



STATUTORY INSTRUMENTS

S.I. No. 61 of 2008



EUROPEAN COMMUNITIES (RAILWAY SAFETY) REGULATIONS
2008

(Prn. A8/0338)

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I, NOEL DEMPSEY, Minister for Transport, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972), and for the purpose of giving effect to Directive No. 2004/49/EC of the European Parliament and of the Council of 29 April 2004¹, hereby make the following regulations:

Citation

1. (1) These Regulations may be cited as European Communities (Railway Safety) Regulations 2008.

Definition

2. In these Regulations “Act” means Railway Safety Act 2005 (No. 31 of 2005).

Interpretation (“Act”)

3. (1) Section 2(1) of the Act is amended—

(a) by inserting the following definitions after the definition of “Council”:

“ ‘Commission Regulation 851/2006/EC’ means Commission Regulation 851/2006/EC of 9 June 2006² with the exception of the final indent;

‘Directive’ means Directive No. 2004/49/EC of the European Parliament and of the Council of 29 April 2004¹;”.

(b) by inserting the following definitions after the definition of “establishment day”:

“ ‘European Commission’ means Commission of the European Communities;

‘European Railway Agency’ means the European Railway Agency, the European Community agency for railway safety and interoperability;”.

(c) by deleting the definition of “railway incident”, and

¹ OJ No. L.164, 30.4.04, p.44 as set out in OJ No. L.220, 21.6.04, p.16.

² OJ No. L 158, 10.6.2005, p, 3

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 11th March, 2008.*

(d) by substituting for paragraph (c) of the definition of “railway undertaking” the following:

“(c) any other person who operates a railway, including any body or undertaking that is responsible in particular for establishing and maintaining the items listed in Annex I.A to Commission Regulation No. 851/2006/EC including management of infrastructure control and safety systems;”,

(2) The following subsection is inserted after section 2(2) of the Act:

“(3) A word or expression which is used in this Act and which is also used in the Directive has, unless the content otherwise requires, the same meaning in this Act as it has in the Directive.”.

(3) The following sections are inserted after section 38 of the Act:

“Definitions and Scope (Part 4).

38A (1) In this Part—

‘common safety methods’ (‘CSMs’) means the methods adopted by the European Commission under Article 6 of the Directive to describe how safety levels and achievement of safety targets and compliance with other safety requirements are assessed;

‘common safety targets’ (‘CSTs’) means the safety levels adopted by the Commission of the European Communities pursuant to Article 7 of the Directive and must be reached by different parts of the rail system and by the system as a whole expressed in risk assessment criteria;

‘conventional rail system Regulations’ means the European Communities (Interoperability of the Trans-European Conventional Rail System) Regulations 2004 (S.I. No. 61 of 2004) (as amended by the European Communities (Interoperability of the Trans-European Conventional and High-Speed Rail Systems) Regulations 2006 (S.I. No. 212 of 2006) (“Regulations of 2006”) and the European Communities (Interoperability of the Trans-European Conventional and (High-Speed Rail System) Regulations 2004 (S.I. No. 772 of 2007) (“Regulations of 2007”);

“high-speed rail system Regulations” means the European Communities (Interoperability of the Trans-European High-Speed Rail System) Regulations 2002 (S.I. No. 118 of 2002) (as amended by the Regulations of 2006 and the Regulations of 2007);

“high-speed and conventional rail systems Regulations” means the high-speed rail system Regulations and conventional rail systems Regulations;

‘infrastructure manager’ means a person, including Iarnród Éireann — Irish Rail, that is responsible in particular for establishing and maintaining on

railway infrastructure the items listed in Annex I.A to Commission Regulation No. 851/2006/EC including management of infrastructure control and safety systems;

‘railway operator’ means—

- (a) any public or private undertaking licensed in accordance with the European Communities (Licensing of Railway Undertakings) Regulations 2003 (S.I. No. 537 of 2003) or otherwise by law, the principal activity of which is to provide services for the transport of goods or passengers or both by rail, and
- (b) any other public or private undertaking, the activity of which is to provide transport of goods or passengers or both by rail,

on the basis that the undertaking must ensure traction including an undertaking which provides traction only;

