



STATUTORY INSTRUMENTS.

S.I. No. 444 of 2013



EUROPEAN UNION (RAILWAY SAFETY) REGULATIONS 2013

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EUROPEAN UNION (RAILWAY SAFETY) REGULATIONS 2013

I, LEO VARADAKAR, Minister for Transport, Tourism and Sport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) for the purpose of giving effect to Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004¹, other than Chapter V, of and Annex V to, that Directive (as amended by Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008², Directive 2008/110/EC of the European Parliament and of the Council of 16 December 2008³ and Commission Directive 2009/149/EC of 27 November 2009⁴), hereby make the following regulations:

Part 1

PRELIMINARY

Citation

1. These Regulations may be cited as the European Union (Railway Safety) Regulations 2013.

Interpretation

2. In these Regulations—

“Act of 2005” means Railway Safety Act 2005 (No. 31 of 2005);

“Directive” means Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004¹ (as amended by Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008², Directive 2008/110/EC of the European Parliament and of the Council of 16 December 2008³ and Commission Directive 2009/149/EC of 27 November 2009⁴);

“entity in charge of maintenance (ECM)” means an entity in charge of maintenance of a vehicle, and registered as such in the National Vehicle Register;

“inspector” means a person appointed to be an inspector under the Act of 2005;

“Interoperability Regulations” means European Communities (Interoperability of the Rail System) Regulations 2011 (S.I. No. 419 of 2011) (as amended by the European Communities (Interoperability of the Rail System) Regulations 2011(Amendment) Regulations 2013 (S.I. No. 186 of 2013));

¹OJ No. L164, 30.04.2004, p.44

²OJ No. L191, 18.07.2008, p.1

³OJ No. L345, 23.12.2008, p.62

⁴OJ No. L313, 28.11.2009, p.65

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 29th November, 2013.*

“National Vehicle Register” “(NVR)” means the register of vehicles kept by the safety authority in accordance with Regulation 29 of the Interoperability Regulations;

“network” means the lines, stations, terminals and all kinds of fixed equipment needed to ensure safe and continuous operation of the railway system;

“railway infrastructure” has the meaning assigned to it in Council Directive 91/440/EEC of 29 July 1991⁵;

“record” means any memorandum, book, plan, map, drawing, diagram, pictorial or graphic work or other document, any photograph, film or recording (whether of sound or images or both), any form in which data (within the meaning of the Data Protection Acts 1988 and 2003) are held, any other form (including machine-readable form) or thing in which information is held or stored manually, mechanically or electronically and anything that is a part or a copy, in any form, of any of the foregoing or is a combination of two or more of any of the foregoing;

“Regulations of 2011” means European Communities (Railway Safety) Regulations 2011 (S.I. No. 70 of 2011);

“Regulations of 2008” means European Communities (Railway Safety) Regulations 2008 (S.I. No. 61 of 2008);

“safety authority” means Railway Safety Commission;

“subsystems” means the result of the division of the railway system as referred to in the Interoperability Regulations, which may be structural or functional.

(2) A word or expression which is used in these Regulations and which is also used in the Directive has, unless the context requires otherwise, the same meaning in these Regulations as it has in the Directive.

(3) In these Regulations, save as otherwise indicated, a reference to an Article is a reference to an Article of the Directive.

Scope

3. (1) These Regulations apply to the railway system in the State, and cover safety requirements, including the safe management of infrastructure and of traffic operation and the interaction between railway undertakings and infrastructure managers.

(2) These Regulations do not apply to—

(a) a metro, tramway or other light rail system,

(b) a network that is functionally separate from the rest of the railway system and is intended only for the operation of local, urban or suburban passenger services, as well as railway undertakings operating solely on that network,

⁵OJ L237, 24.08.1991 p.25

- (c) a privately owned network that exists solely for use by the infrastructure owner for its own freight operations,
- (d) heritage vehicles that run on the railway system in the State provided that they comply with the requirements under the Act of 2005 and with the safety rules that are notified by the State to the European Commission in accordance with Article 8 with a view to ensuring safe circulation of such vehicles, and
- (e) a heritage, museum or tourist railway that operates on its own network, including workshops, vehicles and staff.

Part 2

SAFETY MANAGEMENT, CERTIFICATION AND AUTHORISATION

Safety management systems

4. (1) An infrastructure manager and a railway undertaking shall establish safety management systems in accordance with Article 9.

