



Number 31 of 2005

RAILWAY SAFETY ACT 2005

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Number 31 of 2005

RAILWAY SAFETY ACT 2005

AN ACT TO MAKE PROVISION FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS, IN THE IRISH LANGUAGE, AN COIMISIÚN SÁBHÁILTEACHTA IARNRÓID, OR IN THE ENGLISH LANGUAGE, THE RAILWAY SAFETY COMMISSION, TO DEFINE ITS FUNCTIONS, TO PROVIDE FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS, IN THE IRISH LANGUAGE, AN CHOMHAIRLE SÁBHÁILTEACHTA IARNRÓID, OR IN THE ENGLISH LANGUAGE, THE RAILWAY SAFETY ADVISORY COUNCIL, TO DEFINE ITS FUNCTIONS, TO PROVIDE FOR THE GENERAL DUTIES OF RAILWAY UNDERTAKINGS AND PERSONS WORKING ON RAILWAYS AND OTHER PERSONS, TO PROVIDE FOR MEASURES TO PREVENT PERSONS FROM WORKING ON RAILWAYS WHO ARE UNFIT TO CARRY OUT THAT WORK THROUGH ALCOHOL OR DRUGS, TO PROVIDE FOR OFFENCES BY PERSONS WORKING ON RAILWAYS, TO PROVIDE FOR MATTERS RELATING TO CARRYING OUT WORKS ON PUBLIC ROADS IN THE VICINITY OF RAILWAYS, TO PROVIDE FOR OFFENCES AND OTHER MATTERS RELATING TO THE CONDUCT OF PERSONS ON RAILWAYS, TO PROVIDE FOR MATTERS RELATING TO CÓRAS IOMPAIR ÉIREANN, AND FOR THAT PURPOSE TO AMEND THE TRANSPORT ACT 1950 AND OTHER ENACTMENTS RELATING TO CÓRAS IOMPAIR ÉIREANN, TO PROVIDE FOR MATTERS RELATING TO LIGHT RAILWAYS AND METRO, AND FOR THAT PURPOSE TO AMEND THE TRANSPORT (RAILWAY INFRASTRUCTURE) ACT 2001, TO REPEAL CERTAIN PROVISIONS OF THE REGULATION OF RAILWAYS ACTS 1840 TO 1893 AND OTHER ENACTMENTS RELATING TO RAILWAYS, TO AMEND THE ROAD TRAFFIC ACTS 1961 TO 2004, AND TO PROVIDE FOR RELATED MATTERS.

[18th December, 2005]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY

- Short title. **1.**—This Act may be cited as the Railway Safety Act 2005.
- Interpretation. **2.**—(1) In this Act, except where the context otherwise requires—
- “Commission” means the Railway Safety Commission established under *section 8*;
- “Council” means the Railway Safety Advisory Council established under *section 82*;
- “establishment day” means the day appointed by the Minister under *section 7* to be the establishment day for the purposes of *Part 2*;
- “functions” includes powers and duties and references to the performance of functions include, as respects powers and duties, references to the exercise of the powers and the carrying out of the duties;
- “heritage railway” means a person who only operates train services or railway infrastructure of historical or touristic interest or such other person whom the Commission has by regulations under *section 4(6)* specified to be a heritage railway;
- “inspector” means a person appointed under *section 73* to be an inspector;
- “international service” means the operation of a railway service between the State and another state;
- “intoxicant” includes alcohol and drugs and any combination of drugs or of drugs and alcohol;
- “investigation report” means a report published by the Investigation Unit of an investigation undertaken by it;
- “local authority” has the meaning assigned to it by the Local Government Act 2001;
- “medical practitioner” means a person registered in the General Register of Medical Practitioners;
- “Minister” means Minister for Transport;
- “operation” in relation to a railway undertaking, includes the operation of railway services or the operation of railway infrastructure, or both, and any other ancillary activities;
- “public road” means a road over which a public right of way exists and the responsibility for the maintenance of which lies on a road authority;
- “qualified person” and “suitably qualified person” shall be construed in accordance with *section 49(18)*;
- “railway” means—
- (a) a railway which has a gauge of not less than 350 mm and which is used for the carrying of fare-paying passengers,

or fee-paying members, or the conveyance of merchandise,

- (b) any part of such other railway that has a physical interface with a railway mentioned in *paragraph (a)*, or a physical interface with a public road, or
- (c) any other infrastructure that may be specified by the Commission under *section 4*;

“railway incident” has the meaning assigned to it by *section 51*;

“railway infrastructure” means the fixed assets used for the operation of a railway including, but not limited to, rail track, railway stations, permanent way and plant used for signalling or exclusively for supplying electricity for operational purposes to the railway;

“railway property” has the meaning assigned to it by *section 73(15)*;

“railway undertaking” means—

- (a) Iarnród Éireann—Irish Rail,
- (b) a heritage railway, or
- (c) any other person who operates a railway;

“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 Act 1988) are held, any other form (including machine-readable form) or thing in which information is held or stored manually, mechanically or electronically and any thing that is a part or a copy, in any form, of any of the foregoing or is a combination of two or more of the foregoing;

“reportable railway incident” means a railway incident that is required to be reported by a railway undertaking in accordance with *section 52*;

“road authority” means—

- (a) in the case of a national road, the National Roads Authority, and
- (b) in the case of a regional or local road, the city, county, borough or town council, in whose administrative area the road is located;

“rolling stock”, in relation to a railway, means any train or any other vehicle with flanged wheels which is designed to operate on a railway;

“safety case” shall be construed in accordance with *section 39*;

“train” means a vehicle with flanged wheels designed to operate on a railway for whatever purpose, and includes carriages and rolling stock.

(2) In this Act—

- (a) a reference to a section, Part or Schedule is a reference to a section or Part of or Schedule to this Act unless it is

indicated that a reference to some other enactment is intended,

- (b) a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended, and
- (c) a reference to an enactment shall be construed as a reference to that enactment as amended, adapted or extended by any subsequent enactment including this Act.

Laying of orders and regulations.

3.—Every order other than an order under *section 5, 7, 38, 81, 84 or 92* or regulation (other than a regulation under *section 97(3)*) made by the Minister or Commission under this Act shall, as soon as may be after it is made, be laid before each of the Houses of the Oireachtas and if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Application.

4.—(1) This Act applies to all railway undertakings.

(2) Notwithstanding *section 69* of the Transport (Railway Infrastructure) Act 2001, this Act applies to any railway works authorised by a railway order under *section 43* of that Act.

(3) This Act does not apply to the operation of railway infrastructure solely for industrial use, except insofar as it has an interface with a public road or with a railway undertaking.

(4) This Act does not apply to fairground equipment which has been granted a valid certificate of safety in accordance with *section 239* of the Planning and Development Act 2000, unless, in the opinion of the Commission, it is appropriate to apply it in the interest of the safety of persons.

(5) The Commission may by regulations specify any other infrastructure to be a railway for the purposes of this Act where, in the opinion of the Commission, it is appropriate to do so in the interest of the safety of persons.

(6) The Commission may by regulations specify any person to be a heritage railway for the purposes of this Act where, in the opinion of the Commission, it is appropriate to do so in the interest of the safety of persons.

Repeals.

5.—(1) The enactments specified in *column (2)* of *Schedule 1* are repealed to the extent specified in *column (3)* thereof.

(2) This section comes into operation on such day or days as the Minister may by order or orders appoint and different days may be so appointed for the application of this section to different enactments specified in *Schedule 1* and to different provisions specified in that Schedule of those enactments.

6.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas. Expenses.

PART 2

RAILWAY SAFETY COMMISSION

7.—The Minister may by order appoint a day to be the establishment day for the purposes of this Part. Establishment day.

8.—(1) There shall stand established, on the establishment day, a body to be known as, in the Irish language, An Coimisiún Sábháilteachta Iarnróid, or in the English language, the Railway Safety Commission, in this Act referred to as the “Commission”, to perform the functions assigned to it under this Act. Establishment of Railway Safety Commission.

(2) The Commission shall be a body corporate with perpetual succession and shall have a seal and power to sue and be sued in its corporate name and to acquire, hold and dispose of land or an interest in land, and to acquire, hold and dispose of any other property.

(3) The Commission shall have all such powers as are necessary for or incidental to the performance of its functions under this Act.

9.—Subject to this Act, the Commission shall be independent in the exercise of its functions. Independence of Commission.

10.—(1) The principal functions of the Commission shall be— Functions of Commission.

- (a) to foster and encourage railway safety,
- (b) to enforce this Act and any other legislation relating to railway safety, and
- (c) to investigate and report on railway incidents.

(2) The Commission shall, in carrying out its functions, have regard to any matters arising from the operation of railways which may affect the safety of persons.

(3) The Commission, subject to the approval of the Minister given with the consent of the Minister for Finance, may—

- (a) enter into agreements or make arrangements with any Minister of the Government, or any other person for that Minister or person to perform on behalf of the Commission (with or without payment) any of its functions; and
- (b) enter into agreements or make arrangements with any Minister of the Government or the Health and Safety Authority for the Commission to perform on behalf of that Minister or that Authority (with or without payment) such functions as may appropriately be performed by it in connection with its functions under this Act.

(4) The Commission shall have all such powers as are necessary or expedient for the performance of its functions under *subsection (3)(b)*.

(5) The Commission shall provide advice to the Minister as may be requested by the Minister from time to time in relation to railway safety.

(6) For the purposes of its functions, the Commission shall encourage and foster activities and measures which are directed towards the promotion of railway safety, including such arrangements as it considers appropriate to undertake, to promote, to sponsor, to evaluate and to publish the results of research, surveys and studies relating to railway safety.

Conferral of
additional functions.

11.—(1) The Minister may, by order, made with the consent of the Minister for Finance, confer on the Commission such additional functions in relation to railway safety as, from time to time, he or she considers appropriate.

(2) The Minister or any other Minister of the Government with the consent of the Minister may, with the consent of the Minister for Finance, by order provide that any function relating to railway safety conferred on him or her under any enactment (including this Act), shall, where the relevant Minister is satisfied that the function could be more conveniently performed by the Commission, in lieu of being performed by him or her, be performed by the Commission with effect from a date specified in the order.

(3) Whenever an order under *subsection (2)* is in force in relation to a particular function, a reference in any enactment concerned to the Minister or the Minister of the Government concerned, as the case may be, shall be construed as including a reference to the Commission and the function to which the order relates shall be the function of the Commission.

(4) An order under *subsection (1)* or *(2)* may contain such incidental, supplementary, consequential and transitional provisions as appear to the Minister or the relevant Minister of the Government, as the case may be, to be necessary for the purpose or in consequence of, or to give full effect to, the order.

(5) The Minister or another Minister of the Government who has made an order under *subsection (2)* may—

- (a) where the order is made by the Minister, with the consent of the Minister for Finance, or
- (b) where the order is made by another Minister of the Government, with the consent of the Minister and the Minister for Finance,

amend or revoke the order that he or she has made.

Transfer of
functions.

12.—(1) The administration and business in connection with the exercise, performance or execution of any of the functions transferred by *subsection (2)* are transferred, on the establishment day, to the Commission.

(2) The functions vested in the Minister by or under—

- (a) the provisions of the enactments mentioned in *Part 1 of Schedule 2*, and
- (b) the regulations mentioned in *Part 2 of Schedule 2*,

are, on the establishment day, transferred to the Commission.

(3) References to the Minister contained in any Act or instrument relating to any functions transferred by *subsection (2)* shall, on the establishment day, be construed as references to the Commission.

(4) Anything commenced before the establishment day by or under the authority of the Minister may, in so far as it relates to functions transferred by this section, be carried on or completed on or after such day by the Commission.

(5) Where, immediately before the establishment day, any legal proceedings are pending to which the Minister is the plaintiff or the prosecutor and the proceedings have reference to functions transferred by this section to the Commission, the name of the Commission shall, in so far as the proceedings relate to any functions transferred by this section, be substituted in those proceedings for that of the Minister or added in those proceedings as may be appropriate and those proceedings shall not abate by reason of such substitution.

(6) Where, immediately before the establishment day, any legal proceedings are pending to which the Minister is a defendant and the proceedings have reference to any functions transferred to the Commission by this section, the Commission shall not be substituted for the Minister in those proceedings notwithstanding the transfer of functions under this Act.

(7) Every document (including any certificate or licence) granted or made in the exercise of a function transferred by this section shall, if and in so far as it was operative immediately before the establishment day, have effect on and after that day as if it had been granted or made by the Commission.

13.—(1) Subject to *subsection (3)*, the Minister may, after consultation with the Minister for Finance, give such general policy directions in writing to the Commission in relation to its functions as he or she considers appropriate.

Policy directions by
Minister to
Commission.

(2) The Commission shall comply with any direction given under *subsection (1)*.

(3) The Minister shall not give directions under *subsection (1)* in relation to any particular case with which the Commission is or may be concerned.

(4) The Minister shall lay a copy of any direction given by him or her under *subsection (1)* before each House of the Oireachtas.

(5) The Minister may give policy or other guidelines to the Commission in relation to its functions as he or she considers appropriate and the Commission shall have regard to the guidelines when performing such functions.

(6) The Minister shall lay a copy of any guidelines given by him or her under *subsection (5)* before each House of the Oireachtas.

14.—(1) The Commission shall consist of at least one but not more than 3 members.

(2) Each member of the Commission shall be known as a Commissioner for Railway Safety and is in this Act referred to as a “commissioner”.

(3) The person who holds, immediately before the establishment day, the position of Chief Railway Inspecting Officer of the Minister, shall, subject to his accepting such period for his holding office on such terms and conditions as fixed under *subsection (5)*, on the establishment day, become and be a commissioner and is deemed appointed under this subsection.

(4) A commissioner (other than the person referred to in *subsection (3)*) shall be appointed by the Minister.

(5) A commissioner shall be appointed to hold office in a full-time capacity for a period of not less than 3 years and not more than 7 years on such terms and conditions, including remuneration, as the Minister, with the consent of the Minister for Finance, may fix.

(6) Where there is more than one commissioner, the Minister shall appoint one of them to be chairperson of the Commission on such terms and conditions, including remuneration, as the Minister may fix, with the consent of the Minister for Finance, to hold office in a full-time capacity for a period of not less than 3 and not more than 7 years.

(7) The chairperson shall have a casting vote in the case of decisions to be taken by the Commission in the event of a tied vote.

(8) Where the chairperson is unavailable to perform his or her duties, he or she, or if he or she is unable to do so, the Minister, shall appoint a commissioner to be an acting chairperson to assume the duties of the chairperson for a defined period not exceeding 12 months.

(9) With the exception of the person appointed under *subsection (3)*, a person shall not be appointed as a commissioner unless the Public Appointments Service, after holding a competition on behalf of the Commission, have selected him or her for appointment as a commissioner.

(10) A commissioner, including the chairperson, whose term of office expires by effluxion of time shall be eligible for re-appointment to serve a second term, subject to a limit of serving no more than 12 years on the Commission.

(11) A commissioner shall not be entitled to serve more than 2 terms of office.

(12) A commissioner may—

- (a) at any time resign his or her office by letter addressed to the Minister and the resignation shall take effect from the date specified therein or upon the date of receipt of the letter, whichever is the later, and
- (b) be removed from office by the Minister if, in his or her opinion, the member has become incapable through ill-health of effectively performing his or her duties or for stated misbehaviour and the Minister shall cause to be

laid before each House of the Oireachtas a statement of the reasons for such removal.

(13) The Commission may act notwithstanding a vacancy in its membership.

(14) A commissioner shall not hold any other office or employment in respect of which emoluments are payable.

(15) A commissioner shall not, for a period of 12 months following his or her resignation, removal or retirement from the office of commissioner, accept any office, consultancy or employment, where he or she could or might use or disclose information of a confidential or commercially sensitive nature acquired by him or her in the exercise of the functions of the Commission.

(16) Notwithstanding *subsection (15)*, a person who was a commissioner shall not be precluded from holding office or engagement in any employment in the Civil Service or any statutory regulatory body or from acting as a consultant to the Commission, the Minister or any other Minister of the Government on the basis that the period referred to in that subsection has not expired.

(17) No action or other proceedings shall lie or be maintainable (except in the case of wilful neglect or default) against any commissioner arising from a failure to perform or to comply with any of the functions conferred on the Commission by this Act.

15.—(1) The Commission may, subject to the consent of the Minister and the Minister for Finance, appoint such and so many persons to be members of its staff as it considers necessary to assist it in the performance of its functions.

Staff of
Commission.

(2) The terms and conditions, including terms and conditions as to remuneration and grading, of persons appointed under *subsection (1)* shall be determined by the Minister with the consent of the Minister for Finance.

(3) The Commission may perform such of its functions as it may deem proper through or by any member of its staff.

16.—(1) The Minister—

(a) shall designate his or her officers recruited specifically for transfer to the Commission, and

(b) may designate such and so many of his or her officers who are Railway Inspecting Officers,

Transfer of staff
from Minister to
Commission.

to be transferred to the Commission.

(2) An officer of the Minister designated under *subsection (1)* shall be transferred to and become a member of the staff of the Commission on the establishment day.

(3) Save in accordance with a collective agreement negotiated with any recognised trade unions and staff associations concerned, an officer of the Minister transferred to the staff of the Commission under *subsection (2)* shall not, while he or she is in the service of the Commission, receive a lesser scale of pay or be made subject to less beneficial terms and conditions of service (including those relating

to tenure of office) than the scale of pay to which he or she was entitled or the terms and conditions of service (including those relating to tenure of office) to which he or she was subject immediately before his or her transfer.

(4) In relation to persons transferred in accordance with *subsection (2)* to the staff of the Commission, previous service in the Civil Service shall be reckonable for the purposes of, but subject to any exceptions or exclusions in—

- (a) the Redundancy Payments Acts 1967 to 2003,
- (b) the Minimum Notice and Terms of Employment Acts 1973 to 2001,
- (c) the Unfair Dismissals Acts 1977 to 2001,
- (d) the Terms of Employment (Information) Act 1994,
- (e) the Organisation of Working Time Act 1997, and
- (f) the Worker Protection (Regular Part-Time Employees) Act 1991.

Deputy member of Commission.

17.—(1) The Commission shall designate a member of its staff as a deputy member of the Commission (“deputy commissioner”) who shall assume and carry out all of the functions of the Commission in the absence of all members of the Commission or when the membership of the Commission is vacant.

(2) Subject to *subsection (3)*, a designation under *subsection (1)* shall be for a period not exceeding 12 months and on the expiry of the period the Commission shall—

- (a) renew the designation of the member of staff concerned, or
- (b) designate another member of staff to be the deputy commissioner.

(3) A designation under this section may be revoked at any time by the Commission.

Consultants and advisers.

18.—The Commission may, from time to time, engage such consultants or advisers as it may consider necessary to assist it in the discharge of its functions and any fees due to a consultant or adviser engaged under this section shall form part of the expenses of the Commission.

Membership of House of Oireachtas, European Parliament and local authorities.

19.—(1) Where a commissioner—

- (a) accepts nomination as a member of Seanad Éireann,
- (b) is elected as a member of either House of the Oireachtas or as a representative in the European Parliament,
- (c) is regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy, or

(d) becomes a member of a local authority,

he or she shall thereupon cease to be a commissioner.

(2) Where a member of the staff of the Commission—

(a) accepts nomination as a member of Seanad Éireann,

(b) is elected as a member of either House of the Oireachtas or as a representative in the European Parliament, or

(c) is regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to the European Parliament to fill a vacancy,

he or she shall thereupon stand seconded from his or her employment by the Commission and shall not be paid by, or be entitled to receive from, the Commission remuneration or allowances in respect of the period commencing on such nomination or election or when he or she is so regarded as having been elected, as the case may be, and ending when he or she ceases to be a member of either such House or such Parliament.

(3) A person who is, for the time being, entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament shall, while he or she is so entitled or is such a member, be disqualified from becoming a commissioner or a member of the staff of the Commission.

(4) A person who is a member of a local authority shall be disqualified from becoming a commissioner while he or she is a member of such local authority.

(5) The Commission shall not employ or otherwise retain in any capacity a person who would otherwise be disqualified under this section from becoming a commissioner while that person would be so disqualified.

(6) Without prejudice to the generality of *subsection (2)*, that subsection shall be construed as prohibiting, among other things, the reckoning of a period mentioned in that subsection as service with the Commission for the purposes of any superannuation benefits.

20.—(1) Where a commissioner, a member of the staff of the Commission, or a consultant, adviser or other person engaged by the Commission, has a pecuniary interest or other beneficial interest in, or material to, any matter which falls to be considered by the Commission, he or she shall—

Disclosure of Interests.

(a) disclose to the Commission and in the case of disclosure by a commissioner where there is only one commissioner, that commissioner shall disclose to the Minister, the nature of his or her interest in advance of any consideration of the matter,

(b) neither influence nor seek to influence a decision in relation to the matter,

(c) take no part in any consideration of the matter, unless there are compelling reasons requiring him or her to do so,

- (d) if he or she is a commissioner, withdraw from a meeting of the Commission for so long as the matter is being discussed or considered by the Commission, and unless there are compelling reasons requiring him or her to do so, shall not vote or otherwise act in relation to the matter, and
- (e) prepare and furnish in advance to the Commission or Minister, as appropriate, a statement in writing of the compelling reasons aforesaid.

(2) For the purposes of this section, but without prejudice to the generality of *subsection (1)*, a person shall be regarded as having a beneficial interest if—

- (a) he or she or any connected relative, or any nominee of his or her or any connected relative, is a member of an undertaking or any other body which has a beneficial interest in, or material to, a matter referred to in that subsection,
- (b) he or she or any connected relative is in partnership with or is in the employment of a person who has a beneficial interest in, or material to, such a matter,
- (c) he or she or any connected relative is a party to any arrangement or agreement (whether or not enforceable) concerning land to which such a matter relates, or
- (d) any connected relative has a beneficial interest in, or material to, such a matter.

(3) In *subsection (2)*, “connected relative” means, in relation to a person to whom that subsection applies, the person’s spouse or partner, parent, brother, sister, child or a child of a spouse or partner.

(4) For the purposes of this section, a person shall not be regarded as having a beneficial interest in, or material to, any matter, by reason only of an interest of his or her or of any undertaking or of any other body or person mentioned in *subsection (2)* which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering, discussing or in voting on, any question with respect to the matter, or in performing any function in relation to that matter.

(5) Where a question arises as to whether or not a course of conduct, if pursued by a person, would be a failure by him or her to comply with the requirements of *subsection (1)*, the question shall be determined by the Commission or, where there is only one commissioner, in the case of that commissioner, by the Minister.

(6) Particulars of the determination under *subsection (5)* shall be recorded by the Commission in the minutes of the meeting concerned or by the Minister by letter addressed to the Commission.

(7) Where a disclosure is made to the Commission or the Minister pursuant to *subsection (1)*, particulars of the disclosure shall be recorded in the minutes of any meeting concerned or by the Minister by letter addressed to the Commission.

(8) Where a person referred to in this section, other than a commissioner, fails to make a disclosure in accordance with this section,

the Commission shall decide the appropriate action (including removal from office or termination of contract) to be taken.

(9) Where a commissioner fails to make a disclosure in accordance with this section, the Minister shall decide the appropriate action (including removal from office) to be taken.

21.—(1) Save as otherwise provided by law, a person shall not disclose confidential information obtained by him or her while performing duties as a commissioner, member of staff or an adviser or consultant to the Commission, unless he or she is duly authorised by the Commission to do so.

Disclosure of confidential information.

(2) In this section, “duly authorised” means authorised by the Commission or by some person authorised in that behalf by the Commission for the purposes of this section.

(3) A person who contravenes *subsection (1)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 3 months, or to both.

(4) (a) In this section, “confidential information” means that which is expressed by the Commission to be confidential either as regards particular information or as regards information of a particular class or description.

