 1 of the Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010 has effect as a reference to the Rail Vehicle Accessibility Regulations (Northern Ireland) 2001.

(5) The deeming provisions of paragraph (1) do not apply for the purposes of—

- (a) regulation 45; and
- (b) regulation 4(1) in so far as that regulation applies in relation to any upgrading or renewal of a vehicle to which paragraph (2) applies.

Accessibility for people with reduced mobility

45. No person is to use a vehicle in the provision of a service for the carriage of passengers on the trans-European rail system located in the United Kingdom on or after 1st January 2020 unless it has been constructed, renewed, upgraded or modified to comply with the technical standards, and is operated to comply with the operational standards, required by—

- (a) the TSI relating to persons with reduced mobility set out in the Annex to Decision 2008/164/EC of the European Commission of 21st December 2007^(a), or any amended version of it, or any TSI which replaces it;
- (b) Part 1 of Schedule 1 to the Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010;
- (c) the Rail Vehicle Accessibility Regulations (Northern Ireland) 2001; or
- (d) the TSI, or amended version of it or TSI replacing it, referred to in paragraph (a) except to the extent that—
 - (i) the vehicle or its operation complies with the technical or operational standards required by the provisions referred to in paragraphs (b) or (c),
 - (ii) a derogation from part of it has been granted under regulation 14,
 - (iii) a determination that part of it does not apply has been made under regulation 13(9), and
 - (iv) a dispensation that part of it does not apply for the purposes of this regulation has been granted under regulation 46.

Dispensations

46.—(1) The Competent Authority may grant a conditional or unconditional dispensation from notified national technical rules for a particular case or description of case.

(2) If the Competent Authority has granted a dispensation that the Competent Authority considers has created for the purposes of Article 17(3) of the Directive a rule or restriction of a strictly local nature the Competent Authority must notify the relevant owner that the rule or restriction must be referred to in the infrastructure register.

(3) Paragraph (1) does not apply in relation to the requirements of the Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010 or the Rail Vehicle Accessibility Regulations (Northern Ireland) 2001.

(4) The Secretary of State may grant for a particular case or description of case a dispensation for the purposes of regulation 45(d)(iv).

(a) O.J. No. L64, 7.3.08, p72.

Revocation and savings

47.—(1) The Railways (Interoperability) Regulations 2006, the Railways (Interoperability) (Amendment) Regulations 2007 and regulation 4 of the Rail Vehicle Accessibility (Interoperable Rail System) 2008(a) are revoked.

(2) Where immediately before [] February 2012 an appointment of a notified body had effect as an appointment under the Railways (Interoperability) Regulations 2006 it continues to have effect as if made as an appointment under regulation 31 of these Regulations for the period specified when appointed.

(3) Where, under the Railways (Interoperability) Regulations 2006, a structural subsystem has been authorised to be placed in service on the rail system it is on and from [] February 2012 treated as authorised under these Regulations.

(4) Regulation 4(8), (9) and (9A) of the Railways (Interoperability) Regulations 2006 continue to have effect in relation to a contract made before [] February 2012.

(5) A derogation granted by the Secretary of State in accordance with the High-Speed Directive or a derogation granted by the Competent Authority in accordance with the Conventional Directive is treated as a derogation granted under regulation 14 in accordance Article 9 of the Directive.

(6) Any person who immediately before [] February 2012 is the registration body designated under regulation 33(12) of the Railways (Interoperability) Regulations 2006 is treated on and from [] February 2012 as if the person was designated as the registration entity under regulation 36(11).

Amendments to legislation

48. The Schedule has effect.

Review

49. (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 (which is implemented by means of these Regulations) 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 these Regulations 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.

(a) S.I. 2006/397 was amended by S.I. 2007/3386 and by regulation 4 of S.I. 2008/1746

Signed by authority of the Secretary of State for Transport

Date

Name
Minister of State
Department for Transport

DRAFT

SCHEDULE

Regulation 48

Amendments to legislation

1. Section 182 of the Equality Act 2010^(a) (rail vehicle accessibility regulations) is amended as follows—

- (a) in subsection (4), in the definition of “rail vehicle” for “high-speed rail system or the conventional TEN rail system” substitute “trans-European rail system located in Great Britain”, and
- (b) in subsection (5)—
 - (i) omit the definition of “conventional TEN rail system” and the definition of “high-speed rail system”, and
 - (ii) at the end insert—

““trans-European rail system” has the meaning given in regulation 2(1) of the Railways (Interoperability) Regulations 2012”.

2. In regulation 2(1) of the Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010^(b) (interpretation)—

- (a) omit the definitions of “conventional TEN rail system” and “high-speed rail system”,
- (b) in the definition of “rail vehicle” for “high-speed rail system or the conventional TEN rail system” substitute “trans-European rail system located in Great Britain”, and
- (c) after the definition of “tramway” insert—

““trans-European rail system” has the meaning given in regulation 2(1) of the Railways (Interoperability) Regulations 2012;”.

3. The Railways and Other Guided Transport Systems (Safety) Regulations 2006^(c) are amended as follows—

- (a) in regulation 2(1)—
 - (i) in the definition of “Interoperability Regulations” for “2006” substitute “2012”, and
 - (ii) in the definition of “National Vehicle Register” for “33” substitute “36”,
- (b) in regulation 5(5) omit “regulation 4(1)(a) of”, and
- (c) after regulation 5(5) insert—

“(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) 2010 c. 15.

