

Status: Point in time view as at 06/07/2010.

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SCHEDULES

SCHEDULE 20

Section 186

RAIL VEHICLE ACCESSIBILITY: COMPLIANCE

Rail vehicle accessibility compliance certificates

- 1 (1) A regulated rail vehicle which is prescribed, or is of a prescribed class or description, must not be used for carriage unless a compliance certificate is in force for the vehicle.
- (2) A “compliance certificate” is a certificate that the Secretary of State is satisfied that the regulated rail vehicle conforms with the provisions of rail vehicle accessibility regulations with which it is required to conform.
- (3) A compliance certificate is subject to such conditions as are specified in it.
- (4) A compliance certificate may not be issued for a rail vehicle unless the Secretary of State has been provided with a report of a compliance assessment of the vehicle.
- (5) A “compliance assessment” is an assessment of a rail vehicle against provisions of rail vehicle accessibility regulations with which the vehicle is required to conform.
- (6) If a regulated rail vehicle is used for carriage in contravention of sub-paragraph (1), the Secretary of State may require the operator of the vehicle to pay a penalty.
- (7) The Secretary of State must review a decision not to issue a compliance certificate if before the end of the prescribed period the applicant—
 - (a) asks the Secretary of State to review the decision, and
 - (b) pays any fee fixed under paragraph 4.
- (8) For the purposes of the review, the Secretary of State must consider any representations made by the applicant in writing before the end of the prescribed period.

Regulations as to compliance certificates

- 2 (1) Regulations may make provision as to compliance certificates.
- (2) The regulations may (in particular) include provision—
 - (a) as to applications for and issue of certificates;
 - (b) specifying conditions to which certificates are subject;
 - (c) as to the period for which a certificate is in force;
 - (d) as to circumstances in which a certificate ceases to be in force;
 - (e) dealing with failure to comply with a specified condition;

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- (f) for the examination of rail vehicles in respect of which applications have been made;
- (g) with respect to the issue of copies of certificates in place of those which have been lost or destroyed.

Regulations as to compliance assessments

- 3 (1) Regulations may make provision as to compliance assessments.
- (2) The regulations—
- (a) may make provision as to the person who has to have carried out the assessment;
 - (b) may (in particular) require that the assessment be one carried out by a person who has been appointed by the Secretary of State to carry out compliance assessments (an “appointed assessor”).
- (3) For the purposes of any provisions in the regulations made by virtue of subparagraph (2)(b), the regulations—
- (a) may make provision about appointments of appointed assessors, including (in particular)—
 - (i) provision for an appointment to be on application or otherwise than on application;
 - (ii) provision as to who may be appointed;
 - (iii) provision as to the form of applications for appointment;
 - (iv) provision as to information to be supplied with applications for appointment;
 - (v) provision as to terms and conditions, or the period or termination, of an appointment;
 - (vi) provision for terms and conditions of an appointment, including any as to its period or termination, to be as agreed by the Secretary of State when making the appointment;
 - (b) may make provision authorising an appointed assessor to charge fees in connection with, or incidental to, the carrying out of a compliance assessment, including (in particular)—
 - (i) provision restricting the amount of a fee;
 - (ii) provision authorising fees that contain a profit element;
 - (iii) provision for advance payment of fees;
 - (c) may make provision requiring an appointed assessor to carry out a compliance assessment, and to do so in accordance with any procedures that may be prescribed, if prescribed conditions (which may include conditions as to the payment of fees to the assessor) are satisfied;
 - (d) must make provision for the referral to the Secretary of State of disputes between—
 - (i) an appointed assessor carrying out a compliance assessment, and
 - (ii) the person who requested the assessment,
 relating to which provisions of rail vehicle accessibility regulations the vehicle is to be assessed against or to what amounts to conformity with any of those provisions.

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- (4) For the purposes of sub-paragraph (3)(b) to (d) a compliance assessment includes pre-assessment activities (for example, a consideration of how the outcome of a compliance assessment would be affected by the carrying out of particular proposed work).

Fees in respect of compliance certificates

- 4 (1) The Secretary of State may charge such fees, payable at such times, as are prescribed in respect of—
- (a) applications for, and the issue of, compliance certificates;
 - (b) copies of compliance certificates;
 - (c) reviews under paragraph 1(7);
 - (d) referrals of disputes under provision made by virtue of paragraph 3(3)(d).
- (2) Fees received by the Secretary of State must be paid into the Consolidated Fund.
- (3) Regulations under this paragraph may make provision for the repayment of fees, in whole or in part, in such circumstances as are prescribed.
- (4) Before making regulations under this paragraph the Secretary of State must consult such representative organisations as the Secretary of State thinks fit.

