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## STATUTORY INSTRUMENTS

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# 2011 No. 3066

## The Railways (Interoperability) Regulations 2011

### PART 6

#### Appeals and Enforcement

##### Appeals in Great Britain

**37.**—(1) A person who is aggrieved by a decision of the Safety Authority under regulations 5 to 11 may appeal to the Secretary of State.

(2) The Secretary of State may, in such cases as the Secretary of State considers it appropriate to do so, having regard to the nature of the questions which appear to the Secretary of State to arise, direct that an appeal under this regulation is determined on the Secretary of State's behalf by a person appointed by the Secretary of State for that purpose.

(3) Before the determination of an appeal the Secretary of State must ask the appellant and the Safety Authority whether they wish to appear and be heard on the appeal and—

- (a) the appeal may be determined without a hearing of the parties if both of them express a wish not to appear and be heard;
- (b) the Secretary of State must, if either of the parties expresses a wish to appear and be heard, afford to both of them an opportunity of doing so.

(4) The Tribunals and Inquiries Act 1992<sup>(1)</sup> applies to a hearing held by a person appointed in pursuance of paragraph (2) to determine an appeal as it applies to a statutory inquiry held by the Secretary of State, but as if in section 10(1) of that Act (statement of reasons for decisions) the reference to any decision taken by the Secretary of State included a reference to a decision taken on the Secretary of State's behalf by that person.

(5) A hearing held by a person appointed in pursuance of paragraph (2) is a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007<sup>(2)</sup> (functions etc of Administrative Justice and Tribunals Council).

(6) Without prejudice to the right of any person to make an application for judicial review—

- (a) a determination by the Secretary of State, or by a person appointed to make a determination on the Secretary of State's behalf, on an appeal brought under this regulation is binding on all parties affected by that determination;
- (b) the Secretary of State, or person so appointed, may give such directions as they consider appropriate to give effect to the determination; and
- (c) it is the duty of any person to whom a direction is given under this regulation to comply with and give effect to that direction.

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(1) 1992 c.53.

(2) 2007 c.15.

(7) The Secretary of State may pay to any person appointed to determine an appeal under paragraph (2) on the Secretary of State's behalf such remuneration and allowances as the Secretary of State may with the approval of the Treasury determine.

(8) Where under paragraph (3)(b) a party expresses a wish to appear and be heard, for hearings held in England and Wales, the Health and Safety Licensing Appeals (Hearing Procedure) Rules 1974<sup>(3)</sup>, and for hearings held in Scotland, the Health and Safety Licensing Appeals (Hearing Procedure)(Scotland) Rules 1974<sup>(4)</sup>, apply to an appeal under paragraph (1) as they apply to an appeal under section 44(1) of the 1974 Act, but with the modification that references to a licensing authority in those rules are to be read as references to the Safety Authority.

(9) Where an appeal is made under this regulation, the decision in question is suspended pending the final determination of the appeal.

(10) This regulation does not apply to a decision of DRDNI under regulations 5 to 11.

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<sup>(3)</sup> S.I. 1974/2040.

<sup>(4)</sup> S.I. 1974/2068.