EXPLANATORY MEMORANDUM TO THE

RAILWAYS (ACCIDENT INVESTIGATION AND REPORTING) REGULATIONS 2005

2005 No. 1992

1. Introduction

1.1. This explanatory memorandum has been prepared by the Rail Accident Investigation Branch (RAIB) of the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. The regulations make detailed provision for the type of accident or incident that RAIB must investigate, those it may investigate, the manner in which it will investigate and the content of its accident reports.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None

4. Legislative Background

4.1. The regulations implement Articles 19 to 25 of the Railway Safety Directive (2004/49/EC) (the Directive), which require each member State to establish an independent body to investigate the causes of railway accidents and incidents.

4.2. RAIB is established under Part I of the Railways and Transport Safety Act 2003 (c20). The Act establishes RAIB's general aims, and the objectives and key parameters for its investigations. It defines the powers of inspectors and provides regulation-making powers for the Secretary of State.

4.3. These Regulations are made under Part I of the Act and are the first use of the powers in that Part, but where that Part provides insufficient powers fully to implement Articles 19 - 25 of the Directive, Regulations are also made under section 2(2) of the European Communities Act 1972.

4.4. No undertakings were made by Ministers during passage of the Railways and Transport Safety Bill that relate to this instrument.

5. Extent

5.1. This instrument applies to the whole of the United Kingdom.

6. European Convention on Human Rights

6.1. As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1. The establishment of an independent investigator into the cause of railway accidents and incidents was recommended by Lord Cullen following his inquiry into the Ladbroke Grove railway accident. The Government accepted that recommendation. Member States are required by the Directive to establish an independent investigator of railway accidents and incidents.

7.2. The general aims of RAIB, as set out in sections 4 and 7 of the parent Act, are to investigate railway accidents and incidents to determine what caused them, and, wherever relevant, to improve the safety of railways and to prevent railway accidents and railway incidents. These Regulations make detailed provision about RAIB's powers and duties, the scope of its works and its dealings with people and organisations that are involved in railway accidents and incidents.

7.3. Between 2002 and 2004 a total of 2110 people, excluding trespassers, were injured, and a total of 88 people, excluding trespassers and suicides, died, in railway accidents involving moving rolling stock.

7.4. It is anticipated that in any 12-month period RAIB will receive immediate notification of the occurrence of about 60 of the more significant accidents and incidents, and expects to launch an investigation immediately into a high proportion of these. RAIB also expects it will be notified of the occurrence of up to 300 other incidents and in the order of 1000 precursor events, in respect of which the Branch will determine, given its resources, whether it should conduct an investigation in the pursuit of its statutory aims.

7.5. RAIB's investigations will, in relation to any accident or incident, help meet the Human Rights Act and public interest requirements to hold inquiries into major accidents, which in turn should mean that the public interest concerns arising from accidents should be addressed more effectively.

7.6. RAIB will have the power to investigate accidents and incidents on all railways, both surface and underground, with a gauge of 350mm or more except those specifically excluded by the regulations; all tramways except in Scotland; and all funicular railways greater than 1km in length.

7.7. RAIB conducted a public consultation on these Regulations from 29 October to 24 December 2004 and held seminars in Edinburgh, Derby and London, primarily for industry, the police and the safety authorities. 64 written responses were received, mainly from public or rail industry

bodies. Interest shown by the general public and the media has been minimal.

7.8. The consultation confirmed that stakeholders are generally supportive of RAIB, the proposed provisions and the method of operation that they would establish. The concerns that were raised related principally to the practicability and ease of implementation for industry.

7.9. In summary, the principal concerns were that the Regulations should:

- achieve as much harmony as possible with relevant extant and proposed legislation;
- impose appropriate requirements as to timescale for notifying RAIB of the occurrence of an accident or incident;
- recognise that industry would not necessarily have immediately available details of injuries when notifying RAIB of an accident;
- require that RAIB releases evidence as quickly as possible back to the affected railway; and takes account of the cost implications where it decides to retain, as evidence, expensive pieces of equipment for long periods;
- ensure that affected parties receive appropriate prior notification of RAIB's intention to release items of evidence to them, so that adequate arrangements can be made for their reception;
- ensure that industry parties may be invited to be present when evidence is tested to destruction;
- allow sufficient time for comment to be given on the draft report;
- allow industry sufficient time to review and revise its systems and procedures in order to achieve compliance; and
- make adequate provision for the differences in the Scottish legal system.

7.10. The draft Regulations have therefore been amended as follows to address these concerns:

- definitions have been harmonised as closely as possible with other legislation;
- the Schedules to the Regulations, which list the accidents and incidents whose occurrence must be notified to RAIB, have been reviewed and simplified. A new schedule has been added, defining those events of which RAIB requires notification on a monthly basis. This in turn has reduced the number of events that are subject to a three day notification, thus reducing the burden on industry. New schedules listing accidents and incidents occurring in the Channel Tunnel system have been drawn to correspond as closely as possible with the existing obligations;
- the Regulations now provide that, if a person is taken to hospital with what the railway industry body suspects is a serious injury, then that is deemed to be a serious injury for notification purposes;
- RAIB's power to retain items of evidence has been amended so that where evidence is no longer required for the investigation in respect of which it was obtained, the Branch may continue to hold it only if it may be required for another RAIB investigation that is already under way;

- RAIB must give seven days' notice of its intent to release evidence to the police, the safety authority, or to its owner.
- the Regulations now enable RAIB to inform persons other than the police or safety authorities of its intention to carry out testing of evidence, and to invite them to be present, provided the inspector does not consider that to do so would be detrimental to the investigation. The regulation places controls on the disclosure of any evidence or information obtained by a person who is present, backed by criminal sanctions;
- The regulations now provide for comments to be made on the draft report within 14 days (previously 7 days);
- the Regulations will come into force on 17th October 2005 thus allowing industry the 12-week preparation period that they have requested, and the Intergovernmental Commission sufficient time to agree protocols between France and the UK in respect of the Channel Tunnel System; and
- amendments have been made to provide for differences in Scottish legal system.

8. Impact

8.1. A Regulatory Impact Assessment providing additional detail, including the cost impact on industry and other public bodies, is attached to this Memorandum.

9. Contact

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REGULATORY IMPACT ASSESSMENT

1. Title of Proposal

1.1. A regulatory impact assessment on the Railways (Accident Investigation and Reporting) Regulations (the Regulations) which will establish the mechanisms for the independent investigation into the cause of railway accidents and incidents.

2. Purpose and intended effect of the measure

The objectives

2.1. The objectives of these Regulations are:

- to meet the UK's obligations to implement fully Articles 19 - 25 of the Railway Safety Directive 2004/49/EC (the Directive); and
- to deliver the Government's commitment to implement the recommendations made by Lord Cullen in his report on the railway accident at Ladbroke Grove.

The background

2.2. The establishment of an independent body to investigate rail accidents was recommended by Lord Cullen[1] as a consequence of the Ladbroke Grove rail accident. It is now also required by the Directive. Therefore maintaining the status quo in regard to the investigation of rail accidents, and not establishing an independent investigation body, is not an option.

2.3. The principles underlying the establishment of the Rail Accident Investigation Branch (RAIB) as the independent investigator of railway accidents and incidents were consulted upon fully by DfT before and during the passage of the Railways and Transport Safety Act (the 2003 Act). The 2003 Act establishes RAIB as the independent rail accident investigator, and enables the Secretary of State to make regulations relevant to the Branch's investigation of accidents and incidents, that will enable the Branch to become operational.