Penalty for using rail vehicle that does not conform with accessibility regulations

- 5 (1) If the Secretary of State thinks that a regulated rail vehicle does not conform with a provision of rail vehicle accessibility regulations with which it is required to conform, the Secretary of State may give the operator of the vehicle a notice—
- (a) identifying the vehicle, the provision and how the vehicle fails to conform;
 - (b) specifying the improvement deadline.
- (2) The improvement deadline may not be earlier than the end of the prescribed period beginning with the day the notice is given.
- (3) Sub-paragraph (4) applies if—
- (a) the Secretary of State has given a notice under sub-paragraph (1),
 - (b) the improvement deadline specified in the notice has passed, and
 - (c) the Secretary of State thinks that the vehicle still does not conform with the provision identified in the notice.
- (4) The Secretary of State may give the operator a further notice—
- (a) identifying the vehicle, the provision and how the vehicle fails to conform;
 - (b) specifying the final deadline.
- (5) The final deadline may not be earlier than the end of the prescribed period beginning with the day the further notice is given.
- (6) The Secretary of State may require the operator to pay a penalty if—
- (a) the Secretary of State has given notice under sub-paragraph (4), and
 - (b) the vehicle is used for carriage at a time after the final deadline when the vehicle does not conform with the provision identified in the notice.

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Penalty for using rail vehicle otherwise than in conformity with accessibility regulations

- 6 (1) If the Secretary of State thinks that a regulated rail vehicle has been used for carriage otherwise than in conformity with a provision of rail vehicle accessibility regulations with which the use of the vehicle is required to conform, the Secretary of State may give the operator of the vehicle a notice—
- (a) identifying the provision and how it was breached;
 - (b) identifying each vehicle operated by the operator that is covered by the notice;
 - (c) specifying the improvement deadline.
- (2) The improvement deadline may not be earlier than the end of the prescribed period beginning with the day the notice is given.
- (3) Sub-paragraph (4) applies if—
- (a) the Secretary of State has given a notice under sub-paragraph (1),
 - (b) the improvement deadline specified in the notice has passed, and
 - (c) the Secretary of State thinks that a vehicle covered by the notice has after that deadline been used for carriage otherwise than in conformity with the provision identified in the notice.
- (4) The Secretary of State may give the operator a further notice—
- (a) identifying the provision and how it was breached;
 - (b) identifying each vehicle operated by the operator that is covered by the further notice;
 - (c) specifying the final deadline.
- (5) The final deadline may not be earlier than the end of the prescribed period beginning with the day the further notice is given.
- (6) The Secretary of State may require the operator to pay a penalty if—
- (a) the Secretary of State has given notice under sub-paragraph (4), and
 - (b) a vehicle covered by the notice is at a time after the final deadline used for carriage otherwise than in conformity with the provision identified in the notice.

Inspection of rail vehicles

- 7 (1) If the condition in sub-paragraph (2) is satisfied, a person authorised by the Secretary of State (an “inspector”) may inspect a regulated rail vehicle for conformity with provisions of the accessibility regulations with which it is required to conform.
- (2) The condition is that the Secretary of State—
- (a) has reasonable grounds for suspecting that the vehicle does not conform with such provisions, or
 - (b) has given a notice under paragraph 5(1) or (4) relating to the vehicle.
- (3) For the purpose of exercising the power under sub-paragraph (1) an inspector may—
- (a) enter premises if the inspector has reasonable grounds for suspecting that the vehicle is at the premises;

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- (b) enter the vehicle;
 - (c) require any person to afford such facilities and assistance with respect to matters under the person's control as are necessary to enable the inspector to exercise the power.
- (4) An inspector must, if required to do so, produce evidence of the Secretary of State's authorisation.
- (5) For the purposes of paragraph 5(1) the Secretary of State may draw such inferences as appear proper from any obstruction of the exercise of the power under sub-paragraph (1).
- (6) Sub-paragraphs (7) and (8) apply if the power under sub-paragraph (1) is exercisable by virtue of sub-paragraph (2)(b).
- (7) The Secretary of State may treat paragraph 5(3)(c) as satisfied in relation to a vehicle if—
- (a) the inspector takes steps to exercise the power after a notice is given under paragraph 5(1) but before a notice is given under paragraph 5(4), and
 - (b) a person obstructs the exercise of the power.
- (8) The Secretary of State may require the operator of a vehicle to pay a penalty if—
- (a) the operator, or a person acting on the operator's behalf, intentionally obstructs the exercise of the power, and
 - (b) the obstruction occurs after a notice has been given under paragraph 5(4) in respect of the vehicle.
- (9) In this paragraph “inspect” includes test.

Supplementary powers

- 8
- (1) For the purposes of paragraph 5 the Secretary of State may give notice to a person requiring the person to supply the Secretary of State by a time specified in the notice with a vehicle number or other identifier for a rail vehicle—
- (a) of which the person is the operator, and
 - (b) which is specified in the notice.
- (2) The time specified may not be earlier than the end of the period of 14 days beginning with the day the notice is given.
- (3) If the person does not comply with the notice, the Secretary of State may require the person to pay a penalty.
- (4) If the Secretary of State has given a notice to a person under paragraph 5(1) or 6(1), the Secretary of State may request the person to supply the Secretary of State, by a time specified in the request, with a statement detailing the steps taken in response to the notice.
- (5) The time specified may not be earlier than the improvement deadline.
- (6) The Secretary of State may treat paragraph 5(3)(c) or (as the case may be) paragraph 6(3)(c) as being satisfied in relation to a vehicle if a request under sub-paragraph (4) is not complied with by the time specified.