‘railway system’ means the totality of the subsystems for the structural and operational areas, as defined in high-speed and conventional rail systems Regulations, as well as the management and operation of the system as a whole;

‘safety authorisation’ means a safety authorisation issued under section 46(1)(a)(ii);

‘safety certificate’ means a safety certificate issued under section 46(1)(a)(i);

‘safety management system’ is to be read in accordance with section 39;

‘safety rules’ means legislation which is applicable to more than one railway operator and relates to railway safety;

‘technical specification for interoperability’ (‘TSI’) means the specifications by which each subsystem or part of a subsystem is covered in order to meet the essential requirements and ensure the interoperability of the trans-European high-speed and conventional rail system, and has the same meaning as that given to it in the high-speed and conventional rail systems Regulations.

(2) This Part in relation to CSMs, CSTs and TSIs does not apply to railways which have been designated as a light railway or a metro under section 44(4) of the Transport (Railway Infrastructure) Act 2001 or to heritage railways.”.

(4) The following section is substituted for section 51 of the Act:

“Definitions (Part 5).

51. In this Part—

‘accident’ means an unwanted or unintended sudden event or a specific chain of such events which have harmful consequences including collisions, derailments, level-crossing accidents, accidents to persons caused by rolling stock in motion, fires and others;

‘causes’ means actions, omissions, events or conditions, or a combination thereof, which led to an accident or incident;

‘extensive damage’ means damage that can be immediately assessed by the Investigation Unit to cost at least €2 million in total;

‘incident’ means any occurrence, other than an accident or serious accident, associated with the operation of trains and affecting the safety of operation;

‘interoperability constituents’ means any elementary component, group of components, subassembly or complete assembly of equipment incorporated or intended to be incorporated into a subsystem upon which the interoperability of the high-speed or conventional rail system depends directly or indirectly;

‘investigation’ means a process conducted for the purpose of accident and incident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of causes and, when appropriate, the making of safety recommendations;

‘Investigation Unit’ means the Railway Accident Investigation Unit;

‘serious accident’ means any train collision or derailment of trains, resulting in the death of at least one person or serious injuries to 5 or more persons or extensive damage to rolling stock, the infrastructure or the environment, and any other similar accident with an obvious impact on railway safety regulation or the management of safety;

‘subsystem’ has the meaning assigned to it in the high-speed and conventional rail systems Regulations;”.

Functions of Commission

4. (1) The following section is inserted after section 9 of the Act:

“Commission to operate in an open, non-discriminatory and transparent manner.

9A. The Commission shall carry out its functions in an open, non-discriminatory and transparent manner. In particular, and subject to section 21, it shall allow all parties to be heard and shall give reasons for its decisions.”.

(2) The following section is inserted after section 10 of the Act:

“Safety authority.

10A. The Commission is established as the safety authority for the purposes of Article 16(1) of the Directive, and shall undertake the tasks mentioned in Article 16(2) of the Directive. Notwithstanding section 10(3), these tasks shall not be transferred or subcontracted to any railway undertaking or procurement entity.”.

Report to European Railway Agency

5. The following section is inserted after section 28 of the Act:

“28A. In each year, the Commission shall prepare and publish an annual report concerning its activities in its capacity as safety authority in the preceding year and send it to the European Railway Agency by 30 September at the latest. The report shall contain information on—

- (a) the development of railway safety, including an aggregation of the Community Safety Indicators laid down in Annex I to the Directive,
- (b) important changes in legislation and regulation concerning railway safety,
- (c) the development of safety certification and safety authorisation, and
- (d) results of and experience relating to the supervision of railway undertakings.”.

Safety rules

6. The following section is inserted after section 50 of the Act:

“50A. The Commission shall, in clear language, publish and make available to all railway undertakings, safety rules.”.

Safety management systems

7. (1) Section 39(2) of the Act is amended by substituting for paragraph (a) the following:

- “(a) it shall demonstrate that the railway undertaking has the ability to properly assess and effectively control risk to the safety of persons and the supply of material and contracting of services in compliance with its general duty under section 36, and”.

