



STATUTORY INSTRUMENTS.

S.I. No. 258 of 2014

EUROPEAN UNION (RAILWAY SAFETY) (REPORTING AND
INVESTIGATION OF SERIOUS ACCIDENTS, ACCIDENTS AND
INCIDENTS) REGULATIONS 2014

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EUROPEAN UNION (RAILWAY SAFETY) (REPORTING AND
INVESTIGATION OF SERIOUS ACCIDENTS, ACCIDENTS AND
INCIDENTS) REGULATIONS 2014

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

Part 1

PRELIMINARY

Citation

1. These Regulations may be cited as the European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014.

Interpretation

2. (1) In these Regulations—

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

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

“appointed day” means the day appointed under Regulation 4(11) as the day on which the Railway Accident Investigation Unit is established;

“Department” means Department of Transport, Tourism and Sport;

“Directive” means Directive No. 2004/49/EC of the European Parliament and of the Council of 29 April 2004¹ (as amended by Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008², Directive

¹OJ No. L164, 30.04.2004, p.44

²OJ No. L191, 18.07.2008, p.1

³OJ No. L345, 23.12.2008, p.62

⁴OJ No. L313, 29.11.2009, p.65

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 17th June, 2014.*

2008/110/EC of the European Parliament and of the Council of 16 December 2008³ and Commission Directive 2009/149/EC of 27 November 2009⁴);

“extensive damage” means damage that can immediately be assessed by the Investigating Unit to cost at least €2 million in total;

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

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

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

“Investigation Unit” means Railway Accident Investigation Unit established under Regulation 4;

“investigator” means a person appointed under Regulation 4(5) and includes a qualified person appointed under Regulation 6(2)(b) or (4).

“investigator-in-charge” means the person responsible for the organisation, conduct and control of an investigation;

“Minister” means Minister for Transport, Tourism and Sport;

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

“public road” has the meaning assigned to it by section 2 of the Roads Act 1993 (No. 14 of 1993).

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

“railway organisation” has the meaning assigned to it in section 2(1) (as inserted by Regulation 20(1)(a)(i) of the European Union (Railway Safety) Regulations 2013 (S.I. No. 444 of 2013) of the Act of 2005;

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

⁵OJ No. L237, 24.08.1991, p.25

form, of any of the foregoing or is a combination of two or more of any of the foregoing;

“Regulations of 2013” means European Union (Railway Safety) Regulations 2013 (S.I. No. 444 of 2013);

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

“safety authority” means Railway Safety Commission;

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

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

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

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

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

(4) In these Regulations, a reference to accident is to be read as a reference to a serious accident when the investigation of a serious accident is being carried out.

Scope

3. For the purpose of the carrying out of investigations of railway accidents and incidents by the Investigation Unit these Regulations apply to the railway system in the State to which the Regulations of 2013 apply and to any-

- (a) metro, tramway or other light rail system;
- (b) network that is functionally separate from the rest of the railway system and is intended only for the operation of local, urban or suburban passenger services, as well as railway undertakings operating solely on the network;
- (c) privately owned network that exists solely for use by the infrastructure owner for its own freight operations insofar as it has an interface with a public road or with a railway undertaking;

- (d) heritage vehicles that run on the railway system in the State;
- (e) heritage, museum or tourist railway that operates on its own network, including workshops, vehicles and staff;
- (f) any other person who operates a railway.

Part 2

INVESTIGATION OF SERIOUS ACCIDENTS, ACCIDENTS AND INCIDENTS

Investigating body

4. (1) The Minister shall, from the appointed day, ensure that an investigating body, to be known as the Railway Accident Investigation Unit and in these Regulations referred to as the “Investigation Unit”, is established in the Department of Transport, Tourism and Sport to carry out the function of investigating accidents and incidents in accordance with these Regulations.

(2) The Investigation Unit shall—

- (a) be independent in its organisation, legal structure and decision making from any railway undertaking, infrastructure manager, railway organisation, charging body, allocation body and notified body and from any party whose interests could conflict with the tasks entrusted to it,
- (b) be functionally independent from the safety authority and from any regulator of railways, and
- (c) perform its tasks independently of the organisations referred to in subparagraphs (a) and (b).

(3) The Investigation Unit is the investigating body in the State for the purposes of the Directive and these Regulations.

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

(5) The Minister shall appoint such qualified persons to the staff of the Investigation Unit as Investigators of railway accidents and incidents as the Minister thinks necessary for the purposes of these Regulations and shall nominate one of them to be the Chief Investigator who will be responsible for directing the work of the Investigation Unit in accordance with these Regulations.

