
STATUTORY INSTRUMENTS

2011 No. 3066

The Railways (Interoperability) Regulations 2011

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⁽¹⁾ 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⁽²⁾;
 - (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⁽³⁾ 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—

- (a) the person has applied to be so appointed; and
- (b) 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.

(4) An appointment—

(1) Established under section 201 of the Transport Act 2000 c.38 and abolished by S.I. 2006/2925.
(2) S.I. 2002/1166, revoked with savings by S.I. 2006/397.
(3) S.I. 2006/397.

- (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) and (7), 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 (5);
 - (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 paragraph (7),
- 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) Before terminating the appointment of a person as a notified body or designated body pursuant to the grounds specified in paragraph (7) 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.
- (9) 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.
- (10) 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 or designated body must not draw up a certificate of verification unless it is drawn up in accordance with the applicable part of Annex VI to the Directive.

(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) “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 or issued by a notified body or designated body at an intermediate stage of the verification procedure referred to in section 3 of Annex VI to the Directive.

(5) 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.