2.4. The regulatory impact assessment which accompanied the Act considered the costs and benefits of establishing an independent rail accident investigatory body. This document does not revisit these issues. The purpose of this regulatory impact assessment is to consider the costs and benefits that will result from implementation of the Regulations. It includes the costs and benefits arising from transposition of Articles 19 - 25 of the Directive.

2.5. The Regulations are being made using powers in Part I of the Railways and Transport Safety Act 2003 (the Act) supplemented where necessary by

[1] The Ladbroke Grove Rail Inquiry, chaired by Lord Cullen, report published in two parts by HSE Books, 2001

Section 2(2) of the European Communities Act 1972. The 2003 Act provides that all railways and tramways (except tramways in Scotland) may be covered by these Regulations, but enables the Secretary of State to exclude certain railways from the scope of Part I of the 2003 Act.

3. Risk assessment

Benefits

3.1. The proposed Regulations deliver three key benefits:

- Avoidance of infraction proceedings by the European Commission through effective implementation of Articles 19 - 25 of the Railway Safety Directive;
- Helping to improve railway safety and prevent railway accidents and incidents by enabling RAIB to investigate solely for cause of accidents and incidents and make safety recommendations;
- Providing a more cost effective and viable alternative to a public inquiry for independently investigating the cause of railway accidents.

3.2. While all of the above are benefits to be derived as a result of the regulations none can be clearly quantified in monetary terms. However, failure fully to implement the Directive and the consequent time and money required to deal with any arising infraction proceedings would be substantial. Similarly, public inquiries are costly to the whole industry again in terms of both time and money. Consequently, any process which provides an expert-based and timely alternative investigation to identify the causes of accidents and incidents, and making of safety recommendations, should result in lower expenditure.

3.3. The aim of a public inquiry would be the same as that of an RAIB investigation, namely to establish the root causes of accidents and look for safety lessons that will lead to safety improvements and prevent accidents in the future. The decision on whether to hold a public inquiry will remain with the Secretary of State, and would be taken in the light of wider government policy and considerations.

Costs and consequences of rail accidents

3.4. RAIB is required by the Directive and the Act to investigate serious accidents, and has the discretion to investigate other accidents and incidents, which will include trends and precursor events. It is to be expected, therefore, that RAIB's work will be targeted at uncovering the risk areas that lead to the worst consequences, as evidenced by fatalities and serious injuries.

3.5. Over the last 2 years, 88 people have died in railway accidents in Great Britain. This figure excludes fatalities to trespassers and suicides, which totalled an additional 503 fatalities during the same period. Of these 88 deaths, 51 were associated with the movement of rolling stock: RAIB would expect that the accidents causing these fatalities would be regarded as 'serious', and therefore investigation would be mandatory as dictated by the

Directive. It is not possible, from the historic figures available, to assess how many accidents in addition to these would be classed as serious on the basis that 5 or more people sustained serious injuries, or because of extensive damage to the infrastructure, rolling stock or the environment.

3.6. The total annual cost of rail accidents has recently been estimated[2] to be in the order of £104 million. This suggests that over a ten-year period the discounted present cost of rail accidents is about £870 million[3], assuming the same level of aggregate accident costs year to year. As will be shown, the direct costs of running RAIB will be in the order of £4m per year - less than 4% of the estimated cost of rail accidents.

3.7. Table 1 shows the breakdown of the total annual cost of rail accidents.

Table 1: Adjusted estimated total losses from railway accidents per year (£million at 2002 prices)

	Fatal train accidents	Non-fatal train accidents	Personal accidents	Total
Fatalities	12.5	0	37.5	50
Non-fatal injuries	6	*	19	25
Damage	4	6	0	10
Disruption	4	6	1.5	11.5
Accident investigation	2.5	1	4	7.5
Total	29	13	62	104

*An unknown element of the estimated £6 million for non-fatal injuries in the previous column strictly belongs here, because some non-fatal accidents cause injury. There is no simple way of estimating how much, but it is certainly small.

Public Inquiries

3.8. It is expected that demonstrably independent investigation of cause by a no-blame investigator may reduce the requirement for public inquiries to be conducted into major railway accidents, and if this is the case, then it will result in savings both to industry and to the public purse. Since 1880, there have been a total of 6 public inquiries into railway accidents, of which four have taken place in the last 20 years[4]. These are shown in Table 2. In addition, there has been a joint public inquiry into train protection systems[5].

Table 2 - public inquiries into railway accidents since 1987

Public inquiry	Date

[2] Prof Andrew Evans: research project for Department for Transport, still to be published.
[3] This calculation uses a discount rate of 3.5%, as recommended by HM Treasury in its "Appraisal and valuation in Central Government" - the 'Green Book'.
[4] The others were Taybridge in 1880 and Hixton in 1968.
[5] The Southall and Ladbroke Grove Joint Inquiry Into Train Protection Systems, chaired by Lord Cullen and Professor Uff, report published by HSE Books, 2001

subject	
Kings Cross Fire	1987
Clapham	1988
Southall	1997
Ladbroke Grove	1999

3.9. HSE estimates that the Ladbroke Grove Inquiry cost £8.7m in direct costs, which did not include the work done by HSE, BTP and industry bodies, or other overhead costs born by these organisations. Assuming, therefore, as a conservative estimate, a cost of £10m per Inquiry and that a Public Inquiry might be ordered every 5 years in the absence of RAIB, then the establishment of RAIB might avoid gross cost in the region of £20m over 10 years.

Excluding risk of conflict of interest

3.10. RAIB's sole task is independently to seek the improvement of railway safety by investigating accidents and incidents to identify the causal factors, and on the basis of its findings to make relevant and appropriate safety recommendations. There is a belief that other investigators are perceived - by the public, or by potential witnesses - to have conflicting interests because of their dual role in regulating safety..

3.11. Lord Cullen endorsed the view that statements made by witnesses in connection with RAIB investigations should not be disclosed to the police save by order of a judge, and that in this way the requirements of public safety would be fulfilled, while the judge could balance competing interests, giving appropriate weight to any human rights issues. Whilst it remains to be demonstrated that witnesses will feel able to be more frank and open with an investigator whose role is solely about cause, RAIB's guaranteed independence, together with provisions on non-disclosure in the Regulations, is intended to ensure that those whose evidence is key to the full identification of cause will be reassured that they can be fully open with RAIB without risk to themselves.

3.12. Railway accidents and incidents are currently investigated, depending on the circumstances, by one or more of:

- the rail industry itself, in response to its duties under health and safety legislation: the Rail Safety and Standards Board plays an important role here in respect of the more serious accidents;
- the Safety Authority[6], particularly, but not exclusively, where there is the possibility of breach of health and safety law[7]; and
- the police, or Procurator Fiscal (Scotland), where there are fatalities or a suspicion of a criminal act other than breach of health and safety law.

[6] HSE in Great Britain, the Intergovernmental Commission in respect of the Channel Tunnel, and the Department for Regional Development in Northern Ireland.

[7] HSE also investigates certain occupational health and safety accidents for cause even though there has been no prima facie breach of health and safety legislation. RAIB cannot envisage any circumstances in which it would investigate an occupational health and safety matter as distinct from an accident or incident.

3.13. RAIB's strength as an investigatory body will be its independence, in particular from all bodies with any possible prior involvement with the issues concerning the accident, including any permitting or preventative activity which might be associated with the accident. This independence is required by the Directive.

3.14. Each of these investigators needs to know the cause of the accident or incident, but none of them has the identification of cause as its only objective. The industry's duty is to improve its safety performance but may not, or may be perceived not to be in a position to carry out a completely independent investigation; the safety authority's main role is to ascertain whether or not there has been a breach of health and safety law, and the police will look for breaches of common or other criminal law.