(2) The following section is inserted after section 50A of the Act:

“Qualification

50B. This Part applies without prejudice to the duty of each manufacturer, maintenance supplier, wagon keeper, service provider and procurement entity to ensure that rolling stock, installations, accessories and equipment and services supplied by them comply with the requirements and the conditions for use specified, so that they can be safely put into operation by the railway operator or the infrastructure manager or both.”.

Duties of infrastructure managers and railway operators

8. The following section is inserted after section 39 of the Act:

“Targets for safety management systems.

39A. (1) Railway undertakings shall establish their safety management systems to ensure that the relevant parts of the CSMs are applied and that the railway system—

- (a) can achieve at least the CSTs,
- (b) is in conformity with the safety requirements laid down in the TSIs and with any safety rules.

(2) Each safety management system shall—

- (a) meet the requirements and contain the elements laid down in Annex III to the Directive, adapted to the character, extent and other conditions of the activity pursued,
- (b) ensure the control of all risks associated with the activity of the railway undertaking, including the supply of maintenance and material and the use of contractors, and
- (c) take into account, where appropriate and reasonable, the risks arising as a result of activities by other parties.

(3) The safety management system of an infrastructure manager shall take into account the effects of operations by different railway operators on the network and make provisions to allow all railway operators to operate in accordance with TSIs, with any safety rules, and with conditions laid down in their safety certificate. It shall coordinate the emergency procedures of the infrastructure manager with all railway operators that operate on its infrastructure.

Reports to Commission.

39B. Each year railway undertakings shall submit to the Commission before 30 June in each year an annual safety report concerning the preceding year. The safety report shall contain:

- (a) information on how the undertaking’s corporate safety targets are met and the results of safety plans,

- (b) the development of safety indicators and of CSI's laid down in Annex I to the Directive, as far as is relevant to the undertaking,
- (c) the results of internal safety auditing, and
- (d) observations on deficiencies and malfunctions of railway operations and infrastructure management that might be relevant for the Commission.”.

Safety certification and authorisation

9. (1) Section 45 of the Act is amended by substituting for subsection (4) the following:

“(4) A railway operator shall not operate railway services unless it has received notification from the Commission of its acceptance of the relevant safety case and been issued with a safety certificate.

(4A) An infrastructure manager shall not manage or operate railway infrastructure unless it has received notification from the Commission of its acceptance of the relevant safety case and been issued with a safety authorisation.”.

(2) The following section is substituted for section 46 of the Act:

“46 (1) (a) The Commission shall notify a railway undertaking of its acceptance of a safety case by issuing—

- (i) a safety certificate, where the undertaking is a railway operator, or
- (ii) a safety authorisation, where the undertaking is an infrastructure manager.

(b) A safety certificate or a safety authorisation may contain such conditions as may be deemed appropriate by the Commission, including conditions restricting or prohibiting the operation of specified parts of the infrastructure or individual rolling stock or classes of rolling stock or restricting or prohibiting the provision of a specified railway service or services where, in the opinion of the Commission, not to do so would be in breach of the duty of the Commission under subsection (2).

(c) The form of safety certificates and safety authorisations shall be decided by the Commission.

(2) The Commission shall only accept a safety case, or a revised safety case under section 48, and issue a safety certificate or a safety authorisation under subsection (1) where the information contained in the safety case or the revised safety case is sufficient to satisfy the Commission that the undertaking is capable, subject to any conditions contained in the safety

certificate or the safety authorisation, of carrying out its operations in compliance with the duty imposed on it under section 36.

(3) A safety case submitted by a railway operator to the Commission for safety certification under this section shall (in addition to any elements specified in this Act) contain the following:

- (a) a description of the railway operator's safety management system in accordance with Article 9 and Annex III to the Directive, as referred to in Article 10(2)(a) of the Directive,
- (b) documentation as described in Annex IV to and referred to in Article 10(2)(b) of the Directive, outlining the provisions adopted by the railway operator to meet specific requirements necessary for the safe operation of the relevant network, and including—
 - (i) application of TSIs,
 - (ii) application of other Community legislation relating to safety,
 - (iii) application of any safety rules,
 - (iv) rules applicable to its operations, staff and rolling stock,
 - (v) acceptance of staff's certificates, and
 - (vi) authorisation to place in service the rolling stock used by the railway operator.