(b) In expressing information to be confidential, the Commission shall have regard to the requirement to protect information of a confidential commercial nature.

(5) Nothing in *subsection (1)* shall prevent the disclosure of information in a report made by or on behalf of the Commission to the Minister.

(6) The Third Schedule to the Freedom of Information Act 1997 is amended by the insertion in Part I at the end thereof:

(a) in column (2) of “*Railway Safety Act 2005*”, and

(b) in column (3) of “*Section 21(1)*”.

22.—(1) The Minister shall, with the consent of the Minister for Finance, make a scheme or schemes for the granting of superannuation benefits to or in respect of a commissioner ceasing to hold office.

Superannuation for members of Commission.

(2) Every scheme made under this section shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme and different times and conditions may be fixed in respect of different classes of persons.

(3) The Minister may, with the consent of the Minister for Finance, make a scheme amending or revoking a scheme under this section, including a scheme under this subsection.

(4) If any dispute arises as to the claim of a commissioner to, or the amount of, any pension, gratuity or other allowance payable in

pursuance of a scheme under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance for determination by him or her.

(5) A scheme under this section shall be carried out by the Minister in accordance with its terms.

(6) No pension, gratuity or other allowance shall be granted by the Minister to or in respect of any commissioner ceasing to hold office otherwise than in accordance with a scheme under this section or as otherwise may be approved of by the Minister with the consent of the Minister for Finance.

(7) A scheme under this section shall be laid before each House of the Oireachtas by the Minister as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Superannuation for staff of Commission.

23.—(1) The Commission shall prepare and submit to the Minister a scheme or schemes for the granting of superannuation benefits to or in respect of such members of the staff of the Commission, including the deputy commissioner, as it may think fit.

(2) Every scheme made under this section shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme and different times and conditions may be fixed in respect of different classes of persons.

(3) Every scheme made under *subsection (1)* may, with the consent of the Minister for Finance, be amended or revoked by a subsequent scheme prepared, submitted and approved under *subsection (1)*.

(4) A scheme made under *subsection (1)* submitted by the Commission to the Minister shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the Commission in accordance with its terms.

(5) No superannuation benefits shall be granted by the Commission nor shall any other arrangements be entered into by the Commission for the provision of such a benefit to or in respect of a member of the staff of the Commission otherwise than in accordance with a scheme under *subsection (1)* or otherwise as may be approved of by the Minister with the consent of the Minister for Finance.

(6) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit payable in pursuance of a scheme or schemes under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance for determination by him or her.

(7) A scheme under this section shall be laid before each House of the Oireachtas by the Commission as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

(8) Superannuation benefits granted under schemes under this section to persons who, immediately before the establishment day, were officers of the Minister and the terms and conditions relating to those benefits shall not be less favourable to those persons than those to which they were entitled immediately before that day.

(9) Where, in the period beginning on the establishment day and ending immediately before the commencement of a scheme under this section, a superannuation benefit falls due for payment to or in respect of a person who was transferred to the staff of the Commission under *section 16*, the benefit shall be calculated by the Commission in accordance with such scheme, or such enactments in relation to superannuation, as applied to the person immediately before the establishment day and, for that purpose, his or her pensionable service with the Commission shall be aggregated with his or her previous pensionable service and shall be paid by the Commission.

24.—(1) The Minister may make available to the Commission, on a request being made by the Commission, such staff, premises, equipment, services and other resources as the Minister may determine from time to time in consultation with the Minister for Finance.

Resources made available by Minister.

(2) The Commission shall, on request from the Minister, pay to the Minister such sum or sums as the Minister may specify to be the expenses incurred by the Minister in making available to the Commission such staff, premises, equipment, services and other resources under *subsection (1)*.

(3) Where the Minister makes available to the Commission under *subsection (1)* any officer of the Minister, other than an officer referred to in *section 14(3)* or *section 16(1)*, that officer shall remain an officer of the Minister and shall not be considered to be a member of the staff of the Commission save for the purpose of obligations under *sections 20* and *21*.

(4) An officer of the Minister, other than an officer referred to in *section 14(3)* or *section 16(1)*, shall not be made available to the Commission under *subsection (1)* for any period exceeding 2 years.

25.—In each financial year there may be paid to the Commission out of moneys provided by the Oireachtas a grant of such amount as the Minister, with the consent of the Minister for Finance and after consultation with the Commission in relation to its likely work programme and expenditure for a financial year, may sanction towards the expenses of the Commission in the performance of its functions.

Grants to Commission.

26.—(1) Subject to *subsection (2)*, for the purpose of meeting expenses properly incurred by the Commission in the discharge of its functions under this Act, the Commission, with the consent of the Minister and the Minister for Finance, may make regulations imposing a levy (“levy”) to be paid each year by such classes of railway undertakings as may be specified by the Commission in the regulations.

Levy.

(2) The Commission shall not impose levy before 31 December 2007.

(3) Regulations made under *subsection (1)* may provide for the following—

- (a) rates of levy payable,
- (b) the keeping of records and the making of returns by persons liable to pay levy,
- (c) the collection and recovery of levy,
- (d) exemption from levy, and
- (e) such other matters as are necessary or incidental to the procurement of the payment of levy.

(4) Levy shall be payable to the Commission at such time and at such rates as may be prescribed in regulations made by the Commission under *subsection (1)* and different rates may be prescribed in respect of different classes of railway undertakings liable to pay levy, and such regulations may provide for an exemption from payment of levy for railway undertakings whose operating revenue is below a threshold prescribed in the regulations.

(5) Any increase in levy may only take effect in the year after the year in which the increase is made in regulations.

(6) The Minister may, with the consent of the Minister for Finance, direct the Commission to pay into the Central Fund or the growing produce thereof, such sum as he or she may specify, being a sum that represents the amount by which the gross income received by the Commission in each financial year exceeds the gross expenditure incurred in the administration of its office in that year.

(7) The Commission may recover, as a simple contract debt in any court of competent jurisdiction, from any person by whom it is payable any amount due and owing to it under this section.

Borrowings.

27.—The Commission may, for the purpose of the performance of its functions, borrow money (whether on the security of its assets or otherwise), including money in a currency other than the currency of the State, but shall not do so without the consent of the Minister and the Minister for Finance.

Accounts and annual report of Commission.

28.—(1) The Commission shall keep in such form and in respect of such accounting periods as may be approved of by the Minister, with the consent of the Minister for Finance, all proper and usual accounts of moneys received or expended by it, including an income and expenditure account and a balance sheet.

(2) Accounts kept in pursuance of this section shall be submitted, not later than three months after the end of the financial year to which they relate, by the Commission to the Comptroller and Auditor General for audit and, immediately after the receipt of the Comptroller and Auditor General's report on the accounts, a copy of the income and expenditure account, the balance sheet and of such other (if any) accounts kept pursuant to this section as the Minister, after consultation with the Minister for Finance, may direct and a copy of the Comptroller and Auditor General's report on the accounts shall be presented to the Minister who shall cause copies thereof to be laid before each House of the Oireachtas.

(3) As soon as practicable, but not later than 3 months after the end of each financial year, the Commission shall, in writing, report to the Minister in relation to the performance of its functions in that

year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas within 3 months of its receipt by him or her.

(4) The Minister may give directions in writing to the Commission in regard to the format and content of a report under *subsection (3)*, but such directions shall not require the Commission to include in such report details which could, in the opinion of the Commission, be prejudicial to the performance of its functions.

(5) The Commission shall give to the Minister such information relating to the performance of its functions as the Minister may request provided that such information would not, in the opinion of the Commission, be prejudicial to the performance of its functions.

(6) The financial year of the Commission shall be the period of 12 months ending on 31 December in any year and, for the purposes of this section and *section 25*, the period commencing on the establishment day and ending on the following 31 December shall be deemed to be a financial year.

29.—(1) The Commission shall adopt and submit to the Minister a statement of strategy within 6 months of the establishment day and at least every 3 years from the submission date of the first statement.

Statement of strategy.

(2) The statement of strategy shall—

- (a) comprise the key objectives, outputs and related strategies, including use of resources, of the Commission,
- (b) be prepared in a form and manner in accordance with any directions issued from time to time by the Minister, and
- (c) have regard to the need to ensure the most beneficial, effective and efficient use of the resources of the Commission.

(3) The Commission shall publish a statement of strategy adopted by it and shall lay a copy before each House of the Oireachtas.

30.—Subject to *sections 28* and *60*, the Commission may publish any reports on matters related to its functions.

Publication of reports of Commission.

31.—(1) The commissioner, or where there is more than one commissioner, the chairperson of the Commission shall, whenever required by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, attend before and give evidence to that Committee on—

Accountability of Commission to Committees of Oireachtas.

- (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General which the Commission is required by or under statute to prepare,
- (b) the economy and efficiency of the Commission in the use of its resources,

- (c) the systems, procedures and practices employed by the Commission for the purpose of evaluating the effectiveness of its operations, and
- (d) any matter affecting the Commission referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann.

(2) From time to time, and whenever so requested, the Commission shall account for the performance of its functions to a Committee of one or both Houses of the Oireachtas and shall have regard to any recommendations of such Committee relevant to its functions.

Premises of Commission.

32.—The Commission may, for the purposes of providing premises necessary for the performance of its functions, purchase, lease, equip and maintain offices and premises with the consent of the Minister and the Minister for Finance.

Seal of Commission.

33.—(1) The Commission shall, as soon as may be after its establishment, provide itself with a seal.

(2) The seal shall be authenticated by the signature of—

- (a) a commissioner, or
- (b) a member of the staff of the Commission, authorised by the Commission to act in that behalf.

(3) Judicial notice shall be taken of the seal of the Commission and every document purporting to be an instrument made by and to be sealed with the seal of the Commission (purporting to be authenticated in accordance with this section) shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.

Commission to keep itself informed on certain matters.

34.—(1) The Commission shall keep itself informed of the policies, objectives, resolutions and guidelines of any public authority the functions of which have, or may have, a bearing on the matters with which the Commission is concerned.

(2) In this section, “public authority” means the Minister, the Commission of the European Communities and any other public authority inside or outside the State which, in the opinion of the Commission, has functions that have, or may have, a bearing on matters with which the Commission is concerned.

Provision of services.

35.—The Commission may provide services (including services of staff) to the Minister on such terms and conditions (including payment for such services) as may be agreed and the Minister may avail of such services.

PART 3

GENERAL DUTIES OF RAILWAY UNDERTAKINGS, PERSONS WORKING ON RAILWAYS AND OTHER PERSONS

36.—It shall be the general duty of a railway undertaking to ensure, in so far as is reasonably practicable, the safety of persons in the operation of its railway.

General duties of railway undertakings.

37.—(1) It shall be the general duty of a person working in the course of the operation of a railway undertaking, and of any person being on a railway or railway premises or railway land or on a train, to conduct himself or herself in such a way as to ensure in so far as is reasonably practicable that no person (including himself or herself) is exposed to danger as a consequence of any act or omission of his or hers.

General duties of persons working on railways and other persons.

(2) It shall be the general duty of a person working in the course of the operation of a railway undertaking, while on duty, not to be under the influence of an intoxicant to such an extent as to expose a person (including himself or herself) to danger or risk of danger as a consequence of being under such influence.

(3) It shall be the general duty of every person, in carrying out any activity on or near a railway or railway premises or railway land, to ensure in so far as is reasonably practicable that no person who is involved in the operation of a railway or who is being carried on a railway is exposed to danger as a consequence of any act or omission on the part of such person.

PART 4

SAFETY MANAGEMENT SYSTEMS AND SAFETY CASE

38.—This Part shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes and different provisions.

Commencement (Part 4).

39.—(1) For the purpose of complying with its duty under *section 36*, a railway undertaking shall implement a safety management system and shall prepare a document (“safety case”) describing the components of such safety management system.

Safety management systems and safety case.

(2) A safety case shall achieve the following two objectives—

- (a) it shall demonstrate that the railway undertaking has the ability to properly assess and effectively control risks to the safety of persons, in compliance with its general duty under *section 36*, and
- (b) it shall provide a working document by which the railway undertaking and the Commission can ensure that the safety systems described in the safety case are being properly implemented and continue to be maintained.

(3) To achieve the objectives referred to in *subsection (2)*, a safety case shall contain at least the following components—

- (a) a general description of the operations, or proposed operations, of the railway undertaking,
- (b) a statement of the safety objectives and safety policy of the railway undertaking,
- (c) an identification of the hazards arising from the operations of the railway undertaking, an assessment of the risks and details of the measures in place or proposed to mitigate such risks,
- (d) the management and organisational arrangements necessary for the implementation and management of railway safety, and
- (e) arrangements for monitoring, audit, and consequent review and revision of the safety case.

(4) The Commission may prepare and, after consultation with the Council, railway undertakings and such other persons as in the opinion of the Commission may be relevant, publish guidelines, from time to time, on the appropriate contents of a safety case and on appropriate technical principles and specifications, and a railway undertaking shall, for the purposes of complying with its duty under *section 36*, in preparing a safety case or a revision to a safety case, and for the purposes of complying with *sections 42* and *43*, have regard to such guidelines.

(5) A safety case shall be submitted to the Commission in accordance with *section 45* for acceptance by the Commission in accordance with *section 46*.

(6) A railway undertaking shall consult with its staff and staff representatives in the preparation of a safety case.

(7) A safety case shall contain the title and office address of one person in a senior management position within the railway undertaking who is responsible for ensuring, and has sufficient authority to ensure, that the undertaking implements the provisions of its safety case.

Co-operation
between railway
undertakings.

40.—(1) Where the railway infrastructure of a railway undertaking is used by another railway undertaking to operate trains or where the activities of one railway undertaking may affect the safe operation of another railway undertaking, the railway undertakings concerned shall agree systems and procedures to ensure compliance with the duty imposed on each of them by *section 36*.

(2) Railway undertakings shall co-operate with each other and provide to each other, without undue delay, all information reasonably required by the other party to enable the agreement in *subsection (1)* to be made.

(3) The Commission may give a direction to a railway undertaking requiring it to make an agreement under *subsection (1)* or to co-operate with another railway undertaking under *subsection (2)* and the railway undertaking shall comply with such direction.

(4) A railway undertaking may only refuse to give its agreement under *subsection (1)* where to give such agreement, in its reasonable opinion, would be failing in its duty under *section 36*.

(5) An agreement under *subsection (1)* shall form a separate part of the safety case of each relevant railway undertaking.

(6) An agreement under this section shall include provisions for—

- (a) monitoring, reviewing and updating of the agreement, and
- (b) procedures for dealing with alleged non-compliance by any of the parties involved in the agreement.

(7) A railway undertaking shall not operate trains on the railway infrastructure of another railway undertaking, and an operator of railway infrastructure shall not give permission for such trains to operate, unless all parties have an agreement in accordance with *subsection (1)* and the safety case of each relevant railway undertaking has been accepted by the Commission in accordance with *section 46*.

(8) *Subsection (7)* does not apply to a railway undertaking which operates a railway service immediately before the commencement of this section in respect of the period specified in *sections 45(1)* and *46(8)*.

(9) Where a railway undertaking is contravening *subsection (7)*, the Commission may give a direction to it to cease operating its trains on the railway infrastructure of the other railway undertaking.

(10) A railway undertaking shall comply with a direction of the Commission given to it under this section.

(11) Where the Commission proposes to give a direction under this section, 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.

(12) Where the Commission decides to give a direction under this section, the railway undertaking concerned may, within 21 days of notification of the decision, appeal to the High Court and the direction 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.

(13) On hearing an appeal under *subsection (12)*, the Court may either confirm or vary the decision of the Commission or allow the appeal.

(14) A decision of the High Court on an appeal under *subsection (12)* 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.

(15) A railway undertaking which, without reasonable excuse, fails to comply with a direction of the Commission under this section is guilty of an offence and is liable—

- (a) on summary conviction, to a fine not exceeding €3,000, or
- (b) on conviction on indictment, to a fine not exceeding €500,000.

41.—(1) A railway undertaking first established in another Member State (“foreign railway”) which operates or proposes to operate an international service using only the infrastructure of another railway undertaking first established in the State, is deemed to have met the requirements of *section 39* where—

- (a) it has implemented a safety management system in compliance with the national requirements of the other Member State,
- (b) it holds a valid safety certificate issued by the relevant competent authority in that other Member State, where it is required by that other Member State to do so, and
- (c) it has an agreement under *section 40(1)* with the railway undertaking first established in the State.

(2) A copy of a safety certificate or other evidence of compliance, as the case may be, issued or given to a foreign railway by the relevant competent authority of another Member State and a copy of any agreement under *section 40(1)* between the foreign railway and a railway established in the State, together with any such other information as may be required by the Commission for the purposes of *section 46(2)*, is deemed to be a safety case for the purposes of this Part.

(3) A safety certificate issued to a foreign railway shall specify that the safety certificate is in respect of that element of the international service within the State only.

(4) A reference to an amendment to, a revision of, audit of, or compliance with a safety case in this Act shall, in respect of a foreign railway, be construed as an amendment to, revision of, audit of, or compliance with the agreement under *section 40(1)* and of such other information provided by the railway undertaking under *subsection (2)*.

(5) A foreign railway which is applying for a safety certificate in respect of that element of an international service within the State, shall provide to the Commission a copy of the safety case accepted by the competent authority of the other Member State or where no safety case was or is required by the other Member State, such documentary evidence of its safety management system as the Commission may direct.

(6) In this section “Member State” means a Member State of the European Communities.

42.—(1) A railway undertaking shall not commence construction, installation or assembly of new works unless—

- (a) it has submitted a safety assessment (referred to in this section as a “new works assessment”) to the Commission in such form and containing such information—
 - (i) as it considers appropriate to show to the satisfaction of the Commission the safety of the new works, or
 - (ii) as the Commission may set out in guidelines published in accordance with *section 39(4)*,

and

- (b) the Commission has issued a communication under *subsection (4)*.

(2) Where the Commission considers that the information provided in a new works assessment, or in a revised new works assessment under *subsection (3)*, is not adequate, or the Commission is not satisfied—

- (a) that the proposed method of construction, installation or assembly is adequate to ensure, in so far as reasonably practicable, the safety of persons during that construction, installation or assembly, or
- (b) as to the expected operational safety of the new works,

the Commission shall serve a written notice to that effect on the railway undertaking and that notice shall set out the reasons for the Commission's decision to serve the notice.

(3) A railway undertaking in receipt of a notice under *subsection (2)* may submit a revised new works assessment which addresses the matters raised in such notice.

(4) Where, on the basis of the information contained in a new works assessment or in a revised new works assessment under *subsection (3)*, the Commission is satisfied—

- (a) that the proposed method of construction, installation or assembly is adequate to ensure, in so far as reasonably practicable, the safety of persons during that construction, installation or assembly, and
- (b) as to the expected operational safety of the new works,

the Commission shall communicate in writing its acceptance of a new works assessment to the railway undertaking concerned.

(5) A railway undertaking shall obtain the consent of the Commission before bringing into operation the completed new works.

(6) A railway undertaking shall, within 21 days of receipt of a communication under *subsection (4)*, amend its safety case to reflect the implications of the new works assessment.

(7) The Commission may at its discretion give a general or specific exemption from the requirements of this section where, in the opinion of the Commission, the new works are similar to works of a railway undertaking which are already in operation and where the safety case of the railway undertaking would not require revision when the new works are being brought into operation.

(8) A railway undertaking shall not commence commissioning of a new railway line or an addition to an existing railway line until—

- (a) it has provided such information to the Commission, as may be specified by the Commission in any individual case, that, for the purposes of commissioning, demonstrates to the satisfaction of the Commission—
 - (i) the safety and suitability of the railway line, and
 - (ii) the adequacy of the systems and procedures to ensure safety of persons,

and

(b) the Commission has given its consent to such commissioning.

(9) The Commission may, where it considers it appropriate to do so, direct a railway undertaking to engage a suitably qualified person to independently assess a new works assessment or a revised new works assessment and the report of such person shall be submitted to the Commission at the same time as the submission under *subsection (1)* or *subsection (3)*.

(10) Where a railway undertaking has altered its new works assessment on the basis of the report of a person engaged in accordance with *subsection (9)*, a statement of the actions taken by the railway undertaking in response to the report, together with the report of the person and the new works assessment as amended, shall be submitted to the Commission.

(11) It shall be the duty of the Commission to ensure that it carries out its functions under this section as expeditiously as may be, and for that purpose, to take all such steps as are open to it to ensure that, in so far as is practicable, there are no avoidable delays at any stage in its performance of its functions under this section.

(12) Without prejudice to the generality of *subsection (11)*, and subject to *subsection (9)*, it shall be the objective of the Commission to ensure that it issues a notice under *subsection (2)* or a communication under *subsection (4)* within—

- (a) 28 days, beginning on the date of receipt by the Commission of a new works assessment or a revised new works assessment or receipt of all information or clarifications requested under *subsection (13)*, or
- (b) such other period as the Minister may specify by order, after consultation with the Commission and railway undertakings.

(13) The Commission may, for the purpose of carrying out its functions under this section, request any additional information or clarifications from a railway undertaking and the undertaking shall comply with such a request.

(14) A railway undertaking which does not comply with this section is guilty of an offence and is liable—

- (a) on summary conviction, to a fine not exceeding €3,000, or
- (b) on conviction on indictment, to a fine not exceeding €500,000.

(15) In this section, “new works” means new or material changes to railway infrastructure of operational significance, including, for the avoidance of doubt, railway lines or additions to existing railway lines, bridges and structures, stations or other buildings required to operate or maintain railways, level crossings and signalling systems or such other works as may, by order, be specified by the Minister, after consultation with the Commission and railway undertakings.

(16) Where a railway undertaking proposes to replace the gates at a specific level crossing with barriers, lights or other automatic devices or appliances, and

- (a) it has submitted a new works assessment in respect of those works which has been accepted by the Commission under *subsection (4)*, or
- (b) where the Commission has given a generic or specific exemption under *subsection (7)* in respect of such works,

any obligations to make or maintain gates at that crossing do not apply.

(17) Subject to *subsection (18)*, section 23 of the Transport (Miscellaneous Provisions) Act 1971 applies to works under *subsection (16)* as if those works had been required by an order under section 22 of that Act.

(18) *Subsection (17)* does not apply to a level crossing to which section 47 of the Railway Clauses Consolidation Act 1845 or section 6 of the Railway Clauses Act 1863 applies.

43.—(1) A railway undertaking shall not bring into operation new rolling stock unless— Safety assessment of new rolling stock.

- (a) it has submitted a safety assessment (referred to in this section as a “new rolling stock assessment”) to the Commission containing such information—
 - (i) as it considers appropriate to demonstrate to the satisfaction of the Commission the safety of the new rolling stock, or
 - (ii) as the Commission may set out in guidelines published in accordance with *section 39(4)*,
 and
- (b) the Commission has issued a communication under *subsection (4)*.

(2) Where the Commission considers that the information provided in the new rolling stock assessment is not adequate or that the bringing into operation of the new rolling stock does not provide reasonable assurance of safety, the Commission shall serve a written notice to that effect on the railway undertaking and that notice shall set out the reasons for the Commission’s decision to serve the notice.

(3) A railway undertaking in receipt of a notice under *subsection (2)* may submit a revised new rolling stock assessment which addresses the matters raised in such notice.

(4) Where the Commission is satisfied as to the safety of the new rolling stock on the basis of the information contained in a new rolling stock assessment or a revised new rolling stock assessment under *subsection (3)*, the Commission shall communicate in writing its acceptance of the new rolling stock assessment to the railway undertaking.

(5) A railway undertaking shall, within 21 days of receipt of a communication under *subsection (4)*, amend the safety case to reflect the implications of the new rolling stock assessment.

(6) The Commission may at its discretion give a general or specific exemption from the requirements of this section where, in the

opinion of the Commission, the new rolling stock is similar in nature to rolling stock of the railway undertaking which is already in operation and where the safety case of the railway undertaking would not require revision when the new rolling stock is being brought into operation.

