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STATUTORY INSTRUMENTS

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**2002 No. 1166**

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

**PART VI**

*Enforcement*

**Enforcement in Great Britain**

**31.**—(1) It shall be the duty of the Executive to make adequate arrangements for the enforcement of these Regulations in Great Britain and accordingly a reference to the enforcing authority in the provisions applied for those purposes by paragraph (3) shall be construed as a reference to the Executive.

(2) Subject to paragraph (4), the provisions of the 1974 Act specified in paragraph (3) shall apply for the purposes of the enforcement in Great Britain of these Regulations as if they were Health and Safety Regulations for the purposes of that Act, and any function of the Health and Safety Commission under any other provisions of the 1974 Act which is exercisable in relation to any function of the Executive under or in respect of Health and Safety Regulations (including their enforcement) shall be exercisable as if these Regulations were Health and Safety Regulations for the purposes of that Act.

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

- (a) sections 19 to 22 (enforcement);
- (b) sections 23 (provisions supplementary to sections 21 and 22) and 24 (appeal against improvement or prohibition notice);
- (c) section 26 (power to indemnify inspectors); and
- (d) sections 33 to 42 (provisions as to offences).

(4) A failure to discharge a duty placed on the—

- (a) Executive; or
- (b) supervisory authority,

by these Regulations shall not be an offence under section 33(1)(c) of the 1974 Act.

**Enforcement in Northern Ireland**

**32.**—(1) It shall be the duty of the Executive to make adequate arrangements for the enforcement of these Regulations in Northern Ireland and accordingly a reference to an “enforcing authority” in the provisions applied for those purposes by paragraph (3) shall be construed as a reference to the Executive.

(2) Subject to paragraph (4), the provisions of the 1978 Order specified in paragraph (3) shall apply for the purposes of the enforcement in Northern Ireland of these Regulations as if they were Health and Safety Regulations for the purposes of that Order, and any function of the Health and Safety Executive for Northern Ireland under any other provisions of that Order which is exercisable in relation to any function of the Executive under or in respect of Health and Safety Regulations

(including their enforcement) shall be exercisable as if these Regulations were Health and Safety Regulations for the purposes of that Order.

- (3) The provisions of the 1978 Order referred to in paragraph (2) are—
- (a) Article 20 to 24 (enforcement);
  - (b) Articles 25 (provisions supplementary to Articles 23 and 24) and 26 (appeal against improvement or prohibition notice);
  - (c) Article 28 (power to indemnify inspectors);
  - (d) Articles 31 to 39 (provisions as to offences); and
  - (e) Article 44(1) to (3) (application to Crown).
- (4) A failure to discharge a duty placed on the—
- (a) Executive; or
  - (b) supervisory authority,

by these Regulations shall not be an offence under Article 31(1)(c) of the 1978 Order.

#### **Notices relating to interoperability constituents not meeting the essential requirements**

**33.**—(1) If the Executive is of the opinion that an interoperability constituent in relation to which a conformity declaration or suitability declaration has been prepared does not meet the essential requirements relating to it, the Executive may serve a notice on the person who is using or intending to use that interoperability constituent in the construction or upgrading of a structural subsystem in relation to which that person is a contracting entity, to prohibit the use of or restrict the area of use of that interoperability constituent.

- (2) The information to be contained in a notice served under paragraph (1) is—
- (a) a statement that the Executive 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 shall not be used, or that its area of use shall be restricted; and
  - (d) the date by which the contracting entity shall comply with the notice.

(3) Any notice served under paragraph (1) may be withdrawn by the Executive serving written notice of the withdrawal on the contracting entity.

(4) Where a notice has been served on the contracting entity in accordance with this regulation the contracting entity shall—

- (a) comply with that notice; and
- (b) notify the person who supplied him 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 he requires that person in turn to notify his supplier with the same information required by this paragraph.

#### **Defence of Due Diligence**

**34.**—(1) Subject to the following provisions of this regulation, in any proceedings against any person for an offence under these Regulations it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

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

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

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

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

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

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

#### **Liability of persons other than the principal offender**

**35.**—(1) Where the commission by any person of an offence under these Regulations is due to the act or default of some other person in the course of any business of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) In this regulation, references to a “body corporate” include references to a partnership in Scotland and, in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.