(4) A safety case submitted by an infrastructure manager to the Commission for safety authorisation under this section shall (in addition to any elements specified in this Act) contain the following:

- (a) a description of the infrastructure manager's safety management system, in accordance with Article 9 and Annex III to the Directive and as referred to in Article 10(2)(a) of the Directive, and
 - (b) the provisions of the infrastructure manager to meet specific requirements necessary for the safe design, maintenance and operation of the items listed in Annex I.A to Commission Regulation No. 851/2006/EC including, where appropriate, the maintenance and operation of the traffic control and signalling system, as referred to in Article 11(1)(b) of the Directive.
- (5) (a) Where, over the same railway system, an infrastructure manager is also a railway operator, a single safety case may be submitted for the purposes of obtaining both a safety certificate as a railway operator and a safety authorisation as an infrastructure manager, and separate safety cases are not required.

(b) The single safety case shall comprise:

- (i) the elements required for a safety case required for safety certification as a railway operator, and
- (ii) the elements required for a safety case required for safety authorisation as an infrastructure manager.

(c) The submission of a single safety case shall not prejudice the separate consideration by the Commission of safety certification and safety authorisation.

(d) Where information is requested over an element of the single safety case which is an element common to the requirements for both safety authorisation and safety certification, the shorter period of time for response provided for in this Act applies.

(6) Where the Commission is not satisfied in accordance with subsection (2) with a safety case or a revised safety case, the Commission shall, by notice in writing, require the railway undertaking concerned to—

(a) reconsider the information contained in the safety case or revised safety case and, if appropriate, re-examine and amend the safety management system described in it, and

and

(b) have any changes made by it to the safety case or revised safety case examined by a person engaged in accordance with section 45(2) and to have a report of the examination prepared by such person.

(7) A railway undertaking in receipt of a notice under subsection (6) or in receipt of a safety certificate or a safety authorisation containing conditions in accordance with subsection (1)(b) may re-submit the safety case or revised safety case where, in the opinion of the railway undertaking—

(a) in the case of the notice, the issues raised by the Commission in the notice have been addressed, or

(b) in the case of a safety certificate or a safety authorisation containing conditions, the safety case or revised safety case has been amended to the extent that the conditions are no longer warranted.

(8) The Commission, in deciding whether or not to issue a safety certificate or a safety authorisation, for the purpose of satisfying itself under subsection (2), may request any additional information or clarifications from a railway undertaking and the undertaking shall comply with such a request as soon as possible and in any event within one month of the enquiry.

(9) The re-submission of a safety case in accordance with subsection (7) shall be accompanied by a report prepared under subsection (6)(b).

(10) In considering a safety case or a revised safety case submitted by a railway undertaking, the Commission shall, in relation to the adequacy of the safety management system documented therein, have regard to the size and nature of the railway undertaking and, in particular—

- (a) the nature, extent and complexity of its railway infrastructure or operations or both,
- (b) its interaction, if any, with railway infrastructure or trains of other railway undertakings or with public roads, and
- (c) the likely consequences for persons of any incident on its railway or services.

(11) The Commission shall issue a safety certificate or a safety authorisation under subsection (1) or a notice under subsection (6) as soon as practicable after it has completed its assessment but no later than 3 months after the date of receipt of the safety case or revised safety case or receipt of all information or clarifications requested under subsection (8).

(12) The acceptance of a safety case or a revised safety case by the Commission and the issuing of a safety certificate or a safety authorisation shall not be interpreted as relieving a railway undertaking of its duty under section 36.

(13) The Commission shall—

- (a) refuse to issue a safety certificate or a safety authorisation where it is not satisfied in accordance with subsection (2),
- (b) revoke a safety certificate or a safety authorisation if the railway undertaking which holds the certificate or the authorisation fails to comply with its safety case and the Commission considers that the undertaking cannot comply with its duty under section 39, or
- (c) revoke a safety certificate if the railway operator has not used it as intended in the year following its issue.