(7) A railway undertaking shall not commence commissioning of new rolling stock until—

(a) it has provided such information to the Commission, as may be specified by the Commission in any individual case, that, for the purposes of commissioning, demonstrates to the satisfaction of the Commission—

(i) the safety and suitability for purpose of the rolling stock, and

(ii) the adequacy of the systems and procedures to ensure safety of persons,

and

(b) the Commission has given its consent to such commissioning.

(8) The Commission may, where it considers it appropriate to do so, direct a railway undertaking to engage a suitably qualified person to independently assess a new rolling stock assessment or a revised rolling stock assessment and the report of such person shall be submitted to the Commission at the same time as the submission under *subsection (1)* or *subsection (3)*.

(9) Where a railway undertaking has altered its new rolling stock assessment on the basis of the report of a person engaged in accordance with *subsection (8)*, a statement of the actions taken by the railway undertaking in response to the report, together with the report of the person and the new rolling stock assessment as amended, shall be submitted to the Commission.

(10) It shall be the duty of the Commission to ensure that it carries out its functions under this section as expeditiously as may be, and for that purpose, to take all such steps as are open to it to ensure that, in so far as is practicable, there are no avoidable delays at any stage in its performance of its functions under this section.

(11) Without prejudice to the generality of *subsection (10)*, and subject to *subsection (8)*, it shall be the objective of the Commission to ensure that it issues a notice under *subsection (2)* or a communication under *subsection (4)* within—

(a) 28 days, beginning on the date of receipt by the Commission of a new rolling stock assessment or a revised new rolling stock assessment or receipt of all information or clarifications requested under *subsection (12)*, or

(b) such other period as the Minister may specify by order, after consultation with the Commission and railway undertakings.

(12) The Commission may, for the purpose of carrying out its functions under this section, request any additional information or clarifications from a railway undertaking and the undertaking shall comply with such a request.

(13) A railway undertaking which does not comply with this section is guilty of an offence and is liable—

- (a) on summary conviction, to a fine not exceeding €3,000, or
- (b) on conviction on indictment, to a fine not exceeding €500,000.

(14) In this section, “new rolling stock” includes material alterations to existing rolling stock of a railway undertaking and rolling stock which may have been in prior use but was not previously operated on the railway infrastructure of the relevant railway undertaking.

44.—(1) Where ownership of a railway undertaking or a right to operate a railway is proposed to be transferred from one railway undertaking to another railway undertaking, the latter undertaking shall immediately notify the Commission in writing of the proposed transfer and provide details of the proposed ownership and organisational structure to the Commission together with a statement specifying the principal changes which it intends to make to the safety case of the first-mentioned undertaking. Transfer of ownership.

(2) A railway undertaking to which ownership of another railway undertaking or rights to operate a railway has transferred shall, within a period of 3 months of such transfer or such other period exceeding 3 months as may be specified by the Commission in any particular case, submit a new safety case in accordance with *section 39*.

(3) In the period between the date of such transfer referred to in *subsection (2)* and the acceptance of the new safety case by the Commission, the railway undertaking to which ownership or rights has transferred shall, in respect of the assets or rights transferred and where it continues to operate the railway services or infrastructure transferred, ensure compliance with the statement under *subsection (1)* and with the safety case of the first-mentioned railway undertaking in so far as it has not been changed:

Provided that—

- (a) the railway undertaking to which the ownership or rights has transferred complies with its general duty under *section 36*,
- (b) the Commission has in the circumstances given its approval to the continued operation of the railway services or infrastructure, and
- (c) the railway undertaking complies with any directions given in writing by the Commission.

(4) A railway undertaking from which ownership or rights are transferring shall provide its safety case and all other relevant information to the new railway undertaking to enable the new railway undertaking to comply with this section.

(5) Where a railway undertaking fails to comply with this section, the Commission may give a direction to it to comply with this section.

(6) Where the Commission proposes to give a direction under this section, 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.

(7) Where the Commission decides to give a direction under this section, the railway undertaking concerned may, within 21 days of notification of the decision, appeal to the High Court and the direction 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.

(8) On hearing an appeal under *subsection (7)*, the court may either confirm or vary the decision of the Commission or allow the appeal.

(9) A decision of the High Court on an appeal under *subsection (7)* 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.

(10) A railway undertaking which fails to comply with a direction under *subsection (5)* is guilty of an offence and is liable—

- (a) on summary conviction, to a fine not exceeding €3,000, or
- (b) on conviction on indictment, to a fine not exceeding €500,000.

Submission and
assessment of safety
case.

45.—(1) A safety case prepared by a railway undertaking which operates a railway immediately before the commencement of this section shall be submitted to the Commission by the railway undertaking not later than 6 months after the commencement of this section.

(2) A railway undertaking shall, before it submits a safety case to the Commission, engage a suitably qualified person to independently assess the safety management system described in such safety case and the report of such person shall be submitted to the Commission at the same time as the safety case.

(3) Where a railway undertaking has altered its safety management system on the basis of the report of a person engaged in accordance with *subsection (2)*, the safety case shall be amended as appropriate and a statement of the actions taken by the railway undertaking in response to the report, together with the report of the assessment and the safety case as amended, shall be submitted to the Commission.

(4) A railway undertaking shall not operate railway infrastructure or railway services unless it has received notification from the Commission of its acceptance of the relevant safety case.

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

(6) A railway undertaking which does not comply with this section is guilty of an offence and is liable—

- (a) on summary conviction, to a fine not exceeding €3,000, or

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

46.—(1) (a) The Commission shall notify a railway undertaking of its acceptance of a safety case by issuing a certificate (“safety certificate”) to that undertaking. Acceptance of safety case by Commission.

- (b) A safety certificate 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 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 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, 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 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 therein, 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.

(4) A railway undertaking in receipt of a notice under *subsection (3)* or in receipt of a safety certificate 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 containing conditions, the safety case or revised safety case 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 certificate, 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.

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

(7) 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 and operations,
- (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.

(8) The Commission shall issue a certificate under *subsection (1)* or a notice under *subsection (3)* 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 (5)*.

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

(10) The Commission may—

- (a) refuse to issue a safety certificate where the Commission is not satisfied in accordance with *subsection (2)*, or
- (b) revoke a safety certificate issued under *subsection (1)* if the railway undertaking which is the holder of the certificate fails to comply with its safety case and the Commission considers that the railway undertaking cannot comply with its duty under *section 36*.

(11) Where the Commission proposes to refuse or revoke a safety certificate in accordance with *subsection (10)*, 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.

(12) Where the Commission decides to refuse a safety certificate, or revoke the safety certificate 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.

(13) On hearing an appeal under *subsection (12)*, the court may either confirm or vary the decision of the Commission or allow the appeal.

(14) A decision of the High Court on an appeal under *subsection (12)* 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.

(15) A safety certificate shall remain in force until it is revoked by the Commission under *subsection (10)* or replaced by a new certificate.

47.—(1) A railway undertaking shall implement the safety management system described in its safety case as accepted by the Commission under *section 46*. Compliance with safety case.

(2) A railway undertaking which does not comply with this section is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding €3,000, or

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

48.—(1) A railway undertaking shall revise its safety case (“revised safety case”) in circumstances where— Revision of safety case.

(a) the railway undertaking considers it appropriate to do so,

(b) new works or new rolling stock are accepted by the Commission in accordance with *section 42(6)* or *43(5)*, or

(c) the Commission issues a notice in writing to the railway undertaking requiring it to do so.

(2) Where a revised safety case is proposed under *paragraph (a)* or *(c)* of *subsection (1)* and where the revision will materially alter the safety case previously accepted by the Commission, the relevant railway undertaking shall submit the proposed revision to the Commission, together with a report prepared by a person engaged in accordance with *section 45(2)* and the revision shall not be made unless it has been accepted by the Commission in accordance with *section 46*.

(3) Notwithstanding *subsection (2)*, a railway undertaking may revise its safety case without the prior acceptance of the Commission in circumstances where not to do so may result in the railway undertaking being in contravention of its duty under *section 36*.

(4) Where a railway undertaking revises its safety case in accordance with *subsection (3)*, it shall immediately notify the Commission of such revision, stating the circumstances that give rise to the revision and the reasons why prior submission to the Commission could not be made and, as soon as practicable thereafter, submit the revised safety case to the Commission, together with a report prepared by a person engaged in accordance with *section 45(2)*.

(5) A railway undertaking which does not comply with a requirement of this section is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding €3,000, or

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

Appointment of independent persons for assessments and audits.

49.—(1) The Commission shall, as soon as practicable after the establishment day, prepare and publish guidelines on the nature of the independence deemed appropriate by the Commission for the purposes of this section and shall on request, in so far as is reasonably practicable, provide guidance in individual cases to persons in relation to the appropriateness of their expertise and independence.

(2) The Commission shall establish and maintain a register (in this section referred to as a “register”) of persons who in the opinion of the Commission are qualified persons and the Commission shall make the register available to all railway undertakings.

(3) A person who is of the opinion that he or she is a qualified person for the purpose of *subsection (2)* may apply to the Commission to be placed on the register and an application under this section shall contain such information as may be specified by the Commission from time to time.

(4) The Commission shall review the register from time to time to confirm if the persons named therein remain qualified persons for the purposes of this section and such persons shall provide, on request from the Commission in writing, all relevant information required by the Commission for the purposes of the review.

(5) Where the Commission is of the reasonable opinion that a person who has made an application under *subsection (3)* or who has provided information under *subsection (4)* is not, on the basis of such application or information, a qualified person for the purposes of this section, the Commission shall notify the person in writing of its opinion and the reasons for such opinion.

(6) A person who fails to provide information on receipt of a request from the Commission under *subsection (4)* may be removed by the Commission from the register and, where the Commission proposes to do so, it shall issue a notification under *subsection (5)*.

(7) A person who receives a notification under *subsection (5)* may, within a period of 21 days from the date of the notification, make representations to the Commission on the notification.

(8) Where representations are submitted to the Commission in accordance with *subsection (7)*, the Commission shall consider the representations and—

- (a) if it is satisfied that the person is a qualified person, shall include or, as the case may be, retain the name of the person on the register, or
- (b) if it is not satisfied that the person is a qualified person, shall refuse to include or, as the case may be, refuse to retain the name of the person on the register,

and the person shall be notified in writing of the decision of the Commission within 14 days of the receipt of the submission.

(9) Where a railway undertaking 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 undertaking shall notify the Commission in writing of the proposal at least 21 days in advance of the proposed appointment date.

(10) A notification under *subsection (9)* shall include—

- (a) the name of the person proposed for conducting the assessment or audit, and details of his or her employer,
- (b) where a person is not listed in the register, details of the expertise of the person concerned,
- (c) any current or previous relationships between the railway undertaking and the said person, or between the railway undertaking and the employers of such person, and
- (d) a statement from the railway undertaking that, in the opinion of the railway undertaking, the person—
 - (i) is independent of the railway undertaking having regard to the guidelines published by the Commission under *subsection (1)*, and
 - (ii) has appropriate expertise for the purposes of carrying out an appropriate assessment or audit.

(11) Where, on receipt of a notification under *subsection (9)*, the Commission is not satisfied as to the expertise or independence of the proposed person, the Commission shall communicate this, and the grounds for same, in writing to the railway undertaking within 14 days of receipt of the said notification.

(12) On receipt of a communication under *subsection (11)*, a railway undertaking may, within a period of 21 days from the date of the communication, submit observations to the Commission on the communication.

(13) Where observations are submitted to the Commission in accordance with *subsection (12)*, the Commission shall consider the submission and, having regard to the observations contained therein, shall within 14 days of the receipt of the submission communicate in writing to the railway undertaking that—

- (a) it is satisfied as to the expertise and independence of the person or persons being proposed by the railway undertaking, or
- (b) it is not satisfied as to the expertise and independence of the person or persons being proposed by the railway undertaking.

(14) A person in respect of whom a communication is issued by the Commission under *subsection (13)(b)* shall not be considered to be a suitably qualified person for the purposes of this Act.

(15) A railway undertaking which appoints a suitably qualified person under this section shall bear responsibility in all aspects for the appointment and the remuneration of such a person.

(16) Notwithstanding *subsection (15)* insofar as it relates to remuneration, in the case of a heritage railway the Commission may, with the consent of the Minister and the Minister for Finance and if it deems it appropriate to do so, agree to be responsible for the remuneration of the suitably qualified person and, where it gives its agreement to do so, may charge a fee to the heritage railway to offset in part the level of such remuneration and the level of the fee shall be decided by the Commission.

(17) Where the Commission proposes to be responsible for the

remuneration of the suitably qualified person, it shall, before giving its final agreement to do so, be of the opinion that the scale of the remuneration required is appropriate and a heritage railway shall provide all necessary information to the Commission to enable it to reach an opinion.

(18) In this section—

“qualified person” means an individual who, in the opinion of the Commission, has appropriate expertise of railway operations or of a particular class or aspect of railway operations or other expertise relevant to safety management systems or aspects thereof; and

“suitably qualified person” means a qualified person who, having regard to guidelines published by the Commission, is sufficiently independent of railway undertakings or of a particular class of railway undertaking or of a particular railway undertaking.

Safety audits.

50.—(1) A railway undertaking shall ensure that its safety management system, as described in its safety case, is independently audited by a suitably qualified person not later than the fourth anniversary of its acceptance by the Commission and not later than each subsequent period of 4 years thereafter or such other lesser period as may be specified from time to time by the Commission, having regard in particular to railway undertakings who are parties to an agreement under *section 40*.

(2) The objectives of an audit under *subsection (1)* shall, at minimum, be—

- (a) to confirm the adequacy and scope of the safety management system,
- (b) to confirm that the safety case accurately reflects the safety management system,
- (c) to confirm compliance by a railway undertaking with its safety case, and
- (d) to make recommendations, if any, for such improvements to the safety management system as the suitably qualified person deems appropriate in light of national or international experience and technological development.

(3) The report of a suitably qualified person appointed under *subsection (1)* shall be submitted by the railway undertaking to the Commission within such period as may be specified by the Commission.

(4) The Commission may, where it considers it appropriate to do so upon application by a railway undertaking, being—

- (a) a heritage railway, or
- (b) a railway undertaking, other than a railway undertaking used for the purposes of fare-paying passengers or for fee-paying members or the conveyance of merchandise for monetary gain,

grant an exemption or derogation from the requirements of *subsection (1)* to such railway undertaking on such terms and conditions as it deems appropriate.

(5) In considering an application made by a railway undertaking under *subsection (4)*, the Commission shall have regard to—

- (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 undertakings or with public roads,
- (c) the likely consequences for persons of any incident on its railway, and
- (d) the time elapsed since any previous safety audit was undertaken and the findings of such audit.

(6) Where the Commission considers that a potential danger may exist in any particular situation, it may undertake, or direct by notice in writing the relevant railway undertaking to engage a suitably qualified person to undertake, an independent safety audit of the particular matter that gives rise to potential danger.

(7) The Commission may at any time undertake, or appoint a suitably qualified person to undertake on its behalf, an audit of all or any part of the safety management system and safety case of a railway undertaking.

(8) A person appointed by the Commission under *subsection (7)* shall, for the duration for which he or she stands engaged, have the same powers as an inspector in respect of the railway undertaking concerned.

(9) A railway undertaking shall maintain sufficient records relating to all aspects of its safety management system for the purposes of demonstrating that it is conducting its activities in compliance with its safety management system.

(10) The Commission may make regulations specifying the minimum requirements for the auditing of safety cases and a suitably qualified person referred to in *section 49* shall comply with such regulations.

(11) A railway undertaking which fails to comply with this section is guilty of an offence and is liable—

- (a) on summary conviction, to a fine not exceeding €3,000, or
- (b) on conviction on indictment, to a fine not exceeding €60,000.

PART 5

REPORTING AND INVESTIGATION OF RAILWAY INCIDENTS

51.—In this Act, “railway incident” means an occurrence which has taken place in the course of the operation of a railway which causes or results in—

- (a) loss of life or personal injury to a person,
- (b) a collision between trains or between a train and some other vehicle or object,

- (c) a train or any part of a train accidentally leaving the rails, or
- (d) an occurrence of a kind not mentioned above but which is of such a kind as to have caused or as to be likely to cause loss of life or personal injury or extensive damage to railway infrastructure or rolling stock or the environment, and which is specified in regulations made by the Minister,

where such occurrence occurred in or about any railway infrastructure or train.

Reportable railway incidents.

52.—(1) In the event of a railway incident, the railway undertaking concerned or, if the incident involved more than one railway undertaking, the railway undertakings concerned, shall—

- (a) in the case of loss of life or injury to a person or in other 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 incident, including brief particulars and details of the location of the incident and 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 or incident.

(2) Where as a result of an incident at work, a member of staff of, or other person engaged by, a railway undertaking sustains an injury or suffers a condition which is required to be reported by this section to the Investigation Unit and as a result of that incident the member of staff or other person dies within 30 days of the incident, the railway undertaking shall, as soon as possible after the death comes to its knowledge, inform the Investigation Unit in writing of the death, whether or not the incident had been reported under *subsection (1)*.

(3) A railway undertaking which does not comply with this section is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000.

Investigations by railway undertakings.

53.—(1) It shall be a duty of a railway undertaking to carry out an investigation into a reportable railway incident in order to establish the cause of such incident and to assess what, if any, action can be taken by the railway undertaking to avoid railway incidents in the future or otherwise for the improvement of railway safety.

(2) For the purposes of carrying out an investigation under *subsection (1)*, a railway undertaking may interview any member of its staff or any other person engaged by it who, in the reasonable view of the undertaking, may be able to assist the undertaking in its investigations.

(3) A person who is being interviewed under *subsection (2)* may, if he or she requests, be accompanied—

- (a) where the person is a member of the staff of the railway undertaking, by one other member of the staff,
- (b) where the person is a member of the staff of another person engaged by the undertaking, by one other member of that staff,
- (c) by one person from an organisation which represents, as the case may be, the staff of the undertaking or the person engaged by the undertaking, or
- (d) at his or her own expense, by a legal or other adviser.

(4) A member of staff of a railway undertaking or any other person engaged by a railway undertaking shall, where requested by the railway undertaking to do so, provide all reasonable assistance and in particular any relevant information that may be known to him or her, to enable the railway undertaking to establish the cause or causes of the railway incident.

(5) If a member of staff of, or other person engaged by, a railway undertaking objects to a question asked of him or her in accordance with *subsection (4)* on the grounds that the answer might tend to incriminate the person or make the person liable to a penalty and the person is informed of his or her obligation to answer the question, the person shall not refuse to answer the question but the answer given on that occasion shall not be admissible as evidence in criminal or other proceedings against the person other than proceedings against him or her in respect of the falsity of the answer or the failure to answer the question.

(6) A railway undertaking shall in an expeditious manner carry out an investigation under *subsection (1)* and shall, as soon as practicable but in any event not later than 6 months after the date of the incident, prepare a report on its findings.

(7) Where the railway undertaking is of the opinion that the report cannot be completed within the period specified in *subsection (6)*, the railway undertaking shall notify the Commission together with its reasons for reaching such opinion and shall provide an indication of the revised period for the completion of the report.

(8) The Commission may, where it deems it appropriate to do so, by notice in writing to a railway undertaking, request an interim report on an investigation under *subsection (1)* and a railway undertaking shall provide such interim report within such period as may be specified in the notice.

(9) A report prepared under this section shall be in such form and contain such particulars as may, from time to time, be specified by the Commission but shall, in the case of a report under *subsection (6)*, at minimum include full particulars of the incident, the cause or causes of same in so far as can be established and, where appropriate, recommendations to be adopted by the railway undertaking to prevent the occurrence of incidents or otherwise for the improvement of railway safety.

(10) A report prepared under *subsection (6)*, together with any relevant records gathered in the course of the investigation, shall be retained by a railway undertaking for a period of at least 5 years from the date of completion of the report and the report shall, unless otherwise notified in writing by the Commission in any particular

case or any particular types of investigations, be provided to the Commission within 14 days of its completion.

(11) Where a railway incident is investigated under this section and the incident involves more than one railway undertaking, each relevant undertaking shall co-operate in the provision of information and in the conduct of the respective investigations.

(12) Where, during the course of an investigation under this section or after the completion of such investigation, the railway undertaking responsible for the investigation considers that the cause or likely cause of the incident may have—

- (a) implications for railway safety in general, or
- (b) in a particular case may have implications for the safe operation of another railway undertaking,

the railway undertaking shall, at the earliest possible time, notify the Commission and, where appropriate, such other relevant railway undertaking of such cause or likely cause of the incident and any recommendations which may be adopted arising from the investigation.

(13) Where the Commission receives a notification under *subsection (12)*, it may take such action in relation to the dissemination of the information contained in the notification as it considers appropriate in the interests of railway safety.

(14) Where the Commission considers it appropriate to do so, it may designate an inspector or other suitably qualified person to observe the carrying out of an investigation under this section and the railway undertaking shall facilitate such observation.

(15) The function of an inspector or other person designated under *subsection (14)* shall be to assess the adequacy of the investigation and to ensure that the procedures adopted are in compliance with the safety case of the railway undertaking.

(16) Where an inspector or other person designated under *subsection (14)* considers an investigation under this section not to be adequate, or not to be in compliance with the procedures adopted in the safety case of a railway undertaking, he or she shall, either during the investigation or after the completion of the investigation, notify the railway undertaking in writing of his or her considerations and the railway undertaking shall take all necessary actions to address the considerations.

(17) A railway undertaking which fails to comply with a requirement of this section is guilty of an offence and is liable—

- (a) on summary conviction, to a fine not exceeding €3,000, or
- (b) on conviction on indictment, to a fine not exceeding €60,000.

(18) A member of staff of, or other person engaged by, a railway undertaking who fails to comply with a requirement of *subsection (4)* or *(5)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000.

54.—(1) Where a member of staff of a railway undertaking or a person working under a contract of services with a railway undertaking becomes aware of—

Reporting of risks, etc. by staff of railway undertakings and contractors.

- (a) information relevant to the investigation of a railway incident, or
- (b) a risk arising from the operations of the undertaking which in his or her opinion is not adequately controlled or mitigated by the undertaking,

he or she shall inform the railway undertaking of the information or as the case may be the risk and of his or her opinion.

(2) Where, having informed a railway undertaking under *subsection (1)*, the member of staff or other person is of the opinion that the action, if any, taken by the undertaking is inadequate to comply with the general duty on the undertaking under *section 36* or to comply with any requirement on the undertaking under this Act, he or she may inform the Commission in writing of that opinion.

(3) Where a member of staff of a railway undertaking or other person working under a contract of services with a railway undertaking informs the Commission of his or her opinion in accordance with *subsection (2)*, he or she shall not be disciplined, be held to be in breach of contract or in any other way disadvantaged for the fact that he or she has informed the Commission.

55.—(1) There shall be established a unit within the Commission which shall form part of the Commission and which, subject to *section 57*, shall carry out its functions independent from the other functions of the Commission, to be known as the Railway Incident Investigation Unit and in this Act referred to as the “Investigation Unit”.

Railway Incident Investigation Unit.

(2) The function of the Investigation Unit shall be the investigation in accordance with this Part of all classes of railway incidents specified by the Minister.

(3) The Minister shall make regulations specifying the classes of railway incidents which shall be investigated by the Investigation Unit.

(4) Subject to *subsection (3)*, the Investigation Unit may, where it considers that an investigation is warranted, investigate any railway incident.

(5) The Investigation Unit may for the purposes of undertaking an investigation engage a person in accordance with *section 18* who in the opinion of the Investigation Unit is suitably qualified to undertake an investigation.

(6) The Commission shall ensure that within the resources made available to it for the performance of its functions, an appropriate and proportionate level of resources is made available to the Investigation Unit to enable it to discharge its functions under this Part.