(6) The Minister shall furnish an investigator with a warrant of his or her appointment and, when performing a function of an investigator under these Regulations the investigator shall, if so required by any person affected, produce the warrant or a copy of it to that person.

(7) The Investigation Unit shall comprise of at least one investigator able to perform the function of investigator-in-charge in the event of an accident or incident.

(8) The remuneration of the Chief Investigator and of investigators in the Investigation Unit shall be determined by the Minister, with the consent of the Minister for Public Expenditure and Reform.

(9) The Minister shall ensure that the Investigation Unit is given the means necessary for it to perform its tasks under these Regulations.

(10) The Investigation Unit established under this Regulation replaces the Railway Accident Investigation Unit established under section 55 of the Act of 2005.

(11) The Minister shall by notice, published in *Iris Oifigiúil* and on the website of the Department, appoint a day (“appointed day”) on which the Railway Accident Investigation Unit is established under this Regulation.

Serious accident, accident and incident investigation

5. (1) The objective of an investigation by the Investigation Unit under these Regulations is possible improvement of railway safety and the prevention of accidents.

(2) An investigation by the Investigation Unit shall determine, insofar as possible, the cause or causes of an accident or incident with a view to making, where appropriate, safety recommendations.

(3) The investigation shall in no case be concerned with apportioning blame or liability.

(4) The Investigation Unit shall carry out an investigation after each serious accident.

(5) In addition to each serious accident referred to in paragraph (4), the Investigation Unit may investigate those accidents and incidents which under slightly different conditions might have led to serious accidents, including technical failures of the structural subsystems or of interoperability constituents of the rail system.

(6) The Investigation Unit shall, at its discretion, decide whether or not an investigation of such an accident or incident referred to in paragraph (5) shall be undertaken.

(7) In its decision under paragraph (6) the Investigation Unit shall take account of—

- (a) the seriousness of the accident or incident,
- (b) whether it forms part of a series of accidents or incidents relevant to the system as a whole,
- (c) its impact on railway safety on a European Union level, and

(d) requests from railway undertakings, infrastructure managers, railway organisations, the safety authority, the Minister or another Member State.

(8) The extent of investigations and the procedure to be followed in carrying out such investigations shall be determined by the Investigating Unit in accordance with Article 19(3).

(9) The Investigation Unit may, before commencing an investigation, make enquiries to determine whether an investigation is warranted and shall inform the Agency not later than 7 days, after a decision to open an investigation giving the details referred to in Article 24.

(10) The Investigation Unit shall, on the commencement of an investigation under these Regulations, notify the railway undertaking and the infrastructure manager concerned or, where applicable, the railway organisation concerned, the safety authority, and such other persons as it may deem appropriate of such commencement.

(11) A railway undertaking and an infrastructure manager or, where applicable, the railway organisation shall, as soon as practicable following notification under paragraph (10), 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 these Regulations 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.

(12) The investigation shall be undertaken independently of an investigation of any alleged offence regarding the accident or incident and be separate from any other proceedings whose function is to apportion blame or liability.

(13) The investigation of an accident or incident shall be carried out by the Investigation Unit in accordance with Article 22 and the necessary operational and technical expertise to carry out the investigation may be obtained from inside or outside the Investigation Unit depending on the character of the accident or incident to be investigated.

(14) Where, during the course of an investigation and in advance of the publication of the final report of its investigation, the Investigation Unit becomes aware of any implications for railway safety which, in its opinion, warrant consideration by a railway undertaking, an infrastructure manager, a railway organisation or other person, the Investigation Unit shall immediately advise the safety authority of the circumstances and may make and issue such interim safety recommendations as it considers to be warranted and feasible for the avoidance of accidents and incidents or otherwise for the improvement of railway safety.

(15) A safety recommendation issued by the Investigation Unit shall be in accordance with Article 25.

(16) The safety authority shall take the necessary measures to ensure that a safety recommendation issued by the Investigation Unit or a safety recommendation that is addressed to the safety authority by the investigating body of another Member State is duly taken into consideration, and, where appropriate, acted upon.

(17) Any railway undertaking, infrastructure manager, railway organisation or other person to which a safety recommendation has been directed, shall report at least quarterly to the safety authority on the progress of measures that are taken or planned as a consequence of the safety recommendation.