(2) Each infrastructure manager and railway undertaking shall submit to the safety authority, not later than 30 June in each year, an annual safety report concerning the preceding year which shall contain the matters referred to in subparagraphs (a) to (d) of Article 9(4) and any other matters required by common safety methods (CSMs).

(3) The safety authority may give a direction to an infrastructure manager or a railway undertaking with respect to its safety management systems. The infrastructure manager or railway undertaking shall take reasonable steps to comply with the direction.

(4) Where the safety authority considers that an infrastructure manager or railway undertaking has not established its safety management system in accordance with Article 9, it may give a direction to the infrastructure manager or railway undertaking to comply with Article 9 in accordance with the direction.

Safety certificates

5. (1) A railway undertaking shall not have access to railway infrastructure on the railway system unless the railway undertaking holds a safety certificate for the time being in force.

(2) (a) Subject to subparagraph (b), the safety authority shall, upon application to it, grant to a railway undertaking a safety certificate in accordance with Article 10(2) and (3) where the safety authority has assessed and accepted that the railway undertaking has established its safety management system and is able to meet requirements laid down in technical specifications for interoperability (TSI's) and in Article 10(1) in order to control risks and provide transport services safely on the network of the State.

- (b) The safety authority shall not grant a safety certificate until it is satisfied that the requirements of subparagraph (a) are met.
- (3) A safety certificate may cover the whole of the network or only a part of it.
- (4) A safety certificate is valid for the period stated in it, being a period of not more than 5 years, and shall be renewed by the safety authority upon application to it by the railway undertaking holding the certificate.
- (5) Where the holder of a safety certificate is planning to operate additional services the safety authority shall grant additional certification necessary in accordance with Article 10(2)(b).
- (6) The safety authority may require that the relevant part of a safety certificate be revised following substantial changes in the safety regulatory framework.
- (7) The holder of a safety certificate shall notify the safety authority—
- (a) of all major changes in the conditions of the relevant part of its safety certificate without delay, and
 - (b) whenever new categories of staff or new types of rolling stock are introduced by it.
- (8) Where the type or extent of the operation of a railway undertaking who holds a safety certificate is substantially altered the safety certificate shall be wholly or partly updated.
- (9) Where the safety authority finds that the holder of a safety certificate no longer satisfies the conditions for a certification which it has granted, it shall, as applicable, revoke part (a) or (b) relating to the certification referred to in Article 10(2). Where the revocation is in respect of an additional national certification granted under Article 10(4), the safety authority shall promptly inform the safety authority in the other Member State that granted the certification under Article 10(2)(a) of its decision.
- (10) Where the safety authority considers that it is apparent that a safety certificate has not been used as intended by its holder in the year following its issue, the safety authority shall revoke the certificate.
- (11) The safety authority shall give reasons to the holder of the safety certificate for a decision to revoke a safety certificate.
- (12) Where the safety authority proposes to revoke a safety certificate under this Regulation, it shall notify the railway undertaking concerned in writing of the proposal and the railway undertaking may, within 21 days of the notification, make representations to the safety authority, which shall consider them.
- (13) A decision under this Regulation shall be by way of notice to the railway undertaking concerned.

(14) The safety authority shall inform the Agency, in accordance with Article 10(6), of the safety certificates that it has issued, renewed, amended or revoked and, in the case of revocation, give the reasons for its decision.

(15) In respect of a railway system in the State to which these Regulations apply—

- (a) any application for safety certification made under section 46 (inserted by Regulation 9(2) of the Regulations of 2008) of the Act of 2005 shall be dealt with as though the application was made under this Regulation,
- (b) any reference to a safety certificate that was issued by the safety authority under section 46 of the Act of 2005 and any reference in any enactment to such a certificate or to a requirement to the effect that the necessary safety requirements of the Act of 2005 be met is deemed to be a reference to a safety certificate issued under this Regulation, and
- (c) any safety certificate that was issued under section 46 of the Act of 2005 may be renewed, amended or revoked by the safety authority as if it had been granted under this Regulation.

Safety authorisation

6. (1) An infrastructure manager shall not manage or operate a railway infrastructure unless it holds safety authorisation to so manage or operate from the safety authority.