Avoiding risk of infraction proceedings

3.15. The UK is obliged to implement the Directive no later than April 2006. Failure to do so would leave the UK open to infraction proceedings and periodic fines from the European Court of Justice that would continue until such time as the Directive is properly implemented in the UK. The benefit of avoiding infraction proceedings could alone be sufficient to justify the cost of RAIB.

4. Options for implementation of the Branch's activities

Criteria for selection of the preferred option

4.1. The chosen option must:

- Implement the Directive;
- Provide independent investigation;
- Deliver investigation of cause without considering or apportioning blame; and

4.2. The options considered are:

- Do nothing;
- Use of investigative procedures;
- Administrative arrangements;
- Secondary legislation.

Do nothing

4.3. The Act has established and empowered RAIB. The UK is required to implement fully Articles 19 - 25 of the Railway Safety Directive 2004/49/EC. Doing nothing does not fulfil the selection criteria and is discounted as an option.

Use of existing powers

4.4. There are no existing powers that could be used by RAIB. The Act gives powers to RAIB inspectors, and this might seem to make secondary legislation superfluous. However, Regulations are needed in order to formalise the collection and management of evidence, and to transpose the detailed and specific requirements of the Directive into UK law.

Administrative arrangements

4.5. The Directive cannot be properly implemented in the UK by means other than legislation. RAIB needs to have effective powers to secure compliance and to achieve its general aims in the Act. The use of administrative arrangements does not fulfil the selection criteria and is discounted as an option.

Secondary legislation

4.6. The primary legislation establishing RAIB and its system of investigation is already in place. These Regulations, made using the powers in the Act together with that in S2(2) of the European Communities Act 1972 where the Act does not provide powers fully to transpose the Directive, complete the necessary framework envisaged by the Act and the Directive. The option to make secondary legislation meets all four of the selection criteria.

Chosen option

4.7. The criteria are met only by the option of making secondary legislation, which is therefore the chosen option. This regulatory impact assessment examines the impact of the option to implement by Regulations. It is not possible to quantify the risks or their associated costs with any great accuracy, but they were considered substantial enough by both Lord Cullen and the EU to warrant action.

5. Features and impact of the Regulations

5.1. The Directive prescribes the activities of the independent investigator. The majority of the provisions in the Regulations have been made to transpose this prescription, fully and in a workable manner, into UK law. As well as placing obligations upon RAIB, upon other public authorities, most significantly the safety authorities, and upon the rail industry, the Regulations include requirements aimed at ensuring that the system of investigation as a whole, and the interactions of the bodies involved, will run smoothly and be effective in delivering the benefits.

5.2. The following paragraphs review the key general features of the Regulations, and then look in turn at the obligations placed upon RAIB, upon the industry, and upon the safety authorities; and at the activities and resulting resource requirements that arise from these obligations.

Learning from other regimes

5.3. In formulating its policy and drafting the Regulations, RAIB has, as far as possible, drawn on the experience of other accident investigators. Its sister accident investigation branches in DfT - the Air Accident Investigation Branch and the Marine Accident Investigation Branch - both operate under their own primary and secondary legislation, and the safety authorities operate under the Health and Safety at Work etc Act 1974. RAIB has drawn on all of these, and their operational experience, as far as is possible, to ensure that the regulatory system is practicable for all parties. RAIB has also liaised with other Member States to identify best practice, but since the UK is the first to implement Articles 19 - 25 of the Directive, learning opportunities for RAIB have been limited. However, the exercise should have eliminated risks that might arise from devising and implementing a novel and untried system.

Management of evidence - minimising duplication of effort

5.4. The Regulations set out a detailed framework within which RAIB will be able to manage the collection and preservation of evidence relating to the cause. This will ensure that the evidential needs as to cause of all investigating bodies - whose statutory roles are not affected by RAIB's existence - can be met efficiently and effectively. There is no intention that, if RAIB is investigating the cause of a railway accident or incident, any other statutory body should run a parallel investigation for the same purpose.

5.5. RAIB and the HSE are seeking to establish working arrangements that minimise duplication of effort, which may mean that there is some decrease in demand on the resources of the relevant safety authority. However, they and any other investigating bodies will still have to gather evidence that will enable them to establish whether there has been a breach of the law, and if so, by whom, where this is evidence other than evidence as to cause or is evidence that RAIB is precluded from releasing.

5.6. The relationship between RAIB investigations, and investigations that must be carried out by duty holders under health and safety legislation, is reviewed in the section on Costs to Industry.

5.7. The Regulations enable RAIB to share expert reports with other investigators, and more widely where this will not obstruct the achievement of RAIB's general aims. There is much to gain from the sharing of expert reports with other investigators. For large and complex investigations, such costs can exceed £1m.

6. Activities and resource requirements - RAIB

6.1. Table 3 summarises the activities to which the Regulations relate, and shows, by means of an asterisk (*), which are derived from the Directive. Activities marked # are included in order to deliver the spirit of the Directive, for example in relation to openness, or applying the best technical expertise. Those included for the purpose of defining the roles and relationships in the investigation system, or for enhancing RAIB's ability to achieve its general

aims, are marked [a]. (will enhance the quality of evidence gathered); [b] (will increase RAIB's effectiveness), or [c] (will reduce costs).

Table 3 - summary of provisions in the Regulations relating to RAIB activities

RAIB must:	RAIB may:
➢ Maintain its independence (Reg 5) *****	➢ Investigate occurrences other than railway accidents or incidents (Reg 5) *****
➢ Arrange to start an investigation of a serious accident or serious near miss within 7 days of receiving notification (Reg 5) *****	➢ Undertake a preliminary examination (Reg 5) ***b***
➢ Collaborate as specified with investigating bodies in other member States (Reg 5 & Reg 12) *****	➢ Appoint a person to conduct or participate in an investigation (Reg 6) # ***a& b***
➢ Keep specified persons informed of progress of an investigation, and take into account their views (Reg 5) *****	➢ Request assistance from any person in relation to an investigation (Reg 6) # ***a& b***
➢ Determine the extent of an investigation (Reg 5) *****	➢ Invite other persons to be present at analysis or testing of evidence Reg 9) #
➢ Conclude its examination of a site in the shortest possible time (Reg 5) *****	➢ Retain evidence for another investigation that it is conducting (Reg 9) ***b***
➢ Consider and decide on requests to move or use evidence (Reg 9) ***a& b***	➢ Disclose information unless the Regulations specifically prohibit its disclosure (Reg 10) #
➢ Inform / invite / provide information to other investigatory bodies when testing evidence to destruction (Reg 9) #	➢ Publish reports, advice, recommendations at any time (Reg 12) ***b***
➢ Release technical evidence that is no longer required to another investigator, or to its owner (Reg 10)	➢ Monitor, study or analyse anything relevant to effective investigation of accidents and incidents (Reg 15) ***b & c***
➢ Not disclose specified information including witness statements (Reg 10) #	
➢ Notify relevant parties of intent to publish investigation report, allow them to comment, and take comments into account (Reg 13) *****	
➢ Publish reports of accident and incident investigations (Reg 11) *****	
➢ Address safety recommendations to the safety authorities (Reg 12) *****	
➢ Publish an annual report (Reg 14) *****	

RAIB's resources

6.2. RAIB's budget for 2005-8 is £4,984,000 per annum. The 2005-6 budget comprises £3,632,000 in establishment (fixed) costs (premises, staff etc), and £1,262,000 in variable costs (travel, site security, outsourced facilities, research and other investigation-related costs etc). The budget is intended to cover normal RAIB operations, but not the external costs arising from the investigation of a very major accident. Additional financial support from DfT central funds will be made available to deal with such an eventuality.

