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STATUTORY INSTRUMENTS

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**2006 No. 599**

**The Railways and Other Guided Transport  
Systems (Safety) Regulations 2006**

**PART 5**

**MISCELLANEOUS**

**Appeals**

**27.—**(1) A person who is aggrieved by a—

- (a) decision of the Office of Rail Regulation to refuse his application for—
  - (i) a safety certificate or safety authorisation;
  - (ii) an amended safety certificate or safety authorisation;
- (b) direction of the Office of Rail Regulation to make an application to amend his safety certificate or safety authorisation; or
- (c) decision of the Office of Rail Regulation to revoke his—
  - (i) safety certificate or part of it; or
  - (ii) safety authorisation,

may appeal to the Secretary of State.

(2) For the purposes of paragraph (1) the Secretary of State may, in such cases as he considers it appropriate to do so, having regard to the nature of the questions which appear to him to arise, direct that an appeal under that paragraph shall be determined on his behalf by a person appointed by him for that purpose.

(3) Before the determination of an appeal the Secretary of State shall ask the appellant and the Office of Rail Regulation 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 as aforesaid;
- (b) The Secretary of State shall, 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 shall apply 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 his behalf by that person.

(5) A person who determines an appeal under this regulation on behalf of the Secretary of State and the Secretary of State, if he determines such an appeal, may give such directions as he considers appropriate to give effect to his determination.

(6) The Secretary of State may pay to any person appointed to hear or determine an appeal under paragraph (2) on his behalf such remuneration and allowances as the Secretary of State may with the approval of the Minister for the Civil Service determine.

(7) For the purposes of paragraph (1)(a), a failure by the Office of Rail Regulation to make a decision on whether or not to issue or amend a safety certificate or safety authorisation within the four month period for making a decision calculated in accordance with regulation 17(7) shall be treated as a refusal of the application.

(8) The Health and Safety Licensing Appeals (Hearing Procedure) Rules 1974(1), as respects England and Wales, and the Health and Safety Licensing Appeals (Hearing Procedure)(Scotland)(2) Rules 1974, as respects Scotland, shall apply to an appeal under paragraph (1) as they apply to an appeal under sub-section (1) of the said section 44, but with the modification that references to a licensing authority are to be read as references to the Office of Rail Regulation.

(9) Where an appeal is made under paragraphs (1)(a) or (1)(c), the decision in question shall be suspended pending the final determination of the appeal.

## Offences

**28.** A failure to discharge a duty placed on the Office of Rail Regulation by these Regulations shall not be an offence under section 33(1)(c) of the Health and Safety at Work etc. Act 1974.

## Transitional provisions and savings

**29.**—(1) Any competence and fitness assessments made pursuant to regulation 3 of the Railways (Safety Critical Work) Regulations 1994(3) shall have effect as if they were made under Part 4, provided that the assessment would, at the time it was made, have met the requirements for impartiality and objectivity in that Part.

(2) Notwithstanding the revocation of ROTS pursuant to regulation 34, and subject to paragraph (6) ROTS shall, up to and including 1st October 2008, continue in force as they had effect on 30th September 2006 for the purposes of—

- (a) determining applications for approval made;
- (b) issuing a written consent for the purposes set out in regulation 4(4)(b) of ROTS in relation to new or altered works, plant or equipment for which an application for approval has been made;
- (c) making notices dispensing with or requiring compliance with certain provisions of ROTS under regulation 10(1)(a) or 11(1)(a) of ROTS in relation to new or altered works, plant or equipment, for which an application for approval has been made,

to the Office of Rail Regulation in relation to a relevant transport system before 1st October 2006.

(3) Where an approval is issued by the Office of Rail Regulation in response to an application for approval made in relation to a transport system —

- (a) before 1st October 2006 but where the new or altered works, plant or equipment are placed in service within the meaning of regulation 5(6) and 6(5) on or after that date; or
- (b) on or before 1st October 2008 pursuant to paragraph (2),

in relation to new or altered works, plant or equipment that is relevant infrastructure or a vehicle then such works, plant or equipment shall be deemed to satisfy the requirements of regulations 5(4) and 6(4).