- (2) (a) Subject to subparagraph (b), the safety authority shall grant in accordance with Article 11 a safety authorisation to an infrastructure manager established in the State to manage and operate a railway infrastructure.
- (b) The safety authority shall not grant a safety authorisation to an infrastructure manager under subparagraph (a) until it is satisfied that it can authorise confirmation of acceptance of the infrastructure manager's safety management system under Article 11(1)(a) and of the provisions referred to in Article 11(1)(b).
- (3) A safety authorisation is valid for the period stated in it, being a period not more than 5 years, and shall be renewed by the safety authority upon application to it by the infrastructure manager holding the authorisation.
- (4) The holder of a safety authorisation shall—
 - (a) apply to the safety authority for the authorisation to be updated whenever substantial changes are made to the railway infrastructure, signalling or energy supply or to the principles of its operation and maintenance, and
 - (b) inform the safety authority, without delay, of all such changes.

(5) The safety authorisation shall be wholly or partly updated whenever a substantial change referred to in paragraph (4) is made.

(6) The safety authority may require that the safety authorisation be revised following substantial changes in the safety regulatory framework.

(7) Where the safety authority finds that the holder of a safety authorisation no longer satisfies the conditions for authorisation, it shall revoke the safety authorisation, giving reasons for its decision.

(8) A decision under this Regulation shall be by way of notice to the infrastructure manager concerned.

(9) Where the safety authority proposes to revoke a safety authorisation under this Regulation, it shall notify the infrastructure manager concerned of the proposal and the infrastructure manager may, within 21 days of the date of the service of the notification, make representations to the safety authority, which shall consider them.

(10) The safety authority shall inform the Agency, in accordance with Article 11(3), of the safety authorisations that it has issued, renewed, amended or revoked and, in the case of revocation, to give the reasons for its decision.

(11) In respect of the railway system in the State to which these Regulations apply—

- (a) any application for safety authorisation made under section 46 of the Act of 2005 shall be dealt with as though the application was made under this Regulation,
- (b) any reference to safety authorisation that was issued by the safety authority under section 46 of the Act of 2005 and any reference in any enactment to such authorisation or to a requirement to the effect that the necessary safety requirements of the Act of 2005 be met is deemed to be a reference to a safety authorisation issued under this Regulation, and
- (c) any safety authorisation that was issued under section 46 of the Act of 2005 may be renewed, amended or revoked by the safety authority as if it had been granted under this Regulation.

Appeals

7. (1) A person may, not later than 14 days of the date of the service of the notice giving to him or her a decision to revoke the safety certificate or the safety authorisation, appeal the decision to the High Court. The revocation does not take effect until the time allowed for an appeal has elapsed, and in the case of an appeal, until either the appeal is withdrawn or the decision to revoke the safety certificate or safety authorisation, is confirmed (with or without modification).

(2) The High Court may either allow the appeal or confirm the decision (with or without modification).

(3) The decision of the High Court on an appeal under paragraph (1) is final, except by leave of the Court an appeal on a specified point of law lies to the Supreme Court.

Applications for safety certification or authorisation

8. (1) The safety authority shall comply with Article 12 in relation to applications for safety certification or safety authorisation.

(2) The safety authority may require by notice an applicant for safety certification or safety authorisation to submit to it, not later than 21 days of the date of service of the notice, supplementary information concerning the application.

(3) An application to the safety authority for safety certification or safety authorisation shall be in the English language.

(4) The provisions in the Act of 2005 in respect of safety certification and safety authorisation do not apply to safety certification and safety authorisation that is required under the Directive in respect of the railway system in the State to which these Regulations apply.

Prohibition on acting without safety certificate or authorisation

9. (1) A railway undertaking who operates or manages a transport service on a railway infrastructure without a safety certificate for the time being in force in relation to the provision of that transport service commits an offence.

(2) An infrastructure manager who manages or operates a railway infrastructure without a safety authorisation for the time being in force in respect of such management or operation commits an offence.

(3) A person who commits an offence under this Regulation is liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €500,000.

Access to training facilities

10. (1) The safety authority shall ensure that any railway undertaking applying for a safety certificate has 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 the safety certificate.

(2) The safety authority shall ensure that each infrastructure manager and its staff performing vital safety tasks have fair and non-discriminatory access to training facilities.

(3) For the purpose of paragraphs (1) and (2), training providers shall give fair and non-discriminatory access to training facilities for train drivers and staff accompanying the trains.

(4) The services offered by a training provider 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.