(14) Where the Commission proposes to refuse or revoke a safety certificate or a safety authorisation in accordance with subsection (13), it shall notify the railway undertaking concerned of the proposal and the railway undertaking may, within 21 days of the notification, make representations to the Commission, which shall consider them.

(15) Where the Commission decides to refuse a safety certificate or a safety authorisation, or revoke the safety certificate or the safety authorisation issued by it, the railway undertaking concerned may, within 21 days of notification of the decision, appeal to the High Court and the refusal or

revocation shall not take effect until the time allowed for such appeal has elapsed and, in the event of an appeal, until the appeal is determined or withdrawn.

(16) On hearing an appeal under subsection (15), the court may either confirm or vary the decision of the Commission or allow the appeal.

(17) A decision of the High Court on an appeal under subsection (15) shall be final, save that, by leave of the court, an appeal from the decision shall be to the Supreme Court on a specified point of law.

(18) (a) A safety certificate remains in force until—

(i) it is revoked by the Commission under subsection (13),

(ii) it is replaced by a new certificate, or

(iii) it becomes invalid.

(b) A safety certificate is valid for a period not exceeding 5 years from the date of its issue. It may be renewed upon application by the railway operator concerned as if for a new certificate.

(c) The Commission may require that a safety certificate be updated, in whole or in part, whenever the type or extent of the operation of the railway operator is substantially altered, or following legislative change.

(d) The holder of a safety certificate shall without delay inform the Commission of all major changes in the conditions of the safety certificate, and shall notify the Commission whenever new categories of staff or new types of rolling stock are introduced.

(19) Where a railway operator which has been first established in another Member State and has (within that Member State's implementation of the Directive) been granted a safety certificate by the safety authority of that Member State and plans to operate additional rail transport services in the State, the Commission shall grant the additional safety certification necessary in accordance with this Act and Article 10 of the Directive.

(20) The Commission shall inform the European Railway Agency within one month of the safety certificates which have been issued, renewed, amended or revoked under this section. It shall state the name and address of the railway operator, the issue date, scope and validity of the safety certificate and, in case of revocation, the reasons for its decision.

(21) (a) A safety authorisation is valid for a period not exceeding 5 years from the date of its issue.

- (b) An infrastructure manager must apply for renewal of its safety authorisation not later than 8 months prior to the date of expiry of the existing safety authorisation.
- (c) Whenever substantial changes are made to the railway infrastructure to which the safety authorisation relates, its signalling or energy supply or to the principles of its operation and maintenance, the infrastructure manager must apply for its safety authorisation to be wholly or partially updated.
- (d) The holder of a safety authorisation shall immediately inform the Commission of any changes of a type described in paragraph (c) which would require updating of the authorisation.
- (e) The Commission may require that the relevant part of a safety authorisation be revised following substantial changes in the safety regulatory framework.
- (f) If the Commission finds that the holder of the safety authorisation no longer satisfies the conditions for a safety authorisation which the holder has been issued, the Commission shall revoke the authorisation in whole or in part, giving reasons for its decision.

(22) A safety certificate already issued by the Commission is deemed to be a first safety certificate and safety authorisation under this section.

(23) The Commission shall inform the European Railway Agency within one month of the safety authorisations which have been issued, renewed, amended or revoked under this section. It shall state the name and address of the infrastructure manager, the issue date, scope and validity of the safety authorisation and, in case of revocation, the reasons for its decision.

(24) The Commission shall give detailed guidance to applicant railway undertakings on how to obtain a safety certificate or a safety authorisation, listing all requirements and making all relevant documents available to the potential applicant. Special guidance shall be given to railway operators that apply for a safety certificate concerning services on a defined limited part of an infrastructure, specifically identifying the rules valid for the part in question.”.

(3) Sections 40(8) and 45(5) of the Act are amended by substituting “section 46(8)” for “section 46(11)”.

(4) Section 49(9) of the Act is amended by substituting “section 46(3)(b)” for “section 46(6)(b)”.

Access to training facilities

10. The following section is inserted after section 46 of the Act:

- “46A. (1) (a) Infrastructure managers shall ensure that railway operators applying for a safety certificate have fair and non-discriminatory access to training facilities for train drivers and staff

accompanying the trains, whenever such training is necessary for the fulfilment of requirements to obtain a safety certificate.