(18) The safety authority and other authorities or bodies, to which a safety recommendation has been addressed by the Investigation Unit, shall report back at least annually to the Investigation Unit on measures that are taken or planned as a consequence of the safety recommendation.

(19) When a safety recommendation has been addressed to the safety authority by the investigating body of another Member State, the safety authority shall report back at least annually to the investigating body of the Member State that issued the safety recommendation on measures that are taken or planned as a consequence of the safety recommendation.

(20) The safety authority may take enforcement action under Part 7 of the Act of 2005 against a railway undertaking, an infrastructure manager, a railway organisation or other person where an investigation by the Investigation Unit finds that the railway undertaking, infrastructure manager, railway organisation or other person did not carry out its duties in compliance with the Act of 2005, the Regulations of 2013 and other statutory railway safety requirements.

(21) For the purposes of the exercise of its functions under these Regulations, the Investigation Unit may, where it deems it appropriate to do so as part of an investigation into an accident or incident, investigate any decision, action or omission of the safety authority which the Investigation Unit considers may be relevant to its investigation and the safety authority shall co-operate with the Investigation Unit.

(22) The Investigation Unit may if necessary request the assistance of investigating bodies from other Member States or from the Agency to supply expertise or to carry out technical inspections, analyses or evaluations.

(23) The Investigation Unit shall conduct an active exchange of views and experience with investigating bodies from other Member States for the purpose of developing common investigation methods, drawing up common principles for follow-up of safety recommendations and adaptation to the development of technical and scientific progress.

Investigators

6. (1) An investigation of an accident or incident under these Regulations shall be conducted by an investigator able to perform the function of investigator-in-charge of the investigation.

(2) (a) The Chief Investigator may appoint himself or herself as investigator-in-charge for any particular investigation, and

(b) Where the Chief Investigator does not appoint himself or herself as investigator-in-charge under subparagraph (a) then he or she shall appoint an investigator from the Investigation Unit, or engage any other qualified person, to be the investigator-in-charge for any particular investigation.

(3) The Chief Investigator may, from time to time, engage such consultants or advisers as he or she may consider necessary to assist the Investigation Unit in the discharge of its functions.

(4) The Chief Investigator may engage one or more qualified persons as investigators to assist the investigator-in-charge during an investigation.

(5) The investigator-in-charge shall be independent of any parties involved in the accident or incident, the organisations referred to in Regulation 4(2) and from any party whose interests could conflict with the tasks entrusted to the investigator-in-charge.

(6) (a) Where a person other than an investigator from the Investigation Unit is engaged as investigator-in-charge under paragraph (2)(b) or where a qualified person is engaged as an investigator under paragraph (4) to assist an investigator-in-charge, he or she shall be issued with a warrant by the Minister of his or her appointment to act as an investigator, and he or she shall have for the purpose of so acting, such functions of an investigator under these Regulations as may be specified at the time of his or her appointment and shall if requested by any person affected by the investigation, show the warrant or a copy of it to the person.

(b) A qualified person appointed under paragraph (4) shall—

(i) provide the investigator-in-charge with all relevant information available to him or her, and

(ii) respect the confidentiality of the investigation and not disclose information on the progress, evidence and findings of the investigation without the written consent of the Chief Investigator.

(c) Any fees due to a consultant or adviser engaged under paragraph (3) or any fees payable to a qualified person appointed as an investigator-in-charge under paragraph (2)(b) or as an investigator under paragraph (4) shall form part of the expenses of the Investigation Unit.

Notification and reporting of accidents and incidents

7. (1) When an accident or incident to which these Regulations apply occurs, the railway undertaking, infrastructure manager, railway organisation concerned

or, if the accident or incident involved more than one railway undertaking, infrastructure manager or railway organisation, the railway undertakings, infrastructure managers or railway organisations concerned and, as appropriate, the safety authority, shall immediately report the accident or incident by the quickest practicable means, including brief particulars and details of the location of the accident or incident and, in relation to an accident, of any loss of life or personal injury—

- (a) to the Investigation Unit and as soon as practicable thereafter send a written report to the Investigation Unit, in such form and containing such particulars of the accident or incident as may be specified from time to time by the Investigation Unit, and
- (b) to the safety authority and as soon as practicable thereafter send a written report to the safety authority, in such form and containing such particulars of the accident or incident as may be specified from time to time by the safety authority or as prescribed in Regulations, if any, made pursuant to section 69(1)(g) of the Act of 2005.

