
STATUTORY INSTRUMENTS

2002 No. 1166

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

PART III

General Provisions

Interoperability constituents: prohibition on placing on the market

11.—(1) No person who is the person responsible in respect of an interoperability constituent shall place that interoperability constituent on the market unless—

- (a) the requirements of paragraph (2) have been met in relation to that interoperability constituent; or
 - (b) the interoperability constituent that he places on the market is identical to an interoperability constituent that he has already placed on the market and in relation to which the requirements of paragraph (2) have been met.
- (2) The requirements referred to in paragraph (1) are that—
- (a) the interoperability constituent—
 - (i) conforms to such European specifications as have been published in the Official Journal that are relevant to an interoperability constituent of that type, or
 - (ii) where no such European specifications have been so published, or in the circumstances provided for in regulation 15, conforms to notified standards (if any) in relation to an interoperability constituent of that type;
 - (b) the interoperability constituent meets such of the essential requirements as relate to an interoperability constituent of that type;
 - (c) the appropriate conformity or suitability for use assessment procedure in respect of the interoperability constituent has been carried out;
 - (d) where required by a TSI, a notified body is appointed to carry out the appropriate conformity or suitability for use assessment procedure in respect of that interoperability constituent;
 - (e) either a conformity declaration or a suitability declaration, or both (as the case may be) has been drawn up in relation to the interoperability constituent by the person responsible in accordance with the requirements in Schedule 4; and
 - (f) enables interoperability to be achieved within the trans-European high-speed rail system.

(3) Where there is a requirement to prepare a conformity declaration or suitability declaration in relation to an interoperability constituent and that interoperability constituent is also subject to other requirements pursuant to a European Community Directive other than the high-speed Directive, the person who prepares that conformity declaration or suitability declaration shall state in that declaration whether or not the interoperability constituent in question meets those other requirements.

Interoperability constituents: duties on persons other than the person responsible

12. Where in the case of an interoperability constituent, any of the requirements of regulation 11 have not been met by the person responsible, such requirements shall be met 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 he is manufacturing or assembling, or in any subsystem that he is constructing or upgrading.

Structural subsystems: duties on a contracting entity

13.—(1) This regulation applies where—

- (a) a contracting entity is—
 - (i) intending to contract with another person for the design, manufacture or construction by that other person of a structural subsystem, or
 - (ii) proposing himself to design, manufacture or construct a structural subsystem; or
- (b) a contracting entity has—
 - (i) contracted with another person for the design, manufacture or construction of a structural subsystem, or
 - (ii) has himself commenced work on the design, manufacture or construction of a structural subsystem.

(2) The contracting entity shall appoint a notified body in relation to the structural subsystem in question—

- (a) forthwith, when contracting with another person who is to design the structural subsystem;
- (b) before selecting or completing the design for the structural subsystem, where he is designing that structural subsystem himself; or
- (c) within three months of the coming into force of these Regulations where the contracting entity—
 - (i) is himself in the course of designing or constructing the structural subsystem, or
 - (ii) has contracted with another person for, the design, manufacture or construction of the structural subsystem.

(3) Where the contracting entity is required by paragraph (2) to appoint a notified body, that contracting entity shall ensure that a notified body (whether that originally appointed or another) continues to be appointed in relation to the structural subsystem in question until authorisation pursuant to regulation 14 is given or refused.

(4) The contracting entity shall ensure that the structural subsystem conforms to all relevant TSIs; except that where—

- (a) there are no relevant TSIs;
- (b) a relevant TSI does not govern all elements of the structural subsystem;
- (c) the structural subsystem is not required to conform with the whole or part of a relevant TSI pursuant to regulation 15; or
- (d) permitted by an exemption granted by the supervisory authority in accordance with paragraph (5),

the structural subsystem, or part of the structural subsystem, not governed by any relevant TSI shall conform with the notified standards (if any) that relate to it.

(5) Where a relevant TSI permits non-conformity with part or all of its provisions on the basis that conformity with those provisions would result in the structural subsystem being technically incompatible with the existing rail network schemes in which it is proposed to be placed into service, a contracting entity may apply to the supervisory authority for an exemption from those provisions.

(6) Provided the contracting entity has satisfied the requirements of paragraphs (4) and (7), he shall draw up a verification declaration in relation to the structural subsystem in accordance with the procedure required by Schedule 5.

(7) The requirements referred to in paragraph (6) are that—

- (a) the structural subsystem meets such of the essential requirements as relate to that type of structural subsystem;
- (b) the appropriate verification assessment procedure in respect of the structural subsystem has been carried out in accordance with regulation 20;
- (c) the certificate of conformity has been drawn up in relation to the structural subsystem in accordance with the procedures required by Schedule 6; and
- (d) the technical file contains the information and documents required by paragraph (9).