(7) The level of resources made available to the Investigation Unit shall be subject to the prior consent of the Minister.

Chief Investigator
and staff of the
Investigation Unit.

56.—(1) The Investigation Unit shall have a full-time chief investigator who shall be known and referred to in this Part as the “Chief Investigator” and who will be responsible for directing the work of the Investigation Unit in accordance with this Part.

(2) The Chief Investigator shall be appointed by the Minister following a competition by the Public Appointments Service who have selected him or her for appointment as the Chief Investigator.

(3) The Chief Investigator may be removed from office by the Minister if, in his or her opinion, the Chief Investigator has become incapable through ill-health of effectively performing his or her duties or for stated misbehaviour and the Minister shall cause to be laid before each House of the Oireachtas a statement of the reasons for such removal.

(4) The Chief Investigator may, subject to the consent of the Minister and the Minister for Finance, appoint such and so many persons to be staff of the Investigation Unit as he or she considers necessary to assist him or her in the carrying out of the functions of the Investigation Unit under this Part.

(5) The terms and conditions, including terms and conditions as to remuneration and grading, of persons appointed under *subsections* (2) and (4) shall be determined by the Minister with the consent of the Minister for Finance.

(6) The Chief Investigator, and at the request of the Chief Investigator other staff if any of the Investigation Unit, shall be appointed by the Commission as an inspector under *section 73* for the purposes of carrying out his or her functions.

(7) Notwithstanding *subsection* (2), where the Chief Investigator is unavailable or unable to perform his or her functions, or where the position of Chief Investigator is vacant, the Minister may engage a person (“temporary chief investigator”) who, in his or her opinion, is suitably qualified to perform the functions of Chief Investigator to perform those functions during such unavailability, inability or vacancy.

(8) A temporary chief investigator shall be appointed as an inspector by the Commission and shall have all the powers of Chief Investigator under this Part.

(9) The cost of engaging a temporary chief investigator shall form part of the expenses of the Commission.

Independence of
Investigation Unit.

57.—(1) The Commission shall not influence or seek to influence an investigation by the Investigation Unit of a railway incident or the contents of a report prepared by the Investigation Unit in accordance with *sections 60* or *61*.

(2) For the purposes of the exercise of its functions under this Part, the Investigation Unit may, where it deems it appropriate to do so as part of an investigation into a railway incident, investigate any decision, action or omission of the Commission which the Investigation Unit considers may be relevant to its investigation and the Commission shall co-operate with the Investigation Unit.

(3) The Chief Investigator and other staff of the Investigation Unit shall not be involved in carrying out any other functions of the Commission where such involvement could reasonably be expected

to lead to an actual or potential conflict of interest in the carrying out of an investigation into the cause or causes of a railway incident.

(4) *Subsection (3)* does not prevent the Chief Investigator and other staff of the Investigation Unit from carrying out other functions of the Commission where such functions are required for the proper administration of the Commission or where they could not reasonably be expected to lead to an actual or potential conflict of interest.

(5) An inspector of the Commission, who is not a member of the staff of the Investigation Unit, may, at the request of the Chief Investigator and with the approval of the Commission, assist the Chief Investigator with the investigation of a railway incident, where, in the opinion of the Chief Investigator, this does not lead to an actual or potential conflict of interest.

58.—(1) The purpose of an investigation by the Investigation Unit under this section shall be to improve railway safety by establishing, in so far as possible, the cause or causes of an incident with a view to making recommendations for the avoidance of incidents in the future, or otherwise for the improvement of railway safety.

Investigations by
Investigation Unit.

(2) It shall not be the purpose of an investigation to attribute blame or liability.

(3) Notwithstanding *subsection (2)*, the Commission may take enforcement action under *Part 7* against a railway undertaking where an investigation by the Investigation Unit finds that the railway undertaking did not carry out its duties in compliance with this Act.

(4) An investigation under this section shall be undertaken by a person appointed by the Investigation Unit who is an inspector or a person engaged in accordance with *section 18* who, in the opinion of the Investigation Unit, is suitably qualified to undertake an investigation.

(5) Where a person other than an inspector is appointed under *subsection (4)* or *(8)*, the Commission shall issue to such person a warrant of his or her appointment and the person shall, if requested by any person affected by the investigation, show the warrant to the person.

(6) Where an investigation under this section relates to an international service, the Investigation Unit shall notify the relevant competent authority in the other state and shall invite that competent authority to nominate a person to participate in the investigation and share the results.

(7) Where an investigation under this section relates to an international service and the railway incident concerned took place on or close to the border with another state, the Investigation Unit shall agree with the competent authority in the other state for either it or the other competent authority to investigate the incident, or to carry out a joint investigation.

(8) Where a person is nominated in accordance with *subsection (6)*, the Commission may, for the sole purpose and duration of the investigation, appoint the person nominated to be an inspector.

(9) The Investigation Unit may pay any reasonable expenses incurred by a person appointed under *subsection (8)* and these expenses shall form part of the expenses of the Commission.

(10) Any record gathered by a person appointed under *subsection (4)* shall be and remain a record of the Investigation Unit and a person appointed under this section shall not publish or publicise, or use for any other purpose, such records except with the prior consent in writing of the Investigation Unit.

(11) A person appointed under *subsection (4)* shall, for the purposes of the investigation and for the period of his or her appointment, have the powers of an inspector.

(12) The Investigation Unit shall, as soon as practicable, send a copy of a report into a railway incident involving an international service, published in accordance with *section 60*, to the relevant competent authority in the other state.

(13) Where, during the course of its investigation, the Investigation Unit becomes aware of any implications for railway safety which, in its opinion, warrant consideration by a railway undertaking or other person, in advance of the publication of the report of its investigation, the Investigation Unit may make such interim recommendation as it considers to be warranted and feasible for the avoidance of railway incidents or otherwise for the improvement of railway safety. In *section 63* a reference to a recommendation includes a reference to an interim recommendation under this subsection.

(14) The Investigation Unit shall, on the commencement of an investigation under this section, notify the railway undertaking concerned and such other persons as it may deem appropriate of such commencement.

(15) The Investigation Unit may, before commencing an investigation under this section, make enquiries to determine whether an investigation is warranted.

(16) A railway undertaking shall, as soon as practicable following notification under *subsection (14)*, provide to the Investigation Unit details of all records held by it, and all information known to it, that may be relevant to an investigation under this section and shall immediately thereafter notify the Investigation Unit of any further relevant records which come into its possession and any further relevant information that becomes known to it.

(17) An answer, statement or declaration given to an inspector as part of an investigation under this section shall not be admissible as evidence in civil or criminal proceedings.

Re-opening of investigation by Investigation Unit.

59.—(1) Where the Investigation Unit has carried out an investigation under *section 58* and it is satisfied that there is new evidence available which could be likely to materially alter the findings of the investigation and that the purpose of the investigation would be served by re-opening it, the Investigation Unit may re-open the investigation.

(2) This Part applies to an investigation re-opened under this section in the same way as it applies to an investigation under *section 58*.

60.—(1) The Investigation Unit shall publish a report of an investigation (“investigation report”) undertaken by it under *section 58* and shall immediately transmit a copy to the Minister. Publication of report of investigations.

(2) The Investigation Unit shall endeavour to publish an investigation report not later than 9 months after the commencement of an investigation to which it relates.

(3) Where it appears to the Investigation Unit that it would not be possible or appropriate in the circumstances to publish the report within the period referred to in *subsection (2)*, it shall, within that period, give to the Minister its reasons as to why the report cannot be published within that period and indicate the estimated period within which it expects the investigation report will be published.

(4) The Investigation Unit may publish an interim report of an investigation.

(5) *Sections 61* and *62* shall apply to an interim report in the same way as they apply to a report under *subsection (1)*.

61.—(1) All relevant findings of an inspector during an investigation under *section 58* shall be included in the investigation report. Contents of report.

(2) Having regard to *section 58*, if the inspector succeeds in establishing the cause or causes, or probable cause or causes, of a railway incident, the report shall indicate it or them.

(3) In the light of the findings of the inspector and having regard to *section 58*, the report shall outline any recommendations the Investigation Unit considers to be warranted and feasible for the avoidance of railway incidents or otherwise for the improvement of railway safety.

(4) Although it shall not be the purpose of the report to attribute blame or liability, *section 58* shall not prevent the reporting of relevant findings of an inspector in accordance with *subsection (1)*, indicating the cause or causes or probable cause or causes of the incident in accordance with *subsection (2)* or the making of recommendations in accordance with *subsection (3)*, of this section.

(5) For the avoidance of doubt, copyright in a published report or interim report remains with the Commission but the copyrighted material may be freely used for educational or safety-related purposes but not for commercial benefit.

62.—(1) Before publishing an investigation report or an interim report under *section 60* the Investigation Unit shall send a draft of the report or sections of the draft report to any person who, in its opinion, is likely to be adversely affected by the publication of the report or section. Preparation of draft report and observations of affected persons.

(2) Where a person referred to in *subsection (1)* 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.

(3) A person to whom the Investigation Unit sends a draft in accordance with *subsection (1)* or *(2)* may, within a period of 28 days commencing on the date on which the draft is sent to the person or such further period, not exceeding 28 days, as the Investigation Unit

in its discretion thinks fit, submit to the Investigation Unit in writing his or her observations on the draft.

(4) A person to whom the draft has been sent in accordance with *subsection (1) or (2)* may apply to the Investigation Unit for an extension, in accordance with *subsection (3)*, of the period in which to submit his or her observations on the draft.

(5) Observations submitted to the Investigation Unit in accordance with *subsection (3)* may, if the Investigation Unit considers it appropriate to do so, be included in an appendix to the published report unless the person submitting the observations requests in writing that the observations are not published.

(6) Where observations are submitted to the Investigation Unit in accordance with *subsection (3)*, the Investigation Unit may, at its discretion—

(a) alter the draft before publication or decide not to do so, or

(b) where a person agrees to publication of observations under *subsection (5)*, include in the published report such comments on the observations as it sees fit.

(7) A person to whom a draft has been sent in accordance with *subsection (1) or (2)* shall not disclose (other than by way of disclosure to his or her legal or technical advisors subject to an enforceable condition of confidentiality) to another person the draft or its contents except with the prior consent in writing of the Investigation Unit and subject to such conditions, if any, which may be specified by the Investigation Unit in such consent.

(8) A person who contravenes *subsection (7)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000.

Recommendations
of Investigation
Unit.

63.—(1) A recommendation under *section 61(3)* shall in no case create a presumption of blame or liability for a railway incident.

(2) A public authority or other organisation or person or a railway undertaking, to whom a recommendation under *section 61(3)* is addressed shall, as soon as practicable after receiving it, furnish the Investigation Unit with a statement indicating the action taken or under consideration in response to such recommendations or the reasons why no action will be taken.

(3) In this section, “public authority” means a Minister of the Government, the Council and any other body, including a local authority, in the State which, in the opinion of the Investigation Unit, has or may have functions in relation to a recommendation.

Tribunal of inquiry.

64.—(1) The Minister may, where he or she considers it necessary, with the consent of the Minister for Finance and after consultation with the Commission and the Investigation Unit, direct that a tribunal of inquiry be held into a railway incident.

(2) The following provisions shall have effect in relation to a tribunal—

- (a) the Minister shall appoint a competent person or persons to hold the inquiry and may appoint any person or persons possessing legal, railway or special knowledge, including a commissioner or former commissioner, the Chief Investigator or an inspector, to act as an assessor to assist the inquiry,
- (b) where the tribunal relates to an international service, the Minister may appoint a person or persons nominated by the relevant competent authority in the other state, to act as an assessor to assist the inquiry,
- (c) the tribunal shall hold the inquiry in such manner and under such conditions as it thinks appropriate,
- (d) the tribunal shall have for the purposes of the inquiry all the powers of a judge of the District Court when hearing a prosecution for an offence under this Act, and all the powers of an inspector under this Act, and in addition, power—
 - (i) by summons signed by the tribunal, to require the attendance of such persons as it thinks fit to call before it and examine for the purposes of the inquiry, and to require answers or returns to the inquiries it thinks fit to make, and
 - (ii) to administer an oath or affirmation and require any person examined to make and sign a declaration of the truth of the statements made by the person in his or her examination.

(3) In *subsection (2)(a)*, “competent person” includes a serving or former member of the judiciary or any other person whom the Minister considers has the necessary experience or expertise but does not include a serving commissioner, Chief Investigator, or member of the staff of the Commission or Investigation Unit, any person who is or was a member of the staff of a railway undertaking involved in the incident, or any person who, in the opinion of the Minister, has an actual or potential conflict of interest.

(4) If a person objects to a question asked of him or her as a witness at a tribunal on the grounds that the answer might tend to incriminate the person or make the person liable to a penalty and the person is informed of his or her obligation to answer the question, the person shall not refuse to answer the question but the answer given on that occasion shall not be admissible as evidence in criminal or other proceedings against the person other than proceedings against him or her in respect of the falsity of the answer or the failure to answer the question.

(5) Persons attending as witnesses before a tribunal shall be allowed such expenses as would be allowed to witnesses attending before a court of record and, in case of a dispute as to the amount to be allowed, the dispute shall be referred by the tribunal to the Taxing Master of the High Court who, on request signed by the tribunal, shall ascertain and certify the proper amount of the expenses.

(6) A tribunal shall make a report to the Minister recording all relevant findings of the tribunal, indicating the cause or causes or

probable cause or causes of the railway incident and any recommendations which the tribunal considers to be warranted and feasible for the avoidance of incidents or otherwise for the improvement of railway safety and adding any observations which it thinks fit to make.

(7) The Minister shall publish the report of a tribunal under this section.

(8) The Minister shall pay to the person or persons conducting an inquiry under this section such fees and expenses as the Minister may, with the consent of the Minister for Finance, determine.

(9) The Minister shall, subject to the consent of the Minister for Finance, defray the other costs, if any, of an inquiry and report under this section.

(10) A tribunal may, at its discretion, decide whether or not to award costs in connection with an inquiry under this section and where it decides that costs shall be awarded, those costs may be awarded in such amounts and in respect of such matters as the tribunal, in its discretion, thinks fit.

(11) The Minister shall give notice of his or her intention to establish a tribunal of inquiry under this section by a notice published in *Iris Oifigiúil* and at least one daily newspaper published and circulating in the State, setting out the terms of reference of the inquiry.

(12) The Minister may, if he or she considers it necessary for the more effective conduct of inquiries, make regulations governing the holding of inquiries and without prejudice to the generality of this section, such regulations may provide for—

- (a) the location at which an inquiry may be held,
- (b) the manner in which facts may be proved at an inquiry, and
- (c) the persons allowed to appear and the notices to be given to persons affected.

(13) A person who—

- (a) without reasonable excuse, fails to comply with a summons of a tribunal,
- (b) being in attendance as a witness at a tribunal, refuses—
 - (i) to take any oath or make an affirmation,
 - (ii) to sign any declaration as to the truth of any statement made by him or her, or
 - (iii) refuses to answer any question to which the tribunal may require an answer,

when required by the tribunal to do so,

or

- (c) obstructs or hinders a tribunal,

is guilty of an offence and is liable on summary conviction to a fine

not exceeding €3,000 or to imprisonment for a term not exceeding 3 months, or to both.

(14) In this section, “tribunal” means a tribunal of inquiry under this section.

65.—(1) The Minister may direct that an inquiry be held under *section 64* notwithstanding that the railway incident into which the inquiry is to be held is or was the subject of an investigation by the Investigation Unit under *section 58*.

Suspension of investigation by Investigation Unit where inquiry directed.

(2) Where the Minister directs that an inquiry be held under *section 64*, no investigation by the Investigation Unit into the same matter shall be commenced or continue.

66.—(1) The Minister may, after consultation with the Investigation Unit, direct that a completed inquiry be re-opened if satisfied that there is new evidence available which could materially alter the findings of the inquiry and that the purpose of the inquiry would be served by re-opening it.

Re-opening of inquiry.

(2) This Part applies to a re-opened inquiry in the same way as it applies to an inquiry.

67.—(1) Where a coroner (within the meaning of the Coroners Act 1962) holds or is about to hold an inquest on the body of any person whose death may have been caused by a railway incident, this section has effect.

Inquest in case of railway incident.

(2) The coroner shall notify the Commission of the time and place of the holding of an inquest not less than 72 hours before the time of holding the inquest.

(3) The coroner may in writing request the attendance of an inspector to assist in the holding of an inquest and on receipt of such a request the Commission may appoint an inspector or a person engaged under *section 18* to assist in the holding of such inquest.

(4) Where an inspector does not assist a coroner under *subsection (3)* at an inquest relevant to this section and where evidence is given as to any neglect having caused or contributed to the railway incident or as to any defect in the operation of a railway appearing to a coroner or jury to require a remedy, the coroner shall send to the Commission notice in writing of the evidence of the neglect or defect.

(5) In addition to a notice specified in *subsection (4)*, every coroner shall furnish to the Commission a written return in relation to an inquest to which this section applies and this return shall be in the format specified by the Commission, after consultation with the Coroners Society of Ireland.

68.—Sections 4, 5 and 6 of the Railway Regulation Act 1842, repealed by *section 5* of this Act, continue to apply to any railway or portion of railway in respect of which a notice of its intended opening is given under *section 4* of that Act but which is not opened immediately before the repeal of those sections.

Transitional provision (opening of railways).

PART 6

REGULATIONS AND REVIEW OF LEGISLATION

Regulations.

69.—(1) The Commission, with the consent of the Minister and after consultation with the Council, railway undertakings, organisations which represent staff of railway undertakings and such other persons as in the opinion of the Commission may be relevant, may make regulations in relation to all or any of the following—

- (a) standards and specifications for railway infrastructure and rolling stock,
- (b) additional matters to be included in a safety management system or a safety case for the purposes of *section 39*,
- (c) requirements or restrictions relating to the management of passengers and other persons on railway property, including in relation to persons standing in trains, the placing of luggage in trains, and emergency evacuation from trains,
- (d) levels of training, competencies and qualifications of staff of railway undertakings, including disability awareness training and requirements on railway undertakings to facilitate staff holding positions before the entry into operation of such regulations in achieving any required level of training, competency or qualification,
- (e) requirements relating to interfaces between railway undertakings,
- (f) requirements relating to interfaces between railway infrastructure or trains and any other vehicle or road,
- (g) requirements relating to the reporting by railway undertakings of railway incidents, including the form of reporting and the classification of railway incidents to be reported,
- (h) procedures for the acceptance of new works (within the meaning of *section 42(15)*) and new rolling stock (within the meaning of *section 43(14)*),
- (i) requirements for the maintenance by a railway undertaking of records, and
- (j) standards, specifications and procedures to be used by railway undertakings to safely facilitate the special requirements of mobility-impaired persons.

(2) Regulations made by the Commission under *subsection (1)* shall not be for the purpose of giving effect to an act adopted by an institution of the European Communities.

(3) The Minister may make regulations for the purpose of giving effect to an act adopted by an institution of the European Communities in relation to railway safety.

(4) Regulations under *subsection (3)* may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary for the purposes of the regulations (including

provisions repealing, amending or applying, with or without modification, other law, exclusive of this Act).

70.—The Commission may, with the consent of the Chief Investigator, and after consultation with the Minister, the Minister for the Environment, Heritage and Local Government, the Garda Síochána, the Council, railway undertakings and such other persons as in the opinion of the Commission may be relevant, make regulations relating to the protection of the sites of railway incidents and the regulations may, without prejudice to the generality of the foregoing, include provisions in relation to any or all of the following matters—

Regulations for protection of railway incident sites.

- (a) procedures for the collection, recording and protection of evidence,
- (b) the protection of such sites,
- (c) the protection against unauthorised interference with such sites, and
- (d) prohibiting the unauthorised removal of anything from such sites.

71.—A person who contravenes or fails to comply with any regulations made under this Part is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000.

Offence.

72.—(1) It shall be the duty of the Commission—

- (a) to keep under review the provisions of this Act,
- (b) to keep under review any other relevant statutory provisions that affect, or may affect, the carrying out of its functions under this Act, and
- (c) to submit from time to time, to the Minister, or such other Minister of the Government having responsibility for the other statutory provisions, such recommendations as it considers appropriate in relation to the said statutory provisions or for the making, modification or revocation of any instruments under those provisions.

Review of legislation by Commission.

(2) Before submitting recommendations to the Minister or such other Minister of the Government, as the case may be, in accordance with *subsection (1)(c)*, the Commission shall consult any Minister of the Government, the Council or other person that appears to the Commission to be appropriate in the circumstances or that the Minister, or other Minister of the Government as the case may be, so directs.

(3) The Commission shall consider any proposals for legislative change concerning railway safety and related matters referred to it by the Minister or any other Minister of the Government responsible for any of the other statutory provisions.

(4) Whenever the Minister, or such other Minister of the Government as the case may be, makes, modifies or revokes any instruments under the statutory provisions referred to in *subsection (1)*, or publishes proposals for legislative change concerning railway safety and related matters, he or she shall, at the same time, cause copies of any

recommendation of the Commission under *subsection (1)(c)* or arising from the Commission's consideration of proposals under *subsection (3)*, to be laid before each House of the Oireachtas.

PART 7

ENFORCEMENT

Inspectors.

73.—(1) The Commission may appoint any of its officers, consultants, advisors or other persons as it deems appropriate to be inspectors for the purposes of this Act and such appointment may be revoked by the Commission.

(2) Each commissioner shall, on his or her appointment, be deemed to be an inspector for the purposes of this Act.

(3) A person appointed under *subsection (1)* shall, on his or her appointment, be furnished with a warrant of his or her appointment and when exercising any power conferred on an inspector by this Act shall, if requested by any person thereby affected, show the warrant to that person.

(4) For the purpose of the exercise of functions of the Commission under this Act, an inspector may—

- (a) travel on any train or any part of a train of any railway undertaking,
- (b) enter, inspect, examine and search at all times, any place or premises which he or she has reasonable cause to believe is railway property,
- (c) enter into any place, premises or vehicle which he or she has reasonable cause to believe contains records or information relevant to and necessary for the exercise of functions of the Commission under this Act and therein carry out such searches, inspections and examinations as he or she considers reasonable and necessary,
- (d) have a member of the Garda Síochána accompany him or her if the inspector has reasonable cause to apprehend any serious obstruction in the execution of his or her duty,
- (e) take with him or her any other person or any equipment or materials required for any purpose for which the power of entry is being exercised,
- (f) where he or she has reasonable cause to believe that at or in any railway property an offence under this Act has been or is being committed, use reasonable force where necessary in order to enter that property,
- (g) make such examination and inquiry as may be necessary,
- (h) require the production of any record (and, in the case of information in non-legible form, to reproduce it in legible form) which in the opinion of the inspector is necessary for him or her to inspect, examine and copy or require that a copy of it or of any entry therein be provided to him or her,

- (i) inspect and take copies of or extracts from any such records (including, in the case of information in non-legible form, a copy of or extract from such information in permanent legible form),
- (j) remove and retain such records for such period as may be reasonable for further examination,
- (k) require any person whom he or she has reasonable cause to believe to be able to give information relevant for the purposes of this Act, to answer such questions with respect to matters under this Act as he or she thinks fit to ask and to sign a declaration of the truth of the answers given,
- (l) direct that any railway property or part thereof and anything therein shall be left undisturbed for so long as it is reasonably necessary for the purpose of this Act,
- (m) take samples or, as regards any article or substance he or she finds, require the railway undertaking or any member of staff of, or other person engaged by, the railway undertaking or any person who appears to him or her to be in possession of the article or substance, to supply without payment, for test, examination or analysis sufficient samples thereof,
- (n) cause any article or substance found which appears to him or her to be reasonably necessary for the purpose of this Act to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is in the circumstances necessary for the purposes of the process or test) and where an inspector proposes to exercise the power conferred by this paragraph in the case of an article or substance found, he or she shall, if so requested by a person who at the time is present and who may have responsibilities in respect of such article or substance, cause anything which is to be done by virtue of that power to be done in the presence of that person,
- (o) in relation to any article or substance found at or in railway property in accordance with *paragraph (n)*, take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
 - (i) to examine or arrange for the examination of it and do to it anything which he or she has power to do under *paragraph (n)*,
 - (ii) to ensure that it is not tampered with before the examination of it is completed, or
 - (iii) to ensure that it is available for use as evidence in any proceedings,
- (p) take any measurements, photographs or video recordings or make any sound, electrical or other recordings which he or she considers necessary for the purposes of this Act,
- (q) require any person to afford him or her such facilities and assistance within his or her control or responsibilities as are reasonably necessary to enable him or her to exercise any of the powers conferred on him or her under this Act,

- (r) require any person by or on whose behalf data equipment is or has been used or any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material to afford the inspector all reasonable assistance in relation to its use, and
- (s) require any railway undertaking to have any train, railway infrastructure, equipment, system, or procedure examined and tested at the undertaking's expense where, in his or her opinion, this is necessary for the purposes of this Act.