(2) On receiving a report under paragraph (1)(b), the safety authority shall, by the quickest practicable means, send a report of the accident or incident to the Minister which shall include brief particulars and details of the location of the accident or incident and, in relation to an accident, details of any loss of life or personal injury.

(3) Where as a result of an accident, a person sustains a personal injury and as a result of that accident the person dies within 30 days of the accident, the railway undertaking, the infrastructure manager or the railway organisation concerned shall, as soon as possible after the death comes to its knowledge, inform the Investigation Unit and the safety authority in writing of the death.

(4) A railway undertaking, infrastructure manager or railway organisation who does not comply with subparagraphs (a) and (b) of paragraph (1) or, where applicable, paragraph (3) commits an offence and is liable on summary conviction to a class A fine.

(5) The Investigation Unit shall be able to respond to reports of accidents and incidents received under this Regulation and make the necessary arrangements to start an investigation not later than one week after receiving the report concerning the accident or incident.

Investigation procedure

8. (1) An investigation shall be carried out in a transparent manner in accordance with Article 22.

(2) The Investigation Unit shall conclude its examinations at the accident site in the shortest time possible to enable the infrastructure manager or, where applicable, the railway organisation, to restore the railway infrastructure and open it to rail transport services as soon as possible.

Investigation report and annual report

9. (1) (a) The Investigation Unit shall prepare, publish and communicate a report of any investigation in accordance with Article 23(1) and (2).
- (b) Where it appears to the Investigation Unit that it would not be possible or appropriate in the circumstances to publish the final report of an investigation within the 12 month period referred to in Article 23(2), it shall, within that period, give to the Minister the 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.
- (c) Although it shall not be the purpose of the investigation report to apportion blame or liability, Regulation 5(3) shall not prevent the reporting of relevant findings of an investigator indicating the cause or causes or probable cause or causes of the accident or incident or the making of safety recommendations in accordance with Regulation 5.
- (2) (a) Before publishing an investigation report under paragraph (1), the Investigation Unit shall, as far as is practicable, send a draft of the investigation report to the relevant persons referred to in Article 22(3) and invite them to comment on the draft report.
- (b) Where a person to which subparagraph (a) applies is deceased, a draft of the investigation 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.
- (c) A person to whom the Investigation Unit sends a draft investigation report under subparagraph (a) or (b) may, within a period of 28 days commencing on the date on which the draft report 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 report.
- (d) A person to whom the draft investigation report has been sent in accordance with subparagraph (a) or (b) may apply to the Investigation Unit for an extension, not exceeding 28 days, of the period in which to submit his or her observations on the draft report.
- (e) The Investigation Unit shall, so far as reasonably practicable, take account of observations submitted in accordance with subparagraph (c) relating to the draft investigation report and may, at its discretion—
- (i) alter the draft report before publication or decide not to do so, or
- (ii) where no request in writing referred to in paragraph (f) is made by the person who submitted the observations, include in the published report such comments on the observations as it thinks fit.

- (f) Observations submitted to the Investigation Unit in accordance with subparagraph (c) 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.
 - (g) A person to whom a draft investigation report has been sent in accordance with subparagraph (a) or (b) shall not disclose or permit to be disclosed to another person (other than by way of confidential disclosure to his or her legal or technical adviser), the draft report 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.
- (3) A person who contravenes paragraph (2)(g) commits an offence and is liable on summary conviction to a class A fine.
- (4) The Investigating Unit shall immediately send a copy of every final investigation report to the Agency, the Minister and the safety authority.
- (5) (a) Where the Investigating Unit has carried out an investigation under these Regulations 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.
- (b) These Regulations apply to an investigation re-opened under subparagraph (a) in the same way as they apply to an investigation under these Regulations.
- (6) The Investigation Unit shall publish an annual report each year in accordance with Article 23(3) and shall send a copy of the annual report to the Agency, to the Minister and to the safety authority.
- (7) Copyright in any report published by the Investigation Unit remains with the Investigation Unit but the copyrighted material may be freely used for educational or safety-related purposes but not for commercial benefit.

