

Draft Regulations laid before Parliament under section 103(5) of the Railways and Transport Safety Act 2003, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2005 No.

TRANSPORT

RAILWAYS

**The Railways (Convention on International
Carriage by Rail) Regulations 2005**

Made - - - - 2005

Coming into force in accordance with regulation 1

The Secretary of State, in exercise of the powers conferred upon him by section 103 of, and paragraphs 2(a) to (f), (o) and (p), 3(1) and (2)(a) and (b), 4(a) to (d), 7(1) and (2)(a) and (b), 8(1) and (2), and 9(1) and (2)(a) of Schedule 6 to, the Railways and Transport Safety Act 2003⁽¹⁾, and a draft of these Regulations having been laid before Parliament and approved by each House of Parliament, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Railways (Convention on International Carriage by Rail) Regulations 2005 and shall come into force on the date, specified in the London, Edinburgh and Belfast Gazettes, on which the Protocol enters into force in respect of the United Kingdom.

Interpretation

2.—(1) In these Regulations—

- (a) except where the context otherwise requires a reference to an Article is a reference to the Article so numbered in the Convention and a reference to a paragraph of an Article shall be construed accordingly; and
- (b) an expression used in these Regulations and in the Convention has the same meaning as in the Convention.

(2) In these Regulations—

“the 1933 Act” means the Foreign Judgments (Reciprocal Enforcement) Act 1933⁽²⁾;

(1) 2003 c. 20.
(2) 1933 c. 13.

“the 1976 Act” means the Fatal Accidents Act 1976⁽³⁾;

“the committees” means any of the following—

- (a) the Revision Committee as described in Article 17;
- (b) the RID Expert Committee as described in Article 18; and
- (c) the Committee of Technical Experts as described in Article 20;

“the Convention” means the version of the “Convention concerning International Carriage by Rail (COTIF⁽⁴⁾) of 9th May 1980” as set out after Article 7 of the Protocol and forming an integral part of the Protocol and comprising—

- (a) the Convention itself;
 - (b) the Protocol on the Privileges and Immunities of the Intergovernmental Organisation for International Carriage by Rail referred to in paragraph 4 of Article 1; and
 - (c) Appendices A to G to the Convention, including the Annexes to Appendices C and F; as modified in accordance with its provisions from time to time by a decision of one of the committees under paragraph 4, 5 or 6 of Article 33, as the case may be, whether such modification occurs before or after the coming into force of these Regulations; and
- “the Protocol” means the Protocol signed at Vilnius on 3rd June 1999⁽⁵⁾ to modify the “Convention concerning International Carriage by Rail (COTIF) of 9th May 1980”⁽⁶⁾.

Convention to have the force of law

3.—(1) The Convention shall have the force of law in the United Kingdom, and judicial notice shall be taken of it.

(2) For the avoidance of doubt any question arising as to whether the Convention applies in the circumstances of a particular case falls to be determined in accordance with the provisions of paragraph 2 of Article 3.

Publication of information concerning the Convention

4. The Secretary of State shall publish in such manner as he thinks fit information concerning—
- (a) any change to the list of parties to the Convention;
 - (b) any declaration, objection or reservation by a party to the Convention;
 - (c) the suspension of part of the Convention in relation to a party; and
 - (d) any modification to the Convention.

Fatal accidents

5.—(1) Where by virtue of the Convention any person has a right of action in respect of the death of a passenger by reason of his being a person whom the passenger was under a legal duty to maintain—

- (a) subject to paragraph (2), no action in respect of the passenger’s death shall be brought for the benefit of that person under the 1976 Act, but

(3) 1976 c. 30.

(4) An acronym for “Convention relative aux Transports Internationaux Ferroviaires”.

(5) Cm 4873.

(6) Cm 3812.

(b) nothing in section 2(3) of that Act (not more than one action in respect of the same subject matter of complaint) shall prevent an action being brought under that Act for the benefit of any other person.

(2) Nothing in paragraph (1)(a) affects the right of any person to claim damages for bereavement under section 1A of the 1976 Act(7).

(3) Section 4 of the 1976 Act (exclusion of certain benefits in assessment of damages) shall apply in relation to an action brought by any person under the Convention as it applies in relation to an action under that Act.

(4) Where separate proceedings are brought under the Convention and under the 1976 Act in respect of the death of a passenger, a court, in awarding damages under that Act, shall take into account any damages awarded in the proceedings brought under the Convention and shall have jurisdiction to make any part of its award conditional on the result of those proceedings.

(5) In the application of this regulation to Northern Ireland references to the 1976 Act and to sections 1A, 2(3) and 4 of that Act shall be construed as references to the Fatal Accidents (Northern Ireland) Order 1977(8) and Articles 3A, 4(3) and 6 of that Order.