6.3. The RAIB staff complement has been established as shown in Table 4. It has been agreed as appropriate to give the Branch the capacity and capability to:

- manage the investigation of a large-scale accident, of the magnitude of Hatfield or Potters Bar;
- investigate the approximately 240 other accidents and incidents of varying complexity that it estimates will fall into its remit each year;
- make Directions as to the conduct of industry investigations in accordance with s10 of the 2003 Act;
- monitor a proportion of industry investigations; and
- monitor accident and incident trends.

Table 4 - RAIB complement

Post	Number
Chief Inspector	1
Deputy Chief Inspector	1
Principal Inspector	6
Inspector	23
Support staff	23
TOTAL	54

6.4. The Branch will operate from two operational centres, located in Derby and Woking, chosen to give ready access to all parts of the UK, and in particular to those areas where there is the greatest concentration of railway activity and hence accidents and incidents. These choices have also enabled RAIB to recruit its expert inspectorate workforce from the pool of expertise in those areas - in particular Derby, which is an important centre for railway engineering and operations. The Branch will not have a central London presence because of the proximity of the SE operational centre to many rail organisations, and of its Derby base to suppliers.

Costs consequential on the Regulations.

6.5. Concerns have been expressed by the HSE that the non-disclosure provisions of the Regulations will result in additional burdens upon RAIB and on any prosecuting bodies in complying with the requirements of the Criminal Procedure and Investigation Act 1996 (CPIA). The effect of this is as follows.

6.6. The Regulations preclude the disclosure of witness statements and of information about witnesses and other persons without a court order. RAIB therefore cannot permit - as would normally happen - any prosecuting authority to review such material to ascertain whether its prosecution case is soundly based, or for disclosure to the defence.

6.7. To quantify the work involved, RAIB has reviewed the prosecutions taken by HM Railways Inspectorate, shown in Table 5. This review confirmed that:

- HSE investigates accidents and incidents that are outwith RAIB's purview: a significant proportion of HSE's prosecutions arise from these investigations;
- Had RAIB been in existence during the years in question, it would have investigated some of the accidents in respect of which HSE took prosecutions. HSE would have been likely therefore to have considered RAIB's evidence relevant to its case;
- It is possible for more than one party to be prosecuted in relation to a single accident or incident.

Table 5 - HMRI prosecutions to which RAIB investigations would have been relevant and in respect of which the statements held by RAIB might be relevant.

Year	Total HMRI prosecutions …	… of which RAIB would have investigated*:	No of prosecutions relating to cases that RAIB would have investigated
2002 - 3	11	1	1
2001 - 2	13	2	2
2000 - 1	12	5	6
1999 - 2000	11	4	4
1998 - 99	10	2	4

* - nb this refers to accidents or incidents, not prosecutions. The relationship is not necessarily 1:1, so the safety authority could have brought more than one prosecution for an accident where RAIB conducted one investigation.

6.8. The Branch considers that the numbers involved are manageable, and that, if they remain at this level, any requirements on RAIB, and the work to the prosecuting authorities of seeking court orders, would not be significant. This will be kept under review in the light of experience. RAIB will call upon DfT Legal Services Directorate for this and any other legal support where this

will not conflict with the requirement for the Branch to be independent in its investigatory role.

External assistance and expertise

6.9. RAIB's variable costs also include provision for the use of external expertise and consultants, and the payment of compensation to those rendering assistance to the Branch.

7. Activities and resource requirements - the rail industry

7.1. Organisations which fall within the definition of 'railway industry body', together with their suppliers and contractors, and owners of railway property, as set out in the Regulations, are likely to be most affected by the new obligations arising from the Regulations. The impact of the obligations can be summarised as follows:

- notification to RAIB of the occurrence of an accident or incident;
- provision, on request, of assistance to the Branch (for which provision has been made in RAIB's budget);
- preservation of evidence;
- consideration of relevant recommendations and, where appropriate, acting upon them, and reporting the outcomes to the safety authority.

7.2. These new obligations may result in extra costs to the railway and rail-related industries. Such costs will generally fall into one of two categories:

- costs of devising, implementing and maintaining systems to deliver the new obligations;
- costs of operating these systems in the event of an accident or incident.

7.3. The Regulations also provide discretionary opportunities to these organisations, notably in relation to transparency and openness. For example, where a railway industry body has been involved in or is directly affected by an accident or incident, the body will have the optional opportunity to make its views known to RAIB during the investigation. Also, prior to publication of RAIB's final report, the body will be afforded the opportunity of reviewing the report (or relevant sections) and making representations to RAIB concerning the content.

Duty to notify RAIB of the occurrence of an accident or incident

7.4. RAIB's notification requirements have been designed to replicate, as closely as possible, the reporting requirements already placed on railway industry bodies in Great Britain by the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR), and in Northern Ireland by the parallel Statutory Order 1997 No 455. Railway industry bodies therefore already have the necessary systems in place and operating to gather and furnish the requisite information, and although RAIB requires some extra detail to be notified, the range of accidents and incidents to be notified to

RAIB is much narrower than that reportable under RIDDOR. The duty to notify RAIB is therefore not significant in additional cost terms.

7.5. For the time being, the railway industry body will have to make separate notification to the safety authority under RIDDOR and to RAIB under these Regulations. HSE has indicated that it intends to review and if possible simplify RIDDOR at some point in the future. RAIB and HSE will then collaborate to see whether a single form can be devised for use by industry both for reporting to HSE and notifying RAIB, resulting in reduced effort and costs. Until that time, the interim position is that separate forms will need to be used.

Provision of assistance to the Branch

7.6. The Regulations enable the Branch to request assistance from any person or organisation, in two circumstances:

- First, in relation to an investigation that the Branch is carrying out. Failure to provide the assistance requested is an offence, but if the person is requested to do something that he would not otherwise be obliged to do, then the Secretary of State may pay him reasonable compensation.
- Second, in relation to studies etc carried out by RAIB in pursuit of the effective investigation of accidents or incidents. The Secretary of State may pay reasonable compensation to the person rendering the assistance.

7.7. These obligations, therefore, are a zero cost to the persons to whom they apply: provision is made within RAIB's budget for the payment of appropriate compensation.

Preservation and use of evidence

7.8. Effective investigation, resulting in the accurate identification of cause and the making of appropriate safety recommendations, is dependent upon the availability of evidence. Railway industry bodies have existing obligations to preserve evidence relating to an accident or incident to support investigations by the safety authority, the police, or the industry itself.

7.9. The Regulations differentiate, by means of the Schedules and the immediacy of notification, between those accidents and incidents which RAIB is likely to investigate and where using or moving items associated with the accident could be detrimental to the evidence and the outcome of the investigation (Schedules 1 and 4, for which immediate notification is required), and those where using or moving the evidence would be less likely to be detrimental (Schedules 2 and 5, for which notification within 3 days is required).

7.10. The requirements of these Regulations are clear and explicit, but do not impose significant, if any, additional obligations and therefore do not impose significant costs, over and above those already arising.

