
STATUTORY INSTRUMENTS

2008 No. 2323

HEALTH AND SAFETY

**The Health and Safety (Enforcing Authority
for Railways and Other Guided Transport
Systems) (Amendment) Regulations 2008**

Made - - - - *27th August 2008*
Laid before Parliament *2nd September 2008*
Coming into force - - *1st October 2008*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 15(1) and (3)(c) and 82(3)(a) of the Health and Safety at Work etc Act 1974(1).

She makes these Regulations for the purpose of giving effect without modification to proposals submitted to her by the Office of Rail Regulation under paragraph 2(5) of Schedule 3 to the Railways Act 2005(2) after the carrying out by that office of consultations in accordance with paragraph 2(6) of that Schedule.

Citation and commencement

1. These Regulations may be cited as the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) (Amendment) Regulations 2008 and shall come into force on 1st October 2008.

Amendment of 2006 Regulations

2. The Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006(3) are amended in accordance with the following provisions of these Regulations.

3. In regulation 2 (interpretation)—

(a) after the definition of “bus” insert the following definition—

(1) 1974 c.37; the scope of section 15 and Part I of the 1974 Act was extended by section 117 of the Railways Act 1993 (c.43); section 15(1) was amended by the Employment Protection Act 1975 (c.71), section 116 and Schedule 15, paragraph 6; section 15(1) was also amended by S.I. 2002/794, article 5(2) and Schedule 2.
(2) 2005 c.14
(3) S.I. 2006/557

““bus substitution service” means a service for the carriage of passengers by road that is provided as an alternative to the whole or a part of a railway or tramway passenger service that has been discontinued, reduced or modified (whether temporarily or permanently)”;

- (b) after the definition of “construction work” insert the following definition—
- ““contractor” has the same meaning as in regulation 2(1) of the Construction (Design and Management) Regulations 2007”(4);
- (c) delete the definition of “dock premises” and after the definition of “guided transport” insert the following definition—
- ““harbour” means a harbour or harbour area as defined in regulation 2(1) of the Dangerous Substances in Harbour Areas Regulations 1987”(5);
- (d) after the definition of “mine” insert the following definition—
- ““miniature railway” means a system of transport employing parallel rails which—
- (a) provide support and guidance for vehicles carried on flanged wheels; and
- (b) form a track of a gauge of less than 350 millimetres”;
- (e) in paragraph (k) of the definition of “operation of a railway” replace “dock premises” with “harbours”.

4. In regulation 4 (exceptions)—

- (a) at the end of paragraph (1) add the following sub-paragraphs—
- “or
- (c) a miniature railway which does not cross a carriageway (whether or not on the same level); or
- (d) a bus substitution service when outside operational premises.” and
- (b) in paragraph (3) for sub-paragraphs (a) and (b) substitute the following paragraphs—
- “(a) a harbour within premises referred to in any of sub paragraphs (c) to (h);
- (b) any other harbour unless—
- (i) the system of transport operated is part of a system which is operated outside the harbour and the operation is for the purpose of or related to the carriage of passengers or goods to or from the harbour; or
- (ii) the system of transport is not operated outside the harbour but is a railway, tramway or other system of guided transport for the carriage of the public not connected to any other railway”;

5. For regulation 5 (construction work) substitute the following regulation—

“**5.**—(1) Without prejudice to regulation 4(5), the operations specified in paragraph (2) of regulation 3 include construction work

- (a) for the maintenance, repair, renewal or improvement of existing infrastructure; and
- (b) for the extension or enlargement of infrastructure if that work is in such close proximity to the operation of a railway, tramway or other system of guided transport specified in that paragraph that such operation creates a risk to the health, safety or welfare of those engaged in that work.

(4) S.I. 2007/320

(5) S.I. 1987/37, to which there are amendments not relevant to these Regulations.

- (2) Without prejudice to regulation 4(5) and subject to paragraph (3), the operations set out in paragraph (2) of regulation 3 also include construction work if it is
- (a) carried out within operational premises; and
 - (b) relates to the maintenance, repair, renewal or improvement of any fixed asset (other than infrastructure) of a system of transport specified in that paragraph.
- (3) Paragraph (2) does not include construction work—
- (a) carried out in relation to a structure, premises or other property whose primary function is not related to the operation of the system of transport; or
 - (b) carried out in relation to a bridge, structure or other property which spans or is adjacent to operational premises, by persons other than the owners, operator or manager of the system of transport or persons acting on behalf of one or more of them; or
 - (c) where there is a suspension of the activities normally carried out in the operational premises (other than the use of the infrastructure for the through operation of vehicles with the exit of a passenger or passengers from such a vehicle only in the case of emergency) and the construction work meets the following conditions—
 - (i) the work is carried out in an area which is segregated physically from the infrastructure; and
 - (ii) the contractor has the authority to exclude from the segregated area persons who are not attending in connection with the carrying out of the work; or
 - (d) where activities normally carried on in relation to the operation of the system of transport continue and—
 - (i) the construction work meets the conditions set out in sub paragraphs (i) and (ii) of paragraph (c); and
 - (ii) there is no access (other than emergency access) between the segregated area and the remainder of the operational premises.”