(5) A person who is being interviewed under *subsection (4)(k)* or *section 74* may, if he or she requests—

- (a) where the person is a member of the staff of the railway undertaking or a person engaged by the undertaking, be accompanied—
 - (i) by one other member of the staff of the railway undertaking, or of the person engaged by the undertaking,
 - (ii) by one other person from an organisation which represents, as the case may be, the staff of the undertaking or the person engaged by the undertaking, or
 - (iii) at his or her own expense, by a legal or other adviser,or
- (b) where the person is not a member of the staff of the railway undertaking or a person engaged by the undertaking, be accompanied, at his or her own expense, by a legal or other adviser.

(6) The sole function of a person permitted to accompany another person in accordance with *subsection (5)* shall be the provision of advice to the person being interviewed.

(7) A person permitted to accompany another person in accordance with *subsection (5)* shall, if directed by the inspector concerned, desist from doing anything which, in the opinion of the inspector, frustrates the orderly and efficient conduct of the interview.

(8) Before exercising the power conferred by *subsection (4)(n)* in the case of any article or substance, an inspector shall, in so far as it is reasonably practicable to do so, consult such persons as appear to him or her to be appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he or she proposes to do under that power.

(9) Where, under the power conferred by *subsection (4)(o)*, an inspector takes possession of any article or substance found at or in any railway property, he or she shall, if it is practicable for him or her to do so, take a sample thereof and give to a responsible person at the place of work a portion of the sample marked in a manner sufficient to identify it.

(10) An inspector, for the purpose of carrying out his or her functions under this Act, shall have unhampered access to a railway incident site.

(11) The Commission shall consult with railway undertakings in relation to procedural arrangements for entry by inspectors upon railway property.

(12) An inspector shall not, except under a warrant under *subsection (14)* or with the consent of the occupier, enter a domestic dwelling for the purposes of this section.

(13) Where an inspector in the exercise of his or her powers under this section is prevented from entering any premises, place or vehicle, an application may be made under *subsection (14)* authorising such entry.

(14) If a judge of the District Court is satisfied on the sworn information of an inspector that there are reasonable grounds for suspecting that information required by an inspector for the purpose of this Act is held at any premises, place or vehicle, the judge may issue a warrant authorising the inspector, accompanied if the inspector considers it necessary by other inspectors or members of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production of the warrant if so required, to enter, if need be by reasonable force, the premises, place or vehicle and exercise all or any of the powers conferred on an inspector under this Part.

(15) In this section, “railway property” means all land, buildings, railway infrastructure, rolling stock and vehicles under the control of a railway undertaking.

74.—(1) Where, in the opinion of an inspector carrying out an inspection under this Part, an inspection of any record may be necessary for the purpose of exercising his or her functions under this Act, the inspector may require a railway undertaking or other relevant person to deliver to a place nominated by the inspector, and within such reasonable period as the inspector specifies, such record to enable the inspector to inspect and copy it and the railway undertaking or other relevant person shall comply with the requirement.

Provision of records and other information.

(2) An inspector may require the attendance before him or her of any person in the jurisdiction for the purpose of providing to the inspector any information which may be known to the person and which, in the inspector’s opinion may be necessary for the purposes of exercising a function under this Act and the person shall comply with the requirement.

(3) A person required to attend before an inspector in accordance with *subsection (2)* shall be entitled to the reimbursement by the Commission of any reasonable expenses incurred in connection with his or her attendance.

(4) An inspector may also, for the purpose of exercising his or her functions under this Act—

- (a) examine any person required to attend before him or her and may require answers or returns to any inquiry he or she thinks fit to make, and
- (b) administer an oath and require any person examined to make and sign a declaration of the truth of the statements made by the person in his or her examination.

(5) An inspector may make such copies or take such extracts from

the information gathered under *subsection (4)* as the inspector considers necessary for the purposes of the investigation.

Requirement to give name and address, obstruction, arrest, offence.

75.—(1) A member of the Garda Síochána accompanying an inspector under this Part may require of any person his or her name and address and may, if such person refuses or fails to give his or her name and address or gives a name or address which the member has reasonable grounds for believing to be false or misleading, arrest such person without warrant.

(2) Where a person, when his or her name and address is required of him or her under this section, refuses or fails to give his or her name and address or gives a name or address which is false or misleading, such person is guilty of an offence.

(3) A member of the Garda Síochána accompanying an inspector under this Part may arrest without warrant any person who obstructs or interferes with an inspector exercising a power under this Part or refuses to comply with a request or requirement of an inspector under this Part.

(4) A person who obstructs or interferes with an inspector in exercise of any power conferred on an inspector under this Part, or who fails or refuses to comply with a request or requirement of an inspector under this Part, is guilty of an offence.

(5) A person who wilfully gives to an inspector information which he or she knows to be false or misleading in a material respect, or makes any false or misleading statement reckless as to its truth or otherwise, is guilty of an offence.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 3 months or to both.

(7) In this section, a reference to an inspector includes a reference to a tribunal of inquiry under *section 64*.

Improvement plan.

76.—(1) Where an inspector is of the opinion that an activity being or likely to be carried on by or under the control or on behalf of—

- (a) a railway undertaking and the activity involves, or is likely to involve, a risk to the safety of persons, or
- (b) any other person on or near a railway and where the activity poses, or is likely to pose, a danger to the safety of persons involved in the operation of the railway or being carried on the railway,

the inspector may give a direction in writing to that railway undertaking or person requiring the submission to the inspector, within a time specified in the direction of a plan (“improvement plan”) specifying the remedial action proposed to be taken to rectify the matters set down in the direction.

(2) Where an improvement plan is submitted in accordance with *subsection (1)* or re-submitted under *paragraph (b)*, an inspector shall, within 30 days, write to the railway undertaking or person concerned—

- (a) stating that he or she is satisfied with the remedial action proposed to be taken, or
- (b) if he or she is not satisfied that the plan is adequate, directing that the plan be revised and re-submitted to him or her within a time specified in the direction.

(3) An inspector may withdraw a direction under this section at any time before a date specified therein or may extend and further extend such date.

77.—(1) Where an inspector is of the opinion that a railway undertaking or other person is contravening or has contravened or is failing to comply or has failed to comply with any of the provisions of this Act or has failed, following a direction under *section 76*, to submit or implement an appropriate improvement plan, the inspector may serve on that railway undertaking or person a notice (“improvement notice”) in writing signed by him or her stating that he or she is of that opinion and the improvement notice shall—

- (a) specify the provision as to which the inspector is of that opinion,
- (b) give particulars of the reasons why the inspector is of that opinion,
- (c) where applicable, state that the railway undertaking or person has failed to submit or implement an improvement plan, and
- (d) direct that railway undertaking or person to remedy the alleged contraventions by a date specified in the notice, which shall not be earlier than the period within which an appeal can be brought under *subsection (4)*.

(2) An improvement notice may include directions as to the measures to be taken to remedy the alleged contraventions set out in the notice.

(3) Where an inspector proposes to serve an improvement notice, he or she shall first notify the railway undertaking or person concerned in writing of his or her intention to serve the improvement notice and the railway undertaking or person in question may, within 21 days, make representations to the inspector, who shall consider them.

(4) Where an inspector decides, having considered any representations made to him or her under *subsection (3)*, to serve an improvement notice, a railway undertaking or person which is aggrieved by such improvement notice may, within the period of 14 days beginning on the day on which the notice is served on it, appeal to the High Court against the notice and in determining the appeal the judge may—

- (a) if he or she is satisfied that in the circumstances of the case it is reasonable to do so, confirm the notice with or without modification, or
- (b) cancel the notice.

(5) In considering an appeal against an improvement notice, the

Court shall take into account the general duties of railway undertakings and others under *sections 36 and 37.*

(6) A railway undertaking or person who appeals against an improvement notice shall at the same time notify the Commission of the appeal and the grounds for appeal and the Commission shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(7) Where an appeal against an improvement notice is taken, the notice shall take effect on the day next following the day on which the notice is confirmed on appeal or the appeal is withdrawn or on the day specified in the notice as that on which it is to come into effect, whichever is the later.

(8) Where no appeal is taken against an improvement notice, the notice shall take effect on the expiration of the period during which such an appeal may be taken or on the day specified in the notice as that on which it is to come into effect, whichever is the later.

(9) An inspector may withdraw an improvement notice at any time before the date specified in it under *subsection (1)(d)* and he or she may extend or further extend that date at any time when an appeal against the notice is not pending.

(10) A person who fails to comply with an improvement notice shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding €3,000, or
- (b) on conviction on indictment, to a fine not exceeding €300,000.

Prohibition notice.

78.—(1) Where an inspector is of the opinion that an activity being or likely to be carried on by or under the control or on behalf of—

- (a) a railway undertaking and the activity involves, or is likely to involve, an immediate and substantial risk to the safety of persons, or
- (b) any other person on or near a railway and where the activity poses, or is likely to pose, an immediate and substantial danger to the safety of persons involved in the operation of the railway or being carried on the railway,

or where a railway undertaking or person fails to comply with a requirement of this Act, the inspector may serve on that railway undertaking or person a notice (“prohibition notice”) signed by him or her.

(2) A prohibition notice shall—

- (a) state that the inspector is of that opinion,
- (b) specify the matters which in the inspector’s opinion give or, as the case may be, are likely to give rise to the said risk,
- (c) where, in the opinion of the inspector, the matter involves or, as the case may be, will involve a contravention of any provision of this Act, specify the provision or provisions as to which the inspector is of that opinion, and

give particulars of the reasons why he or she is of that opinion, and

- (d) direct that the activities to which the notice relates shall be carried on neither by nor under the control of the railway undertaking or other person on which the notice is served nor by nor under the control of any other person unless the matters specified in the notice in pursuance of *paragraphs (b) or (c)* have been remedied.

(3) A prohibition notice shall take effect—

- (a) if the notice so declares, immediately the notice is received by the railway undertaking or person on which it is served, and

(b) in any other case—

- (i) if no appeal is taken against the notice, on the expiration of the period during which such an appeal may be taken or on the day specified in the notice as that on which it is to come into effect, whichever is the later, or

- (ii) in case such an appeal is taken, on the day next following the day on which the notice is confirmed on appeal or the appeal is withdrawn or on the day specified in the notice as that on which it is to come into effect, whichever is the later.

(4) The bringing of an appeal against a prohibition notice which is to take effect in accordance with *subsection (3)(a)* shall not have the effect of suspending the operation of the notice:

Provided, however, that the appellant may apply to the Court to have the operation of the notice suspended until the appeal is disposed of and, on such application, the Court may, if it thinks proper to do so, direct that the operation of the notice be suspended until the appeal is disposed of.

(5) (a) A railway undertaking or other person who is aggrieved by a prohibition notice may, within the period of 7 days beginning on the day on which the notice is served on it, appeal to the High Court against the notice and in determining the appeal the judge may—

- (i) if he or she is satisfied that in the circumstances of the case it is reasonable to do so, confirm the notice with or without modification; or

(ii) cancel the notice.

(b) Where on the hearing of an appeal under this section a prohibition notice is confirmed, notwithstanding *subsection (3)* the judge by whom the appeal is heard may, on the application of the appellant, suspend the operation of the notice for such period as in the circumstances of the case he or she considers appropriate.

(6) In considering an appeal against a prohibition notice, the Court shall take into account the general duties of railway undertakings and others under *sections 36 and 37*.

(7) A railway undertaking or person who appeals against a prohibition notice or who applies for a direction suspending the application of the notice shall at the same time notify the Commission of the appeal or the application and the grounds for the appeal or the application and the Commission shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal or the application.

(8) An inspector may withdraw a prohibition notice.

(9) (a) Where a prohibition notice has been served and activities are carried on in contravention of the notice, the High Court may, on the application of an inspector, by order prohibit the continuance of the activities.

(b) An application to the High Court for an order under *paragraph (a)* shall be by motion and the Court, when considering the matter, may make such interim or interlocutory order (if any) as it considers appropriate and the order by which an application under *paragraph (a)* is determined may contain such terms and conditions (if any) as to the payment of costs as the Court considers appropriate.

(10) On the application of the railway undertaking or other person concerned, an inspector shall confirm in writing if the circumstances giving rise to a prohibition notice no longer prevail or have been remedied to his or her satisfaction and if he or she so confirms, the notice shall no longer have effect.

(11) The Commission shall, unless in its opinion it is not appropriate in a particular instance to do so, make public details of a prohibition notice, including the name of the person to whom the notice is addressed and the situation giving rise to the notice.

(12) A person who fails to comply with a prohibition notice is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 3 months, or to both, or

(b) on conviction on indictment, to a fine not exceeding €1,000,000 or imprisonment for a term not exceeding 2 years, or to both.

Application to High Court by Commission.

79.—(1) Where the Commission considers that the risk to the safety of persons is so serious that the operations of a railway or of particular railway infrastructure or services, or activities carried out by, or omissions of, any other person which may pose a danger to persons operating or using the railway, should be restricted or should be immediately prohibited until specified measures have been taken to reduce the risk to a reasonable level, the Commission may apply, *ex parte*, to the High Court for an order restricting or prohibiting such operation.

(2) The Court may make such interim or interlocutory order as it considers appropriate.

(3) Any such order shall have effect notwithstanding the terms of any permission given under this Act or any other enactment for the operation of the railway or part thereof or, where the order refers to an other person, the carrying out of an activity by such person.

(4) On any application for the revocation or variation of an order made under *subsection (1)*, the Commission shall be entitled to appear, be heard and adduce evidence.

80.—(1) Where the Commission is satisfied that a commissioner, an inspector, a member of staff of the Commission or a consultant or adviser or person engaged by the Commission under *section 18*, has discharged his or her duties in the exercise of a function of the Commission under this Act in a *bona fide* manner, it shall indemnify such commissioner, inspector or member of staff of the Commission, or consultant or adviser, or other person engaged by the Commission, against all actions or claims however arising in respect of the discharge by him or her of his or her duties, including for the avoidance of doubt, the preparation and publication of an investigation report.

Indemnification for actions in good faith.

(2) In *subsection (1)* “report” includes a report referred to in *section 60(1)*, a draft report referred to in *section 62(1)*, an interim report under *section 60(4)* and a draft interim report, and it also includes written observations on a draft report or draft interim report and comments on any such observations as referred to in *section 62*.

PART 8

RAILWAY SAFETY ADVISORY COUNCIL

81.—The Minister shall by order appoint a day to be the appointed day for the purposes of this Part.

Appointed day.

82.—(1) There shall be established, on the appointed day, a body to be known as, in the Irish language, An Chomhairle Sábháilteachta Iarnróid, or in the English language, the Railway Safety Advisory Council, and in this Act referred to as the “Council”, to perform the functions assigned to it under this Part.

Railway Safety Advisory Council.

(2) The Council shall consist of 14 members.

(3) Members of the Council shall comprise—

- (a) a chairperson who, in the opinion of the Minister, has appropriate experience and expertise, and is sufficiently independent from railway undertakings and from persons representing the staff of undertakings and from the Commission,
- (b) at least 4 persons representing railway undertakings, of which one will represent railway undertakings which in the opinion of the Minister are heritage railways,
- (c) at least 3 persons from organisations which represent staff of railway undertakings,
- (d) at least one person who in the opinion of the Minister represents the public interest,
- (e) at least one person representing a body established by or under statute involved in the regulation of worker safety or public safety,

(f) at least one person from an organisation representing the interests of mobility-impaired persons, and

(g) at least one person with particular expertise relevant to railway safety but not being a person from an organisation in *paragraph (b) or (c)* or from the Commission.

(4) An organisation or person may, at its own initiative or at the request of the Minister, nominate a person to be a member of the Council, and the Minister in making an appointment under *subsection (5)*, shall have regard, in so far as is practicable, to any nominations received by him or her under this subsection.

(5) The Minister shall appoint persons to be members of the Council, including a person to be chairperson of the Council, and an appointment under this section shall be for such period not exceeding 3 years as may be specified by the Minister when appointing such persons, and shall be on such terms and conditions as may be determined by the Minister, with the consent of the Minister for Finance.

(6) A member of the Council shall be paid, out of monies at the disposal of the Commission, such allowances for expenses as the Minister, with the consent of the Minister for Finance, may determine.

(7) A member of the Council whose term of office expires by the effluxion of time shall be eligible for re-appointment.

(8) The Minister, in appointing members of the Council shall ensure, in as far as is practicable, an equitable balance between men and women in any appointments.

(9) The Commission shall provide all reasonable facilities and services as may be required by the Council for the carrying out of its functions.

(10) The Council may act notwithstanding a vacancy or vacancies in its membership.

(11) The Council may regulate, by standing orders or otherwise, its procedure and business.

(12) The Minister shall fix the date, time and place of the first meeting of the Council and the members of the Council shall decide on the frequency of all further meetings, subject to the Council meeting at least once each year.

(13) A member of the Council may resign from office by letter addressed to the Minister.

(14) The Minister may remove from office a member of the Council in the following circumstances—

(a) where, in the opinion of the Minister, he or she has become incapable through ill-health of effectively performing his or her duties,

(b) for stated misbehaviour,

(c) in the case of a person appointed to represent an organisation, a body or a class of persons under *subsection (3)*, where the person is no longer such a representative, or

- (d) where his or her removal appears to the Minister to be necessary or desirable for the effective performance by the Council of its functions.

(15) The Minister may, after consultation with the Council, make regulations on any matter which the Minister considers expedient for the purposes of this section.

(16) A commissioner (or if membership is vacant, the deputy commissioner) may attend and be heard at meetings of the Council but may not vote on any matter being considered by the Council.

83.—(1) It shall be the general function of the Council to consider issues relevant to railway safety and to make recommendations, as appropriate, to the Commission or to the Minister. Functions of Council.

(2) Without prejudice to the generality of *subsection (1)*, the Council may make recommendations—

- (a) to the Commission in relation to—
- (i) regulations, standards, guidelines and codes of practice that are in force in relation to railway safety,
 - (ii) proposals for regulations, standards, guidelines or codes of practice in relation to railway safety submitted by the Commission to the Council for consideration,
 - (iii) other matters relating to railway safety other than matters relating to industrial relations, and
 - (iv) any other matters related to the functions of the Commission or which the Commission submits to the Council for consideration,
- (b) to the Minister in relation to—
- (i) railway safety policy,
 - (ii) the adequacy of railway safety legislation which is in force,
 - (iii) proposals for legislation or regulations in relation to railway safety submitted by the Minister to the Council for consideration,
 - (iv) the assignment of specific functions relating to railway safety to the Commission,
 - (v) the nature and mix of expertise, skills and experience that is desirable in a candidate for appointment as a commissioner, and
 - (vi) any other matter which, in the opinion of the Council, is relevant to the effective performance by the Council or by the Commission of its functions or which the Minister submits to the Council for consideration.

(3) The Commission or the Minister, as appropriate, shall consider the recommendations of the Council given under this section.

(4) The Council may publish recommendations given under this section.

(5) The Commission may consult the Council on any matter relating to railway safety or to the effective performance by the Commission of its functions.

(6) The Minister may consult the Council on any matter arising in relation to his or her functions with respect to railway safety.

(7) The Council shall be entitled to be informed at its meetings, by the commissioner or deputy member of the Commission who stands appointed to the Council or a person appointed by him or her for the purpose, about the work of the Commission but not in relation to the detail of particular safety cases, assessments, audits or investigations where a report has not been published.

PART 9

INTOXICANTS AND PERSONS WORKING ON RAILWAY INFRASTRUCTURE

Commencement
(Part 9).

84.—This Part comes into operation on such day or days as the Minister may appoint by order either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Interpretation
(Part 9).

85.—In this Part—

“analysis” includes any operation used in determining the presence (if any) of a drug in a specimen of blood or urine, and cognate words shall be construed accordingly;

“analysis body” means a person who, in the opinion of a railway undertaking concerned and the Commission, is competent to carry out an analysis of a sample and is independent of the railway undertaking concerned and of any other railway undertaking;

“authorised person” means a person appointed to be an authorised person under *section 95*;

“code of conduct” means the code of conduct drawn up by a railway undertaking under *section 88(1)(a)* or amended under *section 88(10)* and accepted by the Commission under *section 88(5)*;

“drug” includes all drugs whether legally obtained or otherwise;

“railway undertaking” means a railway undertaking to which this Part applies;

“safety critical task” has the meaning assigned to it in *Part 10*;

“safety critical worker” has the meaning assigned to it in *Part 10*;

“sample” means the provision of a specimen of blood or urine in accordance with sampling procedures;

“sampling procedures” means procedures established under *section 88(1)(b)* or amended under *section 88(10)* and accepted by the Commission under *section 88(5)*.

86.—(1) This Part applies to a railway undertaking (other than a heritage railway) which operates railway infrastructure or operates trains on a railway infrastructure where such infrastructure is used, or intended to be used, wholly or partly for the carriage of members of the public or freight.

Application
(Part 9).

(2) This Part does not apply to a railway undertaking which operates railway infrastructure or operates trains on a railway infrastructure, where such infrastructure is used or intended to be used solely for industrial use.

(3) This Part applies to a safety critical worker.

87.—(1) It is the duty of a safety critical worker and is deemed to be a term of his or her contract of employment or contract of services (whether made before or after the passing of this Act) with a railway undertaking or with a person who has a contract of services with a railway undertaking—

Duties of safety
critical workers and
railway
undertakings.

- (a) not to perform a safety critical task while being unfit,
- (b) not to make himself or herself available to perform a safety critical task by attending at work while being unfit,
- (c) not to do anything that is an offence under *section 97*, and
- (d) to comply with the railway undertaking's code of conduct and sampling procedures.

(2) It is the duty of a railway undertaking to take reasonable steps to ensure that a safety critical worker complies with his or her duties under *subsection (1)*.

(3) In this section, “unfit” has the meaning assigned to it in *section 97*.

88.—(1) Subject to *subsection (2)*, in order to fulfil its duty under *section 87(2)*, a railway undertaking shall, in consultation with organisations which represent the staff of its undertaking—

Codes of conduct,
etc., in relation to
intoxicants.

- (a) draw up a code of conduct for safety critical workers to be observed by each of them while at work in relation to intoxicants,
- (b) establish sampling procedures in relation to the provision of samples under *section 89* by safety critical workers while at work or following a railway incident, and
- (c) provide counselling and other assistance (in this Part referred to as “support services”) to safety critical workers on the request of such workers or in respect of such persons who fail to comply with *section 87(1)* in order to assist those persons to comply with that subsection in the future.