7.11. The rail industry considers that in the past the time taken by investigatory bodies has on occasion resulted in prolonged disruption to rail operations. It is looking to RAIB to be more expeditious in its on-site

investigation, and thus achieve more rapid release of an accident site, with the resultant cost savings to the industry. RAIB has a duty imposed upon it by the Directive and transposed into the Regulations to conclude its examination at the site of an accident or incident in the shortest possible time, to enable the infrastructure closed as a result of the accident or incident to be restored and opened to railway services as soon as possible. RAIB cannot quantify the costs that currently fall to the rail industry as a result of the periods of closure of the railway for the purpose of accident investigation, and it is therefore not possible to estimate the benefit that RAIB's investigative approaches and techniques, particularly in respect of the collection and management of evidence from the accident and related sites, are expected to bring by reducing these periods of closure. However, RAIB will monitor its performance and seek continuous improvement in the management and execution of its investigations to ensure that on-site activities are concluded as soon as is practicable.

Consideration of, and reporting on, safety recommendations

7.12. Organisations such as railway industry bodies, which have specific or implied duties under health and safety legislation, must keep their risk assessments under review and must update their working practices in the light of any changes in these risk assessments, with the objective of achieving a level of risk that is as low as reasonably practicable (ALARP). This review process is an existing obligation upon duty holders, and any safety recommendations made by RAIB will be just one more source - albeit an influential and important source - of information that should be taken into account in such reviews. Industry's own investigations are, and will remain, another source. If RAIB's recommendations result in railway industry bodies having to review their risk assessments more frequently because a recommendation suggests that the assessment may no longer be valid and this results in change, it would indicate that RAIB is being effective in delivering its aims and that its recommendations are well-targeted and are likely to be addressing a safety need.

7.13. RAIB's safety recommendations must, in accordance with the Directive, be addressed to the safety authorities or other public bodies. However, where RAIB considers that a railway industry body will add value, then that body will have been invited to input to the formulation of the safety recommendations. The recommendations will be in the public domain, and will also be passed on to the relevant railway industry bodies by the safety authority. Every recommendation will need to be considered individually by the relevant railway industry bodies.

7.14. Following recent Public Inquiries, Ministers and the industry have made commitments to implementing all recommendations, and HSC/E have monitored implementation on behalf of the Government. Experience has shown that recommendation tracking from the public inquiry recommendations has been a significant workload for both the HSE and the industry: a total of 295 recommendations emerged from inquiries into the Southall and Ladbroke Grove accidents plus the joint inquiry into train protection systems. The Regulations, implementing a requirement of the

Directive, will now formalise the approach in respect of RAIB's recommendations, and require the safety authority to take the necessary measures to ensure that the safety recommendations are duly taken into consideration and where appropriate acted upon. However, this workload is unavoidable, and at this stage difficult to quantify.

7.15. The status of RAIB as a professional, full-time investigating body, and its policy of consulting industry bodies and the safety authorities during the formulation of its safety recommendations - which will generally be of the goal-setting type - is expected to ensure that its safety recommendations will be clearly focused and specific to the safety deficiencies identified during the investigation. Bodies which must take RAIB's recommendations into consideration should therefore be in little or no doubt as to the relevance of a recommendation to their own activities. In addition, they will have the flexibility to implement recommendations in the most appropriate way for their particular circumstances.

7.16. As indicated above, the obligation to take into consideration the safety recommendations issued by RAIB, and where appropriate to act upon them, is transposed from the Directive. The relevant safety authority is the monitoring and enforcing body for health and safety legislation. These Regulations formalise what industry should be doing currently, and give the safety authority powers to require the railway industry body to provide information. This sets up an effective 'closed loop' system, enabling the safety authority to require consideration by the industry bodies and others to which a safety recommendation might be relevant, and to require information from those organisations regarding their intentions and progress on implementation.

Implementation of safety recommendations

7.17. RAIB's safety recommendations are advisory: RAIB has no powers to mandate their implementation.

7.18. In the first instance, the decision to implement or not lies with the relevant industry body, which, in reaching it, will need to consider:

- its obligations under health and safety legislation; and
- the business benefits of implementation.

7.19. Thereafter, should the body decide not to implement, or to delay implementation, it is for the safety authority to take a view, in the context of the health and safety legislation, on whether implementation would be "reasonably practicable"[8]. If the safety authority considers that it would be reasonably practicable, then that authority may, under health and safety legislation, take such action as it deems to be appropriate.

7.20. The making of safety recommendations with the objective of leveraging or correcting railway safety was envisaged by the Act. Since the purpose of

[8] Full information on "reasonably practicable" in the context of ALARP - 'as low as is reasonably practicable', can be found on the HSE website. The concept includes both cost and implementability of an option.

these Regulations is to set out the mechanisms by which that objective can be achieved, this regulatory impact assessment has taken into account the costs of operating those mechanisms, but not any costs associated with the improvement of safety arising from their implementation.

7.21. RAIB intends that its safety recommendations will be:

- focused and targeted;
- auditably related to an identified cause of an accident or incident or to an identified trend;
- formulated with the involvement of external parties whom the Branch judges will bring benefit to the process;
- be 'goal-setting' - focused on outcomes rather than process or activity; and
- either generic or specific, depending on the nature of the cause that they are addressing; and capable of enabling the industry to judge how best to allocate resources to achieve ALARP.

7.22. The Branch does not yet have any operational experience from which to derive values for these features and benefits.

Co-operation with RAIB

7.23. Direct compliance costs to industry are unlikely to be significantly different to existing costs of co-operating with the safety authorities, HMRI and BTP and other police services because industry's activities will not differ materially from those that they are already obliged to undertake.

7.24. Nevertheless, we consider that the additional costs arising from the need to co-operate with RAIB as a new body will be relatively minor. Any resource demands arising from co-operation will be managed by means of effective protocols between the public sector bodies (RAIB, the safety authorities and the police) and accords between RAIB and the main industry players.

Persons appointed to conduct or participate in RAIB investigations

7.25. RAIB is working with the rail industry to establish the principles and detailed arrangements for the appointment of Accredited Agents as the first presence at the scene of a railway accident, with the objective of preserving evidence. Network Rail, for example, which is the company likely to provide the largest number of Accredited Agents, estimates that 4 or 5 will be required from each of its 18 areas - maybe totalling 100. RAIB does not intend to make payment for such services: costs to the rail industry of co-operating with RAIB in this way will therefore be limited to staff time for training (one man day every 2 years) and to attendance at the accidents themselves. Network Rail is supportive of this proposal as it considers that there will be benefit from the prompt and accurate recording of perishable evidence.

Potential savings to industry

7.26. The direct charging arrangements from the HSE to duty holders for regulatory services mean that the industry effectively pays for HSE investigations. To the extent that the HSE is relieved of the work involved in

investigating cause, industry costs will be lower because RAIB has no parallel provision for making charges for its services, and the cost of investigations will fall instead on the public purse.

7.27. These Regulations may also provide an opportunity for savings for duty holders in the railway industry, particularly in cases where RAIB is investigating an accident or incident that a duty holder also has an implicit duty to investigate in accordance with health and safety legislation. The duty holder may consider that it can properly wait for the outcome of the RAIB investigation, and that that investigation will meet its needs and obligations as duty holder.

8. Activities and resource requirements - the safety authorities

8.1. The mobilisation of RAIB will not modify the safety authorities' responsibilities for carrying out statutory duties under the Health and Safety at Work etc Act 1974. In the absence of any operational experience of RAIB, there are too many uncertainties for the net impact of RAIB's work to be quantified, and no quantified cost saving to the safety authorities has been included in this assessment although possible savings have been identified, eg in the sharing of evidence. The safety authorities are likely to incur some new costs in dealing with the recommendations made by RAIB, but it is difficult to quantify these costs as they will be directly related to the number and substance of RAIB's recommendations.

8.2. As well as placing some explicit obligations upon safety authorities, the Directive provides opportunities for them to have access to the evidence, and to the investigation process insofar as that is compatible with ensuring that RAIB's independence is not undermined. This may lead to some savings in resources and cost.