(5) If the training services do not include examinations and granting of certificates, the safety authority shall ensure through the conditions of recognition of examiners and examination centres that each railway undertaking has access to such certification if it is a requirement of the safety certificate.

(6) The safety authority shall ensure that the provision of training services meets the safety requirements mentioned in Article 13(1).

(7) The safety authority shall recognise persons as training providers for the purpose of this Regulation.

(8) Recognition may be withdrawn by notice where the safety authority finds that an approved training provider, examiner or examination centre is not complying with this Regulation.

(9) The safety authority shall give reasons for the withdrawal of recognition and allow representations against such to be made by the person affected within 14 days of the date of the notice notifying him or her of the decision.

(10) The safety authority shall ensure that Article 13 is complied with.

(11) If training facilities are available only through the services of one single railway undertaking or infrastructure manager, the safety authority may give a direction to the railway undertaking or infrastructure manager concerned regarding access to its training facilities. The railway undertaking or infrastructure manager shall take all reasonable steps to comply with the direction.

(12) When recruiting new train drivers, staff on board trains and staff performing vital safety tasks, railway undertakings must be in a position to take into account any training, qualification and experience acquired previously from other railway undertakings. For this purpose, such members of staff shall be entitled to have access to, obtain copies of, and communicate all documents attesting to their training, qualification and experience.

(13) Each infrastructure manager and each railway undertaking shall be responsible for the level of training and qualifications of any member of its staff carrying out safety-related work as set out in Article 9 of, and Annex III to, the Directive.

(14) Any access to training, training provided, any certificates granted following examinations and any other training related matters that have been done in accordance with, and for the purposes of, section 46A (inserted by Regulation 10 of the Regulations of 2008) of the Act of 2005 is deemed to have been done under this Regulation.

Safety authority

11. (1) The Railway Safety Commission is the safety authority in the State for the purposes of the Directive and these Regulations.

(2) The safety authority shall ensure the development and improvement of railway safety in accordance with Article 4, and in particular—

(a) that railway safety is maintained and, where reasonably practicable, continuously improved in accordance with Article 4(1) and that measures to develop and improve railway safety take account of the need for a system-based approach, and

(b) that the responsibility for the safe operation of the railway system and the control of risks associated with it is laid upon infrastructure managers and railway undertakings in accordance with Article 4(3), but that this shall be without prejudice to the responsibility of each manufacturer, maintenance supplier, 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 conditions for use specified, so that they can be safely put into operation by either or both the infrastructure manager and the railway undertaking.

(3) The safety authority shall be independent in its organisation, legal structure and decision making from any infrastructure manager, railway undertaking, applicant and procurement entity.

(4) The safety authority shall undertake the tasks referred to in Article 16(2) and carry them out in accordance with Article 17. These tasks shall not be transferred or subcontracted to any infrastructure manager, railway undertaking or procurement agency.

(5) The safety authority shall collect the information for the purposes of Article 5(1).

(6) The performance of the tasks referred to in Article 16 and of other tasks assigned to the safety authority under these Regulations is a function of the safety authority.

(7) The safety authority shall in accordance with Article 18 in each year publish a report concerning its activities in the preceding year and send it, not later than 30 September of that year, to the Agency.

(8) The safety authority may at any time request the technical assistance of any infrastructure manager or railway undertaking or other qualified body when it is carrying out the tasks referred to in Article 16.

(9) In the process of developing the national regulatory framework, the safety authority shall consult all persons involved and interested parties, including each infrastructure manager, railway undertaking, manufacturer and maintenance supplier, entities in charge of maintenance, users and staff representatives.

(10) The safety authority shall conduct an active exchange of views and cooperate with other safety authorities in accordance with Article 17(4).

Part 3

ENTITY IN CHARGE OF MAINTENANCE OF VEHICLES

Entity in charge of maintenance of vehicles

12. (1) Each vehicle shall have an entity in charge of maintenance (ECM) assigned to it before it is placed in service or used on the network, and this entity shall be registered in the NVR in accordance with the Interoperability Regulations.

(2) A railway undertaking, an infrastructure manager or a keeper may be an ECM.

(3) Without prejudice to the responsibility of any railway undertaking or any infrastructure manager for the safe operation of a train as provided for in Article 4, the ECM shall ensure that any vehicle for which it is in charge of maintenance is in a safe state of running by means of a system of maintenance.