(2) Without prejudice to the generality of *subsection (1)(a)*, a code of conduct shall include provisions—

- (a) providing for the course of action (including dismissal,

termination of contract, suspension, demotion, prohibition on working at the undertaking or performing specified safety critical tasks or mandatory attendance at counselling) to be taken where a safety critical worker—

(i) has failed to comply with his or her duties under *section 87(1)*,

(ii) has failed, without reasonable excuse, to provide a sample under *section 89* or comply with sampling procedures under this section, or

(iii) is convicted of an offence under *Chapter 2 of Part 10*,

and

(b) providing for procedures relating to appeals under *section 90*.

(3) Without prejudice to the generality of *subsection (1)(b)*, sampling procedures shall provide for—

(a) matters relating to the circumstances in which sampling may be undertaken under *section 89*,

(b) the caution to be given to a safety critical worker who is required under *section 89* to provide a sample, as to the consequences of failing, without reasonable excuse, to give such sample,

(c) the means of sampling,

(d) the location where a sample may be taken,

(e) analysis of a sample by an analysis body,

(f) privacy in relation to sampling,

(g) procedures for the protection of the integrity of a sample,

(h) division of any specimen of blood and urine into 2 parts and provision of one part to a person being sampled,

(i) a certificate to prove the results of the analysis of a sample and presumption as to the accuracy of the results of the sample so certified, and

(j) grievance procedures in relation to sampling.

(4) A railway undertaking shall, within 6 months of the commencement of this Part or such further period, at the discretion of the Commission, being not more than 12 months from such commencement, submit to the Commission for its acceptance drafts of a code of conduct, sampling procedures and details of support services to be provided.

(5) The Commission shall issue a notification in writing accepting a code of conduct, sampling procedures or details of support services submitted under *subsection (4)* where the Commission is satisfied that—

(a) it is sufficient to enable the railway undertaking to discharge its duty under *section 87(2)*, and

- (b) the undertaking has adequately consulted with organisations which represent the staff of its undertaking.

(6) Where the Commission is not satisfied with any draft code of conduct, sampling procedures or details of support services submitted to it under *subsection (4)*, the Commission shall notify in writing the railway undertaking of its dissatisfaction and the reasons for the dissatisfaction, and the railway undertaking, on receipt of a notification under this subsection shall, before re-submitting to the Commission, within such period as may be specified to it by the Commission, the code, sampling procedures or details, take the action necessary to address the reasons stated in the notification and shall consult with organisations which represent the staff of its undertaking in relation to the said matters.

(7) On service of a notification from the Commission under *subsection (6)*, a railway undertaking shall, within 6 months of the date of the notification, ensure that the code of conduct and sampling procedures are adopted and implemented and support services are provided.

(8) A railway undertaking shall take reasonable steps to ensure that the code of conduct, sampling procedures and details of support services provided by it and an abstract of this Part are displayed in a prominent place in the undertaking and brought to the attention of safety critical workers.

(9) A railway undertaking shall give a copy of the code of conduct, sampling procedures or details of support services provided by it to a safety critical worker upon the request of that worker.

(10) A railway undertaking may amend a code of conduct drawn up, sampling procedures or details of support services provided by it, in consultation with organisations which represent the staff of its undertaking, and *subsections (4) to (9)* shall apply to any such amendment or alteration with such modifications as are necessary.

(11) A railway undertaking to which this Part and *section 95* apply, shall, within 3 months of the end of each year, make a report to the Commission on the implementation by it of the measures provided for in this Part and *Part 10*. The report shall contain such particulars as the Commission may direct.

(12) The Commission shall, within 2 months of receipt of a report under *subsection (11)*, publish details of the report, but without giving information of a personal, confidential or prejudicial nature.

(13) The Commission shall, before publishing details of a report in accordance with *subsection (12)*, lay a copy of those details before each House of the Oireachtas.

89.—(1) An authorised person may require a safety critical worker to provide a sample of blood or urine, in accordance with the sampling procedures of the railway undertaking concerned—

Sampling for drugs.

- (a) where he or she is of the opinion, or on the request of an inspector who is of the opinion, that a safety critical worker, who is performing a safety critical task or who has made himself or herself available to perform a safety critical task by attending at work, has a drug in his or her body to such an extent that he or she is in breach of his or her duty under *section 87(1)*,

(b) where a railway incident occurs and he or she is of the opinion, or on the request of an inspector who is of the opinion, that—

(i) the safety critical worker concerned was performing or had performed a safety critical task on the railway infrastructure, or on the train, involved with the incident, or

(ii) the safety critical worker concerned failed to perform a safety critical task expected of him or her, on the railway infrastructure, or on a train, involved with the incident,

or

(c) for the safe operation of the undertaking, at random and in circumstances that are reasonable, where that worker is performing a safety critical task or has made himself or herself available to perform a safety critical task by attending at work.

(2) Only a medical practitioner may take a specimen of blood or be provided with a specimen of urine.

(3) It is the duty of a safety critical worker if a requirement to provide a sample is made of him or her under *subsection (1)*, unless he or she has reasonable excuse, to provide the sample.

(4) While a safety critical worker is at a hospital as a patient, he or she shall not be required to provide a sample unless the medical practitioner in immediate charge of his or her case has been notified by an authorised person of the proposal to make the requirement and—

(a) if the requirement is then made, it shall be for the provision of a sample at the hospital, but

(b) if the medical practitioner objects, on the ground that the requirement would be prejudicial to the proper care and treatment of the patient, the requirement shall not be made.

(5) A sample provided to an authorised person under this section shall be sent by him or her to an analysis body for the purposes of analysing the sample for drugs and the analysis body shall issue a certificate to the authorised person in relation to the results of the analysis.

(6) An analysis body may charge the railway undertaking concerned a fee in respect of any analysis made and certificate issued by it under *subsection (5)*.

(7) The results of any analysis under *subsection (5)* in respect of a sample taken under this section shall, at the request of the Investigation Unit, be given to it by the railway undertaking for whom it was made for the purposes of an investigation by the Unit under *section 58*.

Disciplinary
measures.

90.—(1) Where an authorised person makes a complaint to the management of the railway undertaking which appointed him or her that—

- (a) a safety critical worker has been convicted of an offence under *Chapter 2 of Part 10*, or
- (b) in his or her opinion, a safety critical worker has—
 - (i) failed to comply with his or her duty under *section 87(1)*,
 - (ii) failed without reasonable excuse to comply with his or her duty to provide a sample under *section 89*, or
 - (iii) contravened *subsection (6)*,the railway undertaking concerned shall—
- (c) in the case of a complaint under *paragraph (a)*, satisfy itself as to the fact of that person's conviction, and if the code of conduct so provides, inquire at an oral disciplinary hearing into the circumstances of that conviction, and
- (d) in the case of a complaint under *paragraph (b)*, satisfy itself as to the facts and circumstances of the matter at an oral disciplinary hearing.

(2) Where, in accordance with *subsection (1)(c)* or *(d)*, a railway undertaking is satisfied that a safety critical worker—

- (a) has been convicted of an offence under *Chapter 2 of Part 10*, or
- (b) has—
 - (i) failed to comply with his or her duty under *section 87(1)*,
 - (ii) failed without reasonable excuse, to comply with his or her duty to provide a sample under *section 89*, or
 - (iii) contravened *subsection (6)*,

it shall decide the course of action to be taken (including dismissal, termination of contract, suspension, demotion, prohibition on working at the undertaking or working at safety critical tasks, or mandatory attendance at counselling) in accordance with the code of conduct.

(3) A safety critical worker who is the subject of a disciplinary hearing under this section may represent himself or herself or be represented by another person at the hearing.

(4) Where a railway undertaking imposes any sanction against a safety critical worker as a result of a hearing under this section, it shall afford the worker an opportunity, at his or her choice, to appeal to it or to such other person or persons nominated by the undertaking against the sanction.

(5) A person nominated under *subsection (4)* shall be independent of the undertaking and shall not be a member of its staff or connected to it or be a member of the staff of or connected to another railway undertaking.

(6) A safety critical worker shall not take or attempt to take any

action with the intention of frustrating disciplinary measures under this section.

Proof of certificate of analysis.

91.—In any disciplinary hearing under *section 90* or in any proceedings, a certificate, issued under *section 89(5)*, purporting to be signed by a person employed or engaged in the analysis of samples provided under *section 89(1)* at an analysis body, stating the capacity in which the person is so employed or engaged and stating any one or more of the following, namely—

- (a) that the person received the sample sent under *section 89(5)* to the analysis body,
- (b) that, for such period as is specified in the certificate, the person had in his or her custody the sample so sent,
- (c) that the person gave to such other person as is specified in the certificate the sample so sent,
- (d) that the person carried out the analysis of the sample, and
- (e) the results of the analysis,

shall, unless the contrary is shown be evidence of the matters stated in the certificate.

PART 10

OFFENCES BY PERSONS WORKING ON RAILWAY INFRASTRUCTURE

Chapter 1

Preliminary

Commencement, (*Part 10*).

92.—This Part comes into operation on such day or days as the Minister may appoint by order either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Definitions, (*Part 10*).

93.—(1) In this Part—

“analysis” includes any operation used in determining the concentration of alcohol in a specimen of breath, blood or urine, and any operation used in determining the presence (if any) of a drug or drugs in a specimen of blood or urine, and cognate words shall be construed accordingly;

“Bureau” means Medical Bureau of Road Safety;

“designated” means designated by a member of the Garda Síochána;

“prescribed” means prescribed in regulations made by the Minister;

“safety critical task” means a task specified in *paragraph (i), (ii) or (iii)* when performed in the course of the operation of a railway undertaking, and—

- (a) in the course of a person’s employment with the undertaking,

- (b) under a contract of services with the undertaking,
- (c) in the course of a person's employment with a person who has a contract of services with the undertaking, or
- (d) voluntarily or otherwise,

namely—

- (i) driving a train, or in any other way controlling or affecting the movement of a train,
- (ii) controlling, affecting or managing, the movement of persons on a train, on a platform, across a level crossing, or the boarding of, or alighting from, a train of persons, or
- (iii) working in a maintenance capacity (as defined in *subsection (2)*) or as a supervisor of, or look-out for, persons working in such capacity;

“safety critical worker” means a person who performs a safety critical task.

(2) For the purposes of this Part and *Part 9*, a person works in the course of the operation of a railway undertaking in a maintenance capacity, if his or her work in the operation involves installation, maintenance, repair, alteration or inspection of, railway infrastructure or trains, or involves coupling or uncoupling trains or performing a pre-departure examination of trains.

94.—(1) A member of the Garda Síochána may enter railway property for the purposes of enforcing this Part.

Power of Garda Síochána to enter railway property and to stop train.

(2) A member of the Garda Síochána may request a railway undertaking to stop a train at a convenient and safe location for the purposes of this Part.

(3) In exercising a power under *subsection (2)*, a member of the Garda Síochána shall take all reasonable steps to avoid disruption to the operations of the railway undertaking concerned.

95.—(1) This section applies to a railway undertaking (other than a heritage railway) which operates railway infrastructure or operates trains on a railway infrastructure where such infrastructure is used, or intended to be used, wholly or partly for the carriage of members of the public or freight.

Application and authorised persons.

(2) This section does not apply to a railway undertaking which operates railway infrastructure or operates trains on a railway infrastructure, where such infrastructure is used, or is intended to be used, solely for industrial use.

(3) A railway undertaking to whom this section applies shall appoint persons whom it, with the consent of the Commission, considers are suitably qualified to be authorised persons for the purpose of performing functions under this Part and *Part 9*, on its behalf.

(4) An authorised person is not entitled to perform a function under this Part or *Part 9* unless he or she has received training and instruction, which, in the opinion of the undertaking concerned, is

such as will provide appropriate guidance to him or her in the performance of the function.

(5) An authorised person, shall, on his or her appointment under this section, be furnished by the railway undertaking concerned with a warrant of his or her appointment as an authorised person and when performing any function conferred on an authorised person under this Part or *Part 9*, shall if requested by any person affected, produce such warrant to that person for inspection.

(6) A statement by an employee involved in the management of the railway undertaking concerned that, a warrant of appointment as an authorised person was furnished to a particular person, and such person had received training and instruction which, in the opinion of the undertaking concerned, provided appropriate guidance to such person in the performance by him or her of a function under this Part or *Part 9*, shall, until the contrary is proved, be sufficient evidence in any proceedings of the fact of, the furnishing of such warrant to such person, receipt by him or her of such training and instruction, and the making of the statement by an employee so involved in the undertaking.

(7) A warrant furnished by an undertaking under *subsection (5)* shall be in such form and contain such particulars as may, from time to time, be specified by the Commission.

(8) Subject to the Fire Services Act 1981, an authorised person shall have unhampered access to a railway incident site for the purposes of this Part and *Part 9*.

(9) Subject to the Fire Services Act 1981, a railway undertaking shall, for the purposes of this Part and *Part 9*, ensure that an authorised person appointed by it has unhampered access to any railway property under its management or control.

(10) An authorised person may be referred to by the undertaking concerned by such title as it decides.

Chapter 2

Intoxicants

Functions of the Bureau in relation to analysis under Chapter.

96.—(1) The Bureau shall perform the functions assigned to it by this Chapter.

(2) In particular, and without prejudice to the generality of *subsection (1)*, the Bureau shall arrange for—

- (a) the receipt and analysis of specimens of blood and urine forwarded to the Bureau under this Part and the issue of reports on such analyses,
- (b) the determination, in respect of such specimens, of the concentration of alcohol in the blood or urine and of the presence (if any) of a drug or drugs in the blood or urine, and
- (c) the issue of certificates required under this Chapter to be issued by the Bureau.

(3) The Director shall exercise general supervision in relation to

the performance by the Bureau of the functions assigned to it by or under this Chapter.

(4) No action or other legal proceedings lie (except in the case of wilful neglect or default) against the Director or any member, officer or employee of the Bureau by reason of, or arising out of, any analysis or determination under this Part.

97.—(1) A safety critical worker who performs a safety critical task, or who makes himself or herself available to perform such a task by attending at work, while being unfit, is guilty of an offence.

Offences involving
intoxicants by
persons working on
railway property.

(2) A safety critical worker who performs a safety critical task, or who makes himself or herself available to perform such a task by attending at work, while there is present in his or her body a quantity of alcohol such that, within 3 hours after so performing that task or of attending at work, the concentration of alcohol—

- (a) in his or her blood will exceed a concentration of 80 milligrammes of alcohol per 100 millilitres of blood,
- (b) in his or her urine will exceed a concentration of 107 milligrammes of alcohol per 100 millilitres of urine, or
- (c) in his or her breath will exceed a concentration of 35 microgrammes of alcohol per 100 millilitres of breath,

is guilty of an offence.

(3) The Minister may, by regulations, provide for other amounts, for the time being, to stand in lieu of any of the amounts of alcohol concentration specified in *subsection (2)(a), (b) or (c)*.

(4) A draft of every regulation proposed to be made under *subsection (3)* shall be laid before each House of the Oireachtas and the regulation shall not be made until a resolution approving of the draft has been passed by each such House.

(5) In this section and in *section 87*, “unfit” means, in relation to a safety critical worker, being under the influence of an intoxicant to such an extent that his or her ability to perform a safety critical task, without exposing a person (including himself or herself) to danger or risk of danger, is for the time being impaired.

98.—(1) Where an authorised person or a member of the Garda Síochána is of the opinion—

Obligation to
provide specimen of
breath.

- (a) that a safety critical worker, who is performing a safety critical task or who has made himself or herself available to perform a safety critical task by attending at work,
 - (i) has consumed intoxicating liquor, or
 - (ii) is committing or has committed an offence under *section 97*,
 or
- (b) where a railway incident occurs, that—

- (i) a safety critical worker was performing or had performed a safety critical task on the railway infrastructure, or on the train, involved with the incident, or
- (ii) a safety critical worker failed to perform a safety critical task expected of him or her, on the railway infrastructure, or on a train, involved with the incident,

or at the request of an inspector who is of such opinion, he or she may make a requirement of the safety critical worker under *subsection (3)*.

(2) Without prejudice to *subsection (1)*, a member of the Garda Síochána or an authorised person may, for the safe operation of a railway undertaking, at random and in circumstances that are reasonable, make a requirement under *subsection (3)* of a safety critical worker who is performing a safety critical task or who has made himself or herself available to perform a safety critical task by attending at work.

(3) A member of the Garda Síochána or an authorised person, may, in the circumstances referred to in *subsection (1)* or (2), require a safety critical worker—

- (a) to provide, or to accompany him or her to a place (including a vehicle) at or in the vicinity of the railway infrastructure concerned and there require the worker to provide, by exhaling into an apparatus for indicating the presence of alcohol in the breath, a specimen of his or her breath, or
- (b) where the authorised person or member does not have such apparatus with him or her, to remain (for not more than one hour), at an appropriate place on the railway infrastructure concerned or at the scene of the incident, in his or her presence or in the presence of another authorised person or member of the Garda Síochána until such an apparatus becomes available to him or her and the authorised person or member may then require the worker, to provide by exhaling into such an apparatus, a specimen of his or her breath.

(4) Where an authorised person is of the opinion that a safety critical worker, who is performing a safety critical task or who has made himself or herself available to perform a safety critical task by attending at work, has consumed intoxicating liquor, or is committing or has committed an offence under *section 97*, and where a member of the Garda Síochána is not present, the authorised person shall require the safety critical worker concerned to remain (for not more than one hour), as the case may be, at an appropriate place on the railway infrastructure concerned or at the scene of the incident, in his or her presence or in the presence of another authorised person, pending the arrival of a member.

(5) A member of the Garda Síochána or an authorised person making a requirement under *subsection (3)* may indicate the manner in which the safety critical worker is to comply with the requirement.

(6) A safety critical worker who refuses or fails, to comply immediately with a requirement under this section, or to comply immediately with such a requirement in a manner indicated by a member of the Garda Síochána or an authorised person, is guilty of an offence.

(7) In a prosecution for an offence under this Chapter, it shall be presumed, until the contrary is shown, that an apparatus provided by a member of the Garda Síochána or an authorised person for the purpose of enabling a person to provide a specimen of breath under this section is an apparatus for indicating the presence of alcohol in the breath.

99.—(1) A member of the Garda Síochána may arrest a safety critical worker without warrant if he or she has reasonable cause to suspect that that worker is committing or has committed an offence under *section 97* or *98*. Arrest without warrant.

(2) For the purpose of arresting a safety critical worker under *subsection (1)*, where a member of the Garda Síochána has reasonable cause to suspect that the worker is committing or has committed an offence under *section 97* or *98*, the member may enter (if need be by force) any place where that worker is or where the member, with reasonable cause, suspects him or her to be.

100.—(1) Where a safety critical worker is arrested under *section 99*, a member of the Garda Síochána may, at a Garda Síochána station, at his or her discretion, do either or both of the following: Obligation to provide specimen following arrest.

- (a) require the worker to provide, by exhaling into an apparatus for determining the concentration of alcohol in the breath, 2 specimens of his or her breath and may indicate the manner in which he or she is to comply with the requirement,
- (b) require the worker either—
 - (i) to permit a designated medical practitioner to take from the worker a specimen of his or her blood, or
 - (ii) at the option of the worker, to provide for the designated medical practitioner a specimen of his or her urine.

(2) If the medical practitioner referred to in *subsection (1)(b)* states in writing that he or she is unwilling, on medical grounds, to take from the safety critical worker a specimen of the worker's blood or be provided by the worker with a specimen of the worker's urine, the member may make a requirement of the worker under *subsection (1)(b)* in relation to the specimen other than that to which the first requirement related.

(3) Subject to *section 108*, a person who refuses or fails to comply immediately with a requirement under *subsection (1)(a)* is guilty of an offence.

(4) Subject to *section 108*, a person who, following a requirement under *subsection (1)(b)*—

- (a) refuses or fails to comply with the requirement, or
- (b) refuses or fails to comply with a requirement of a designated medical practitioner in relation to the taking under that subsection of a specimen of blood or the provision under that subsection of a specimen of urine,

is guilty of an offence.

(5) In a prosecution for an offence under this Chapter it shall be presumed, until the contrary is shown, that an apparatus provided by a member of the Garda Síochána for the purpose of enabling a person to provide 2 specimens of breath pursuant to this section is an apparatus for determining the concentration of alcohol in the breath.

Obligation to provide blood or urine specimen while in hospital.

101.—(1) Where a railway incident occurs in consequence of which a safety critical worker is injured, or claims or appears to have been injured, and is admitted to, or attends at, a hospital and a member of the Garda Síochána is of opinion that, at the time of the incident—

- (a) the worker was working on the railway infrastructure or on a train involved in the incident, and
- (b) the worker had consumed an intoxicant,

then the member may, in the hospital, require the worker either—

- (i) to permit a designated medical practitioner to take from the worker a specimen of his or her blood, or
- (ii) at the option of the worker, to provide for the designated medical practitioner a specimen of his or her urine.

(2) If the medical practitioner referred to in *subsection (1)* states in writing that he or she is unwilling, on medical grounds, to take from the safety critical worker a specimen of the worker's blood under *subsection (1)(i)* or be provided by the worker with the specimen of the worker's urine under *subsection (1)(ii)*, the member may make a requirement of the worker under *subsection (1)* in relation to the specimen other than that to which the first requirement related.

(3) Subject to *section 108*, a person who, following a requirement under *subsection (1)*—

- (a) refuses or fails to comply with the requirement, or
- (b) refuses or fails to comply with a requirement of a designated medical practitioner in relation to the taking under that subsection of a specimen of blood or the provision under that subsection of a specimen of urine,

is guilty of an offence.

(4) Notwithstanding *subsection (2)*, it is not an offence for a person to refuse or fail to comply with a requirement under *subsection (1)* where, following his or her admission to, or attendance at, a hospital, the person comes under the care of a medical practitioner and the medical practitioner refuses, on medical grounds, to permit the taking or provision of the specimen concerned.

Detention of intoxicated persons where a danger to themselves or others.

102.—Where a safety critical worker is at a Garda Síochána station having been arrested under *section 99*, section 16 of the Road Traffic Act 1994 applies and references in that section to subsection (1) of that section are to be read as including references to this section.

103.—(1) Where, consequent on a requirement under *section 100* of him or her, a safety critical worker provides 2 specimens of his or her breath and the apparatus referred to in that section determines the concentration of alcohol in each specimen, in case the apparatus determines that each specimen has—

Procedure following provision of breath specimen under *section 100*.

- (a) the same concentration of alcohol, either specimen, or
- (b) a different concentration of alcohol, the specimen with the lower concentration of alcohol,

shall be taken into account for the purposes of *section 97(2)* and the other specimen shall be disregarded.

(2) Where the apparatus referred to in *section 100* determines that in respect of the specimen of breath to be taken into account the safety critical worker may have contravened *section 97(2)* he or she shall be supplied immediately by a member of the Garda Síochána with 2 identical statements, automatically produced by the apparatus in the prescribed form and duly completed by the member in the prescribed manner, stating the concentration of alcohol in the said specimen determined by the apparatus.

(3) On receipt of the statements, the safety critical worker shall on being requested so to do by the member—

- (a) immediately acknowledge such receipt by placing his or her signature on each statement, and
- (b) return either of the statements to the member.

(4) A person who refuses or fails to comply with *subsection (3)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,000 or to imprisonment for a term not exceeding 1 month, or to both.

(5) *Section 107(1)* applies to a statement under this section as respects which there has been a failure to comply with *subsection (3)(a)* as it applies to a duly completed statement under this section.

104.—(1) Where under this Chapter a designated medical practitioner has taken a specimen of blood from a safety critical worker or has been provided by the worker with a specimen of his or her urine, the medical practitioner shall divide the specimen into 2 parts, place each part in a container which he or she shall immediately seal and complete the form prescribed for the purposes of this section.

Procedure to be followed relating to specimens taken or provided.

(2) Where a specimen of blood or urine of a safety critical worker has been divided into 2 parts pursuant to *subsection (1)*, a member of the Garda Síochána shall offer to the worker one of the sealed containers together with a statement in writing indicating that he or she may retain either of the containers.