Obligations on the safety authorities

8.3. The Directive prescribes that, as the addressee, the safety authority must receive RAIB's safety recommendations. The Directive explicitly requires the safety authority to ensure that safety recommendations are duly taken into consideration and where appropriate acted upon: this is a new duty upon the safety authorities, created by the Directive, and is transposed into the Regulations.

8.4. The existing health and safety legislation does not provide the safety authority with powers to secure consideration or action, nor to obtain information from those organisations who will be the end implementers of safety recommendations. The Regulations therefore provide these powers for use at the safety authority's discretion. It is considered that the targeted use of a clear power is likely to be more efficient and effective for both the safety authorities and those organisations which they are regulating than an informal system.

8.5. To fulfil its obligations effectively, the safety authority will need to undertake a number of activities, some administrative, some technical. The work required is summarised in Table 6.

Table 6 - Recommendations' handling - work of the safety authorities

Administration	Technical
• receive and acknowledge recommendations • inform duty holders of the recommendation, stating that HSE will be assessing it as soon as possible and requesting duty holders' assessments and action plans; • enter onto and update recommendations management database • convene inspector assessment team and record their decisions • inform relevant HSE inspectors (as recommendation owners) • monitor progress • provide information to RAIB.	• review to confirm that, as safety authority, it has power to secure implementation; • screen for soundness, and compatibility with recommendations arising from other sources and other RAIB investigations; • form a duty-holder-specific view on how that duty holder might deliver the recommendation, and what will be the safety authority's assessment criteria for judging successful implementation; • prioritise recommendations, on the basis of their ability to contribute to improved safety, against other recommendations and requirements; • follow up with relevant duty holders, adopting an approach that is proportionate to the potential safety benefit.

8.6. RAIB will co-operate with the safety authorities, for example through consultation on draft recommendations, to ensure that this work can be done as efficiently and smoothly as possible.

8.7. The costs to the safety authorities of handling RAIB recommendations will depend on the numbers and nature of the recommendations that RAIB makes. It is also recognised that RAIB will investigate the cause of many more railway accidents or incidents than has been the custom of the safety authorities, which could lead to an increase in the number of recommendations overall.

8.8. RAIB cannot, at this stage, estimate with any precision the number of safety recommendations that will emerge from its investigations, nor the number of organisations that will be required to consider them, and nor, therefore, the likely resource requirement for the safety authorities in fulfilling their responsibilities. However, Table 7 sets out some possible scenarios for the numbers of recommendations that might arise from RAIB's investigations and the consequences for the safety authorities. This is based upon an analysis of accident and incident reports for December 2004 – February 2005. On the basis of Scenario 1, for example, HSE estimates that administration will require in the order of 2.5 full time equivalents (FTEs), with an additional 1.5 - 2 inspector FTEs. This duty is derived from the Directive.

Table 7 - workload for recommendations handling by safety authorities

Scenarios for numbers of safety recommendations to be made by RAIB	Scenario 1	Scenario 2	Scenario 3
Assumption: RAIB will investigate, and make safety recommendations arising from:			
• 3 major accidents pa	Av 5 **new** recomms per accident	Average 10 **new** recomms	Average 20 **new** recomms
• 44 complex accidents pa	Average 0.5 **new** recomms	Average 2 **new** recomms	Average 5 **new** recomms
• 276 simple accidents pa	Average 0.1 **new** recomms	Average 0.15 **new** recomms	Average 0.2 **new** recomms
Total no of recommendations	15 + 22 + 27.6 = 64.6	30 + 88 + 41.4 = 159.4	60 + 220 + 55.2 = 335.2
Follow-up			
Assume 50% of recommendations relate to infrastructure, and an infrastructure recommendation will only bear on one Duty Holder	**33**	**80**	**168**
Assume rest of recommendations relate to TOCs.	33	80	168
Assume that half relate to one TOC only	**17**	**40**	**84**
Assume that of the remainder:			
• 80% relate to 5 TOCs and	17 * 0.8 * 5 = **68**	40 * 0.8 * 5 = **160**	84 * 0.8 * 5 = **336**
• 20% relate to all TOCs	17 * 0.2 * 35 = **119**	40 * 0.2 * 35 = **280**	84 * 0.2 * 35 = **588**
Total TOC Recommendations =	**204**	**480**	**1008**
So HSE's total follow up burden (excluding multiplication arising from initial assessment) is to track x recommendations.	**x = 237**	**x = 560**	**x = 1176**

8.9. The Directive further requires the safety authority to report back at least annually to RAIB on measures that are taken or planned as a consequence of the recommendation. This duty is transposed into the Regulations, together with powers to enable the safety authority to obtain information if it considers that to be appropriate. However, it is critical for RAIB to know how effective

its investigation has been in achieving RAIB's statutory responsibilities. The Regulations require the safety authority to furnish information to RAIB without undue delay, while recognising that this applies only to information of which the safety authority can reasonably obtain. RAIB's expectation is that the safety authority will take reasonable steps to obtain information in line with its responsibilities under the Directive. These requirements represent additional duties and costs for the safety authority, which is currently setting up additional procedures to deal with this. The resource costs will depend on the number of recommendations issued by RAIB.

8.10. The remaining duties placed upon the safety authorities are summarised below, but it is considered that they are insignificant in terms of workload additional to that currently required. The safety authority must, until RAIB has either concluded, or determined that it will not conduct an investigation:

- preserve evidence;
- notify a RAIB inspector of intent to collect, examine or analyse evidence or interview a witness;
- provide details of the action taken;
- provide a list of the evidence taken; and
- on request, provide the Branch with access to or copies of any evidence taken or information obtained.

Opportunities for the safety authorities

8.11. The Regulations enable the safety authority to:

- request that RAIB undertakes a discretionary investigation;
- submit its opinions and views to RAIB on an investigation that RAIB is carrying out, and comment on the information in draft reports;
- receive formal notification of RAIB's intention to publish an investigation report, together with copy of part or all of the report, and make representations to RAIB regarding the content of that report prior to its publication;
- to be present during examination or analysis of evidence if the safety authority could collect that evidence using its own powers, and to have access to all records and reports relating to such examinations;
- receive evidence that the Branch no longer requires if the safety authority could collect that evidence using its own powers;
- have disclosed to it by RAIB any factual / technical evidence obtained by RAIB if the safety authority could collect that evidence using its own powers.

8.12. Some of these activities will have costs associated with them, but it will be for the safety authority itself to determine priorities and hence the appropriate level of resource. Others will represent a cost saving, for example where RAIB is gathering and providing evidence, or conducting tests etc which the safety authority would, under previous arrangements, have had to do for itself.

Avoided costs

8.13. Mobilisation of RAIB has the potential to reduce the safety authorities' role in the immediate attendance at an investigation of the more serious types of railway accident where there is no obvious and serious breach of health and safety law. They will be able to draw upon RAIB's evidence and findings as to cause, resulting in some resource saving in the investigation process from their point of view.

9. Activities and resource requirements - other public authorities

9.1. The establishment of RAIB and the detailed requirements of its legislation mean that the Branch will interface with other public bodies, and that this, in turn, may necessitate changes in the way in which they conduct their work. Such bodies include, for example, the police, Procurator Fiscal, Crown Prosecution Service, Coroner. These interfaces have the potential both for costs and benefits to the other bodies but there is no reason to believe that the costs will be significant.

10.Equity and fairness

10.1. All railway industry bodies and, to a lesser extent, their manufacturers and suppliers, will be affected by the Regulations. However, there is no expectation that costs to the various groups within the industry might fall disproportionately upon particular groups or individual players within those groups. Hence it is not necessary to consider the impact on 'small firms' or to identify a 'typical' business: rather it is valid to consider costs to industry as a whole.