(4) The ECM shall ensure that each vehicle is maintained in accordance with—

(a) the maintenance file of each vehicle, and

(b) the requirements in force including maintenance rules and TSI provisions.

(5) The ECM shall carry out the maintenance itself or make use of contracted maintenance workshops.

(6) In the case of freight wagons, each ECM shall be certified by a safety authority or a body accredited or recognised in accordance with Article 14a.

(7) A vehicle shall not be placed in service or used on the network unless an ECM is assigned to it in accordance with this Regulation.

(8) Certification granted by other Member States for the purposes of Article 14a(5) are valid in the State.

(9) A person who places in service or uses a vehicle on the network in contravention of paragraph (7) commits an offence and is liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €250,000.

(10) In respect of a railway system in the State to which these Regulations apply—

- (a) any ECM that was assigned to a vehicle under section 43B (inserted by Regulation 2(d) of the Regulations of 2011) of the Act of 2005 is deemed to have been assigned in accordance with this Regulation, and
- (b) in the case of a freight wagon, any certification of an ECM by a safety authority or a body accredited or recognised in accordance with Article 14a that was done for the purposes of section 43B of the Act of 2005 is deemed to have been done to meet the requirements of paragraph (6).

Part 4

INSPECTORS

Inspectors

13. Inspectors appointed by the Railway Safety Commission under the Act of 2005—

- (a) are deemed to be inspectors—
 - (i) to carry out any inspections and investigations that are necessary for the accomplishment of the tasks of the safety authority under these Regulations, and
 - (ii) to enforce these Regulations,

and

- (b) have the powers of inspectors under Part 7 of the Act of 2005 to perform those functions.

Prohibition on obstruction of inspector

14. A person who—

- (a) obstructs or impedes an inspector performing a function of an authorised person under these Regulations,
- (b) fails to comply with a requirement of an inspector under these Regulations, or
- (c) gives information to an inspector which he or she knows to be false or misleading,

commits an offence and is liable on summary conviction to a class A fine.

Part 5

PROCEEDINGS

Prosecution of summary offences

15. Proceedings for an offence under these Regulations may be prosecuted summarily by the safety authority.

Offence by body corporate

16. Where an offence under these Regulations is committed by a body corporate and is proved to have been committed with the consent or connivance of or is attributable to any wilful neglect on the part of any person being a director, manager, secretary or other officer of the body corporate or a person who was purporting to act in any such capacity, that person as well as the body corporate commits an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Notices and directions

17. (1) Where a notice or direction is required to be given or served on a person under these Regulations, it shall be in writing and shall be addressed to that person and shall be given to the person in one of the following ways—

- (a) by giving a copy to the person, his or her employee, servant or agent, or in the case of a partnership, by delivery of a copy to any of the partners,
- (b) by leaving a copy at the address where the person ordinarily resides, where he or she carries on business, or, where an address for service of notices or directions has been furnished by the person to the safety authority, at that address,
- (c) by sending a copy by post in a prepaid registered letter to the address at which the person ordinarily resides or carries on business, in the case of a body corporate or unincorporated body at the registered office of the body or, where an address for service has been furnished by the person to the safety authority, at that address,
- (d) by sending a copy by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the person ordinarily resides or carries on business or, if an electronic address or facsimile number address for the service of a notice or direction has been furnished by the person to the safety authority, that electronic address or facsimile machine, but only if—
 - (i) the recipient's facility for the reception of electronic mail generates a message confirming the successful receipt of the electronic mail, or

- (ii) the sender's facsimile machine generates a message confirming the successful transmission of the total number of pages of the notice or direction.

(2) For the purposes of this Regulation, a company registered under the Companies Acts is deemed to be ordinarily resident at its registered office and every other body corporate and every unincorporated body is deemed to be resident at its named place of business.

Compliance orders

18. Where a person fails to comply with a direction of the safety authority under Regulation 4(3) or (4) or 10(11), the safety authority may apply to the Circuit Court where the person has his or her registered office or principally carries on business for an order directing compliance in accordance with the terms of the order.

Part 6

AMENDMENT OF ACT OF 2005

Non-application of Part 4 of Act of 2005

19. Part 4 of the Act of 2005 does not apply in relation to the aspects of safety management, safety certification, safety authorisation or entity in charge of maintenance provisions in respect of the railway system in the State to which these Regulations apply.