(3) As soon as practicable after *subsection (2)* has been complied with, a member of the Garda Síochána shall cause to be forwarded to the Bureau the completed form referred to in *subsection (1)*, together with the relevant sealed container or, where the safety critical worker has declined to retain one of the sealed containers, both relevant sealed containers.

(4) In a prosecution for an offence under *section 97* it shall be

presumed, until the contrary is shown, that *subsections (1) to (3)* have been complied with.

Procedure at
Bureau regarding
specimens.

105.—(1) As soon as practicable after it has received a specimen forwarded to it under *section 104*, the Bureau shall analyse the specimen and determine the concentration of alcohol or (as may be appropriate) the presence of a drug or drugs in the specimen.

(2) Where the Bureau receives 2 specimens of blood so forwarded together in relation to the same safety critical worker or 2 specimens of urine so forwarded together in relation to the same worker, it shall be sufficient compliance with *subsection (1)* for the Bureau to make an analysis of and determination in relation to one of the 2 specimens of blood or (as may be appropriate) one of the 2 specimens of urine.

(3) As soon as practicable after compliance with *subsection (1)*, the Bureau shall forward to the Garda Síochána station from which the specimen analysed was forwarded a completed certificate in the prescribed form for the purpose of this section and shall forward a copy of the completed certificate to the safety critical worker who is named on the relevant form under *section 104* as the person from whom the specimen was taken or who provided it.

(4) In a prosecution for an offence under *section 97*, it shall be presumed, until the contrary is shown, that *subsections (1) to (3)* have been complied with.

Frustrating
prosecution.

106.—(1) A safety critical worker shall not take or attempt to take any action (including consumption of alcohol but excluding a refusal or failure to comply with a requirement under *section 100*) with the intention of frustrating a prosecution under *section 97*.

(2) A person who contravenes *subsection (1)* is guilty of an offence.

(3) Where, on the hearing of a charge for an offence under *section 97*, the court is satisfied that any action taken by the defendant (including consumption of alcohol but excluding a refusal or failure to provide a specimen of his or her breath or urine or to permit the taking of a specimen of his or her blood) was taken with the intention of frustrating a prosecution under that section, the court may find him or her guilty of an offence under *subsection (2)*.

Evidence in
proceedings under
this Chapter.

107.—(1) A duly completed statement purporting to have been supplied under *section 103(2)* is, until the contrary is shown, sufficient evidence in any proceedings under this Chapter, of the facts stated therein, without proof of any signature on it or that the signatory was the proper person to sign it, and shall, until the contrary is shown, be sufficient evidence of compliance by the member of the Garda Síochána concerned with the requirements imposed on him or her by or under this Chapter prior to and in connection with the supply by him or her under *section 103(2)* of such statement.

(2) A duly completed form under *section 104(1)* is, until the contrary is shown, sufficient evidence in any proceedings under this Chapter of the facts stated therein, without proof of any signature on it or that the signatory was the proper person to sign it, and shall, until the contrary is shown, be sufficient evidence of compliance by

the designated medical practitioner concerned with the requirements imposed on him or her by or under this Chapter.

(3) A certificate expressed to have been issued under *section 105* is, until the contrary is shown, sufficient evidence in any proceedings under this Part of the facts stated therein, without proof of any signature on it or that the signatory was the proper person to sign it, and shall, until the contrary is shown, be sufficient evidence of compliance by the Bureau with the requirements imposed on it by or under this Chapter.

(4) In a prosecution for an offence under *section 97*, it shall be presumed, until the contrary is shown, that each of the following persons is a designated medical practitioner—

- (a) a person who by virtue of powers conferred on him or her by this Part took from another person a specimen of that other person's blood or was provided by another person with a specimen of that other person's urine,
- (b) a person for whom, following a requirement under *section 100(1)* or *101(1)* to permit the taking by him or her of a specimen of blood, there was a refusal or failure to give such permission or to comply with a requirement of his or her in relation to the taking of such a specimen,
- (c) a person for whom, following a requirement under *section 100(1)* or *101(1)* to provide for him or her a specimen of urine, there was a refusal or failure to provide such a specimen or to comply with a requirement of his or her in relation to the provision of such a specimen.

(5) Where, pursuant to *section 100* or *101* a designated medical practitioner states in writing that he or she is unwilling, on medical grounds, to take from a person a specimen of his or her blood or be provided by him or her with a specimen of his or her urine, the statement signed by the medical practitioner is, in any proceedings under this Part, sufficient evidence, until the contrary is shown, of the facts stated therein, without proof of any signature on it or that the signatory was the proper person to sign it.

108.—(1) In a prosecution of a safety critical worker for an offence under *section 100* for refusing or failing to comply with a requirement to provide 2 specimens of his or her breath, it is a defence for the defendant to satisfy the court that there was a special and substantial reason for his or her refusal or failure and that, as soon as practicable after the refusal or failure concerned, he or she complied (or offered, but was not called upon, to comply) with a requirement under the section concerned in relation to the taking of a specimen of blood or the provision of a specimen of urine. Defences.

(2) In a prosecution of a safety critical worker for an offence under *section 100* or *101* for refusing or failing to comply with a requirement to permit a designated medical practitioner to take a specimen of blood or for refusing or failing to comply with a requirement of a designated medical practitioner in relation to the taking of a specimen of blood, it is a defence for the defendant to satisfy the court that there was a special and substantial reason for his or her refusal or failure and that, as soon as practicable after the refusal or failure concerned, he or she complied (or offered, but was not called upon, to comply) with a requirement under the section concerned in relation to the provision of a specimen of urine.

(3) Notwithstanding *subsections (1) and (2)*, evidence may be given at the hearing of a charge of an offence under *section 97* that the defendant refused or failed to comply with a requirement to provide 2 specimens of his or her breath, or that the defendant refused or failed to comply with a requirement to permit the taking of a specimen of his or her blood or to comply with a requirement of a designated medical practitioner in relation to the taking of a specimen of blood, as the case may be.

(4) It is not a defence for a person charged with an offence under *section 97* to show that, in relation to the facts alleged to constitute the offence, an analysis or determination under this Chapter, has not been carried out or that he or she has not been requested under *section 98* to provide a specimen of his or her breath.

Penalties.

109.—A person guilty of an offence under this Chapter (other than *section 103(4)*) is liable on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months, or to both.

Chapter 3

Carelessly or dangerously working or working while unfit, on railway

Careless working on railway.

110.—(1) A safety critical worker shall not perform a safety critical task on railway property or in a public place without taking due care and attention.

(2) A person who contravenes *subsection (1)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €2,500 or to imprisonment for a term not exceeding 3 months, or to both.

Dangerous working on railway.

111.—(1) A safety critical worker shall not perform a safety critical task in a manner which, having regard to all the circumstances of the case, is dangerous to the safety of persons or poses an unreasonable risk of harm to persons.

(2) A person, being a supervisor, manager, director or secretary of a railway undertaking, shall not instruct a safety critical worker to perform a safety critical task in a manner that may cause that worker to contravene *subsection (1)*.

(3) A person who contravenes *subsection (1) or (2)* is guilty of an offence and is liable—

(a) on conviction on indictment to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 5 years, or to both, or

(b) on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months, or to both.

(4) In proceedings for an offence under *subsection (3)*, it shall be a defence for the person against whom such proceedings are brought to prove that the safety critical task—

- (a) in respect of a contravention of *subsection (1)*, was performed, or
- (b) in respect of a contravention of *subsection (2)*, was instructed to be performed,

in accordance with written rules or procedures of the railway undertaking concerned, where those rules or procedures specify the manner in which that task should be performed.

(5) Where, when a person is tried on indictment or summarily for an offence under this section, the jury, or, in the case of a summary trial the District Court, is of the opinion that he or she was not guilty of an offence under this section but was guilty of an offence under *section 110*, the jury or court may find him or her guilty of an offence under *section 110* and he or she may be sentenced accordingly.

(6) Where a member of the Garda Síochána is of the opinion that a person has committed an offence under this section causing loss of life or serious personal injury to another person, the member may arrest the person without warrant.

112.—(1) A railway undertaking may require a safety critical worker to undergo an assessment by a medical practitioner, nominated by the undertaking, of his or her fitness to perform a safety critical task and such person shall co-operate with such medical assessment. Medical fitness for duty.

(2) Railway undertakings shall ensure that safety critical workers undergo assessment by a medical practitioner of their fitness to perform safety critical tasks.

(3) Where, following an assessment under *subsection (1)*, a medical practitioner is of the opinion that a safety critical worker is unfit to perform a safety critical task, he or she shall notify the railway undertaking concerned, by the quickest practicable means, of that opinion and shall inform the safety critical worker of that opinion and the reasons for that opinion.

(4) If a safety critical worker becomes aware that he or she is suffering from any disease or physical or mental impairment which, should he or she perform a safety critical task, would be likely to cause him or her to expose a person to danger or risk of danger, he or she shall immediately notify the railway undertaking concerned.

(5) Where a railway undertaking receives a notification under *subsection (3)* or *(4)*, it shall not permit the safety critical worker concerned to perform a safety critical task until such time as an assessment under *subsection (1)* confirms that he or she is fit to so perform that task.

(6) The Commission may, with the consent of the Minister, and after consultation with railway undertakings, organisations which represent staff of railway undertakings, the Medical Council, the Health and Safety Authority and such other persons as in the opinion of the Commission may be relevant, make regulations in relation to all or any of the following—

- (a) the nature of a medical assessment under *subsection (1)* and the matters that shall be assessed, or
- (b) the frequency of an assessment under *subsection (2)*.

(7) The Commission may, after consultation with railway undertakings, organisations which represent staff of railway undertakings, the Medical Council, the Equality Authority, the Health and Safety Authority and such other persons as in the opinion of the Commission may be relevant, publish guidelines in relation to the types of disease or physical or mental impairment which may require notification by a safety critical worker to a railway undertaking under *subsection (4)*.

(8) On each occasion that a safety critical worker attends his or her medical practitioner, he or she shall inform that medical practitioner of his or her position as a safety critical worker.

PART 11

WORKS BY ROAD AUTHORITIES, ETC.

Works on public roads in the vicinity of railway infrastructure.

113.—(1) A person (other than a road authority or a person acting under contract on behalf of a road authority) shall not commence or carry out any works on a public road in the vicinity of railway infrastructure where such works may, in his or her reasonable opinion having regard to any guidelines published by the Commission under *subsection (4)*, affect the safe operation of that infrastructure without obtaining the prior written consent of the road authority concerned, and subject to any conditions contained in such consent.

(2) Before giving its consent under *subsection (1)*, a road authority shall notify the railway undertaking concerned of the proposed works and shall consider any objections or representations, made to it in writing within 21 days of notification, by the railway undertaking concerning the proposed works.

(3) A road authority shall, before it commences or authorises a person to commence under contract on its behalf, any works on a public road in the vicinity of a railway infrastructure which may, in its reasonable opinion having regard to any guidelines published by the Commission under *subsection (4)*, affect the safe operation of the infrastructure, notify the railway undertaking concerned of its intention and shall consider any objections or representations, made to it in writing within 21 days of notification, by the undertaking concerning the intended works.

(4) The Commission may, after consultation with the Minister, the Minister for the Environment, Heritage and Local Government and the National Roads Authority, publish guidelines in relation to any works on a public road in the vicinity of railway infrastructure which may affect the safe operation of the railway infrastructure.

(5) Nothing in this section shall prevent a road authority or other person from carrying out works in advance of a requirement under this section where such works are necessary to eliminate or reduce an immediate danger or risk to persons or property.

(6) Where works are carried out in accordance with *subsection (5)*, the road authority or person concerned shall, as soon as practicable after the commencement of such works, comply with the requirements of this section.

(7) A person who carries out any works on a public road in the vicinity of a railway infrastructure shall take all reasonable steps to

ensure that the works do not affect the safe operation of the infrastructure.

(8) A person who is for the time being responsible for works completed on a public road in the vicinity of a railway infrastructure shall take all reasonable steps to ensure that the works do not affect the safe operation of that infrastructure.

(9) A person who contravenes this section is guilty of an offence and is liable—

- (a) on summary conviction, to a fine not exceeding €3,000, or
- (b) on conviction on indictment, to a fine not exceeding €500,000.

(10) In this section, “works” includes, but may not be limited to—

- (a) in the case of a public road — road excavation or resurfacing, road widening or narrowing, signage, road markings, traffic signalling and protective barriers in the vicinity of railway infrastructure, a railway level crossing or a road over or under a railway or a road tunnel, and
- (b) in the case of a railway undertaking — new works under *section 42(15)*.

PART 12

GENERAL ENFORCEMENT AND OFFENCE PROVISIONS RELATING TO RAILWAY SAFETY AND CONDUCT OF PERSONS ON RAILWAYS

114.—A person who uses or attempts to use a train or other mechanically propelled vehicle on a railway, other than a light railway (within the meaning of the Transport (Railway Infrastructure) Act 2001) without the express consent of the railway undertaking concerned, is guilty of an offence and is liable on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months or to both.

Unlawful use of railway.

115.—A person who deliberately or wantonly causes or attempts to cause damage to any railway property is guilty of an offence.

Deliberate or wanton damage to railway.

116.—(1) A person who causes a hazard or risk to persons by accidentally or negligently causing any structure, vehicle, or other matter or thing to come to lie on railway infrastructure, or to overhang or protrude into the operational area above or adjacent to railway infrastructure, shall immediately notify the railway undertaking concerned or a member of the Garda Síochána.

Obligation to notify danger caused to railway.

(2) A person who, without reasonable excuse, contravenes *subsection (1)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €5,000, or to imprisonment for a term not exceeding 3 months, or to both.

117.—A person who deliberately or wantonly exposes another to danger on railway property is guilty of an offence.

Obligation not to expose person to danger on railway.

Unlawful use of system of communication between passengers and train drivers.

118.—Where a railway undertaking provides an emergency cord or other system of emergency communication between the passengers and the driver of a train, any person who uses that cord or system without reasonable and sufficient cause is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 1 month, or to both.

Attempting to obstruct, damage or derail a train, etc.

119.—A person who, without lawful authority, deliberately or maliciously—

- (a) puts, places, casts or throws upon any railway property or across any railway track any wood, stone, vehicle or other matter or thing,
- (b) takes up, removes or displaces any rail, sleeper, or other matter or thing belonging to a railway undertaking, or
- (c) turns, moves or diverts any points, signals or other plant or machinery belonging to a railway undertaking,

to obstruct, damage or derail a train or to injure persons present on, using or working on railway property is guilty of an offence.

Penalty.

120.—A person guilty of an offence under *section 115, 117 or 119* is liable—

- (a) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 3 years or to both,
- (b) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 3 months, or to both.

Power to arrest by member of Garda Síochána.

121.—A member of the Garda Síochána may arrest a person without warrant where the member reasonably suspects that the person is committing or has committed an offence under—

- (a) section 59(1) of the Transport Act 1950,
- (b) section 25(1) of the Transport (Miscellaneous Provisions) Act 1971, or
- (c) this Part.

PART 13

PROCEDURAL

Prosecution of summary offences.

122.—(1) Proceedings for an offence under this Act may be brought and prosecuted summarily by the Commission.

(2) The Commission shall be entitled—

- (a) to view and take copies of any record or other evidence gathered or obtained by the Investigation Unit during the course of its investigation of a railway incident under *section 58*, and

- (b) subject to *section 58(17)*, to submit as evidence in criminal or other proceedings any such record or other evidence.

(3) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for any offence under this Act may be instituted at any time within 2 years after the date of the offence.

123.—Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a 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 is guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Offences by bodies corporate.

124.—Where a person is convicted of an offence under this Act, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order that person to pay to the Commission the costs and expenses, measured by the court, incurred by the Commission in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of employees or persons engaged by the Commission.

Cost of prosecutions.

125.—(1) Where a notice, notification or direction is required under this Act to be given to or served on a person, the notice or direction shall be in writing and shall be addressed to that person and shall be given to the person in one of the following ways:

Service of notices, etc.

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or carries on business;
- (c) by sending it by post in a pre-paid registered letter or by any other form of recorded delivery service, addressed to the person at the address at which the person ordinarily resides or carries on business;
- (d) if an address for the service of notices, notifications or directions has been furnished by the person, by leaving it at, or sending it by pre-paid registered post or by any other form of recorded delivery service addressed to the person to, that address;
- (e) in any case where the Commission considers that the immediate giving of the notice, notification or direction is required, by sending it, by means of a facsimile machine or electronic mail, to a device or facility for the reception of facsimiles or electronic mail located at the address at which the person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the sender's—
 - (i) facsimile machine generates a message confirming successful transmission of the total number of pages of the notice, or

- (ii) facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail.

(2) For the purposes of this section, a company registered under the Companies Acts 1963 to 2005, shall be deemed to be ordinarily resident at its registered office and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

Disclosure of records.

126.—(1) The Investigation Unit, the Commission, a railway undertaking or any other person concerned with the conduct of an investigation under *section 53* or *58* or with an inquiry under *section 64* shall not disclose the following records to any other party for purposes other than such investigation or inquiry:

- (a) statements taken by an inspector, railway undertaking or other person in the course of the investigation or inquiry;
- (b) medical or private information regarding persons involved in the railway incident which is the subject of the investigation or inquiry;
- (c) voice or video recordings or transcripts of such recordings;
- (d) data recordings or output from such recordings which are not relevant to the investigation or inquiry;
- (e) opinions expressed in the analysis of information; and
- (f) observations submitted in accordance with *section 62(3)* where the person who has submitted the observations so requests.

(2) Notwithstanding *subsection (1)*, the Commission or tribunal may disclose a particular record where it considers, in respect of the particular record, that the probable benefits to the public interest from such disclosure would outweigh any adverse impact of such disclosure on that investigation or inquiry or on any future investigation by the Commission, or railway undertaking or an inquiry by a tribunal.

(3) *Subsection (1)* shall not preclude the Commission, a railway undertaking or a tribunal from including such records in a report under *section 53, 60, 62* or *64* where the information is pertinent to the analysis of the cause of a railway incident or the recommendations arising from the investigation of or inquiry into such incident.

(4) Any record, other than a record under *subsection (1)*, held by the Commission or a tribunal in the course of an investigation or inquiry shall not be made available by the Commission or tribunal to any other party except for the purposes of an investigation or inquiry until after the day of publication of a report under *section 60* or *64* or the finalisation of a report under *section 53* unless the Commission or tribunal as the case may be deems it appropriate in the public interest to do so.

(5) For the avoidance of doubt, information specified in *subsection (1)* shall—

- (a) where held by a railway undertaking, be provided to the

Commission or a tribunal on receipt of a request from the Commission or the tribunal, and

- (b) where held by the Commission or a tribunal in relation to an investigation or an inquiry relating to an international service, and where the Commission or the tribunal considers that there is a benefit in so doing, be provided on receipt of a request from a relevant competent authority in another state, to such authority.

(6) In this section, “tribunal” means a tribunal of inquiry under *section 64*.

PART 14

PROVISIONS RELATING TO CÓRAS IOMPAIR ÉIREANN

127.—Section 17 of the Transport Act 1950 is amended by substituting for subsections (1) and (2) the following:

Compulsory acquisition of land.

“(1) The Minister may, if and whenever he or she thinks fit, on the application of the Board, by order (‘Acquisition Order’) authorise the Board for the purpose of the exercise of its powers and duties or of the powers and duties of any of its subsidiary companies to—

- (a) acquire compulsorily such land as may be specified in the order, or
- (b) close, stop up, remove, alter, divert or restrict an existing means of crossing a railway as may be specified in the order.

(2) An Acquisition Order—

- (a) shall provide for the payment of compensation by the Board to the several persons having estates or interests in the land to which the order relates,
- (b) shall provide that any question of disputed compensation shall be determined, subject to subsection (2A), under and in accordance with the Acquisition of Land (Assessment of Compensation) Act 1919 and, for this purpose, the Board is deemed to be a public authority within the meaning of that Act, and
- (c) may incorporate all or any of the provisions of the Land Clauses Acts, with such modifications and adaptations as the Minister thinks proper.

(2A) An official arbitrator appointed under section 1 of the Acquisition of Land (Assessment of Compensation) Act 1919 shall—

- (a) in assessing compensation for the closure, stopping up, removal, alteration or restriction of an existing means of crossing the railway, have regard to any new means of access provided by the Board to affected lands and where appropriate to any existing means of access (where restricted or otherwise) that remains, and

(b) have jurisdiction to make a nil award.”.

Matters relating to
bye-laws, etc.

128.—The Transport Act 1950 is amended—

(a) in section 20(1), by inserting after paragraph (b) the following:

“(bb) the provision of parking facilities for vehicles on land belonging to or occupied by the Board, including fees for failure to comply with bye-laws made under section 22(1)(ee),”.

(b) in section 22—

(i) by inserting after paragraph (e) of subsection (1) the following:

“(ee) for matters relating to the use and parking of vehicles on land belonging to or occupied by the Board including—

(i) the regulation of traffic generally, including parking restrictions, direction of traffic and the maximum speed of traffic on such land,

(ii) the making of provision for the fixing of an immobilisation device to any vehicle which has been unlawfully parked in any place on such land, and

(iii) the regulation of small public service vehicles (within the meaning of section 3 of the Road Traffic Act 1961) at railways or the approaches thereto;”.

and

(ii) by substituting for subsection (4) (as amended by section 6 of the Transport Act 1987) the following:

“(4) Where a person contravenes a provision of bye-laws made under this section which is stated in the bye-laws to be a penal provision, he or she is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,000.

(4A) The liability of an offender to a penalty under subsection (4) of this section does not prejudice the recovery of any fare, tariff or fee payable by him or her to the Board for any damage caused by him or her to property of the Board.

(4B) An offence under subsection (4) of this section may be prosecuted by the Board.”.

and

(c) in section 59, by substituting for subsection (1) (as amended by section 7 of the Transport Act 1987) the following:

“(1) A person who trespasses on any of the railways of or worked by the Board is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,000.”.

129.—The following section is inserted after section 22 of the Transport Act 1950:

Powers of
authorised officers.

“22A.—(1) If an authorised officer reasonably suspects that a person—

- (a) is contravening or has contravened or is failing or has failed to comply with a provision of bye-laws made under section 22 of this Act which is stated in the bye-laws to be a penal provision,
- (b) is committing or has committed an offence under section 59(1) of this Act, section 25 of the Transport (Miscellaneous Provisions) Act 1971, or *section 118 or 132 of the Railway Safety Act 2005*,
- (c) is assaulting or has assaulted or is causing or has caused deliberate harm to another on railway property,
- (d) is causing or has caused wanton or deliberate damage to railway property,
- (e) is obstructing or has obstructed or is impeding or has impeded an authorised officer in the exercise of his or her duties under this section or any provision of bye-laws made under section 22 of this Act which is stated in the bye-laws to be a penal provision,
- (f) on any railway property is intoxicated or is committing or has committed an offence under section 15 of the Misuse of Drugs Act 1977, or
- (g) if requested by an authorised officer to cease such contravention or action or to so comply, fails to comply with the request,

he or she may—

- (i) using such reasonable force as the circumstances require, remove or escort the person from the railway property or any part of it,
- (ii) in circumstances where the officer considers it to be justified, arrest the person without warrant, or
- (iii) require the person to give his or her name and address and, if the person fails or refuses to do so or gives a name that the authorised officer reasonably suspects is false or misleading may arrest that person without warrant,

and, if he or she is not a member of the Garda Síochána, deliver, as soon as practicable, the person, if arrested, into the custody of a member of the Garda Síochána to be dealt with according to law.

(2) A person who fails or refuses to give his or her name or

address when required under subsection (1) of this section, or gives a name or address which is false or misleading, is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,000.

(3) The Board may appoint such and so many persons as it considers necessary to be authorised officers for the purposes of this section or any provision of bye-laws made under section 22 of this Act which is stated in the bye-laws to be a penal provision.