- (b) The services offered must include training on necessary route knowledge, operating rules and procedures, the signalling and control command system and emergency procedures applied on the routes operated.
- (c) Infrastructure managers shall also ensure that their staff performing vital safety tasks have fair and non-discriminatory access to training facilities.
- (d) If the training services do not include examinations and granting of certificates, infrastructure managers shall ensure that railway operators have access to such certification if it is a requirement of the safety certificate.
- (e) Infrastructure managers shall ensure that the provision of training services or, where appropriate, the granting of certificates meets the safety requirements laid down in TSIs safety rules.

(2) If training facilities are available only through the services of one single railway operator or the infrastructure manager, that railway operator or infrastructure manager must make these training facilities available to other railway operators at a reasonable and non-discriminatory price, which is cost-related and may include a profit margin.

(3) A railway operator must provide on request to train drivers and staff on board trains and staff performing vital safety tasks to whom it provides training and experience access to and copies of all documents attesting to their training, qualifications and experience. The railway operator shall not unreasonably restrict communication in relation to such documents by the train drivers and staff referred to in this subsection.

(4) Railway operators and infrastructure managers shall be responsible for the level of training and qualifications of their staff carrying out safety-related work as set out in the safety management system.”.

Placing in service of in-use rolling stock

11. (1) Section 43 of the Act is amended by inserting after subsection (14) the following:

“(15) This section does not apply to rolling stock that has been authorised to be placed in service in another Member State.”.

(2) The following section is inserted after section 43 of the Act:

“Placing in service rolling stock authorised in another Member State.

43A. (1) Rolling stock that has been authorised to be placed in service in another Member State in accordance with Article 10(2)(b) of the Directive and is not fully covered by the relevant TSIs shall be authorised

to be placed in service in the State in accordance with this section by the Commission.

(2) A railway undertaking applying for authorisation to place rolling stock in service shall submit a technical file concerning the rolling stock or type of rolling stock to the Commission, indicating its intended use on the network. The file shall contain the following information:

- (a) evidence that the rolling stock has been authorised to be placed in service in another Member State and records that show its history of operation, maintenance and, where applicable, technical modifications undertaken after the authorisation,
- (b) relevant technical data, maintenance programme and operational characteristics requested by the safety authority and needed for its complementary authorisation,
- (c) evidence on technical and operational characteristics that shows that the rolling stock is in compliance with the energy supply system, the signalling and control command system, the track gauge and infrastructure gauges, the maximum allowed axle load and other constraints of the network, and
- (d) information on exemptions from safety rules and that are needed to grant authorisation and evidence, based on risk assessment, showing that the acceptance of the rolling stock does not introduce undue risks to the network.

(3) The Commission may request that test runs on the network be undertaken to verify compliance with the restrictive parameters referred to in subsection (2)(c) and shall in that case specify their range and content.

(4) The Commission shall adopt its decision on an application in accordance with this section without delay and not later than 4 months after the complete technical file, including documentation of the test runs, has been submitted. The certificate of authorisation may contain conditions for use and other restrictions.”.

Railway accidents and incidents

12. (1) Section 51 of the Act is repealed.

(2) Section 52 of the Act is amended by—

(a) substituting for subsection (1) the following:

“52. (1) Where an accident or incident occurs, the railway undertaking concerned or, if the accident or incident involved more than one railway undertaking, the railway undertakings concerned, shall—

- (a) in cases as may be specified from time to time by the Investigation Unit, send to the Investigation Unit by the quickest

practicable means (or within such timeframe as may be specified by the Investigation Unit) notice of the accident or incident, including brief particulars and details of the location of it and, in relation to an accident, of any loss of life or personal injury, and

(b) as soon as practicable send a written report to the Investigation Unit, in such form and containing such particulars as may be specified from time to time by the Investigation Unit, of the loss of life, injury, condition, accident or incident.”, and

(b) in subsection (2), substituting “accident” for “incident” in each place it occurs.

(3) Section 53 of the Act is amended by substituting “accident” for “railway incident” in each place it occurs.

