

EXPLANATORY MEMORANDUM TO
THE RAILWAYS (INTEROPERABILITY) (AMENDMENT) REGULATIONS 2007

2007 No. 3386

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Regulations amend the Railways (Interoperability) Regulations 2006 (S.I. 2006/397) ("RIR") to implement Directive 2007/32/EC of the European Commission of 1 June 2007. In particular, they make amendments to the verification procedure whereby an independent third party (a notified body) checks and certifies that certain subdivisions of the trans-European rail system, referred to as "subsystems" (e.g. rolling stock, infrastructure, energy and signalling), comply with appropriate standards.

2.2 Interoperability is intended to promote the single market in the rail sector by providing for harmonious technical standards and a common European assessment and authorisation process for bringing into operation any major new rail developments or major upgrades or renewals of existing subsystems.

2.3 The Regulations make consequential amendments to the RIR and also address two miscellaneous issues. They update the definition of EEA State used in the RIR. They also substitute the expression "verification declaration" for "declaration of verification" in Schedule 8 for consistency.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The Regulations amend the RIR to implement Directive 2007/32/EC of the European Commission of 1 June 2007 (O.J. No. L 141, 2.6.07, p. 63) which the UK is required to transpose before 2 December 2007.

4.2 This Directive replaces with a new text Annex VI to Council Directive 96/48/EC on the interoperability of the trans-European high-speed rail system ("the High-Speed Directive") and also Annex VI to Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system ("the Conventional Directive").

4.3 The High Speed Directive was implemented in the UK by the Railways (Interoperability) (High-Speed) Regulations 2002 (SI 2002/1166) ("the High-Speed Regulations"). Regulation (EC) No. 1882/2003 substituted a new article 21 in the High-Speed Directive (committee procedure). The Conventional Directive was adopted in

2001. A third Directive (2004/50/EC) ("the Amendment Directive") was adopted in 2004 and amended the previous two. The Amendment Directive operated to make the text of the High-Speed Directive consistent with the text of the Conventional Directive, and added a number of specific requirements.

4.4 The RIR revoked and replaced the High-Speed Regulations in order to transpose and consolidate the provisions of all three railway interoperability Directives.

4.5 A full explanation of the provisions of the RIR can be found in the explanatory memorandum to those Regulations¹.

4.6 As Directive 2007/32/EC simply substitutes a slightly amended version of Annex VI (verification procedure for subsystems) for Annex VI to both the High Speed and the Conventional Directives, as amended, a transposition note has not been produced. The new Directive is transposed by regulation 2(8) of the Regulations and by consequential provisions in regulation 2.

4.7 In particular, however, in Part 6 of the new Schedule 9 to the RIR, the second paragraph of Part 6 of the new Annex VI has not been transposed. Instead transposition is effected in regulation 11 of the RIR. This is because, firstly, Regulation 11 already addresses the requirements for technical documents to be kept. Secondly the new requirement for copies to be provided to Member States on request is added to Regulation 11 by regulation 2(5)(b).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The railways interoperability Directives support the policy objectives of the European Community, as expressed in the Common Transport Policy, of promoting the single market in the rail sector. Interoperability is focussed on removing mainly technical barriers to the supply of equipment and the through-running of trains across Europe.

7.2 The aim of these Directives is to:

- achieve interoperability across the trans-European rail network, and in due course, the rest of the mainline rail system;

¹ At www.opsi.gov.uk/si/em2006/uksiem_20060397_en.pdf.

- mandate the preparation of common technical standards, known as technical specifications for interoperability ("TSIs"), to be applied across Europe's railways; and
- establish common assessment and authorisation processes.

7.3 Technical harmonisation and common processes will help to break down some of the barriers to open access on the European rail network. Similar technical compliance controls, aimed at the point of manufacture and marketing of components produced to be incorporated into rail subsystems (known as "interoperability constituents"), should help do the same for the component supply market. When new rolling stock is introduced, or new lines are built, or when major work is done on the trans-European rail network, compliance with TSIs under the assessment and authorisation processes will gradually bring about greater harmonisation across the European network.

7.4 Before a new, or renewed or upgraded, subsystem is brought into service, it must be authorised by the Safety Authority (in the UK this is the Office of Rail Regulation except for Northern Ireland, where it is the Department for Regional Development, and for the Channel Tunnel, where it is the Channel Tunnel Intergovernmental Commission). The Safety Authority relies upon a verification process to be certain that, at the design, construction and putting into service stages, the result is in line with the regulations and technical/operational provisions in force. Verification is undertaken by notified bodies (in the UK, these are appointed by the Secretary of State).

7.5 The concept of "final testing of the subsystem" provided for by High-Speed and Conventional Directives (as amended, but prior to the changes made by Directive 2007/32/EC) is not sufficiently clear and precise. There are tests which a manufacturer can carry out on an isolated sub-system or its constituent parts, for example at the design stage, which are independent of the final environment in which they will be installed and used. However, there is currently no formal and official recognition of the validity of such interim testing which can give the manufacturer some certainty that the design or production stage reached satisfies interoperability requirements up to that point.

7.6 The effect of the Regulations is to enable a main contractor or manufacturer to seek interim assessment of their products at design or production stage to verify compliance with technical requirements. The assessment would be carried out by a notified body in the same manner as the current final testing process, although it does not replace the latter. If a notified body is satisfied that the subsystem is compliant, it will now be able to issue an intermediate statement of verification ("ISV"). The introduction of the ISV process is also intended to enable manufacturers to be assured of equality of treatment throughout the European Union, supporting the wider objectives of interoperability in relation to the European market and the enhancement of the competitiveness of European rail transport.

7.7 On the basis of an ISV, the body seeking verification will be able to draw up an "EC declaration of intermediate subsystem conformity" for the design and/or production stage which a subsystem must go through. Final testing and verification by a notified body will still be required and, for consistency, the Regulations provide for a change in

terminology for the final sign-off document from "certificate of conformity" to "certificate of verification".

7.8 The Regulations make consequential amendments to the RIR. In particular they restate the definitions of the Directives in regulation 2(1) such as to include references to their amending measures, for consistency with the referencing of the new amending Directive 2007/32/EC on the face of the Regulations rather than in footnotes. The Regulations also make two miscellaneous adjustments to the RIR. Firstly, they update the meaning of "EEA State", aligning it with the latest definition given in Schedule 1 of the Interpretation Act 1978, as amended. Secondly, they substitute the expression "verification declaration" for "declaration of verification" in Schedule 8 because the former is defined in regulation 2(3) and used in regulation 4(6)(a) of the RIR.

7.9 Given that EU Member States are required to transpose the requirements of Directive 2007/32/EC in their entirety, that the new requirements are minor in scope, that they provide contractors and manufactures with an optional interim verification process should they wish to use it, and they are supported by industry, no formal consultation process has been undertaken. However, the Department for Transport will write to stakeholders outlining the changes, indicating when they are likely to come into force and offering additional advice about implementation.

8. Impact

8.1 An impact assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 No impact on the public sector is foreseen.

9. Contact

Dr Peter Browne at the Department for Transport (tel: 020 7944 2571 or e-mail: interoperability@dft.gsi.gov.uk) can answer any queries regarding the instrument.