
STATUTORY INSTRUMENTS

2019 No. 837

The Rail Safety (Amendment etc.) (EU Exit) Regulations 2019

PART 2

Amendments to subordinate legislation

Amendments to the Railways and Other Guided Transport Systems (Safety) Regulations 2006

3.—(1) The Railways and Other Guided Transport Systems (Safety) Regulations 2006 ^{M1} are amended as follows.

(2) In regulation 2 (interpretation and application)—

(a) before the definition of “building operation”, insert—

[^{F1}“2011 EU ECM Regulation” means [Commission Regulation \(EU\) No 445/2011](#) on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) No 653/2007 as it had effect or as it has effect in EU law, as the context dictates;

“2019 EU ECM Regulation”, save in the expression “retained 2019 EU ECM Regulation”, means Commission Implementing Regulation (EU) 2019/779 laying down detailed provisions on a system of certification of entities in charge of maintenance of vehicles pursuant to [Directive \(EU\) 2016/798](#) of the European Parliament and of the Council and repealing [Commission Regulation \(EU\) No 445/2011](#) as it had effect or as it has effect in EU law, as the context dictates;]

“accident” means an unwanted or unintended sudden event or a specific chain of such events which have harmful consequences; accidents are divided into the following categories: collisions, derailments, level-crossing accidents, accidents to persons caused by rolling stock in motion, fires and others;”;

(b) in the definition of “certification body”, for “has the same meaning as in the ECM Regulation”, substitute “ means a body responsible for the certification of entities in charge of maintenance, on the basis of the criteria in Part 3 of Schedule 10 ”;

(c) for the definition of “common safety methods”, substitute—

““common safety methods” (“CSMs”) means—

(a) [Commission Regulation \(EU\) No 1158/2010](#) on a common safety method for assessing conformity with the requirements for obtaining railway safety certificates;

(b) [Commission Regulation \(EU\) No 1169/2010](#) on a common safety method for assessing conformity with the requirements for obtaining a railway safety authorisation;

[^{F2}(c) [Commission Delegated Regulation \(EU\) 2018/761](#) establishing common safety methods for supervision by national safety authorities after the issue of a single safety certificate or a safety authorisation;]

- (d) Commission Regulation (EU) No 1078/2012 on a common safety method for monitoring to be applied by railway undertakings, infrastructure managers after receiving a safety certificate or safety authorisation and by entities in charge of maintenance; and
- (e) Commission Implementing Regulation (EU) No 402/2012 on a common safety method for risk evaluation and assessment,
- as they have effect in Great Britain;”;
- (d) for the definition of “common safety targets”, substitute—
- ““common safety targets” (“CSTs”) means the minimum safety levels that must be reached by the mainline railway system, or parts of the mainline railway system, expressed in risk categories as defined in paragraph 2 of Schedule 11;”;
- [^{F3}(dd) after the definition of “competent person”, insert—
- ““cross-border service” means a service for the carriage of passengers or goods by way of the tunnel system;
- “cross-border UK-issued ECM certificate” means a certificate issued in the United Kingdom to an entity in charge of maintenance by an accredited or recognised body or by a safety authority in accordance with the retained 2019 EU ECM Regulation;”;
- (e) for the definition of “ECM certificate”, substitute—
- ““EU ECM certificate” means a certificate issued to an entity in charge of maintenance in accordance with the [^{F4}2011 EU ECM Regulation or the 2019 EU ECM Regulation as may be applicable];”;
- (f) omit the definition of “ECM Regulation”;
- [^{F5}(g) after the definition of “responsible person”, insert—
- ““retained 2019 EU ECM Regulation” means [Commission Implementing Regulation \(EU\) 2019/779](#) laying down detailed provisions on a system of certification of entities in charge of maintenance of vehicles pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing [Commission Regulation \(EU\) No 445/2011](#), as it has effect in the UK after IP completion day;”;
- (h) for the definition of “safety authority”, substitute—
- ““safety authority”, save for in the expression “safety authority for the tunnel system”, means—
- (a) as regards Great Britain, the Office of Rail and Road ^{M2}; or
- (b) as regards Northern Ireland, the Department for Infrastructure established by article 3(1) of the Departments (Northern Ireland) Order 1999 ^{M3} and renamed by section 1(6) of the Departments Act (Northern Ireland) 2016 ^{M4};”;
- (i) after the definition of “safety authority” insert—
- ““safety authority for the tunnel system” means the Intergovernmental Commission as defined in section 49(1) of the Channel Tunnel Act 1987 ^{M5};”;
- (j) in the definition of “subsystem”, for “Directive”, substitute “Regulations”;
- [^{F6}(ja) omit the definition of “technical specifications for interoperability;]
- (k) after the definition of “trolley vehicle system” insert—
- ““tunnel system” has the same meaning as in section 1(7) of the Channel Tunnel Act 1987;