10.2. The Regulations present no barrier to new entrants to the market. In respect of technological developments, it is to be expected that RAIB's safety recommendations will promote the exploration and adoption of safer practices. These might be found in new or in existing technology, and the means of achievement of improved safety will be a matter for the railway industry body concerned and its safety authority in the context of compliance with and enforcement of health and safety legislation.

10.3. Framing the recommendations around safety outcomes will eliminate any possibility that RAIB's safety recommendations could be anti-competitive. It is possible that RAIB will recommend evaluation by the industry of a particular type of equipment for a particular purpose, but the objective of this will be to drive innovation and technological improvement. We therefore consider that RAIB's safety recommendations will not create any bias in favour of any particular manufacturer or supplier.

10.4. Since the Regulations implement a Directive that all Member States must implement by April 2006, there will be no adverse effect on competition in the wider European context.

10.5. The Regulations will not affect individuals except to the extent that as rail users they may be reassured as to the effectiveness of investigation into cause, and should benefit from the safety improvements that are achieved as

a result of RAIB's recommendations. Hence there is no impact bias in respect of gender, race, income, age, health or disability except to the extent to which different groups are rail users.

11.Enforcement and Sanctions

11.1. The offences created by the Regulations relate to:

- failure to notify RAIB of an accident or incident;
- failure to assist a RAIB inspector when requested to do so;
- unauthorised entry to an accident site; unauthorised interference with evidence;
- failure to preserve evidence;
- use of evidence contrary to the Regulations;
- disclosure of specified evidence contrary to the Regulations;
- disclosure of an unpublished report contrary to the Regulations; and
- failure to comply with a requirement of the safety authority.

11.2. The potential benefits of a RAIB investigation will be reaped only if:

- RAIB receives swift and reliable notification by the relevant railway industry bodies of the occurrence of an accident or incident; and
- RAIB can gather full and reliable evidence as to cause.

11.3. The offences are designed to discourage activity that puts at risk either of these critical factors. They will contribute directly to the achievement of RAIB's statutory general aims of preventing future accidents and incidents, and improving the safety of railways

11.4. Under current arrangements, railway industry bodies have a duty to report a very similar range of accidents and incidents to the relevant safety authority in accordance with RIDDOR. The HSE, as the safety authority within whose purview the majority of work arising from these Regulations will fall, has provided data indicating that compliance with RIDDOR reporting requirements is reasonably good, albeit that HSE has given encouragement and reminders and has, on occasion, issued improvement notices to secure compliance.

11.5. As duty holders, railway industry bodies must preserve evidence for the purposes of their own investigations. It is not possible to quantify the effectiveness with which they currently do this. If it is already done to a high standard, then enforcement action would seldom be necessary.

11.6. As described earlier, the obligations upon industry fall into two groups:

- putting in place the systems which enable compliance; and
- operating those systems to achieve the required outcome in the event of an accident or incident.

11.7. There is no provision, however, for any inspection regime to assess the first of these - whether industry has properly prepared itself to comply. To that extent, the regime is self-regulatory. Enforcement action cannot be brought

unless there has been an actual failure in the context of an accident or incident.

11.8. The Act does not specify who may initiate enforcement action, and it is therefore not possible to place any restrictions on this through the Regulations. RAIB would envisage that it in most cases the Branch would identify a failure to comply, and would decide whether enforcement action was appropriate. But, for example, if a railway industry body had failed to preserve evidence and another railway industry body considered that this failure had been to its detriment, then the second railway industry body might decide to pursue a prosecution.

11.9. The sanctions for all offences are criminal, and variously include fines and terms of imprisonment. The regulations specify the courts in which the cases can be heard. Appeals against convictions will be via the normal legal channels.

12. Consultation

12.1. The creation of an independent body to investigate the causes of rail accidents was a recommendation made by Lord Cullen in his report on the Ladbroke Grove accident. Government accepted this recommendation, and conducted a full public consultation exercise in preparation for the Railways and Transport Safety Act 2003, which showed overwhelming support for the creation of RAIB. Subsequently the requirement for an independent body has been incorporated into European law in the Directive, adopted in April 2004.

12.2. The Chief Inspector of Rail Accidents was appointed in May 2003. Since then, during the establishment phase of RAIB, the Chief Inspector and her colleagues have conducted an active dialogue with all relevant stakeholders, with a formal consultation on the proposed Regulations and key supporting policies at the end of 2004. This continuing process involves stakeholders from industry, trades unions, Government, and other relevant public bodies and authorities, most notably the HSE and BTP.

13. Summary and recommendations

13.1. The case for the establishing an independent investigator of railway accidents and incidents was made prior to passage of the Act in 2003. Subsequently, it has become a requirement of the Directive. While it has been difficult to quantify savings with any certainty, RAIB will, in conjunction with other parties, seek to achieve them in the way in which it operates. In areas where increased costs have been identified by RAIB or others - these arise almost entirely from transposition of the Directive and are hence unavoidable in particular for the safety authorities in ensuring consideration of, and appropriate action in respect of, RAIB's safety recommendations,. For these reasons it is recommended that the Secretary of State should accept this regulatory impact assessment.

Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed **……Alistair Darling… ……..**

Date 19th July 2005

Secretary of State for Transport

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Article	**RAILWAY SAFETY DIRECTIVE - CHAPTER V** **ACCIDENT AND INCIDENT INVESTIGATION**	Section of RTSA that implements	**regulation making power in RTSA except where indicated**	**Implementing regulation**
Article 19 Obligation to investigate	1. Member States shall ensure that an investigation is carried out by the investigating body referred to in Article 21 after serious accidents on the railway system, the objective of which is possible improvement of railway safety and the prevention of accidents.	7(1)(a)	n/a	n/a
Article 19	2. In addition to serious accidents, the investigating body referred to in Article 21 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 trans-European high-speed or conventional rail systems.	7(1)(b)	n/a	n/a
Article 19	The investigating body shall, at its discretion, decide whether or not an investigation of such an accident or incident shall be undertaken. In its decision it shall take into account: (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 Community level, and (d) requests from infrastructure managers, railway undertakings, the safety authority or the Member States.	n/a	2(4), 9(1) and 11(1)	5(4)

Article	**RAILWAY SAFETY DIRECTIVE - CHAPTER V** **ACCIDENT AND INCIDENT INVESTIGATION**	Section of RTSA that implements	**regulation making power in RTSA except where indicated**	**Implementing regulation**
Article 19	3. The extent of investigations and the procedure to be followed in carrying out such investigations shall be determined by the investigating body, taking into account the principles and the objectives of Articles 20 and 22 and depending on the lessons it expects to draw from the accident or incident for the improvement of safety.	n/a	9(1)	5(11)
Article 19	4. The investigation shall in no case be concerned with apportioning blame or liability.	7(5)(a) and 7(5)(b)	n/a	n/a
Article 20 Status of investigation	1. Member States shall define, in the framework of their respective legal system, the legal status of the investigation that will enable the investigators-in-charge to carry out their task in the most efficient way and within the shortest time.	3, 8(5) and (6)	9(1) and 11(1)	4, 5, 6, 7, 8, 9 and 10
Article 20	2. In accordance with the legislation in force in the Member States and, where appropriate, in cooperation with the authorities responsible for the judicial inquiry, the investigators shall, 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 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;	8	9(1) ,11(2) and 11(3)	7, 8 and 9