Transitional provisions

6.—(1) In this regulation—

- (a) “function” means a function transferred to the Office of Rail Regulation or, as the case may be, to the Health and Safety Executive by these Regulations;
- (b) function referred to in sub-paragraph (a);
- (c) “transferor” means the Office of Rail Regulation or, as the case may be, the Health and Safety Executive from which the function is transferred and “transferee” means the Office of Rail Regulation or, as the case may be, the Health and Safety Executive to which the function is transferred.

(2) Anything done by, or in relation to, the transferor in relation to any function which has effect before or at the date of coming into force of these Regulations shall, so far as necessary or appropriate for the purpose of, or in consequence of, the transfer, have effect as if done by, or in relation to, the transferee.

(3) There may be continued by, or in relation to, the transferee anything (including legal proceedings) relating to a function which is in the process of being done by, or in relation to, the transferor immediately before the coming into force of these Regulations.

(4) Any reference to the transferor in any document relating to a function shall be taken, so far as necessary or appropriate for the purposes of, or in consequence of, the transfer, as a reference to the transferee.

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(5) The transfer does not affect the validity of anything done by, or in relation to, the transferor before the coming into force of these Regulations.

(6) In this regulation a reference to the Office of Rail Regulation or to the Health and Safety Executive includes a reference to an officer of such body, including any inspector appointed by it, so far as may be necessary for the purposes of, or in consequence of, the transfer.

(7) If and in so far as immediately before the coming into force of these Regulations any function transferred by these Regulations is held by a local authority pursuant to any transfer or assignment made under regulations 5 or 6 of the Health and Safety (Enforcing Authority) Regulations 1998, paragraphs (2) to (6) of this regulation shall have effect as if any reference to the Health and Safety Executive were a reference to the local authority.

Signed by authority of the Secretary of State

27th August 2008

Tom Harris
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the allocation of responsibility for the enforcement of health and safety law in respect of railways, tramways and other guided transport systems between the Office of Rail Regulation (“ORR”) and the Health and Safety Executive (“HSE”) by amending the Health and Safety (Enforcing Authority for Railways and other Guided Transport Systems) Regulations 2006 (“the 2006 Regulations”).

Regulation 3(2) of the 2006 Regulations defines the scope of enforcement authority conferred on ORR subject to the exceptions and limitations in regulations 4 and 5 of those Regulations.

The changes effected by *regulation 3* of these Regulations are —

- (a) and “harbour area” as defined in the Dangerous Substances in Harbour Areas Regulations 1987 (S.I.1987/37) so as to align these Regulations with the [Railways and Other Guided Transport Systems \(Safety\) Regulations 2006 \(2006/599\)](#); and
- (b) to insert new definitions of “bus substitution service”, “contractor” and “miniature railway” into regulation 2(1) of the 2006 Regulations.

Regulation 4 of these Regulations makes changes to regulation 4 of the 2006 Regulations. The principal change is to add to the exceptions in regulation 4(1) of the 2006 Regulations—

- (a) any miniature railway (as defined by these Regulations) which does not cross a carriageway (whether or not on the same level), and
- (b) any bus substitution service when outside operational premises. Responsibility for enforcement in respect of these will thus fall to HSE.

Regulation 4 of these Regulations also makes changes to regulation 4(3) of the 2006 Regulations to make ORR responsible for enforcement in respect of a railway, tramway or other system of guided transport operated within a harbour or harbour area for the carriage of the public which is not connected to any other railway.

Regulation 5 of these Regulations substitutes a new version of regulation 5 of the 2006 Regulations (which extends the meaning of operation in regulation 3(2) of the 2006 Regulations to include the carrying out of certain construction work). The principal changes made are—

- (c) to include in the enforcement responsibility of ORR construction work for the extension or enlargement of infrastructure if the work is in such close proximity to the operation of a railway, tramway or other system of transport as to create a risk to the health, safety or welfare of those engaged in the work; and
- (d) to exclude from the enforcement responsibility of ORR construction work for the development or maintenance of a fixed asset other than infrastructure-
 - (i) on operational premises out of service aside from the through operation of vehicles through those premises (and the exceptional alighting of a person or persons) if the work is segregated physically from the infrastructure and satisfies specified conditions for the security of the operational premises; or
 - (ii) on operational premises in service if the construction work in addition to those mentioned in (i) further satisfies requirements as to access to the segregated premises.

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Because these Regulations alter the allocation of enforcement responsibility between ORR and HSE regulation 6 of these Regulations makes transitional provisions, which mirror those made by the 2006 Regulations.

As the regulations do not create costs or savings to businesses, the public sector or the third sector, an impact assessment has not been prepared.