(4) Section 54(1)(a) of the Act is amended by substituting “an accident or incident” for “a railway incident”.

Investigation Unit

13. Section 55 of the Act is amended—

(a) in subsection (1) by inserting “in accordance with Article 21(1) and (2)” after “within the Commission” and by substituting “Accident” for “Incident”,

(b) by deleting subsections (2) and (3), and

(c) by substituting for subsection (4) the following:

“(4) (a) The Investigation Unit shall investigate all serious accidents.

(b) The Investigation Unit may investigate and report on accidents and incidents (including making safety recommendations on them) which under slightly different conditions might have led to serious accidents, including technical failures of the structural subsystems or of interoperability constituents of the high-speed or conventional rail systems, and taking into account—

(i) the seriousness of the accident or incident,

(ii) whether it forms or may form part of a series of accidents or incidents relevant to the system as a whole,

(iii) its impact on railway safety in the State or Northern Ireland, and

- (iv) requests from the Minister, railway undertakings or other Member States.”.

Investigations by Investigation Unit

14. (1) Section 57 of the Act is amended by inserting after subsection (1) the following:

“(1A) (a) (i) The Investigation Unit shall at all times be independent including in its organisation and decision-making from any railway undertaking, charging body, allocation body and notified body, and from any party whose interests could conflict with the tasks entrusted to the investigating body. It may however co-operate with them in sharing of information to the extent otherwise permitted by law.

(ii) Investigations of the Investigation Unit shall at all times be independent from any railway undertaking, charging body, allocation body and notified body, and from any party whose interests could conflict with the tasks entrusted to the investigating body. It may however co-operate with them in sharing of information to the extent otherwise permitted by law.”.

(2) Section 58 of the Act is amended by inserting after subsection (2) the following:

“(2A) (a) The Investigation Unit must respond to reports of railway accidents and incidents under section 55(4) and shall make the necessary arrangements to commence an investigation of an accident or incident within 7 days of being notified of it.

(b) Not later than one week after the decision to open an investigation, the Investigation Unit shall inform the European Railway Agency of the date, time and place and type of the accident or incident, the number of persons killed, the number of persons injured and the seriousness of the injuries suffered and the extent of damage caused as a result of the accident or incident.

(c) In order to enable the infrastructure to be restored and opened to rail transport services, the Investigation Unit shall conclude its examinations at the accident site in the shortest time possible.”.

(3) Section 58 of the Act is amended by inserting after subsection (17) the following:

“(18) The Investigation Unit shall be given—

(a) access to the site of the accident or incident as well as to the rolling stock involved, the related infrastructure and traffic control and signalling installations,

- (b) the right to an immediate listing of evidence and controlled removal of wreckage, infrastructure installations or components for examination or analysis purposes,
- (c) access to and use of the contents of on-board recorders and equipment for recording of verbal messages and registration of the operation of the signalling and traffic control system,
- (d) access to the results of examination of the bodies of victims,
- (e) access to the results of examinations of the train staff and other railway staff involved in the accident or incident,
- (f) the opportunity to question the railway staff involved and other witnesses, and
- (g) access to any relevant information or records held by the railway undertakings involved and the Commission.”.

(4) Section 65 of the Act is amended by deleting subsection (2).

Reports — Investigation Unit

15. (1) Section 60(1) of the Act is amended by inserting “and to the European Railway Agency” after “Minister”.

(2) Section 60 of the Act is amended by inserting after subsection (2) the following:

“(2A) Other than in exceptional circumstances, the Investigation Unit shall make public the final report of an investigation not later than 12 months after the date of the occurrence.”.

(3) Section 61 of the Act is amended by inserting after subsection (1) the following:

“(1A) (a) The investigation report shall state the objectives of the investigation and shall, as closely as possible, follow the structure and contain the contents laid down in Annex V to the Directive.

(b) The investigation report may, where considered by the Investigation Unit or the Commission to be necessary by reason of the character of the safety recommendations, be provided to other persons in the State or in other Member States.”.

(4) The following section is inserted after section 61 of the Act:

“Annual safety report

61A. (1) The Investigation Unit shall publish by 30 September at the latest in every year an annual safety report accounting for investigations carried out by it in the preceding year, the safety recommendations that

were issued and actions (by whatever body or authority) taken or planned in accordance with recommendations issued previously.