(4) An authorised officer, who is not a member of the Garda Síochána, is not entitled to exercise a power under this section unless he or she has received training and instruction, which, in the opinion of the Board is such as will provide guidance to him or her in the exercise of the power.

(5) The Board shall endorse on the warrant it furnishes to an authorised officer under subsection (6) of this section a statement to the effect that the officer has received the training and instruction referred to in subsection (4) of this section.

(6) An authorised officer, who is not a member of the Garda Síochána, shall, on his or her appointment under this section, be furnished by the Board with a warrant of his or her appointment as an authorised officer.

(7) An authorised officer, who is not a member of the Garda Síochána, when exercising a power under this section shall be in uniform provided or authorised by the Board.

(8) The arrest of a person under this section does not prejudice the re-arrest of the person by a member of the Garda Síochána.

(9) An authorised officer, who is not a member of the Garda Síochána, may be referred to by the Board by such title as it decides.

(10) In this section—

“authorised officer” means a person appointed under this section or a member of the Garda Síochána whose attendance is requested by an authorised officer or by the Board;

“railway property” means all land, buildings, railway infrastructure (within the meaning of the *Railway Safety Act 2005*), rolling stock and vehicles within the control of the Board.

(11) In this section a reference to the committal of an offence or an act includes a reference to an attempt to commit the offence or the act.”.

Borrowing by CIE
for capital purposes.

130.—(1) This section comes into operation on such day or days as the Minister may by order or orders appoint and different days may be so appointed for the coming into operation of different subsections.

(2) The Transport Act 1964 is amended by substituting for section 5(2) (inserted by section 3 of the Transport Act 1985) the following:

“(2) The aggregate at any one time of borrowings under this

section which have not been repaid shall not exceed €600,000,000.”.

(3) The State Guarantees (Transport) Act 1962 is amended by substituting for section 2(2) (inserted by section 4 of the Transport Act 1985) the following:

“(2) The Minister shall not so exercise the powers conferred by subsection (1) of this section or by section 4(1) of the Transport Act 1974, that the amount, or the aggregate amount, of principal which he or she may at any one time be liable to pay pursuant to a guarantee or guarantees under this section or section 4 of the Transport Act 1974 (or under both those sections), and for the time being in force, together with the amount of principal (if any) which he or she has previously paid pursuant to any such guarantees and which has not been repaid, exceeds €600,000,000.”.

131.—Section 25 of the Transport (Miscellaneous Provisions) Act 1971 is amended by substituting for subsection (1) (as amended by section 8 of the Transport Act 1987) the following: Failure to shut and fasten gates of level crossing or passage.

“(1) Where a person fails to shut and fasten the gate of a level crossing or passage to which this section applies, as soon as he or she or any animal or vehicle under his or her care has passed through the level crossing or passage, he or she is guilty of an offence and is liable on summary conviction in respect of every such offence to a fine not exceeding €1,000.”.

PART 15

FARE EVASION AND FIXED PAYMENT NOTICES

132.—(1) Every passenger of a railway undertaking shall, on request by an officer or employee of a railway undertaking, produce, and if so requested, deliver up to the officer or employee a ticket showing that his or her fare is paid and, if the fare has not been paid, shall upon request— Penalty for avoiding payment of fare.

(a) pay, to the officer or employee—

(i) his or her fare from the place where he or she started the journey by railway, or

(ii) such other fare for non-payment of a fare as fixed by the undertaking,

as the officer or employee decides, or

(b) give the officer or employee his or her name and address.

(2) A passenger who fails—

(a) to comply with a request under *subsection (1)* to deliver up a ticket,

(b) to pay the fare required under *subsection (1)(a)*, or

(c) to give his or her name and address, if requested under *subsection (1)(b)*,

is guilty of an offence.

- (3) A passenger who—
- (a) travels or attempts to travel on a railway of a railway undertaking without having previously paid his or her fare, and with intent to avoid such payment,
 - (b) having paid his or her fare for a certain distance, knowingly and wilfully proceeds by train beyond that distance without previously paying the additional fare for the additional distance, and with intent to avoid such payment, or
 - (c) having failed to pay his or her fare, gives in reply to a request by an officer or employee of a railway undertaking a false or misleading name or address,

is guilty of an offence.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding €1,000.

(5) The liability of an offender to a penalty under this section does not prejudice the recovery of any fare payable by him or her.

Fixed payment notice.

133.—(1) Where an authorised officer has reasonable grounds for believing that a person is committing or has committed an offence under section 22(4), 22A(2) or 59(1) of the Transport Act 1950, section 25(1) of the Transport (Miscellaneous Provisions) Act 1971, or *section 118 or 132*, he or she may serve the person with a notice (“fixed payment notice”) in the prescribed form stating that—

- (a) the person is alleged to have committed the offence,
 - (b) the person may during the period of 21 days beginning on the date of the notice make to the railway undertaking concerned at the address specified in the notice a payment of €100, or in lieu of that amount such other amount standing specified for the time being in regulations, accompanied by the notice, and
 - (c) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.
- (2) Where a fixed payment notice is given under *subsection (1)*—
- (a) a person to whom the notice applies may, during the period specified in the notice, make to the railway undertaking concerned at the address specified in the notice the payment specified in the notice accompanied by the notice,
 - (b) the railway undertaking concerned may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstances by the person who made it, and
 - (c) a prosecution in respect of the alleged offence shall not be

instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence shall be instituted.

(3) In a prosecution for an offence under this Act the onus of proving that a payment pursuant to a notice under this section has been made shall lie on the defendant.

(4) A railway undertaking may appoint such and so many persons as it considers necessary to be authorised officers for the purpose of *subsection (1)* generally or for specified purposes.

(5) In this section—

“authorised officer” includes in relation to an offence under section 22(4), 22A(2) or 59(1) of the Transport Act 1950, section 25(1) of the Transport (Miscellaneous Provisions) Act 1971 or *section 118 or 132* and in relation to railway property belonging to or under the control of Corás Iompair Éireann, an authorised officer appointed under section 22A (inserted by *section 129*) of the Transport Act 1950;

“prescribed” means prescribed by regulations made by the Minister.

PART 16

LIGHT RAILWAY AND METRO

134.—(1) The following sections are substituted for section 66 of the Transport (Railway Infrastructure) Act 2001:

Amendment of
Transport (Railway
Infrastructure) Act
2001.

“Bye-laws.

66.—(1) Bye-laws may be made—

(a) by the Agency, in relation to a railway,
or

(b) with the consent of the Agency, by a
railway undertaking in relation to a
railway it operates or under its control,

in relation to any one or more of the following
matters—

(i) the general regulation, subject to any
statutory provisions in that behalf, of—

(I) the travelling upon or use of a rail-
way, (including a requirement to
travel with a valid ticket or pass
and the issue of such), or

(II) the working of railway transport
services by a railway undertaking,

(ii) the prevention of the commission of
nuisances in or upon a railway,

(iii) the prevention of damage to railway in-
frastructure,

- (iv) the removal from or the prohibition of the use on a railway of any vehicle or thing which is or may become a danger to life, health, the operation or maintenance of a railway or would otherwise interfere with the proper operation of a railway,
- (v) the regulation of parking of vehicles on or adjacent to a railway,
- (vi) the safe custody and return or disposal of any property found on a railway,
- (vii) the repair, improvement, extension and development of a railway,
- (viii) subject to any statutory provisions in that behalf, the regulation of works that would affect the operation or maintenance of a railway or would otherwise interfere with the proper operation of a railway.

(2) Bye-laws under this section may contain such incidental, subsidiary and ancillary provisions as the Agency or the railway undertaking making the bye-laws, considers necessary or expedient for the purposes of the bye-laws.

(3) The Agency, or, as the case may be, a railway undertaking may provide for reasonable charges in respect of matters provided for in bye-laws made by it under this section.

(4) Whenever, after the passing of the *Railway Safety Act 2005*, the Agency or a railway undertaking proposes to make bye-laws under this section, the following provisions have effect—

- (a) the Agency or the undertaking, as the case may be, shall publish notice of the proposal at least once in at least 2 daily newspapers published in and circulating in the State or the area to which the bye-laws relate,
- (b) the notice shall include—
 - (i) a statement of the purposes for which the bye-laws are to be made,
 - (ii) an intimation that a copy of draft bye-laws is open for public inspection at the principal offices in the State of the Agency or the undertaking, as the case may be,
 - (iii) an intimation that any person may submit to the Agency or the undertaking, as the case may be, objections to the draft bye-laws at

any time during the period of 30 days commencing on the date of the first publication of the notice,

- (c) the Agency or the undertaking, as the case may be, shall, during that period of 30 days, keep a copy of the draft bye-laws open for public inspection during ordinary office hours at its principal offices,
- (d) any person who objects to the draft bye-laws may submit his or her objection to the Agency or the undertaking, as the case may be, in writing at any time during that period of 30 days and the Agency or the undertaking, as the case may be, shall consider the objections, and
- (e) on the completion of that period of 30 days, the Agency or the undertaking, as the case may be, shall as it thinks proper, refrain from making the bye-laws or make the bye-laws either without modification or with modification as it thinks proper.

(5) Such details of bye-laws under this section shall be displayed on a railway, where practicable, in conspicuous places in such manner as—

- (a) the Agency, where the bye-laws are made by it, or
- (b) a railway undertaking, where the bye-laws are made by it, subject to any general direction of the Agency,

considers best adapted for giving information to the public. The absence of any such display is not a defence to a contravention of or failure to comply with such bye-laws.

(6) Bye-laws under this section shall not be made without the consent of the Minister.

(7) Every bye-law made under this section, after the passing of the *Railway Safety Act 2005*, shall be laid, where they are made by the Agency, by the Agency and where they are made by a railway undertaking, by the railway undertaking, before each House of the Oireachtas, as soon as may be after it is made and, if a resolution annulling the bye-law is passed by either such House within the next 21 days on which that House has sat after the bye-law is laid before it, the bye-law shall be annulled accordingly, but without prejudice to anything previously done under it.

(8) A person who contravenes or fails to comply with a bye-law under this section is guilty of

an offence and is liable on summary conviction to a fine not exceeding €1,000.

(9) The liability of an offender to a fine under subsection (8) does not prejudice the recovery of any fare, tariff or fee payable by him or her to the Agency or a railway undertaking for any damage caused by him or her to property of the Agency or a railway undertaking.

Immobilisation, removal, etc. of unlawfully parked vehicles.

66A.—(1) Where an authorised officer finds on or adjacent to a railway a vehicle which he or she believes—

- (a) is parked in contravention of bye-laws made under section 66,
- (b) is or may become a danger or a nuisance to persons, or
- (c) would otherwise interfere with the proper operation of a railway,

he or she or a person acting under his or her direction may—

- (i) fix an immobilisation device to the vehicle while it remains in the place where he or she finds it, or
- (ii) move it from the place where he or she finds it (whether or not he or she has fixed an immobilisation device to it) to another place and, if he or she considers it necessary, fix an immobilisation device to it in that other place.

(2) When fixing an immobilisation device to a vehicle, there shall also be affixed to the vehicle a notice in the prescribed form—

- (a) indicating that the device has been fixed to the vehicle and warning that an attempt should not be made to drive it or otherwise put it in motion until the device is removed,
- (b) specifying the steps to be taken to secure such removal, and
- (c) giving such other information (if any) as may be prescribed.

(3) Subject to subsection (4), an immobilisation device that has been fixed to a vehicle under this section may be removed only by an authorised person or a person acting under his or her direction.

- (4) (a) An immobilisation device fixed to a vehicle under this section shall be removed or a vehicle moved under this section shall be released, only—

- (i) if the person seeking its removal or release shows to the satisfaction of an authorised person that he or she, is the owner of the vehicle or is authorised by its owner to seek such removal or release and pays the prescribed charge,
 - (ii) for the purpose of the removal of the vehicle under section 97 of the Act of 1961, or
 - (iii) for the purpose of moving the vehicle under subsection (1).
- (b) Where the owner of a vehicle which has been moved or to which an immobilisation device has been fixed under this section shows to the satisfaction of an authorised officer that the vehicle was parked while being used by a person other than the owner and that such use was not authorised by the owner, the authorised officer shall waive the prescribed charge and he or she or a person acting under his or her direction shall remove the immobilisation device from or release the vehicle.
- (c) An immobilisation device fixed to a vehicle under this section shall be removed from it or a vehicle moved under this section shall be released, as soon as is reasonably practicable, after the payment of the prescribed charge or after the waiver of such charge, as the case may be.

(5) A notice affixed to a vehicle under this section shall not be removed or interfered with by a person other than the owner of the vehicle or a person authorised by such owner to use the vehicle and a person who contravenes this subsection is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,000.

(6) Charges may be prescribed for the purposes of this section for the removal of an immobilisation device or the release of a vehicle.

(7) A person who—

- (a) obstructs or impedes an authorised officer, or a person acting under his or her direction, in the performance of his or her duties under this section, or
- (b) without being authorised to do so under this section, removes or attempts to remove from a vehicle an immobilisation device fixed to it under this section,

is guilty of an offence and is liable on summary conviction to a fine not exceeding €2,000.

(8) An immobilisation device shall not be fixed under this section to an ambulance, a fire brigade vehicle or any vehicle used by a member of the Garda Síochána or the Defence Forces, in the performance of his or her duties, in an emergency situation.

(9) In this section—

‘immobilisation device’ means any device or appliance designed or adapted for fixing to a vehicle for the purpose of preventing it from being driven or otherwise put in motion;

‘prescribed’ means prescribed in regulations made by the Agency with the consent of the Minister;

‘vehicle’ has the same meaning as in the Act of 1961.

Powers of authorised officers.

66B.—(1) If an authorised officer reasonably suspects that a person—

- (a) is contravening or has contravened or is failing or has failed to comply with a bye-law made under section 66,
- (b) is committing or has committed on a railway an offence under section 64 or 65,
- (c) is assaulting or has assaulted or is causing or has caused deliberate harm to another on a railway,
- (d) is causing or has caused wanton or deliberate damage to railway infrastructure,
- (e) has contravened *section 118 or 132 of the Railway Safety Act 2005*,
- (f) is obstructing or has obstructed or is impeding or has impeded an authorised officer in the exercise of his or her duties under this section, section 66A, 66C, or under any bye-law made under section 66,
- (g) on any railway is intoxicated or is committing or has committed an offence under section 15 of the Misuse of Drugs Act 1977, or
- (h) if requested by an authorised officer to cease such contravention or action or to so comply, fails to comply with the request,

he or she may—

- (i) using such reasonable force as the circumstances require, remove or escort the person from the railway or any part of it,
- (ii) in circumstances where the authorised officer considers it to be justified, arrest the person without warrant, or
- (iii) require the person to give his or her name and address and, if the person fails or refuses to do so or gives a name that the authorised officer reasonably suspects is false or misleading, arrest that person without warrant,

and, if he or she is not a member of the Garda Síochána, deliver, as soon as practicable, the person, if arrested, into the custody of a member of the Garda Síochána to be dealt with according to law.

(2) A person who fails or refuses to give his or her name or address when required under subsection (1), or gives a name or address which is false or misleading, is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,000.

(3) The Agency, or a railway undertaking with the consent of the Agency, may appoint such and so many persons as it considers necessary to be authorised officers for the purposes of this section, section 66A, 66C or any bye-law made under section 66.

(4) An authorised officer, who is not a member of the Garda Síochána, is not entitled to exercise a power under this section unless he or she has received training and instruction, which, in the opinion of the Agency is such as will provide guidance to him or her in the exercise of the power.

(5) The Agency or a railway undertaking, as the case may be, shall endorse on the warrant it furnishes to an authorised officer under subsection (6) a statement to the effect that the officer has received the training and instruction referred to in subsection (4).

(6) An authorised officer, who is not a member of the Garda Síochána, shall, on his or her appointment under this section, be furnished by the Agency or a railway undertaking, as the case may be, with a warrant of his or her appointment as an authorised officer.

(7) An authorised officer, who is not a member of the Garda Síochána, when exercising a power under this section shall be in uniform provided or authorised—

(a) where he or she is appointed by the Agency, by the Agency, or

(b) where he or she is appointed by a railway undertaking, by the railway undertaking.

(8) The arrest of a person under this section does not prejudice the re-arrest of the person by a member of the Garda Síochána.

(9) An authorised officer, who is not a member of the Garda Síochána, may be referred to—

(a) where he or she is appointed by the Agency, by the Agency, or

(b) where he or she is appointed by a railway undertaking, by the railway undertaking,

by such title as it decides.

(10) In this section a reference to the committal of an offence or an act includes a reference to an attempt to commit the offence or the act.

(11) In this section ‘authorised officer’ means a person appointed under this section or a member of the Garda Síochána whose attendance is requested by an authorised officer or by the Agency or a railway undertaking.

Fixed payment
notice.

66C.—(1) Where—

(a) an authorised officer has reasonable grounds for believing that a person is committing or has committed an offence under section 64(1), 66(8) (for a contravention or failure to comply with a bye-law made under that section), 66A(5) or (6), or 66B(2) or *section 118 or 132 of the Railway Safety Act 2005*, or

(b) a member of the Garda Síochána has reasonable grounds for believing that a person is committing or has committed an offence under section 54(5),

he or she may serve the person with a notice (‘fixed payment notice’) in the prescribed form stating that—

(i) the person is alleged to have committed the offence,

(ii) the person may during the period of 21 days beginning on the date of the notice make to the Agency or the railway undertaking concerned, as the case may be, at the address specified in the notice a payment of €100, or in lieu of

that amount such other amount standing prescribed for the time being, accompanied by the notice, and

- (iii) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.

(2) Where a fixed payment notice is given under subsection (1)—

- (a) a person to whom the notice applies may, during the period specified in the notice, make to the Agency or the railway undertaking concerned, as the case may be, at the address specified in the notice the payment specified in it and accompanied by the notice,
- (b) the Agency or the railway undertaking concerned may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstances by the person who made it, and
- (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence shall be instituted.

(3) In a prosecution for an offence under this Act the onus of proving that a payment pursuant to a notice under this section has been made lies on the defendant.

(4) In this section ‘prescribed’ means prescribed in regulations made by the Minister.”.

(2) Any bye-law made under section 66 of the Transport (Railway Infrastructure) Act 2001, which is in force immediately before the passing of this Act, continues in force as if made under section 66, inserted by *subsection (1)*.

135.—Parts 4 and 5 of the Transport (Railway Infrastructure) Act 2001 are amended by substituting in— Increase of fines.

- (a) section 54(6), “€1,600” for “€600 (£472.54)”,
- (b) section 56(2), “€5,000” for “€2,500 (£1,968.91)”,
- (c) section 59(3), “€1,600” for “€600 (£472.54)”,
- (d) section 60(4), “€5,000” for “€2,000 (£1,575.13)”,

- (e) section 63(3), “€5,000” for “€2,000 (£1,575.13)”,
- (f) section 64(1), “€1,600” for “€600 (£472.54)”,
- (g) section 65, “€5,000” for “€2,000 (£1,575.13)”, and
- (h) section 67(2), “€1,600” for “€600 (£472.54)”.

Amendment of
timeframe for
submissions on
railway order.

136.—Section 40 of the Transport (Railway Infrastructure) Act 2001 is amended by substituting for paragraph (iv) of subsection (1)(b) the following:

- “(iv) stating that the Minister will consider any submissions in relation to the proposed order or in relation to the likely effects on the environment of the proposed railway works which are submitted in writing to him or her by any person not later than 30 days after the end of the period specified in the notice referred to in subparagraph (ii), and”.

PART 17

ROAD TRAFFIC — BRIDGE STRIKES

Collective citation
and construction
(Part 17).

137.—The Road Traffic Acts 1961 to 2004 and this Part may be cited together as the Road Traffic Acts 1961 to 2005 and shall be construed together as one.

Bridge strikes.

138.—(1) In this section “structure” means any bridge, viaduct, subway, tunnel, underpass, overpass or flyover.

(2) Where the height of a structure in a public place is indicated by means of a traffic sign, specified in regulations made under section 95(2) of the Road Traffic Act 1961, provided in accordance with those regulations on or in the vicinity of the structure, a person shall not drive or attempt to drive a mechanically propelled vehicle under the structure, where the height of the vehicle, including its load, if any, measured from the ground to its highest point is equal to or exceeds the height indicated in the traffic sign, so as to strike the structure.

(3) A person who contravenes *subsection (2)* is guilty of an offence and is liable—

- (a) on conviction on indictment, to a fine not exceeding €50,000 or to imprisonment for a term not exceeding 3 years, or to both, or
- (b) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months, or to both.

(4) Where a person driving a mechanically propelled vehicle referred to in *subsection (2)* strikes a structure where a traffic sign referred to in that subsection is provided and, whether or not any damage to the structure is apparent, where the person who owns or is in charge of or has use of the structure has provided in a conspicuous place a notice containing a telephone number to contact in the event of such a strike, he or she shall make such contact immediately

after the occurrence of the strike. If the person is unable to make such contact immediately, he or she shall immediately notify a member of the Garda Síochána of the occurrence.

(5) A person who, without reasonable excuse, fails to comply with *subsection (4)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,000.

(6) Article 34 of the Road Traffic (Traffic and Parking) Regulations 1997 (S.I. No. 182 of 1997) is revoked.

(7) Part 4 of the First Schedule to the Road Traffic Act 2002 is amended by the deletion of the matter at reference number 26.

Section 5.

SCHEDULE 1

ENACTMENTS REPEALED

Session and Chapter or Number and Year (1)	Short Title (2)	Extent of Repeal (3)
5 & 6 Vic. c. 55	Railway Regulation Act 1842	Sections 4, 5, 6 and 11
24 & 25 Vic. c. 97	Malicious Damage Act 1861	Section 35
31 & 32 Vic. c. 119	Regulation of Railways Act 1868	Section 22 and Part V
34 & 35 Vic. c. 78	Regulation of Railways Act 1871	Sections 3, 4, 5, 6, 7 (except in so far as it relates to an inquiry or investigation under section 7 which is not completed before its repeal) and 11
41 Vic. c. 20	Railway Returns (Continuous Brakes) Act 1878	The whole Act
52 & 53 Vic. c. 57	Regulation of Railways Act 1889	Sections 5 and 6
63 & 64 Vic. c. 27	Railway Employment (Prevention of Accidents) Act 1900	Section 13(2)
No. 29 of 1924	Railway Act 1924	Sections 58(2), (3), (4) and (5)
No. 19 of 1958	Transport Act 1958	Section 9
No. 14 of 1971	Transport (Miscellaneous Provisions) Act 1971	Sections 22 and 29
No. 27 of 1987	Transport Act 1987	Sections 10 and 11
No. 55 of 2001	Transport (Railway Infrastructure) Act 2001	Sections 11(1)(b), 51, 55 and 57

SCHEDULE 2

Section 12.

FUNCTIONS TRANSFERRED FROM MINISTER TO COMMISSION

PART 1

Session and Chapter or Number and Year (1)	Short Title (2)	Provisions transferred to Commission (3)
8 Vic. c. 20	Railway Clauses Consolidation Act 1845	Section 47
26 & 27 Vic. c. 92	Railway Clauses Act 1863	Section 6
31 & 32 Vic. c. 119	Regulation of Railways Act 1868	Section 22 (as amended by section 9 of the Transport Act 1987)
52 & 53 Vic. c. 57	Regulation of Railways Act 1889	Sections 1 and 2
63 & 64 Vic. c. 27	Railway Employment (Prevention of Accidents) Act 1900	Sections 1 and 2
No. 24 of 1946	Local Government Act 1946	Section 60
No. 14 of 1993	Roads Act 1993	Section 15A(a)

PART 2

Regulations 15, 16 and 17 of the European Communities (Allocation of Railway Infrastructure Capacity and Charging of Infrastructure Fees) Regulations 1999 (S.I. No. 281 of 1999).