Investigations by Investigation Unit

10. (1) For the purposes of an investigation of an accident or an incident under these Regulations, an investigator shall, and where appropriate, in cooperation with the authorities responsible for any criminal investigation or other inquiry, as soon as possible, be given—

- (a) access to the site of the accident or incident as well as to the rolling stock involved, the related infrastructure and traffic control and signalling installations;
- (b) the right to an immediate listing of, and access to, evidence and controlled removal of wreckage, infrastructure installations or components for examination or analysis purposes;

- (c) access to and use of the contents of on-board recorders and equipment for recording of verbal messages and registration of the operation of the signalling and traffic control system;
- (d) access to the results of examination of the bodies of victims;
- (e) access to the results of examinations of the train staff and other railway staff involved in the accident or incident;
- (f) the opportunity to question the railway staff involved and other witnesses, and anyone who the investigator-in-charge has reasonable grounds to believe may have information relevant to an investigation;
- (g) access to any relevant information or records held by any railway undertaking, infrastructure manager or railway organisation involved and the safety authority.

(2) The Investigation Unit shall consult with railway undertakings, infrastructure managers and railway organisations to establish agreed procedures for entry by investigators upon railway property.

Powers of investigators

11. (1) A person appointed as an investigator when exercising any power conferred by these Regulations shall, if requested by any person affected, show the warrant of his or her appointment or a copy of it to that person.

(2) An investigator shall be independent in carrying out an investigation under these Regulations.

(3) An investigator may, for the purposes of carrying out an investigation under these Regulations, do any one or more of the following—

- (a) enter the site of the accident or incident to be investigated,
- (b) bring with him or her any other person authorised by the Chief Investigator or any equipment or materials required,
- (c) direct that any railway property or part thereof and anything therein and any related scene shall be left undisturbed or preserved for so long as reasonably necessary,
- (d) make such examination and inquiry as may be necessary,
- (e) enter into any place, premises or vehicle which he or she has reasonable cause to believe contains records or information relevant to the investigation,
- (f) require the production of any record, including the results of any examination or test carried out as part of an investigation into the same accident or incident (and, in the case of information in non-legible form, to reproduce it in legible form) which in the opinion of

the investigator is necessary for him or her to examine and copy or require that a copy of it or of any entry therein be provided to him or her,

- (g) examine 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) which in the opinion of the investigator is necessary,
- (h) direct that such records be retained for such period as may be reasonable for further examination,
- (i) take samples or, as regards any article or substance he or she finds, require the railway undertaking, infrastructure manager or railway organisation or any member of staff of, or other person engaged by, the railway undertaking, infrastructure manager or railway organisation 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,
- (j) in relation to any article or substance found, to take possession of it, preserve 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 subparagraph (k),
 - (ii) to ensure that it is not tampered with before the examination of it is completed, or
 - (iii) to ensure that it is kept available for purposes of the investigation and any other statutory investigation into the same accident or incident,
 - (iv) to ensure that results of any process or test to which it has been subjected are kept available for purposes of the investigation and any other statutory investigation into the same accident or incident,
- (k) require that any article be operated or set in motion, or cause any article or substance found to be dismantled or subjected to any process or test which appears to him or her to be reasonably necessary (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 investigator proposes to exercise the power conferred by this subparagraph in the case of an article or substance found, he or she shall, if so requested by a person 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,

- (l) before exercising the power conferred by subparagraphs (j) and (k) in the case of any article or substance, an investigator shall, insofar as it is practicable to do so, consult such persons as appear to him or her to be appropriate for the purpose of ascertaining what risks and dangers, if any, there may be in doing anything which he or she proposes to do under that power,
 - (m) take any measurements or photographs or make any tape, electronic or other audio or visual recordings which the investigator considers necessary,
 - (n) require any person to afford the investigator such facilities and assistance within that person's control or responsibilities as are necessary to enable the investigator to exercise any of the powers conferred on him or her by these Regulations,
 - (o) 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 investigator all reasonable assistance in relation to its use,
 - (p) require any railway undertaking, infrastructure manager or railway organisation to have any train, railway infrastructure, equipment, system, or procedure examined and tested at the railway undertaking's, infrastructure manager's or railway organisation's expense where, in his or her opinion, this is necessary,
 - (q) require any person whom he or she has reasonable cause to believe to be able to give information relevant for the purposes of the investigation, to answer such questions with respect to relevant matters as he or she thinks fit to ask, and
 - (r) have a member of the Garda Síochána accompany him or her if the investigator has reasonable cause to apprehend any serious obstruction in the execution of his or her duty.
- (4) Where, under the power conferred by subparagraph (j) of paragraph (3), an investigator 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 the railway undertaking, infrastructure manager or railway organisation a portion of the sample marked in a manner sufficient to identify it.
- (5) An answer or statement given to an investigator as part of an investigation under these Regulations may be reproduced in whole or in part in the investigation report, but shall not be admissible as evidence in civil or criminal proceedings.