(8) Where the RVAR constitute part of the notified standards, and pursuant to paragraph (4) they are standards with which high-speed rolling stock is required to comply, a contracting entity may apply—

- (a) in relation to Great Britain to the Secretary of State, or
- (b) in relation to Northern Ireland to the Department,

for an accessibility compliance certificate in respect of that high-speed rolling stock pursuant to the procedure set out in regulation 22.

(9) The following shall be placed in the technical file—

- (a) the items required by paragraph 4 of Schedule 6;
- (b) records relating to the conditions and limits of use of the structural subsystem;
- (c) manuals and instructions relating to the servicing, maintenance and configuration control of the structural subsystem;
- (d) in respect of high-speed rolling stock in circumstances falling within paragraph (8), the accessibility compliance certificate (if any);
- (e) details of any exemption orders granted in respect of the structural subsystem under section 47(1) of the Disability Discrimination Act 1995; and
- (f) documentation or records demonstrating compliance with the notified standards where those standards are used.

(10) Where a contracting entity is the owner of a structural subsystem, he shall, from the time that the structural subsystem is placed into service until it is permanently withdrawn from service (whether such service is in the United Kingdom or in the territory of another Member State), retain—

- (a) the technical file, which shall include the documentation it contained at the date of authorisation pursuant to regulation 14;
- (b) the certificate of conformity; and
- (c) the verification declaration.

(11) Where a contracting entity who is the owner of a structural subsystem disposes of his interest in it, he shall transfer to the person who acquires that interest the items specified in sub-paragraphs (a) to (c) of paragraph (10) and thereafter, for the purposes of paragraph (10) and this paragraph, the acquirer shall be regarded as being the contracting entity.

(12) Where a contracting entity is not the owner of the structural subsystem, he shall transfer to the owner of the structural subsystem the items specified in sub-paragraphs (a) to (c) of paragraph (10) within 60 days of obtaining an authorisation under regulation 14 in respect of that structural subsystem, and thereafter, for the purposes of paragraphs (10) and (11) and this paragraph, the owner shall be regarded as being the contracting entity.

(13) In this regulation “design” includes the selection of a design.

Structural subsystems: authorisation

14.—(1) No person shall place into service a structural subsystem that he has constructed or upgraded unless the supervisory authority has given an authorisation for its placing into service (but see regulation 17).

(2) A request for an authorisation under paragraph (1) shall be made in writing and be accompanied by, in relation to the structural subsystem in question—

- (a) the certificate of conformity;
- (b) the technical file; and
- (c) the verification declaration.

(3) The supervisory authority shall not give an authorisation for the placing into service of a structural subsystem unless it is satisfied in relation to that structural subsystem that—

- (a) the verification declaration has been drawn up in accordance with Schedule 5;
- (b) the technical file is complete; and
- (c) it has been designed, constructed and installed in such a way so as not to hinder satisfaction of the essential requirements when it is placed into service as part of the rail network schemes.

(4) The supervisory authority shall not refuse to give an authorisation for placing into service of a structural subsystem if the structural subsystem—

- (a) satisfies the conditions set out in paragraph (3)(a) and (b); and
- (b) meets the essential requirements relating to it.

(5) After receiving a request for authorisation under paragraph (2), the supervisory authority may require a contracting entity to carry out any additional checks which it considers to be necessary in relation to a structural subsystem if that subsystem appears to the supervisory authority not to meet the requirements of regulation 13(4) and (7) and in particular the essential requirements.

(6) After receiving a request for authorisation under paragraph (2) the supervisory authority shall—

- (a) authorise the placing into service of the structural subsystem;
- (b) inform the contracting entity that additional checks will be required pursuant to paragraph (5) before the request can be considered further; or
- (c) refuse the request for authorisation.

(7) Subject to paragraph (8) where a contracting entity—

- (a) contracts with another person for the construction of; or
- (b) is himself constructing,

a number of items of high-speed rolling stock, to the same standards and specifications, he shall only be required to obtain authorisation pursuant to this regulation in respect of the first of those items placed into service that has been constructed to those standards and specifications.

(8) For the purposes of paragraph (7) the items of high-speed rolling stock to be taken into account shall include only items that are the subject of the same contract or the same project; and for these

purposes a contract shall be taken to include an option to purchase further items of high-speed rolling stock to the same standards and specifications provided that the option—

- (a) was agreed at the time the contract was made; and
- (b) is exercised by the contracting entity within five years of the time that the contract was made; except that where an item of high-speed rolling stock constructed under that contract is authorised pursuant to regulation 14 within four years from that time, the option must be exercised within 12 months of the date of that authorisation.

