
STATUTORY INSTRUMENTS

2002 No. 1166

The Railways (Interoperability) (High-Speed) Regulations 2002

PART II

Notified Bodies

Notified bodies

4. For the purposes of these Regulations, a notified body is a body which has been—
- (a) appointed by the Authority as a notified body for the purpose of these Regulations and notified to the Commission and other Member States pursuant to regulation 5; or
 - (b) 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 high-speed Directive.

Appointment of notified bodies by the Authority

5.—(1) The Authority may from time to time appoint such persons as it thinks fit to be notified bodies for the purposes of these Regulations.

(2) The Authority shall not appoint any person as a notified body in accordance with paragraph (1) unless it is satisfied that that person is capable of meeting the criteria specified in Schedule 7.

(3) An appointment—

- (a) shall relate to such descriptions of structural subsystems and interoperability constituents as the Authority may specify; and
- (b) shall be made subject to such conditions as the Authority may specify, including any such conditions as are to apply upon or following termination of the appointment.

(4) Subject to paragraphs (5)(b) and (c) and (6), an appointment under this regulation shall be for such period as may be specified in the appointment.

(5) An appointment shall terminate—

- (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 to the Authority; or
- (c) on any date specified for the termination of the appointment in accordance with paragraph (6),

whichever is the earliest.

(6) If at any time it appears to the Authority in relation to a notified body appointed by it that—

- (a) any of the conditions of the appointment of that notified body are not being complied with; or
- (b) the notified body is not meeting the criteria specified in Schedule 7,

the Authority may, by notice in writing to that notified body, specify a date on which the appointment of that person as a notified body shall terminate.

(7) Where the Authority is minded to terminate the appointment of a person as a notified body pursuant to the grounds specified in paragraph (6) it shall—

- (a) give notice in writing to the notified body of the reasons why it is minded to do so;
- (b) give the notified body the opportunity to make representations within a period of 14 days beginning with the day on which such notice is given; and
- (c) consider any representations made within that period by the notified body before making its decision.

(8) When the appointment of a notified body terminates in accordance with paragraph (5) the Authority may—

- (a) give such directions as the Authority considers appropriate, either 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 is terminating; 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 Authority may specify.

(9) The Authority shall notify in writing the Commission and other Member States of the appointment or termination or appointment, as the case may be, of a notified body.

(10) Where it appears to the Authority that a notified body appointed by another Member State fails to meet the criteria set out in Schedule 7, it shall notify the Article 21 Committee of that fact forthwith.

Requirement on notified bodies to carry out functions

6.—(1) Save as provided in paragraph (2) where a contracting entity, person responsible or other interested person so requests in writing, a notified body appointed by the Authority shall carry out, in relation to a structural subsystem or interoperability constituent, the procedures and checks (including, where so provided as part of those procedures and checks, surveillance) required to ensure that the contracting entity or the person responsible, as the case may be, duly fulfils the obligations arising from the appropriate conformity or suitability for use assessment procedure or the appropriate verification assessment procedure.

(2) A notified body appointed by the Authority shall not be required to comply with a request under paragraph (1) if—

- (a) the request relates to a structural subsystem or interoperability constituent of a description to which the appointment of that body does not relate;
- (b) to do so would place that body in breach of a condition of its appointment;
- (c) the documents submitted to it in relation to carrying out such functions are not in a language acceptable to that body;
- (d) the person making the request has not submitted with its request the amount of the fee which the body requires to be submitted with the request pursuant to regulation 9; or
- (e) when a contracting entity, person responsible or other interested person makes its request pursuant to paragraph (1), the notified body reasonably believes that it will be unable to commence the required work in relation to that request within three months of receiving it.

(3) In this regulation “interested person” means a person who is or expects to be subject to the duties imposed by regulation 12.

Notified bodies: certificates of conformity etc.

7.—(1) Where a notified body is minded to decline to draw up a certificate of conformity in relation to a structural subsystem, or is minded to decline to confirm that a conformity declaration or suitability for use declaration can be drawn up in respect of an interoperability constituent, it shall—

- (a) give notice in writing to the applicant of the reasons why it is minded to do so;
- (b) give the applicant the opportunity to make representations 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 applicant before making its decision.

(2) A notified body shall not draw up a certificate of conformity in relation to a structural subsystem unless satisfied that subsystem conforms to such of the TSIs or notified standards as it is required to conform by regulation 13(4).

(3) A notified body shall not confirm that a conformity declaration or suitability for use declaration can be drawn up in respect of an interoperability constituent unless satisfied that that constituent conforms to the such of the European specifications or notified standards as are required by regulation 11(2)(a).

Duties on notified bodies to consult

8. Notified bodies appointed by the Authority shall consult other notified bodies appointed pursuant to the high-speed Directive throughout the European Community in relation to the assessment procedures specified in regulations 19 and 20 with a view to ensuring that, particularly in the absence of TSIs, the conformity or suitability for use assessment procedures and the verification assessment procedures required under the high-speed Directive are consistently applied within the European Community.

Notified bodies: fees

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

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

- (a) the costs incurred or to be incurred by the notified 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 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 work commissioned in advance of carrying out that work.

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

The Strategic Rail Authority: fees

10. The Strategic Rail Authority may charge such reasonable fee in connection with, or incidental to, carrying out its functions under regulation 5 as it may determine.