(1) S.I.1974/2040.

(2) S.I. 1974/2068 [Scots.]

(3) S.I. 1994/299 as amended by SIs 1996/1592, 1999/2024 and 2000/2688.

(4) Where a written consent is issued by the Office of Rail Regulation in relation to new or altered works, plant or equipment which is relevant infrastructure or a vehicle in relation to a transport system—

- (a) under regulation 4(4)(b)(i) of ROTS on or before 1st October 2008 pursuant to paragraph (2) then such relevant infrastructure or vehicle shall be deemed to satisfy the requirements of regulations 5(4) and 6(4) ; or
- (b) under regulation 4(4)(b)(ii) of ROTS on or before 1st October 2008 pursuant to paragraph (2) then no regard shall be taken of the use of such relevant infrastructure or vehicle for the purposes for which the written consent relates when determining whether the relevant infrastructure or vehicle has been placed in service in accordance with regulations 5(6) and 6(5).

(5) In this regulation—

- (a) “application for approval” means an application for approval made under regulation 5, 6 or 7 of ROTS;
- (b) “altered works, plant or equipment” shall have the meaning in regulation 2(a) of ROTS; and
- (c) “relevant transport system” shall have the meaning in regulation 2(a) of ROTS.

(6) For the purposes of heritage railways and tramways, all references in this regulation to 1st October 2006 shall be read as if those references were in each case to 1st October 2008, and all references to 1st October 2008 shall be read as if those references were in each case to 1st October 2010.

(7) Schedule 5 shall have effect.

## **Exemptions**

**30.**—(1) Subject to paragraphs (2) and (3), the Office of Rail Regulation may, by certificate in writing, exempt any person or class of persons or any transport system or part of a transport system from any requirement or prohibition imposed by these Regulations.

(2) The Office of Rail Regulation shall not grant any such exemption in relation to any requirement or prohibition imposed by Part 2 or 3 in relation to an operation carried out on the mainline railway other than an exemption to an operator of last resort from the requirement to copy the documents referred to in regulation 17(3)(a)(i) and (ii) to an affected party or to notify an affected party as the case may be.

(3) The Office of Rail Regulation shall not grant any such exemption unless, having regard to the circumstances of the case, and in particular to—

- (a) the conditions, if any, which it proposes to attach to the exemption; and
- (b) any other requirements imposed by or under any enactment which applies to the case,

it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it.

(4) The Secretary of State for Defence may, in the interests of national security, by a certificate in writing exempt any person or class of persons from any requirement or prohibition imposed by these Regulations.

(5) An exemption granted pursuant to paragraph (1), (2) or (4) may be granted subject to conditions and to a limit of time.

(6) An exemption granted pursuant to—

- (a) paragraph (1) or (2) may be revoked by the Office of Rail Regulation; and
- (b) paragraph (4) may be revoked by the Secretary of State for Defence,

at any time by a further certificate in writing.

### **Defence of due diligence**

**31.**—(1) Subject to the following provisions of this regulation, in any proceedings against any person for an offence under regulation 5(4) or 6(4) 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 provided 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 upon 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.

### **Amendment of ROTS**

**32.** In regulation 4 of ROTS—

- (a) for paragraph (2A) substitute—

“(2A) Approval shall not be required in relation to any interoperability constituent or any subsystem to the extent that the interoperability constituent or subsystem, as the case may be, has been authorised before 2nd April 2006 under regulation 14 of the Railways (Interoperability) (High-Speed) Regulations 2002 or is subject to the requirement for authorisation under regulation 4(1)(a) of the Railways Interoperability Regulations 2006.”

- (b) for paragraph (5) substitute—

“(5) In this regulation, “interoperability constituent” and “subsystem” have the same meaning as in the Railways (Interoperability) Regulations 2006.”

### **Consequential amendments**

**33.** The Regulations referred to in Schedule 6 shall be amended as set out in that Schedule.

### **Revocation**

**34.** The Regulations referred to in column (1) of Schedule 7 are revoked to the extent specified in column (3) of that Schedule.