[^{F7}“UK-issued ECM certificate”, save in the expression “cross-border UK-issued ECM certificate”, means a certificate issued in the United Kingdom to an entity in charge of maintenance by an accredited or recognised body or by a safety authority in accordance with Schedule 10;”];

[^{F8}(1) for paragraph 3 substitute—

“(3) Parts 2 and 3 of these Regulations shall not apply to or in relation to the operation of a train or the management or use of infrastructure in the tunnel system, save for—

- (a) regulation 18(A1) for vehicles used to operate a cross-border service;
- (b) regulation 18B for the tunnel system.”.]

[^{F9}(2A) In regulation 7 (safety certificate)—

(i) in paragraph (2), at the beginning, insert “ Subject to paragraph 2A, ”

(ii) after paragraph (2), insert—

“(2A) Where in accordance with paragraphs (1) and (2) of this regulation, the applicant has at any time before, on or after exit day submitted a copy of the certificate referred to in paragraph 1(b)(i)(bb) of Schedule 2, that certificate shall cease to be deemed to be Part A of the safety certificate after the second anniversary of exit day and no such certificate submitted after that anniversary shall be deemed to be Part A of the safety certificate.”

(b) in paragraph (11), in the new paragraph 1(b)(i), in sub-paragraph (bb), after “member State” insert “ before exit day, ”.]

(3) After regulation 9 (further safety certificate), insert—

“Format for safety certificates and applications

9A. Schedule 8 has effect.”.

(4) In regulation 15 (revocation of safety certificate)—

- (a) in paragraph (5)(b), omit “in another member State or”;
- (b) after paragraph (5), insert—

“(6) Where—

- (a) the Office of Rail and Road revokes Part B of a safety certificate; and
- (b) Part A of that safety certificate is deemed to be Part A of a safety certificate pursuant to regulation 7(2) and was issued by an authority carrying out railway safety functions in a member State [^{F10}or the European Union Agency for Railways],

the Office of Rail and Road must notify that authority or the [^{F11}European Union Agency for Railways].

(7) For the purposes of paragraph (6), “authority carrying out railway safety functions” means an authority established in a member State in accordance with article 16.1 of the Directive [^{F12}or Article 16.1 of the Recast Safety Directive].”.

(5) Omit regulation 18 (notification to the European Railway Agency regarding safety certificates and safety authorisations relating to the mainline railway).

(6) In regulation 18A (maintenance of vehicles on the mainline railway)—

(a) for paragraph (1)(b), substitute—

“(b) where the vehicle is a freight wagon, holds either an EU ECM certificate valid on the terms of its original issue or a UK-issued ECM certificate.”;

[^{F13}(aa) after paragraph (1), insert—

“(1A) No person may use a vehicle to operate a cross-border service unless that vehicle has an entity in charge of maintenance assigned to it, and that entity in charge of maintenance—

- (a) is registered in relation to that vehicle in the National Vehicle Register; and
- (b) holds either an EU ECM certificate valid on the terms of its original issue or a cross-border UK-issued ECM certificate, where it is required to do so in accordance with the retained 2019 EU ECM Regulation.”;]

(b) after paragraph (3), insert—

“(4) Schedule 9 (applications for UK-issued ECM certificates by entities in charge of maintenance) and Schedule 10 (system of certification of entities in charge of maintenance in respect of Great Britain) have effect.”.

(7) After regulation 18A, insert—

“Common safety targets

18B. The Office of Rail and Road must assess the achievement of common safety targets in accordance with Schedule 11 (common safety targets), which has effect.”.

(8) In regulation 20 (annual safety reports)—

- (a) in paragraph (1)(c), omit “listed in Annex I (common safety indicators) to the Directive,”;
- (b) omit paragraphs (3), (4) and (5);
- (c) at the end, insert—

“(6) For the purposes of paragraph (1)(c), the common safety indicators are those laid down in paragraphs 1.1 to 6.2 of, and the Appendix to, Annex I to the Directive, save that the Appendix is to be read with the following modifications—

- (a) in paragraph 1.2, for “EUR 150 000” substitute “ £170,000 ”;
- (b) in paragraph 5.1, for “Member State” substitute “ United Kingdom ”; and
- (c) in paragraphs 7.3 and 7.4, for “railway network in Member States, whose scope is set out in Article 2” substitute “ mainline railway as defined in the Railways and Other Guided Transport Systems (Safety) Regulations 2006 ”.