(6) In this Regulation, “railway property” means all land, buildings, railway infrastructure, rolling stock and vehicles under the control of a railway undertaking, an infrastructure manager or a railway organisation.

Search warrant

12. (1) An investigator shall not, except under a warrant under paragraph (3) or with the consent of the occupier, enter a domestic dwelling for the purposes of these Regulations.

(2) Where an investigator in the exercise of his or her powers under these Regulations is prevented from entering any premises, place or vehicle, an application may be made under paragraph (3) authorising such entry.

(3) If a judge of the District Court is satisfied by information on oath of an investigator that there are reasonable grounds for suspecting that information required by an investigator for the purpose of these Regulations is held at any railway, premises, place or vehicle, the judge may issue a warrant authorising the investigator, accompanied if the investigator considers it necessary by other investigators 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 investigator under these Regulations.

Provision of records and other information

13. (1) Where, in the opinion of an investigator carrying out an investigation under these Regulations, an inspection of any record may be necessary for the purpose of exercising his or her functions under these Regulations, the investigator may require a railway undertaking, an infrastructure manager, a railway organisation or the safety authority to make available within such reasonable period as the investigator specifies, such record to enable the investigator to inspect and copy it and the railway undertaking, infrastructure manager, railway organisation or the safety authority shall comply with the requirement.

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

(3) A person required to attend before an investigator in accordance with paragraph (2) shall be entitled to the reimbursement by the Investigation Unit of any reasonable expenses incurred in connection with his or her attendance.

(4) An investigator may make such copies or take such extracts from the information gathered as the investigator considers necessary for the purposes of the investigation.

Prohibition on obstruction of investigator

14. A person who—

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

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

Requirement to give name and address to member of Garda Síochána, offence and arrest without warrant

15. (1) A member of the Garda Síochána accompanying an investigator may require of any person his or her name and address and, if such person refuses or fails to give his or her name and address or gives a name and address which the member has reasonable grounds for believing to be false or misleading, the person commits an offence.

(2) A person who commits an offence under paragraph (1) is liable, on summary conviction, to a class A fine.

(3) A member of the Garda Síochána accompanying an investigator may arrest without warrant—

- (a) a person who obstructs or impedes an investigator exercising a power under these Regulations or refuses to comply with a request or requirement of an investigator, or
- (b) a person who, when his name and address is required of him or her under paragraph (1), refuses or fails to give his or her name and address to the member or gives a name or address which the member has reasonable grounds for believing to be false or misleading.

Part 3

PROCEEDINGS

Prosecution of summary offences

16. (1) (a) Subject to subparagraph (b), proceedings for an offence under these Regulations may be prosecuted summarily by the Minister.

- (b) Proceedings for an offence under Regulation 7(4) may be prosecuted summarily by the safety authority where the railway undertaking or railway organisation concerned does not comply with the obligation under Regulation 7(1)(b) to send a report to the safety authority or the obligation under Regulation 7(3).

(2) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under these Regulations may be instituted at any time within 2 years after the date of the offence.

Offence by body corporate

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

Immunities from claims

18. (1) An investigator or a person engaged by the Investigation Unit under Regulation 6 is immune from claims for damages in respect of any thing done in good faith and in the course of carrying out investigations into accidents and incidents under these Regulations or in assisting the Investigation Unit in the discharge of its functions including the preparation and publication of an investigation report.

(2) In paragraph (1) “report” includes an investigation report and a draft investigation report that are referred to in Regulation 9 and it also includes written observations on a draft report and comments on any such observations as referred to in Regulation 9(2)(e)(ii) and any safety recommendations and interim safety recommendations that are referred to in Regulation 5.

Part 4

SAVER AND TRANSFER OF RECORDS, ETC. TO INVESTIGATION UNIT

Saver and transfer of records, etc

19. On and from the appointed day—

- (a) any investigation of an accident or incident or the preparation of any report that has been commenced by the Railway Accident Investigation Unit established under section 55 of the Act of 2005 and which is not completed at the time the Investigation Unit is established under Regulation 4 shall be carried out and completed by the latter Investigation Unit and these Regulations apply as if the carrying out of the investigation or the preparation of any report, had been commenced under these Regulations,
- (b) any investigation reports, annual reports and any other reports that were published pursuant to the Act of 2005 by the Railway Accident Investigation Unit established under section 55 of that Act are deemed to have been published by the Investigation Unit under these Regulations,
- (c) any safety recommendations that were issued pursuant to the Act of 2005 by the Railway Accident Investigation Unit established under

section 55 of that Act are deemed to be safety recommendations issued by the Investigation Unit under these Regulations.

