



# Railway Safety Act (Northern Ireland) 2002

## 2002 CHAPTER 8

An Act to make provision with respect to the safety of railways. [13th August 2002]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

### **Safety of railways**

1.—(1) Part II of the [Health and Safety at Work \(Northern Ireland\) Order 1978 \(NI 9\)](#) (“the 1978 Order”) shall have effect as if the provisions mentioned in subsection (4) (which relate to the proper construction and safe operation of railways and of the vehicles used on railways and the protection of railway employees or the general public from personal injury and other risks arising therefrom)—

- (a) were existing statutory provisions, within the meaning of that Part; and
- (b) in the case of the statutory provisions mentioned in paragraphs (a) to (i) of that subsection, were specified in the third column of Schedule 1 to that Order.

(2) If to any extent they would not do so apart from this subsection, the general purposes of Part II of the 1978 Order shall include—

- (a) securing the proper construction and safe operation of railways, and of any vehicles used, or to be used, on railways; and
- (b) protecting the public (whether passengers or not) from personal injury and other risks arising from the construction and operation of railways.

- (3) Without prejudice to the generality of paragraph (1) of Article 17 of the 1978 Order (health and safety regulations), regulations under that Article may—
- (a) repeal or modify any of the statutory provisions mentioned in subsection (4); and
  - (b) make any provision which, but for any such repeal or modification, could be made by regulations or orders made under any of those statutory provisions.
- (4) The provisions referred to in subsections (1) and (3) are—
- (a) section 10 of the Railway Regulation Act 1842 (c. 55);
  - (b) section 47 of the Railways Clauses Consolidation Act 1845 (c. 20);
  - (c) section 22 of the Regulation of Railways Act 1868 (c. 119);
  - (d) the Regulation of Railways Act 1871 (c. 78);
  - (e) sections 1 and 4 of the Regulation of Railways Act 1889 (c. 57);
  - (f) the Railway Employment (Prevention of Accidents) Act 1900 (c. 27);
  - (g) sections 2 and 3 of the Railways Act (Northern Ireland) 1934 (c. 5);
  - (h) section 66 of the Transport Act (Northern Ireland) 1967 (c. 37);
  - (i) sections 2 to 4 of this Act;
  - (j) any regulations made under section 2 of the European Communities Act 1972 (c. 68) for the purpose of implementing the Council Directive of 29th July 1991 (91/440/EEC) on the development of the Community's railways (as amended or extended by any subsequent Directive), so far as the regulations are made for safety purposes.

### **Approval of railway works, plant and equipment**

2.—(1) For the purpose of securing the safe operation of railways, the Department may make regulations requiring that its approval be obtained before—

- (a) new works, plant or equipment are first brought into use; or
  - (b) works, plant or equipment are first brought into use after alterations have been made to them.
- (2) Regulations under this section—
- (a) shall prescribe the cases in which approval is required and the procedure for obtaining it;
  - (b) may include provision as to the time when works, plant or equipment are to be treated as first brought into use, including provision for disregarding periods of testing and other periods of use before sufficient information is available for a decision to be made on an application for approval;

(c) may include provision prohibiting the giving of false information to the Department.

(3) Regulations under this section may include provision authorising the Department—

(a) to dispense (conditionally or unconditionally) with compliance with regulations that would otherwise apply, or

(b) to require compliance with regulations that would not otherwise apply, either in the case of any particular works, plant, equipment or alterations, or in the case of works, plant, equipment or alterations of such descriptions as it may determine.

(4) Regulations under this section may provide that any person who without reasonable cause contravenes any specified provision of the regulations, or does so in specified circumstances, shall be guilty of an offence under this section.

(5) Where the commission by any person of an offence under this section is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against the first-mentioned person.

(6) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) In this section “equipment” includes vehicles.

(8) Regulations under this section shall be subject to negative resolution.

### **Accidents, etc.**

**3.—**(1) The Department may make regulations requiring the reporting to it of—

(a) accidents involving death or personal injury, and

(b) circumstances involving a danger of death or personal injury,

which occur in the operation of railways.

(2) Regulations under this section shall prescribe the cases in which reports are required, the persons required to make them, the time and manner in which they are to be made, and the particulars to be included in them.