(6) The provisions of Schedule 1 to these Regulations shall, as respects Scotland, have effect in lieu of paragraphs (1) to (5).

Power of court to take account of other proceedings

6.—(1) A court before which proceedings are brought to enforce a liability which is limited by any of the provisions of the Convention may at any stage of the proceedings make any such order as appears to the court to be just and equitable in view of those provisions and of any other proceedings which have been, or are likely to be, commenced in the United Kingdom or elsewhere to enforce the liability in whole or in part.

(2) Without prejudice to paragraph (1), a court before which proceedings are brought to enforce a liability which is so limited shall, where the liability is or may be partly enforceable in other proceedings in the United Kingdom or elsewhere, have jurisdiction to award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court, or to make any part of its award conditional on the result of any other proceedings.

Conversion of special drawing rights into sterling

7.—(1) The special drawing rights by reference to which any liability is limited by the Convention shall, in the case of judicial proceedings or an arbitration in the United Kingdom, be converted into their sterling equivalent on the day of the judgment or award or on such day as may be agreed between the parties to the judicial proceedings or arbitration.

(2) For the purposes of this regulation the value on a particular day of a special drawing right shall be treated as equal to such sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right—

(a) for that day; or

(b) if no sum has been fixed for that day, for the last day before that day for which a sum has been so fixed.

(7) Section 1A was inserted by the Administration of Justice Act 1982 (c. 53), section 3(1), and amended by article 2 of S.I.2002/644. Also amended by the Civil Partnership Act 2004 (c. 30), section 83(1) and (7)(a) and (b) from a date to be appointed.

(8) S.I. 1977/1251 (N.I. 18); Article 3A was inserted, and Article 6 was substituted, by section 68 of, and paragraphs 4 and 7 of Schedule 6 to, the Administration of Justice Act 1982 (c. 53). Article 3A (3) was amended by S.I. 2002/645.

Enforcement of judgments

8.—(1) Subject to paragraph (2), Part I of the 1933 Act shall apply, whether or not it would otherwise have applied, to any judgment which—

(a) has been pronounced as mentioned in paragraph 1 of Article 12 by a court or tribunal in a State which is a party to the Convention for the time being, other than the United Kingdom; and

(b) has become enforceable under the law applied by that court or tribunal.

(2) In the application of Part I of the 1933 Act in relation to any such judgment section 4 of that Act shall have effect with the omission of subsections (2) and (3).

(3) The registration, in accordance with Part I of the 1933 Act, of any such judgment shall constitute compliance with the required formalities referred to in paragraph 1 of Article 12.

Repeals and revocations and consequential amendments

9.—(1) Schedule 2 (repeals and revocations) shall have effect.

(2) Schedule 3 (consequential amendments) shall have effect.

(3) Nothing in regulation 3 affects any rights or liabilities arising out of an occurrence before its coming into force and paragraphs (1) and (2) above do not affect any enactment in its application to any such rights or liabilities.

Signed by authority of the Secretary of State for Transport

Parliamentary Under Secretary of State
Department for Transport

SCHEDULE 1

Regulation 5(6)

FATAL ACCIDENTS: SCOTLAND

1.—(1) Subject to sub-paragraph (2), no enactment or rule of law shall have effect so as to permit a person who has a right of action under the Convention in respect of the death of a passenger by virtue of his being a person whom the passenger was under a legal duty to maintain to raise any other action in that respect for any loss of support suffered by him.

(2) Sub-paragraph (1) shall not apply in so far as the other action concludes for an award under section 1(4) of the Damages (Scotland) Act 1976(9).

2. Section 1(5) of the said Act of 1976(10) (exclusion of certain items in assessment of damages) shall apply to an action brought under the Convention as it applies to an action brought under that Act, but section 6 of that Act shall not apply to such an action under the Convention.

3. Where separate proceedings in respect of the death of a passenger are brought under the Convention and under any other enactment or rule of law the court, in awarding damages in such other proceedings, shall take into account any damages awarded in the proceedings brought under the Convention and may make any part of its award conditional on the result of those proceedings.

SCHEDULE 2

Regulation 9(1)

REPEALS AND REVOCATIONS

1. Sections 1 to 8 and 11(3) and (4) of, and Schedule 1 to, the International Transport Conventions Act 1983(11) are hereby repealed.

2. Paragraph 5 of the Schedule to the Damages (Scotland) Act 1993(12) is hereby repealed.

3. The following Orders are hereby revoked—

- (a) the International Transport Conventions Act 1983 (Certification of Commencement of Convention) Order 1985(13);
- (b) the International Transport Conventions Act 1983 (Amendment) Order 1992(14); and
- (c) the International Transport Conventions Act 1983 (Amendment) Order 1994(15).