- (d) all records held by the Railway Accident Investigation Unit established under section 55 of the Act of 2005 that relate to functions carried out by it pursuant to that Act are deemed to be transferred to the Investigation Unit established under Regulation 4 and to be the property of that Investigation Unit, and
- (e) all assets including any licences held by or on behalf of the Railway Accident Investigation Unit established under section 55 of the Act of 2005 stand transferred to the Investigation Unit established under Regulation 4 and shall continue in force.

Part 5

AMENDMENT OF ACT OF 2005

Application of Act of 2005

20. On and from the appointed day—

- (a) subject to subparagraphs (b), (c) and (d) of this Regulation, the Act of 2005 does not apply in relation to the investigation of accidents and incidents by the Investigation Unit to which these Regulations apply,
- (b) reference to Investigation Unit in each place it occurs in sections 2, 64, 65, 66, 89 and 126 of the Act of 2005 and any reference in any enactment to the Railway Accident Investigation Unit established under section 55 of the Act of 2005 is to be read as a reference to the Investigation Unit established under Regulation 4,
- (c) reference to Chief Investigator in each place it occurs in sections 64(3), 65 and 70 of the Act of 2005 is to be read as a reference to the Chief Investigator appointed under Regulation 4, and
- (d) reference in section 89(7) (as amended by Regulation 20(1)(d) of the Regulations of 2013) of the Act of 2005 to an investigation carried out by the Investigation Unit under section 58 is to be read as a reference to an investigation carried out by the Investigation Unit under the Regulations of 2014.

Amendment of Act of 2005

21. (1) On the day appointed as the appointed day the Act of 2005 is amended—

- (a) in section 2(1) (amended by Regulation 20(1)(a), (c) and (d) of the Regulations of 2013)—
 - (i) by inserting the following definitions, at the appropriate places:

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

‘causes’ means actions, omissions, events or conditions, or a combination thereof, which led to an accident or incident, and includes a direct and immediate cause of the accident or incident including contributory factors relating to actions taken by persons involved or condition of the rolling stock or technical installations, underlying causes relating to skills, procedures or maintenance and root causes relating to the regulatory framework conditions and application of the safety management system;

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

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

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

‘investigation unit’ means the Railway Accident Investigation Unit established under Regulation 4 of the Regulations of 2014;

‘investigator’ has the meaning assigned to it in the Regulations of 2014;

‘Regulations of 2014’ means European Union (Railway Safety)(Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014 (S.I. No. 258 of 2014);

‘Regulations of 2013’ means European Union (Railway Safety) Regulations 2013 (S.I. No. 444 of 2013);

‘Regulations of 2008’ means European Union (Railway Safety) Regulations 2008 (S.I. No. 61 of 2008);

‘serious accident’ means any train collision or derailment of trains, resulting in the death of at least one person or serious injuries to five or more persons or extensive damage to rolling stock, the infrastructure or the environment, and any other

similar accident with an obvious impact on railway safety regulation or the management of safety;”,

(ii) by substituting for “reportable railway incident” the following:

“ ‘reportable accident or incident’ means a railway accident or incident that is required to be reported to the Investigation Unit and to the Commission in accordance with Regulation 7 of the Regulations of 2014.”,

and

(iii) by inserting after subsection (3) the following:

“(4) In this Act, a reference to accident is to be read as a reference to a serious accident when the investigation of a serious accident is being carried out.”.

(b) in section 10(1), by substituting for paragraph (c) the following:

“(c) to investigate and report on railway accidents and incidents for the purposes of determining compliance with safety management systems and safety targets.”,

(c) in section 53 (as amended by Regulation 20(1) (c) and (d) of the Regulations of 2013), by inserting “or incident” after “accident” in each place it occurs,

(d) in section 64(2)(a), by deleting “, the Chief Investigator” after “former commissioner”,

(e) in sections 64, 95, 98 (all as amended by Regulation 20(1) of the Regulations of 2013), 67 and 101 by inserting “accident or” before “incident” in each place where it occurs,

(f) by substituting for section 65 (as amended by Regulation 14(4) of the Regulations of 2008) the following:

“Minister may direct that inquiry be held

65. The Minister may direct that an inquiry be held under section 64 notwithstanding that the railway accident or incident into which the inquiry is to be held is or was the subject of an investigation by the Investigation Unit.”,

(g) in section 69 (as amended by Regulation 20(1)(d) of the Regulations of 2013), by inserting “accidents or ” before “incidents” in each place it occurs.