(3) Regulations under this section may include provision authorising the Department—

(a) to dispense with compliance with any provision of the regulations that would otherwise apply, or

(b) to require compliance with any provision that would not otherwise apply, in any case where the Department considers it appropriate to do so.

(4) A person who, without reasonable excuse, fails to make a report as required by regulations under this section shall be guilty of an offence.

(5) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(6) Regulations under this section shall be subject to negative resolution.

### **Directions limiting speeds and loads**

4.—(1) The Department may give a direction under this section to the operator of a railway.

(2) A direction under this section may impose—

- (a) maximum speeds at which vehicles in use on a railway may travel, and
- (b) maximum weights that may be transmitted to the rails by any one pair of wheels, or by such other parts of the vehicles as may be specified in the direction.

(3) Directions under this section may make different provision for different vehicles, different parts of a railway, or otherwise for different circumstances.

(4) Before giving a direction under this section, the Department shall consult the person to whom he proposes to give it.

(5) If a direction under this section is contravened, the person to whom the direction was given shall be guilty of an offence.

(6) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Signs and barriers at private crossings**

5. Schedule 1 (which makes provision for the placing of signs and barriers on or near a private road or path which crosses a railway) shall have effect.

### **Interpretation**

6. In this Act—

“the Department” means the Department for Regional Development;

“operator”, in relation to a railway, means a person carrying on an undertaking which includes that system of transport, or the provision of transport services on that system;

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

- (a) provide support and guidance for vehicles carried on flanged wheels; and
- (b) form a track which is of a gauge of at least 350 millimetres;

“vehicle”, in relation to a railway, includes anything which (whether or not it is constructed or adapted to carry any person or load) is constructed or adapted to run on flanged wheels over or along parallel rails.

### **Consequential amendments and repeals**

7.—(1) In section 7 of the Regulation of Railways Act 1871 (c. 78)—

(a) for the words “this Act” (in the words preceding the paragraphs) there shall be substituted the words “regulations under section 3 of the Railway Safety Act (Northern Ireland) 2002”; and

(b) after paragraph (4) there shall be inserted—

“In this section any reference to an accident includes a reference to circumstances involving a danger of death or personal injury.”.

(2) The statutory provisions mentioned in Schedule 2 are hereby repealed to the extent specified in the second column of that Schedule.

### **Commencement**

8.—(1) Except as provided by subsection (2), this Act shall come into operation on the expiration of the period of two months from the date on which it receives Royal Assent.

(2) Sections 2, 3 and 7 (and Schedule 2) shall come into operation on such day or days as the Department may by order appoint.

(3) An order under subsection (2) may include such transitional provisions and savings as the Department thinks necessary or expedient.

### **Short title**

9. This Act may be cited as the Railway Safety Act (Northern Ireland) 2002.

## SCHEDULES

### SCHEDULE 1

Section 5.

#### SIGNS AND BARRIERS AT PRIVATE CROSSINGS

##### *Placing of signs and barriers*

1.—(1) Subject to any directions under sub-paragraph (2), the operator of a railway which is crossed in any place by a private road or path may cause or permit crossing signs or barriers of a character—

- (a) prescribed in regulations made by the Department, or
- (b) otherwise authorised by the Department,

to be placed on or near the road or path near the crossing.

(2) The Department may give directions to the operator of a railway which is crossed in any place by a private road or path for the placing of crossing signs or barriers of a character specified in the directions on or near the road or path near the crossing.

(3) For the purposes of this paragraph—

- (a) the size and colour of a crossing sign and whether or not it is illuminated (by lighting or the use of reflectors or reflecting material), and
- (b) the nature of the warnings, information, requirements, restrictions or prohibitions conveyed by it,

shall be regarded as part of the sign's character.

(4) Regulations under this paragraph shall be subject to negative resolution.

##### *Rights to enter land*

2.—(1) The operator of a railway shall not enter or do anything on any land for the purpose of exercising his powers under paragraph 1(1) except—

- (a) with the consent of every owner of the land, or
- (b) in accordance with an authorisation given by the Department under sub-paragraph (4).