SCHEDULE 3

Regulation 9(2)

CONSEQUENTIAL AMENDMENTS

1. In section 1(7) of the Damages (Scotland) Act 1976(16), for “or under section 1 of the International Transport Conventions Act 1983” substitute “or under regulation 3 of the Railways (Convention on International Carriage by Rail) Regulations 2005”.

(9) 1976 c. 13; section 1(4) was amended by the Damages (Scotland) Act 1993 (c. 5), section 1(1).

(10) Section 1(5) was amended by the Damages (Scotland) Act 1993 (c. 5), section 1(2).

(11) 1983 c. 14.

(12) 1993 c. 5.

(13) S.I. 1985/612.

(14) S.I. 1992/237.

(15) S.I. 1994/1907.

(16) Section 1(7) was amended by the International Transport Conventions Act 1983 (c. 14), Schedule 1, paragraph 4(a). There have been other amendments to section 1(7) which are not relevant to these Regulations.

2. In section 31(3) and section 32(4) of the Civil Jurisdiction and Judgments Act 1982(17), for “section 6 of the International Transport Conventions Act 1983” substitute “regulation 8 of the Railways (Convention on International Carriage by Rail) Regulations 2005”.

3. In section 6(8)(a) of the Contracts (Rights of Third Parties) Act 1999(18), for “section 1 of the International Transport Conventions Act 1983” substitute “regulation 3 of the Railways (Convention on International Carriage by Rail) Regulations 2005”.

4. In the Pressure Systems Safety Regulations 2000(19), for paragraph 10 of Schedule 1 substitute:

“10. Any pressure system being carried in a vehicle if the vehicle is engaged in an international transport operation within the meaning of the Convention concerning International Carriage by Rail as revised or reissued from time to time (COTIF)(20) and such carriage conforms in every respect to the provisions of the Uniform Rules concerning the Contract for International Carriage of Goods by Rail (CIM), which form Appendix B to that Convention, and the Regulation concerning the International Carriage of Dangerous Goods by Rail including its Annex (RID)(21), which together form Appendix C to that Convention.”.

5. In the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002(22), in regulation 8A(23) for paragraph (4)(b)(v) substitute:

“(v) the Regulation concerning the International Carriage of Dangerous Goods by Rail including its Annex (“RID”)(24) which together form Appendix C to the Convention concerning International Carriage by Rail (“COTIF”)(25), as revised or reissued from time to time.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide that the 1999 Protocol to the Convention concerning International Carriage by Rail 1980 (Cm 4873) (COTIF), shall have the force of law following its ratification by, and entry into force for, the UK.

COTIF is an intergovernmental Convention concerning international carriage of passengers and goods by rail. The 1999 Protocol includes a new version of the Convention that introduces revised uniform rules regulating the content of international rail contracts and that makes provision for the validation of technical standards applicable to railway material intended to be used in international traffic, and the technical admission of such material.

(17) 1982 c. 27. Sections 31(3) and 32(4) were amended by the International Transport Conventions Act 1983 (c. 14), section 11(2). There have been other amendments to these sections which are not relevant to these Regulations.

(18) 1999 c. 31.

(19) S.I. 2000/128.

(20) Cm 4873.

(21) Current Edition 2005.

(22) S.I. 2002/1689.

(23) Regulation 8A was inserted by S.I. 2004/568, regulation 60 and Schedule 11, paragraph 2.

(24) Current Edition 2005.

(25) Cm 4873.

Any modifications made to COTIF by any decision of the Revision Committee, the RID Expert Committee or the Committee of Technical Experts, shall automatically have the force of law, by virtue of the definition of “the Convention” in regulation 2(2).

For the avoidance of doubt regulation 3(2) provides that any question as to whether COTIF applies to a particular case shall be determined by reference to article 3(2) of COTIF. That article provides that obligations under COTIF shall not prevail over European Community obligations.

These Regulations repeal the provisions of the International Transport Conventions Act 1983 that give the 1980 Convention the force of law in the UK and deal with related matters. Those repealed provisions are largely replicated in these Regulations. For example, regulation 5 specifies the relationship between rights arising under COTIF in respect of the death of a passenger and rights under other legislation; regulation 6 enables a court before which proceedings are brought to enforce a liability which is limited by COTIF to take account of proceedings elsewhere; and regulation 8 makes provision for the reciprocal enforcement of judgments made in another state which is party to COTIF.

The Depositary of COTIF is the Secretary General of the Intergovernmental Organisation for International Carriage by Rail (OTIF) (www.otif.org). At present OTIF has 42 member states in Europe, North Africa and the Near East.

A copy of the regulatory impact assessment prepared in respect of these Regulations can be obtained from the Rail Directorate, International Rail Branch, Department for Transport, Great Minster House, 76 Marsham Street, London, SW1P 4DR. A copy has been placed in the library of each House of Parliament.