Exemption from need to conform with the TSIs

15.—(1) The circumstances in which the subsystems and interoperability constituents comprised in a project need not conform with the whole or part of any relevant TSI are where a derogation relating to that project has been—

- (a) notified by the Secretary of State to the Commission as provided for in Article 7(a) of the high-speed Directive;
- (b) notified by the Secretary of State to the Commission as provided for in Article 7(b) or (c) of the high-speed Directive; or
- (c) notified by the Secretary of State to the Commission and permitted by the Commission as provided for in Article 7(d) of the high-speed Directive.

(2) For the purposes of paragraph (1)(a), a derogation notified pursuant to Article 7(a) of the high-speed Directive shall have no effect in relation to a subsystem or interoperability constituent unless—

- (a) the project in which that subsystem or interoperability constituent is to be used is at an advanced stage of development at the time the relevant TSI was published; and
- (b) the derogation has been notified to the Commission before authorisation is given pursuant to regulation 14.

(3) For the purposes of paragraph (1)(b), a derogation notified pursuant to Article 7(b) or (c) of the high-speed Directive shall have no effect in relation to a subsystem or interoperability constituent unless the derogation has been notified to the Commission before the physical construction of the project in which that subsystem is to be used has commenced.

(4) For the purposes of paragraph (1)(c), a derogation notified pursuant to Article 7(d) of the high-speed Directive shall have no effect in relation to a subsystem unless the derogation is notified to and permitted by the Commission before the physical construction of the project in which that subsystem is to be used has commenced.

Structural subsystems: screening decisions

16.—(1) A contracting entity shall unless satisfied that those works constitute upgrading of the relevant rail network scheme—

- (a) before—
 - (i) entering into a contract with another person for major works in relation to, or
 - (ii) commencing major work himself on,an existing structural subsystem or part of a structural subsystem which changes the performance of that structural subsystem; or
- (b) within three months of the coming into force of these Regulations, where he has—
 - (i) already contracted with another person for major works in relation to an existing structural subsystem or part of a structural subsystem which changes the

performance of that structural subsystem and those works have not been completed,
or

- (ii) has himself commenced major works on an existing structural subsystem or part of a structural subsystem which changes the performance of that structural subsystem and these works have not been completed,

make a request in writing to the supervisory authority for a decision as to whether or not those works constitute upgrading of a rail network scheme (a “screening decision”) for the purpose of these Regulations.

(2) Any question as to whether proposed works constitute major works that change the performance of a structural subsystem shall be determined by the supervisory authority.

(3) A request made pursuant to paragraph (1) shall be accompanied by the following information—

- (a) a description of the nature and scope of the proposed works;
- (b) the dates when the works are due to commence, finish and be placed into service;
- (c) in relation to works in Great Britain falling under paragraph (1)(b), a list of any approvals given by the Executive under the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994(1);
- (d) if it is likely that the contracting entity will in relation to the works—
 - (i) seek not to conform with the whole or part of a TSI pursuant to regulation 15, or
 - (ii) make an application for an exemption pursuant to regulation 13(5),a description of the nature and extent of any such proposed non-conformity or exemption; and
- (e) an implementation plan in respect of the works.

(4) If the supervisory authority considers that the information provided by the contracting entity in or with a request made under paragraph (1) is insufficient to enable it to make a screening decision the supervisory authority shall notify the contracting entity in writing of the additional information that it considers it requires in order to make that decision.

(5) On receiving a notification under paragraph (4), the contracting entity shall provide the supervisory authority with such of the additional information specified in that notification as the contracting entity is reasonably able to supply and, where any of the additional information so specified is not provided, a written explanation as to why the contracting entity is unable to provide that information.

(6) In making its screening decision, the factors the supervisory authority shall take into account shall include—

- (a) the implementation strategy provided in any relevant TSI; and
- (b) the scale of the proposed works.

(7) If the supervisory authority considers that the proposed works would be likely to affect the overall level of safety of the relevant rail network scheme or any part of it, its screening decision shall be that the works constitute an upgrade of that structural subsystem for the purpose of these Regulations.

(8) The supervisory authority shall notify the contracting entity of its screening decision in writing.

(9) If the supervisory authority decides that the proposed works constitute upgrading of the rail network schemes for the purpose of these Regulations, the supervisory authority shall give reasons for that decision in the notification given under paragraph (8).