(2) The Investigation Unit shall forward a copy of each annual safety report to the Minister and the European Railway Agency.

(3) The Commission, railway undertakings and other persons to which safety recommendations have been addressed, shall report back at least annually to the Investigation Unit on measures that are taken or planned as a consequence of the recommendation.”.

Duty to notify affected persons

16. Section 58 of the Act is amended by the insertion of the following after subsection (14):

“(14A) (a) When an investigation is being carried out the Investigation Unit shall regularly inform the following parties of the investigation and its progress:

- (i) the relevant railway undertakings;
- (ii) victims and their relatives;
- (iii) owners of damaged property;
- (iv) the relevant manufacturers;
- (v) the emergency services involved; and
- (vi) representatives of staff and users.

(b) (i) Before publishing an investigation report or an interim report the Investigation Unit shall send a draft of the report or sections of the draft report to any person mentioned in paragraph (a).

(ii) Persons referred to in paragraph (a) shall be invited to comment on any draft reports issued in respect of the investigation.

(iii) Where a person referred to in paragraph (a) is deceased, a draft of the report or sections of the draft report shall be sent by the Investigation Unit to the person who appears to the Investigation Unit to best represent the interests of the deceased person.

(iv) The Investigation Unit shall, so far as reasonably practicable, take account of opinions relating to the investigation or to the interim report or investigation report expressed by the parties mentioned in subsection (14)(a).

(c) The Investigation Unit shall provide a copy of the final report, including the safety recommendation, to the parties mentioned in subsection (14)(a) and to any other relevant bodies or parties in other Member States.”.

Amendment of S.I. No. 537 of 2003

17. The European Communities (Licensing of Railway Undertakings) Regulations 2003 (S.I. No. 537 of 2003) are amended:

(a) in Regulation 2(1)—

(i) by substituting for the definition of “Directive” the following definition:

“ ‘Directive’ means Directive No. 2001/13/EC of the European Parliament and of the Council of 26 February 2001³, and

(ii) by substituting for the definition of “Principal Directive” the following definition:

“ ‘Principal Directive’ means Council Directive No. 95/18/EC of 2 July 1996⁴ as amended by the Directive and Directive No. 2004/49/EC of the European Parliament and of the Council of 29 April 2004¹”, and

(b) by deleting subparagraph (d) of Regulation 5(3).

Amendment of S.I. No. 643 of 2004

18. The European Communities (Allocation of Railway Infrastructure Capacity and the Levying of Charges for the use of Railway Infrastructure and Safety Certification) Regulations 2004 (S.I. No. 643 of 2004) are amended:

(a) in Regulation 2(1)—

(i) by substituting for the definition of “ Directive” the following:

“ ‘Directive’ means Council Directive No. 2001/14/EC of 26 February 2001⁵ as amended by Commission Decision No. 2002/844/EC of 23 October 2002⁶ and Directive No. 2004/49/EC of the European Parliament and of the Council of 29 April 2004¹;”, and

(ii) by deleting the definitions of “Chief Railway Inspecting Officer” and “safety certificate”,

(b) in Regulation 7(2)(b) by substituting for clause (ii) the following:

“(ii) a safety certificate issued to the applicant under the Railway Safety Act 2005 (No. 31 of 2005)”,

¹ OJ No. L164, 30.4.C4, p.44 as set out in OJ No. L220, 21.6.04, p.16

³ OJ No. L.75, 15.3.01, p.26.

⁴ OJ No. L.143, 27.6.95, p.70.

⁵ OJ No. L.75, 15.3.01, p.29.

⁶ OJ No. L.289, 26.10.02, p.30.

(c) in Regulation 11(2)(b) by substituting for paragraph (b) the following:

“(b) to whom a safety certificate has been issued under the Railway Safety Act 2005 (No. 31 of 2005)”, and

(d) by deleting Regulations 16 and 17.



GIVEN under my Official Seal,
6 March 2008

NOEL DEMPSEY.
Minister for Transport.

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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
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DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
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