(h) by substituting for section 70 the following:

“Regulations for protection of railway accident and incident sites

70. The Minister may, after consultation with the Minister for the Environment, Community and Local Government, the Chief Investigator, the Garda Síochána, the Commission, the Council, railway organisations and such other persons as in the opinion of the Minister may be relevant, make regulations relating to the protection of the sites of railway accidents and incidents in relation to any or all of the following matters—

- (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,
- (d) prohibiting the unauthorised removal of anything from such sites, and
- (e) access to evidence collected at such sites.”.

(i) in section 73, by substituting for paragraph (10) the following:

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

(j) in section 89—

- (i) by inserting “accident or” before “incident” in each place it occurs in subsection (1)(b), and
- (ii) by substituting for subsection (7) (as amended by Regulation 20(1)(d) of the Regulations of 2013) the following:

“(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 organisation for whom it was made for the purposes of an investigation by the Investigation Unit under the Regulations of 2014.”,

(k) in sections 95(8), 98 and 101, by inserting “accident or” before “incident” in each place where it occurs,

(l) in section 122, by deleting subsection (2), and

(m) by substituting for section 126 (as amended by Regulation 20(1)(d) of the Regulations of 2013) the following:

“Disclosure of records

126. (1) The Investigation Unit, the Commission, a railway organisation or any other person concerned with the conduct of an investigation under section 53, an investigation under the Regulations of 2014 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 investigator, inspector, railway organisation or other person in the course of the investigation or inquiry,
- (b) medical or private information regarding persons involved in the accident or incident which is the subject of the investigation or inquiry,
- (c) voice or video recordings or transcripts of such recordings, data recordings or output from such recordings which are not relevant to the investigation or inquiry,
- (d) opinions expressed in the analysis of information, and
- (e) observations submitted to the Investigation Unit in accordance with Regulation 9(2)(c) of the Regulations of 2014 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 organisation or an inquiry by a tribunal.

(3) Subsection (1) shall not preclude the Investigation Unit, the Commission, a railway organisation or a tribunal from including such records in a report under the Regulations of 2014, under section 10, section 53 or section 64, respectively, where the information is pertinent to the analysis of the cause of an accident or incident or the recommendations arising from the investigation of or inquiry into such accident or 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 by the Investigation Unit under Regulation 9(1) of the Regulations of 2014 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) Information specified in subsection (1) shall—

- (a) where held by a railway organisation, be provided to the Commission or a tribunal on receipt of a request from the Commission or tribunal, and
- (b) where held by the Commission or a tribunal in relation to an investigation or inquiry relating to an international service, and where the Commission or the tribunal considers that there is 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.”.

Act of 2005 – repeal of certain provisions

22. On the appointed day sections 51,52, 55, 56, 57, 58, 59, 60, 61, 61A, 62 and 63 (as amended by Regulations 3(4), 12, 13, 14, 15 and 16 of the Regulations of 2008 and by Regulation 20(1)(d) of the Regulations of 2013) of the Act of 2005 are repealed.



GIVEN under my Official Seal,
12 June 2014.

LEO VARADKAR,
Minister for Transport, Tourism and Sport.

EXPLANATORY NOTE

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

The purpose of these Regulations is to restate the national law that gives effect to Chapter V of Directive 2004/49/EC on safety of the Community's railways. Chapter V provides for railway accident and incident investigation and reporting. These Regulations provide for the establishment, from a date to be appointed by the Minister, of the national investigation body, the Railway Accident Investigation Unit, in the Department of Transport, Tourism and Sport to investigate railway accidents and incidents in accordance with these Regulations. Prior to these Regulations, the Railway Accident Investigation Unit operated in accordance with the Railway Safety Act 2005 as amended by the European Communities (Railway Safety) Regulations 2008 (S.I. No. 61 of 2008). These Regulations replace and repeal the provisions for investigation of accidents and incidents by the Railway Accident Investigation Unit under that Act and make some consequential amendments to that Act. The other provisions of Directive 2004/49/EC are provided for in the European Union (Railway Safety) Regulations 2013 (S.I. No. 444 of 2013).

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
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