(9) In regulation 21 (sending, issuing, and keeping of documents and making them available for public inspection), in paragraphs (3) and (8), omit “in Great Britain”.

(10) In regulation 27 (appeals)—

[^{F14}(a) in paragraph (1)(a), for “an ECM certificate”, substitute “an EU ECM certificate, a cross-border UK-issued ECM certificate or a UK-issued ECM certificate”];]

[^{F15}(b) for sub-paragraph (b) substitute—

“(b) for paragraph (1)(d) substitute—

“(d) decision of the Office of Rail and Road, concerning his EU ECM Certificate taken pursuant to either—

- (i) Article 7(3), (4) or (7) of the 2011 EU ECM Regulation; or
- (ii) Article 7(5) or (8) or 8(2) of the 2019 EU ECM Regulation;”];]

(c) after paragraph (1)(d), insert—

“(dd) decision of the Office of Rail and Road taken pursuant to paragraph 7(3), (4) or (7) of Schedule 10 concerning his UK-issued ECM certificate; ^{F16}...”

- [^{F17}(de) decision of the Office of Rail and Road, concerning his cross-border UK-issued ECM certificate, taken pursuant to Article 7(5) or (8) or 8(2) of the retained 2019 EU ECM Regulation; or”];
- (d) for paragraph (1A), substitute—
- [^{F18}(1A) A person who is aggrieved by—
- (a) a decision taken either—
- (i) to refuse an application for an EU ECM certificate or taken pursuant to Article 7(4) or (7) of the 2011 ECM Regulation by a certification body accredited or recognised in Great Britain for the purposes of the 2011 EU ECM Regulation; or
- (ii) to refuse an application for an EU ECM certificate or taken pursuant to Article 7(8) or 8(2) of the 2019 EU ECM Regulation by a certification body accredited or recognised in Great Britain for the purposes of the 2019 EU ECM Regulation;
- (b) a decision of a certification body accredited or recognised for the purposes of Schedule 10 either to refuse an application for a UK-issued ECM certificate or taken by that body pursuant to paragraph 7(3), (4) or (7) of Schedule 10; or
- (c) a decision of a certification body accredited or recognised for the retained 2019 EU ECM Regulation, either to refuse an application for a cross-border UK-issued ECM certificate or taken by that body pursuant to Article 7(3), (4) or (7) of the retained 2019 EU ECM Regulation,
- may appeal to the Secretary of State.”];
- (e) after paragraph (1A), insert—
- “(1B) For the purposes of an appeal under paragraph (1A), references to the Office of Rail and Road in this regulation are to be construed as references to the relevant certification body (except for paragraph (7), which does not apply to such appeal).”.
- (11) In Schedule 2 (application for a safety certificate), for paragraph 1(b)(i), substitute—
- “(i) a copy of a current certificate issued to the applicant by—
- (aa) the Office of Rail and Road;
- [^{F19}(bb) the European Union Agency for Railways or a safety authority in a member State before the end of the second anniversary of exit day, under provisions giving effect to Article 10(2)(a) of the Directive or Article 10 of the Recast Safety Directive;]
- (cc) the safety authority in Northern Ireland; or
- (dd) the safety authority for the tunnel system,
- which relates to an equivalent railway operation; or”.
- (12) The Schedule has effect.

Textual Amendments

- F1** Words in reg. 3(2)(a) inserted (31.12.2020 immediately before IP completion day) by [The Railways \(Miscellaneous Amendments, Revocations and Transitional Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/786\)](#), regs. 1(2)(b)(i), **7(2)(a)**
- F2** Words in reg. 3(2)(c) substituted (31.12.2020 immediately before IP completion day) by [The Railways \(Interoperability\) \(Miscellaneous Amendments and Revocations\) \(EU Exit\) Regulations 2020 \(S.I. 2020/318\)](#), regs. 1(2)(b), **6(a)**