Amendment of Act of 2005

20. (1) The Act of 2005 is amended:

(a) in section 2(1)—

- (i) by substituting for the definition of "railway undertaking" (as amended by Regulation 3(1)(d) of the Regulations of 2008) the following:

“ ‘railway organisation’ means—

- (a) a metro, tramway or other light rail system,
- (b) a heritage, museum or tourist railway that operates on its own network, including workshops, vehicles and staff,
- (c) a heritage railway that runs on the railway system in the State,
- (d) a railway undertaking or an infrastructure manager to which the European Union (Railway Safety) Regulations 2013 (S.I. No. 444 of 2013) apply except in the case of sections 39, 45, 46, 47, 48 and 50 of this Act, or
- (d) any other person who operates a railway;”

and

(ii) by inserting after “safety case” the following:

“ ‘safety management certificate’ means a safety management certificate issued under section 46(1)(a);”,

(b) in section 2, by deleting subsection (3) (inserted by Regulation 3(2) of the Regulations of 2008),

(c) by substituting “safety management document” for “safety case” in each place it occurs in sections 2, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50, 53, 69 and 83,

(d) by substituting “railway organisation” for “railway undertaking” in each place it occurs in sections 2, 4, 26, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 54, 55, 57, 58, 61A, 63, 64, 69, 70, 73, 74, 76, 77, 78, 82, 85, 86, 87, 88, 89, 90, 93, 94, 95, 98, 111, 112, 113, 114, 116, 118, 119, 126, 132, 133 and 134,

(e) in section 40, by substituting for subsection (8) (inserted by Regulation 2(c) of the Regulations of 2011) the following:

“(8) Subsection (7) does not apply to a railway organisation that operates a railway service immediately before the commencement of this section in respect of the period specified in sections 45(1) and 46(8).”,

(f) in sections 41 and 45, by substituting “safety management certificate” for “safety certificate” in each place it occurs.,

(g) in section 45—

(i) by substituting for subsections (4) and (4A) (each inserted by Regulation 9 of the Regulations of 2008) the following:

“(4) A railway organisation shall not operate railway infrastructure or railway services unless it has received notification from the Commission of its acceptance of the relevant safety management document and been issued with a safety management certificate.”, and

(ii) by substituting for subsection (5) (inserted by Regulation 2(e) of the Regulations of 2011) the following:

“(5) Subsection (4) does not apply in respect of the periods specified in subsection (1) and sections 44(2) and 46(8).”,

(h) by substituting for section 46 (as amended by Regulation 9(2) of the Regulations of 2008 and Regulation 2(f) of the Regulations of 2011) the following:

“Acceptance of safety management document by Commission

46. (1) (a) The Commission shall notify a railway organisation of its acceptance of a safety management document by issuing a certificate (“safety management certificate”) to that railway organisation.

(b) A safety management certificate may be subject to such conditions as may be deemed appropriate by the Commission.

(c) The form of safety management certificates shall be determined by the Commission.

(2) The Commission shall only accept a safety management document, or a revised safety management document under section 48, and issue a safety management certificate under subsection (1) where the information contained in the safety management document or in the revised safety management document is sufficient to satisfy the Commission that the railway organisation is capable, subject to any conditions set down for the safety management certificate, of carrying out its operations in compliance with the duty imposed on it under section 36.

(3) Where the Commission is not satisfied in accordance with subsection (2) with a safety management document or a revised safety management document, the Commission shall, by notice in writing, require the railway organisation concerned to—

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

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

(4) A railway organisation in receipt of a notice under subsection (3) or in receipt of a safety management certificate that is subject to conditions in accordance with subsection (1)(b) may re-submit the safety management document or revised safety management document where, in the opinion of the railway organisation—

(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 the safety management certificate that is subject to conditions, the safety management document or revised safety management document has been amended to the extent that the conditions are no longer warranted.

(5) The Commission, in deciding whether or not to issue a safety management certificate, for the purposes of satisfying itself under subsection (2), may request any additional information or clarifications from a railway organisation and the organisation shall comply with such a request.

(6) The re-submission of a safety management document in accordance with subsection (4) shall be accompanied by a report prepared under subsection (3)(b).

(7) In considering a safety management document or a revised safety management document submitted by a railway organisation, 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 organisation and, in particular—

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

(8) The Commission shall issue a safety management certificate under subsection (1) or a notice under subsection (3) as soon as practicable after it has completed its assessment but no later than 4 months after the date of receipt of the safety management document or revised safety management document or receipt of all information or clarifications requested under subsection (5).