Article	**RAILWAY SAFETY DIRECTIVE - CHAPTER V** **ACCIDENT AND INCIDENT INVESTIGATION**	Section of RTSA that implements	**regulation making power in RTSA except where indicated**	**Implementing regulation**
	(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; (g) access to any relevant information or records held by the infrastructure manager, the railway undertakings involved and the safety authority.			
Article 20	3. The investigation shall be accomplished independently of any judicial inquiry.	7(6),	9(1)	5(1), 7, 8 and 9
Article 21 Investigating body	1. Each Member State shall ensure that investigations of accidents and incidents referred to in Article 19 are conducted by a permanent body, which shall comprise at least one investigator able to perform the function of investigator-in-charge in the event of an accident or incident. This body shall be independent in its organisation, legal structure and decision-making from any infrastructure manager, railway undertaking, charging body, allocation body and notified body, and from any party whose interests could conflict with the tasks entrusted to the investigating body. It shall furthermore be functionally independent from the safety authority and from any regulator of railways.	3 and 4	n/a	n/a

Article	**RAILWAY SAFETY DIRECTIVE - CHAPTER V** **ACCIDENT AND INCIDENT INVESTIGATION**	Section of RTSA that implements	**regulation making power in RTSA except where indicated**	**Implementing regulation**
Article 21	2. The investigating body shall perform its tasks independently of the organisations referred to in paragraph 1 and shall be able to obtain sufficient resources to do so. Its investigators shall be afforded status giving them the necessary guarantees of independence.	3 and 8	2(2) ECA	5(1)
Article 21	3. Member States shall make provision that railway undertakings, infrastructure managers and, where appropriate, the safety authority, are obliged immediately to report accidents and incidents referred to in Article 19 to the investigating body. The investigating body shall be able to respond to such reports and make the necessary arrangements to start the investigation no later than one week after receipt of the report concerning the accident or incident.	n/a	9(1) and 11(2)	4(1) & (4) 5(3)
Article 21	4. The investigating body may combine its tasks under this Directive with the work of investigating occurrences other than railway accidents and incidents as long as such investigations do not endanger its independence.	3(4)4	9(1) 2(2) ECA	5(2)
Article 21	5. If necessary the investigating body may 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.	n/a	9(1)(e)	6(3)(a)
Article 21	6. Member States may entrust the investigating body with the task of carrying out investigations of railway accidents and incidents other than those referred to in Article 19.	7(1)(b)	9(1)	5(5)
Article 21	7. The investigating bodies shall conduct an active exchange of views and experience 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. The Agency shall support the investigating bodies in	n/a	2(2) ECA	15(5)

Article	**RAILWAY SAFETY DIRECTIVE - CHAPTER V** **ACCIDENT AND INCIDENT INVESTIGATION**	Section of RTSA that implements	**regulation making power in RTSA except where indicated**	**Implementing regulation**
	this task.			
Article 22 Investigation procedure	1. An accident or incident referred to in Article 19 shall be investigated by the investigation body of the Member State in which it occurred. If it is not possible to establish in which Member State it occurred or if it occurred on or close to a border installation between two Member States the relevant bodies shall agree which one of them will carry out the investigation or shall agree to carry it out in cooperation. The other body shall in the first case be allowed to participate in the investigation and fully share its results.	6 and 14	9(1)	5(7)
Article 22	Investigation bodies from another Member State shall be invited to participate in an investigation whenever a railway undertaking established and licensed in that Member State is involved in the accident or incident. This paragraph shall not preclude Member States from agreeing that the relevant bodies should carry out investigations in cooperation in other circumstances.	n/a	9(1)	5(8) and 5(9)
Article 22	2. For each accident or incident the body responsible for the investigation shall arrange for the appropriate means, comprising the necessary operational and technical expertise to carry out the investigation. The expertise may be obtained from inside or outside the body, depending on the character of the accident or incident to be investigated.	n/a	9(1) and 11(1)	6(1), (2), (3), and (4)

Article	**RAILWAY SAFETY DIRECTIVE - CHAPTER V** **ACCIDENT AND INCIDENT INVESTIGATION**	Section of RTSA that implements	**regulation making power in RTSA except where indicated**	**Implementing regulation**
Article 22	3. The investigation shall be carried out with as much openness as possible, so that all parties can be heard and can share the results. The relevant infrastructure manager and railway undertakings, the safety authority, victims and their relatives, owners of damaged property, manufacturers, the emergency services involved and representatives of staff and users shall be regularly informed of the investigation and its progress and, as far as practicable, shall be given an opportunity to submit their opinions and views to the investigation and be allowed to comment on the information in draft reports.	n/a	9(1) and (2)	5(10) and 13
Article 22	4. The investigating body shall conclude its examinations at the accident site in the shortest possible time in order to enable the infrastructure manager to restore the infrastructure and open it to rail transport services as soon as possible.	n/a	9(1)	5(12)
Article 23 Reports	1. An investigation of an accident or incident referred to in Article 19 shall be the subject of reports in a form appropriate to the type and seriousness of the accident or incident and the relevance of the investigation findings. The reports shall state the objectives of the investigations as referred to in Article 19(1) and contain, where appropriate, safety recommendations.	n/a	9(2)	11(1)
Article 23	2. The investigating body shall make public the final report in the shortest possible time and normally not later than 12 months after the date of the occurrence. The report shall, as close as possible, follow the reporting structure laid down in Annex V. The report, including the safety recommendations, shall be communicated to the relevant parties referred to in Article 22(3) and to bodies and parties concerned in other Member States.	n/a	9(2)	11(2), 11(5) and Schedule 6

Article	**RAILWAY SAFETY DIRECTIVE - CHAPTER V** **ACCIDENT AND INCIDENT INVESTIGATION**	Section of RTSA that implements	**regulation making power in RTSA except where indicated**	**Implementing regulation**
Article 23	3. Each year the investigating body shall publish by 30 September at the latest an annual report accounting for the investigations carried out in the preceding year, the safety recommendations that were issued and actions taken in accordance with recommendations issued previously.	6	9(2)	14(1) and (2)
Article 24 Information to be sent to the Agency	1. Within one week after the decision to open an investigation the investigating body shall inform the Agency thereof. The information shall indicate the date, time and place of the occurrence, as well as its type and its consequences as regards fatalities, injuries and material damage.	n/a	9(1)	5(6)
Article 24	2. The investigating body shall send the Agency a copy of the final report referred to in Article 23(2) and of the annual report referred to in Article 23(3).	n/a	9(2)	11(3) and 11(5)
Article 25 Safety recommendations	1. A safety recommendation issued by an investigating body shall in no case create a presumption of blame or liability for an accident or incident.	7(5)	n/a	n/a
Article 25	2. Recommendations shall be addressed to the safety authority and, where needed by reason of the character of the recommendation, to other bodies or authorities in the Member State or to other Member States. Member States and their safety authorities shall take the necessary measures to ensure that the safety recommendations issued by the investigating bodies are duly taken into consideration, and, where appropriate, acted upon.	6(2)	9(2) 2(2) ECA	12(1)

Article	**RAILWAY SAFETY DIRECTIVE - CHAPTER V** **ACCIDENT AND INCIDENT INVESTIGATION**	Section of RTSA that implements	**regulation making power in RTSA except where indicated**	**Implementing regulation**
Article 25	3. The safety authority and other authorities or bodies or, when appropriate, other Member States to which recommendations have been addressed, shall report back at least annually to the investigating body on measures that are taken or planned as a consequence of the recommendation.	n/a	13	12(2)(b)

Note : RTSA = The Railways and Transport Safety Act 2003 (c. 20). ECA = The European Communities Act 1972 (c.68)