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Penalties: amount, due date and recovery

- 9 (1) In this paragraph and paragraphs 10 to 12 “penalty” means a penalty under this Schedule.
- (2) The amount of a penalty must not exceed whichever is the lesser of—
- (a) the maximum prescribed for the purposes of this sub-paragraph;
 - (b) 10% of the turnover of the person on whom it is imposed.
- (3) Turnover is to be determined by such means as are prescribed.
- (4) A penalty must be paid to the Secretary of State before the end of the prescribed period.
- (5) A sum payable as a penalty may be recovered as a debt due to the Secretary of State.
- (6) In proceedings for recovery of a penalty no question may be raised as to—
- (a) liability to the penalty;
 - (b) its amount.
- (7) Sums paid to the Secretary of State as a penalty must be paid into the Consolidated Fund.

Penalties: code of practice

- 10 (1) The Secretary of State must issue a code of practice specifying matters to be considered in determining the amount of a penalty.
- (2) The Secretary of State may—
- (a) revise the whole or part of the code;
 - (b) issue the code as revised.
- (3) Before issuing the code the Secretary of State must lay a draft of it before Parliament.
- (4) After laying the draft before Parliament, the Secretary of State may bring the code into operation by order.
- (5) The Secretary of State must have regard to the code and any other relevant matter—
- (a) when imposing a penalty;
 - (b) when considering an objection under paragraph 11.
- (6) In sub-paragraphs (3) to (5) a reference to the code includes a reference to the code as revised.

Penalties: procedure

- 11 (1) If the Secretary of State decides that a person is liable to a penalty the Secretary of State must notify the person.
- (2) The notification must—
- (a) state the Secretary of State's reasons for the decision;

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- (b) state the amount of the penalty;
 - (c) specify the date by which and manner in which the penalty must be paid;
 - (d) explain how the person may object to the penalty.
- (3) The person may give the Secretary of State notice of objection to the penalty on the ground that—
- (a) the person is not liable to the penalty, or
 - (b) the amount of the penalty is too high.
- (4) A notice of objection must—
- (a) be in writing;
 - (b) give the reasons for the objection;
 - (c) be given before the end of the period prescribed for the purposes of this sub-paragraph.
- (5) On considering a notice of objection the Secretary of State may—
- (a) cancel the penalty;
 - (b) reduce the amount of the penalty;
 - (c) do neither of those things.
- (6) The Secretary of State must inform the objector of the decision under sub-paragraph (5) before the end of the period prescribed for the purposes of this sub-paragraph (or such longer period as is agreed with the objector).

Penalties: appeals

- 12
- (1) A person may appeal to the court against a penalty on the ground that—
- (a) the person is not liable to the penalty;
 - (b) the amount of the penalty is too high.
- (2) The court may—
- (a) allow the appeal and cancel the penalty;
 - (b) allow the appeal and reduce the amount of the penalty;
 - (c) dismiss the appeal.
- (3) An appeal under this section is a re-hearing of the Secretary of State's decision and is to be determined having regard to—
- (a) any code of practice under paragraph 10 which has effect at the time of the appeal;
 - (b) any other matter which the court thinks is relevant (whether or not the Secretary of State was aware of it).
- (4) An appeal may be brought under this section whether or not—
- (a) the person has given notice of objection under paragraph 11(3);
 - (b) the penalty has been reduced under paragraph 11(5).
- (5) In this section “the court” is—
- (a) in England and Wales, a county court;
 - (b) in Scotland, the sheriff.
- (6) The sheriff may transfer the proceedings to the Court of Session.

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- (7) If the sheriff makes a determination under sub-paragraph (2), a party to the proceedings may appeal against the determination on a point of law to—
- (a) the Sheriff Principal, or
 - (b) the Court of Session.

Forgery, etc.

- 13 (1) Section 188 has effect—
- (a) as if a compliance certificate were a “relevant document”;
 - (b) as if subsection (4) included a reference to a compliance certificate.
- (2) A person commits an offence by pretending, with intent to deceive, to be a person authorised to exercise a power under paragraph 7.
- (3) A person guilty of an offence under sub-paragraph (2) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Regulations

- 14 A power to make regulations under this Schedule is exercisable by the Secretary of State.

Interpretation

- 15 (1) In this Schedule—
- “compliance assessment” has the meaning given in paragraph 1(5);
 - “compliance certificate” has the meaning given in paragraph 1(2);
 - “operator”, in relation to a rail vehicle, means the person having the management of the vehicle.
- (2) If an exemption order under section 183 authorises the use of a rail vehicle even though the vehicle does not conform with a provision of rail vehicle accessibility regulations, a reference in this Schedule to provisions of rail vehicle accessibility regulations with which the vehicle is required to conform does not, in relation to the vehicle, include a reference to that provision.

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