STATUTORY INSTRUMENTS

2013 No. 950

HEALTH AND SAFETY

The Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013

Made - - - -	*20th April 2013*
Laid before Parliament	*25th April 2013*
Coming into force - -	*21st May 2013*

The Secretary of State makes the following Regulations in exercise of the powers conferred by—

(a) section 2(2) of, as read with paragraph 1A of Schedule 2 to, the European Communities Act 1972(**a**); and

(b) sections 15(1), (2), (4), (5), 47(2), and 82(3)(a) of, and paragraphs 1(1)(a) and (c), 1(2) and 6 of Schedule 3 to, the Health and Safety at Work etc. Act 1974(**b**).

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to railways and railway transport(**c**). These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State expedient for the references to Annex I to Commission Regulation (EU) No 36/2010 on Community models for train driving licences, complementary certificates, certified copies of complementary certificates and application forms for train driving licences under Directive 2007/59 of the European Parliament and the Council(**d**) to be construed as a reference to that Annex to that Regulation as amended from time to time.

These Regulations are made for the purpose of giving effect without modifications to proposals submitted to the Secretary of State by the Office of Rail Regulation under paragraph 2(5) of Schedule 3 to the Railways Act 2005(**e**), in respect of which the Office of Rail Regulation has carried out consultations in accordance with paragraph 2(6) of Schedule 3 of the Railways Act 2005.

(**a**) 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). Paragraph 1A of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006, section 28 and was subsequently amended by S.I. 2007/1388 and by Part 1 of Schedule 3 to the European Union (Amendment) Act 2008.

(**b**) 1974 c.37; section 15 was amended by the Employment Protection Act 1975 (c.71), Schedule 15, paragraph 6 and by S.I. 2002/794 and S.I. 2008/960; there are other amendments none of which are relevant. Section 47 was amended by the Employment Protection Act 1975, Schedule 15, paragraph 14 and Schedule 18. The general purposes of Part I referred to in section 15(1) were extended by section 117 of the Railways Act 1993 (c.43). There are no relevant amendments to section 83 or Schedule 3.

(**c**) S.I. 1996/266, to which there are amendments not relevant to these Regulations.

(**d**) O.J. No. L13, 19.01.2010, p1.

(**e**) 2005 c.14, to which there are amendments not relevant to these Regulations.

Citation and commencement

1. These Regulations may be cited as the Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013 and come into force on 21st May 2013.

Amendments to the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006

2.—(1) In regulation 2 of the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006(**a**)—

(a) after the definition of "Enforcing Authority Regulations", insert—

""entity in charge of maintenance" has the same meaning as in the Railways and Other Guided Transport Systems (Safety) Regulations 2006(**b**);";

(b) after the definition of "light maintenance services", insert—

""mainline railway" has the same meaning as in the Railways and Other Guided Transport Systems (Safety) Regulations 2006;".

(2) After regulation 4(4), insert—

"(4A) Notwithstanding paragraph (3), where an entity in charge of maintenance performs maintenance on a vehicle that is to be placed in service or is used on the mainline railway, the operation of a railway specified in regulation 3(2)(a) shall include such maintenance performed on a vehicle within any premises referred to in paragraph (3).".

(3) After regulation 7 (transitional provisions), insert—

"**Review**

8.—(1) Before the end of each review period, the Secretary of State must—

(a) carry out a review of these Regulations;

(b) set out the conclusions of the review in a report; and

(c) publish the report.

(2) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;

(b) assess the extent to which those objectives are achieved; and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) "Review period" means—

(a) the period of five years beginning with the day on which the Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013 come into force; and

(b) subject to paragraph (4), each successive period of five years.

(4) If a report under this regulation is published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.".

(**a**) S.I. 2006/557, as amended by S.I. 2008/2323; there are other amendments not relevant to these Regulations.
(**b**) S.I. 2006/599, as amended by S.I 2007/3531 and S.I. 2011/1860; there are other amendments not relevant to these Regulations.

Amendments to the Railways and Other Guided Transport Systems (Safety) Regulations 2006

3.—(1) The Railways and Other Guided Transport Systems (Safety) Regulations 2006 are amended as follows.