(2) Where the operator of a railway proposes to enter or do anything on any land for the purpose of exercising his powers under paragraph 1(1) but has not obtained the consent of every owner of the land to his proposals (after making reasonable

efforts to do so), he shall serve on every owner whose consent he has not obtained a notice giving details of the proposals and stating that—

- (a) he is referring the proposals to the Department for a decision as to whether or not they should be carried out, and
- (b) in making that decision, the Department will consider any written representations made to it by the owner within the period of 6 weeks beginning with the date of the notice.

(3) Where sub-paragraph (2) applies, the operator shall—

- (a) submit a copy of every notice served by him under that sub-paragraph to the Department, and
- (b) provide the Department with such further information about the proposals as it may require.

(4) Where proposals are referred to the Department under this paragraph, it shall after the expiry of the period of 6 weeks beginning with the date of the latest notice served under sub-paragraph (2) and after considering any representations made to it in accordance with that sub-paragraph—

- (a) authorise the operator to carry out the proposals (either without modifications or with such modifications as the Department may specify),  
or
- (b) direct him not to carry out the proposals,

and shall serve notice of its decision on every owner served with a notice under sub-paragraph (2).

(5) Any authorisation under sub-paragraph (4) may be given subject to such conditions as the Department may specify, including conditions that compensation shall be payable by the operator.

(6) Any dispute as to the amount of any compensation payable by virtue of sub-paragraph (5) shall be referred to and determined by the Lands Tribunal.

(7) The operator of a railway may enter any land and do anything necessary on it (without the consent of the owners of the land) for the purpose of—

- (a) complying with any directions given under paragraph 1(2), or
- (b) maintaining a crossing sign or barrier lawfully placed on or near a private road or path near a place where it crosses the railway.

(8) The Department may enter any land and do anything necessary on it (without the consent of the owners of the land) for the purpose of exercising the Department's powers under paragraph 3(1).

(9) In this paragraph "owner" means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple (whether in possession or reversion) and includes also a person holding, or entitled to the

rents and profits of, the land under a tenancy, other than a tenancy for a month or any period less than a month.

#### *Default powers of Department*

3.—(1) If the operator of a railway fails—

- (a) to comply with a direction given under paragraph 1(2), or
- (b) to maintain a crossing sign or barrier lawfully placed on or near a private road or path near a place where it crosses the railway,

the Department may itself carry out the work required by the direction or necessary to maintain the crossing sign or barrier.

(2) Any expenses incurred by the Department in doing so shall be recoverable by the Department from the operator.

(3) A direction given under paragraph 1(2) shall be enforceable on the application of the Department by an order of mandamus.

#### *Offence of failing to comply with sign*

4.—(1) A person who fails to comply with any requirement, restriction or prohibition conveyed by a crossing sign lawfully placed on or near a private road or path near a place where it crosses a railway shall be guilty of an offence.

(2) In any proceedings for an offence under this paragraph, a crossing sign on or near a private road or path near a place where it crosses a railway shall be taken to have been lawfully placed there unless the contrary is proved.

(3) A person guilty of an offence under this paragraph shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### *Interpretation*

5.—(1) In this Schedule—

“barrier” includes gate;

“cross” means cross otherwise than by tunnel or bridge;

“crossing sign”, in relation to a private road or path and any place where it crosses a railway, means—

- (a) any object or device (whether fixed or portable), or
- (b) any line or mark on the road or path,

for conveying to users of the road or path warnings, information, requirements, restrictions or prohibitions relating to the crossing;

“fail” includes refuse;

“lawfully placed” means placed in accordance with paragraphs 1 to 3;

“maintain” includes repair and replace;

“place” includes erect and (in relation to a sign) display;

“private road or path” means any length of road or path to which the public does not have access.

(2) In the case of a railway which has more than one operator, the powers conferred by paragraphs 1 to 3 shall only be exercisable by or in relation to the operator carrying on the undertaking which includes maintaining the permanent way.

## SCHEDULE 2

Section 7.

### REPEALS

Short Title	Extent of repeal
The Regulation of Railways Act 1842 (c. 55).	Sections 4 to 6.
The Regulation of Railways Act 1871 (c. 78).	Sections 5 and 6.
The Notice of Accidents Act 1894 (c. 28).	The whole Act.
The Notice of Accidents Act 1906 (c. 53).	The whole Act
The Railways Act (Northern Ireland) 1934 (c. 5).	Section 3.