(9) The acceptance of a safety management document or a revised safety management document by the Commission and the issuing of a safety management certificate shall not be interpreted as relieving a railway organisation of its duty under section 36.

(10) The Commission shall—

- (a) refuse to issue a safety management certificate where it is not satisfied in accordance with subsection (2),
- (b) revoke a safety management certificate issued under subsection (1) if the railway organisation which is the holder of the certificate fails to comply with its safety management document and the Commission considers that the railway organisation cannot comply with its duty under section 36, or
- (c) revoke a safety management certificate if the railway organisation has not used it as intended in the year following its issue.

(11) Where the Commission proposes to refuse or revoke a safety management certificate in accordance with subsection (10), it shall notify the railway organisation concerned of the proposal and the railway organisation may, within 21 days of the date of the service of notification, make representations to the Commission, which shall consider them.

(12) Where the Commission decides to refuse a safety management certificate, or revoke the safety management certificate issued by it, the Commission shall inform the railway organisation concerned of its decision and the railway organisation may, not later than 14 days of the date of the service of the notice giving the decision appeal the decision to the High Court. The refusal or revocation does not take effect until the time allowed for an appeal has elapsed, and, in the case of an appeal, until either the appeal is withdrawn or the decision to refuse the safety management certificate or to revoke the safety management certificate is confirmed (with or without modification).

(13) The High Court may either allow the appeal or confirm the decision (with or without modification).

(14) The decision of the High Court on an appeal under subsection (12) is final, except by leave of the Court an appeal on a specified point of law lies to the Supreme Court.

(15) (a) A safety management certificate remains in force until—

(i) it is revoked by the Commission under subsection (10)(b),

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

(iii) it becomes invalid.

(b) A safety management 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 organisation concerned as if for a new certificate.

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

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

(16) Railway organisations 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.”,

and

- (i) in section 49, by substituting for subsection (9) (inserted by Regulation 2(g) of the Regulations of 2011) the following:

“(9) Where a railway organisation proposes to appoint a suitably qualified person for the purposes of section 42(9), 43(8), 45(2), 46(3)(b), 50(1) or 50(6), the railway organisation shall notify the Commission in writing of the proposal not later than 21 days in advance of the proposed appointment date.”.

Act of 2005 — repeal of certain provisions

21. The following provisions of the Act of 2005 are repealed, namely—

- (a) sections 9A and 10A (each inserted by Regulation 4 of the Regulations of 2008),
- (b) section 28A (inserted by Regulation 5 of the Regulations of 2008),
- (c) section 38A (inserted by Regulation 3 of the Regulations of 2008 and amended by Regulation 2(b) of the Regulations of 2011),
- (d) sections 39A and 39B (each inserted by Regulation 8 of the Regulations of 2008),
- (e) section 43(15) (inserted by Regulation 11(1) of the Regulations of 2008),
- (f) section 43A (inserted by Regulation 11(2) of the Regulations of 2008),
- (g) section 43B (inserted by the Regulation 2(d) of the Regulations of 2011),
- (h) section 43C (inserted by Regulation 36 of the European Communities (Interoperability of the Rail Systems) Regulations 2011 (S.I. No. 419 of 2011)),
- (i) section 46A (inserted by Regulation 10 of the Regulations of 2008),
- (j) section 50A (inserted by Regulation 6 of the Regulations of 2008),

and

(k) section 50B (inserted by Regulation 7(2) of the Regulations of 2008 and as amended by Regulation 2(h) of the Regulations of 2011).



GIVEN under my Official Seal,
25 November 2013.

LEO VARADKAR,
Minister for Transport, Tourism and Sport.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

The purpose of these Regulations is to restate the national law that gives effect to Directive 2004/49/EC (as amended by Directive 2008/57/EC and Directive 2008/110/EC) on safety of the Community's railways except in respect of Chapter V (Accident and Incident Investigation) of the Directive — the existing national provisions for the latter are provided in the Railway Safety Act 2005. The railway safety provisions in these Regulations apply to the railway system in the State to which the Directive applies. These Regulations replace and repeal the earlier transposition provisions in this regard that were provided in the Railway Safety Act 2005 as amended by the European Communities (Railway Safety) Regulations of 2008 and 2011. The Regulations also make some consequential amendments to the Railway Safety Act 2005.

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