- F3** Reg. 3(2)(dd) inserted (31.12.2020 immediately before IP completion day) by [The Railways \(Miscellaneous Amendments, Revocations and Transitional Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/786\)](#), regs. 1(2)(b)(i), **7(2)(b)**
- F4** Words in reg. 3(2)(e) substituted (31.12.2020 immediately before IP completion day) by [The Railways \(Miscellaneous Amendments, Revocations and Transitional Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/786\)](#), regs. 1(2)(b)(i), **7(2)(c)**
- F5** Reg. 3(2)(g) substituted (31.12.2020 immediately before IP completion day) by [The Railways \(Miscellaneous Amendments, Revocations and Transitional Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/786\)](#), regs. 1(2)(b)(i), **7(2)(d)**
- F6** Reg. 3(2)(ja) inserted (31.12.2020 immediately before IP completion day) by [The Railways \(Interoperability\) \(Miscellaneous Amendments and Revocations\) \(EU Exit\) Regulations 2020 \(S.I. 2020/318\)](#), regs. 1(2)(b), **6(b)**
- F7** Words in reg. 3(2)(k) substituted (31.12.2020 immediately before IP completion day) by [The Railways \(Miscellaneous Amendments, Revocations and Transitional Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/786\)](#), regs. 1(2)(b)(i), **7(2)(e)**
- F8** Reg. 3(2)(l) substituted (31.12.2020 immediately before IP completion day) by [The Railways \(Miscellaneous Amendments, Revocations and Transitional Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/786\)](#), regs. 1(2)(b)(i), **7(2)(f)**
- F9** Reg. 3(2A) inserted (31.12.2020 immediately before IP completion day) by [The Railways \(Safety, Access, Management and Interoperability\) \(Miscellaneous Amendments and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1310\)](#), regs. 1(2)(c), **7(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F10** Words in reg. 3(4)(b) inserted (31.12.2020 immediately before IP completion day) by [The Railways \(Miscellaneous Amendments, Revocations and Transitional Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/786\)](#), regs. 1(2)(b)(i), **7(3)(a)(i)**
- F11** Words in reg. 3(4)(b) substituted (31.12.2020 immediately before IP completion day) by [The Railways \(Miscellaneous Amendments, Revocations and Transitional Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/786\)](#), regs. 1(2)(b)(i), **7(3)(a)(ii)**
- F12** Words in reg. 3(4)(b) inserted (31.12.2020 immediately before IP completion day) by [The Railways \(Miscellaneous Amendments, Revocations and Transitional Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/786\)](#), regs. 1(2)(b)(i), **7(3)(b)**
- F13** Reg. 3(6)(aa) inserted (31.12.2020 immediately before IP completion day) by [The Railways \(Miscellaneous Amendments, Revocations and Transitional Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/786\)](#), regs. 1(2)(b)(i), **7(4)**
- F14** Reg. 3(10)(a) substituted (31.12.2020 immediately before IP completion day) by [The Railways \(Miscellaneous Amendments, Revocations and Transitional Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/786\)](#), regs. 1(2)(b)(i), **7(5)(a)**
- F15** Reg. 3(10)(b) substituted (31.12.2020 immediately before IP completion day) by [The Railways \(Miscellaneous Amendments, Revocations and Transitional Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/786\)](#), regs. 1(2)(b)(i), **7(5)(b)**
- F16** Word in reg. 3(10)(c) omitted (31.12.2020 immediately before IP completion day) by virtue of [The Railways \(Miscellaneous Amendments, Revocations and Transitional Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/786\)](#), regs. 1(2)(b)(i), **7(5)(c)(i)**
- F17** Words in reg. 3(10)(c) inserted (31.12.2020 immediately before IP completion day) by [The Railways \(Miscellaneous Amendments, Revocations and Transitional Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/786\)](#), regs. 1(2)(b)(i), **7(5)(c)(ii)**
- F18** Words in reg. 3(10)(d) substituted (31.12.2020 immediately before IP completion day) by [The Railways \(Miscellaneous Amendments, Revocations and Transitional Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/786\)](#), regs. 1(2)(b)(i), **7(5)(d)**
- F19** Words in reg. 3(11) substituted (31.12.2020 immediately before IP completion day) by [The Railways \(Miscellaneous Amendments, Revocations and Transitional Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/786\)](#), regs. 1(2)(b)(i), **7(6)**

Commencement Information

- I1** Reg. 3 in force at 31.12.2020 in force on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see **reg. 1**

Marginal Citations

- M1** [S.I. 2006/599](#); relevant amending instruments are [S.I. 2007/950](#), 2011/1043, 2011/1860, 2011/3066, 2013/950, 2015/1682 and 2015/1917.
- M2** The Office of Rail and Road was established by section 15 of the [Railways and Transport Safety Act 2003 \(c. 20\)](#) as the Office of Rail Regulation and subsequently renamed by the Office of Rail Regulation (Change of Name) Regulations ([S.I. 2015/1682](#)).
- M3** [S.I. 1999/283 \(N.I. 1\)](#).
- M4** [2016 c. 5 \(N.I.\)](#). The Department for Infrastructure was originally established as the Department for Regional Development by article 3(1) of the Departments (Northern Ireland) Order 1999) [S.I. 1999/283](#)) and subsequently renamed by subsection 1(6) of the [Departments Act \(Northern Ireland\) 2016 \(c. 5\)](#).
- M5** 1987 c. 53.

Changes to legislation:

There are currently no known outstanding effects for the The Rail Safety (Amendment etc.) (EU Exit) Regulations 2019, Section 3.