(10) If at any stage of the execution of the works there is a change in the information provided by the contracting entity to the supervisory authority under paragraphs (3) or (5), the contracting entity shall notify the supervisory authority of that change and the supervisory authority shall then consider whether that change affects the screening decision given under paragraph (8).

(11) If the supervisory authority considers that the change notified under paragraph (10) affects the screening decision the supervisory authority shall confirm or vary that decision and the requirements of paragraphs (8) and (9) will apply to that confirmation or variation.

(12) At the same time as the contracting entity sends to the supervisory authority the information required by paragraphs (3), (5) and (10) it shall send a copy of that information to the Authority.

(13) For the purpose of this regulation “implementation plan” means a description of how a contracting entity will manage and undertake the works, the interface of infrastructure with rolling stock, and the impact of the works on other persons who may be affected by those works.

Structural subsystems: staged works decisions

17.—(1) Nothing in regulation 14 prevents a stage of a relevant upgrading project being placed into service prior to an authorisation being given pursuant to regulation 14, if it is placed into service in accordance with the following paragraphs of this regulation.

(2) A contracting entity may at any time during a relevant upgrading project make a request in writing to the supervisory authority for a decision on whether a stage of that project may be placed into service prior to an authorisation being given pursuant to regulation 14 (a “staged works decision”).

(3) A request made under paragraph (2) shall be accompanied by the following information—

- (a) a description of the upgrading project;
- (b) the dates when each stage of the project is due to commence and finish and be placed into service;
- (c) a description of how the work will be carried out in each stage;
- (d) the arrangements to be put in place by the contracting entity to ensure the continued safety of any part of a rail network scheme affected by the upgrading project for the duration of that project; and
- (e) the date when an authorisation under regulation 14 will be sought.

(4) If the supervisory authority considers that the information provided by a contracting entity in a request made under paragraph (2) is insufficient to enable it to make a staged works decision the supervisory authority shall notify the contracting entity in writing of the additional information that it considers it requires in order to make that decision.

(5) On receiving a notification under paragraph (4), the contracting entity shall provide the supervisory authority with such of the additional information specified in that notification as the applicant is reasonably able to supply and, where any of the additional information so specified is not provided, a written explanation as to why the applicant is unable to provide that information.

(6) The supervisory authority shall notify the contracting entity in writing of its staged works decision.

(7) The staged works decision may contain such conditions as the supervisory authority considers necessary to ensure that the overall level of safety of the relevant part of a rail network scheme is not adversely affected.

(8) If at any stage of the upgrading project there is a change in the information provided by the contracting entity to the supervisory authority under paragraphs (3) or (5), the contracting entity shall notify the supervisory authority of that change and the supervisory authority shall then consider whether it affects the staged works decision given under paragraph (6) or the conditions attached to that decision under paragraph (7).

(9) If a change notified under paragraph (8) affects the staged works decision, or the conditions attached to that decision, the supervisory authority—

- (a) shall confirm or vary the staged works decision; and
- (b) may remove or amend the conditions given under paragraph (7) or attach new conditions to the staged works decision,

and the requirements of paragraphs (6) and (7) shall apply to any action taken by the supervisory authority under this paragraph.

(10) For the purpose of this regulation “a relevant upgrading project” means a project to upgrade an infrastructure subsystem, an energy subsystem, or a control and command and signalling subsystem.

Fees payable to the supervisory authority

18.—(1) A fee shall be payable by the contracting entity to the supervisory authority for work carried out in Great Britain by or on behalf of the supervisory authority in relation to—

- (a) a request by that contracting entity pursuant to—
 - (i) regulation 14(2) for an authorisation,
 - (ii) regulation 16(1) for a screening decision, or
 - (iii) regulation 17(2) for a staged works decision; and
- (b) the re-consideration of a—
 - (i) screening decision pursuant to regulation 16(10), or
 - (ii) staged works decision pursuant to regulation 17(8).

(2) The fee payable under paragraph (1) shall—

- (a) not exceed the sum of the costs reasonably incurred by the supervisory authority in carrying out the work referred to in paragraph (1); and
- (b) be payable within 30 days from the date of the invoice that the supervisory authority has sent or given to the person who is required to pay the fees, such invoice to include a statement of the work done and the costs reasonably incurred including the period to which the statement relates.

(3) A fee payable under this regulation shall be recoverable as a civil debt.

(4) Failure to pay a fee under this regulation shall not constitute an offence under these Regulations.

(5) This regulation does not apply to the Intergovernmental Commission in respect of work carried out under regulations 14, 16 and 17 in relation to the Channel Tunnel system.