(b) S.I. 2010/432.

(c) S.I. 2006/599, as amended by S.I. 2011/1860; there are other amending instruments but none is relevant.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the provisions of Directive 2008/57/EC (the “Directive”) of the European Parliament and of the Council of 17th June 2008 (O.J. No. L191, 18.7.2008, p1, as amended by Commission Directive 2009/131/EC O.J. No. L273, 17.10.2009, p12 and Commission Directive 2011/18/EU O.J. No. L57, 2.3.2011, p21) on the interoperability of the rail system within the Community (now the EU).

The Directive is a recast of two earlier rail interoperability Directives, which were repealed with effect from 19 July 2010. The two earlier Directives, defined in *regulation 2* as the Conventional Directive and the High-Speed Directive, were implemented in the United Kingdom by the Railways (Interoperability) Regulations 2006 (the “2006 Regulations”) (S.I. 2006/397, as amended by S.I. 2007/3386 and S.I. 2008/1746). These Regulations in effect consolidate and where necessary, amend the 2006 Regulations. The 2006 Regulations are, therefore, revoked subject to appropriate savings being made (*regulation 47*). The substantive changes from the 2006 Regulations are explained in the Explanatory Memorandum.

Regulation 3 provides for the application of the Regulations, including provisions for parts of the of the United Kingdom rail system to be excluded from the scope of the Regulations. These exclusion provisions are subject to voluntary arrangements provided for in *regulation 5*.

Regulation 4 restricts the putting into use of structural subsystems (e.g. infrastructure, vehicles) that are new or have undergone renewal or upgrade. The Competent Authority can make decisions under *regulation 12* as to whether a project or type of project is for the renewal or upgrading of a structural subsystem. Only those authorised by the Safety Authority or ruled by the Competent Authority as not requiring authorisation (*regulation 13*) or, in the case of vehicles, having a valid authorisation for another Member State may be put into use. In Great Britain the Safety Authority is the Office of Rail Regulation. In Northern Ireland it is the Department for Regional Development in Northern Ireland (“DRDNI”). The Competent Authority means the Secretary of State in Great Britain and the DRDNI in Northern Ireland.

Regulation 5 and regulations 16 to 19 set out the process for making an application to the Safety Authority for authorisation, the information that must be provided and the assessments that must be undertaken. These include assessments in relation to EU technical specifications for interoperability (“TSIs”) and, if any national technical rules have been notified to the Commission, assessments in relation to those rules. The Competent Authority may grant derogations from the application of TSIs in the circumstances set out in *regulation 14*.

If an authorisation is sought in respect of a vehicle that is authorised for use in another Member State the authorisation process is modified by *regulation 6*.

Regulation 7 provides the Safety Authority must give an authorisation if satisfied that a verification declaration has been drawn up in accordance with Annex V to the Directive, and that the subsystem has been designed, constructed and installed so as to meet the essential requirements in accordance with *regulation 15* when placed into service and is technically compatible with the rail system. *Regulation 15* provides that the essential requirements are deemed to be met by conformity with any applicable TSI and notified national technical rules.

Regulation 8 provides that the Safety Authority must make a determination of type that describes the basic design characteristics of a vehicle for which an authorisation has been issued. The Safety Authority may, with the consent of the applicant, make a determination of type where a non-vehicle authorisation has been issued.

Where a determination of type has been made a process for obtaining an authorisation of a subsystem that conforms to the determination is available under *regulations 9 and 10*.

Regulation 11 provides that the Safety Authority may revoke an authorisation and the process for making a revocation decision.

Regulation 20 places obligations on the operator of an authorised subsystem that has been placed in service to continue to meet TSIs and notified national technical rules.

Regulations 21 and 22 permit the Safety Authority and the Competent Authority to charge for certain work (but not in relation to the Channel Tunnel system).

Part 3 contains requirements for “interoperability constituents”. These are components of a subsystem that must satisfy requirements to be placed on the railway market for use in the rail system.

Part 4 concerns the bodies responsible for assessing conformity of subsystems and interoperability constituents to the relevant standards, called “notified bodies”, or, in the case of the assessment of notified national technical rules “designated bodies”. Provision for the recovery of fees by notified bodies, designated bodies and the Secretary of State are contained in *regulations 34 and 34*.

Part 5 contains provisions for the keeping of registers of infrastructure (*regulation 35*) and a National Vehicle Register (*regulation 36*). Authorised vehicles are issued with a vehicle number.

Enforcement and appeal provisions are set out in *Part 6*. The recall and withdraw notice powers in *regulations 41* gives effect, in relation to the part that needs to be transposed for these Regulations, to Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products (OJ No. L218 13/8/2008 p.30 – see Article 20(1)).

Part 7 contains supplementary provisions. Passenger rail vehicles falling under *regulation 44* are to be authorised and assessed against notified national technical rules relating to rail vehicle accessibility. All passenger rail vehicles operated on the United Kingdom’s part of the trans-European rail system must comply with accessibility standards by 2020 (*regulation 45*).

Regulation 46 enables dispensations from notified national technical rules to be granted and partial dispensations in relation to *regulation 45*.

Regulation 49 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

The Schedule makes consequential amendments to rail vehicle accessibility legislation and rail safety regulations.

A list of TSIs and of notified national technical rules applying in Great Britain can be obtained from the Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR and those applying in Northern Ireland can be obtained from the Department for Regional Development, River House, 48 High Street, Belfast, BT1 2AR.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.