(2) In regulation 2(1) (Interpretation and application)—

(a) after the definition of "carriageway" insert—

""certification body" has the same meaning as in the ECM Regulation;";

(b) the definitions of "deemed safety authorisation" and "deemed safety certificate" are omitted;

(c) after the definition of "the Directive" insert—

""ECM certificate" means a certificate issued in accordance with the ECM Regulation to an entity in charge of maintenance for the purposes of Article 14a(4) of the Directive or a certificate or self-declaration recognised as being equivalent for those purposes in accordance with Article 12(3) to (7) of the ECM Regulation;

"ECM Regulation" means Commission Regulation (EU) No 445/2011 on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) No 653/2007(**a**);";

(d) after the definition of "factory" insert—

""freight wagon" means a non-self-propelled-vehicle designed for the purpose of transporting freight or other materials to be used for activities such as construction or infrastructure maintenance;";

(e) omit the definition of "heritage railway";

(f) for the definition of "mainline railway" substitute—

""mainline railway" means any railway except for any railway or part of a railway—

(a) that the Office of Rail Regulation determines in accordance with regulation 2A (determination of exclusion from the mainline railway) falls within one of the categories listed in paragraph (1) of that regulation; or

(b) which is privately owned infrastructure that exists solely for use by the infrastructure owner for its own freight operations;";

(g) in the definition of "maintenance rules" for "to the whole of" substitute "in";

(h) in the definition of "national safety rules"—

(i) in paragraph (a) for "to the whole of" substitute "in";

(ii) for paragraph (b) substitute—

"(b) which contain requirements (including common operating rules) relating to railway safety which are imposed on more than one transport undertaking operating on the mainline railway;";

(i) for the definition of "placed in service", substitute—

""placed in service" means when a vehicle or infrastructure, having been constructed, upgraded or renewed, is first operated in the provision of a transport service, and in ascertaining when this takes place no regard shall be had to any trials or testing that take place to the vehicle or infrastructure, and cognate expressions shall be construed accordingly;".

(3) After regulation 2 (interpretation and application) insert—

(**a**) O.J. No. L122, 11.05.2011, p22.

"Determination of exclusion from the mainline railway

2A.—(1) A railway or part of a railway does not form part of the mainline railway if the Office of Rail Regulation determines that it falls within one or more of these categories—

(a) metros and other light rail systems;

(b) networks that are functionally separate from the rest of the mainline railway and intended only for the operation of local, urban or suburban passenger services, as well as transport undertakings operating solely on these networks;

(c) heritage, museum or tourist railways that operate on their own networks;

(2) The Office of Rail Regulation may determine that a heritage vehicle which operates on the mainline railway and complies with national safety rules is deemed not to operate on the mainline railway for the purposes of these Regulations.

(3) The Office of Rail Regulation may revoke or vary a determination under paragraph (1) or (2).

(4) A person may make an application to the Office of Rail Regulation for a determination under paragraph (1) or (2) or for such a determination to be revoked or varied under paragraph (3) and the Office of Rail Regulation shall consider any such application.

(5) The Office of Rail Regulation shall maintain and publish a list of—

(a) railways or parts of railways that do not form part of the mainline railway; and

(b) heritage vehicles which operate on both the mainline railway and heritage railway and are deemed not to operate on the mainline railway,

by virtue of determinations made under paragraph (1) or (2)."

(4) In regulation 3 (use of infrastructure on the mainline railway), paragraph (1)(a), for "5(1) to (4)" insert "5(1) to (3)"

(5) In regulation 5 (safety management system for the mainline railway)—

(a) in paragraph (1)—

(i) at the end of sub-paragraph (d)(i) insert "and";

(ii) at the end of sub-paragraph (d)(ii) omit "and";

(iii) omit sub-paragraph (d)(iii);

(b) omit paragraphs (4), (5) and (6);

(c) in paragraph (7)—

(i) for "(1) to (6)" substitute "(1) to (3)";

(ii) omit "save that any reference to new or altered vehicles in those paragraphs shall be replaced with a reference to new or altered infrastructure";

(iii) omit sub-paragraph (a);

(iv) for "sub-paragraphs (a) to (d)" insert "sub-paragraphs (b) to (d)".

(6) In regulation 17 (general provisions relating to safety certificates and safety authorisations)—

(a) in paragraph (3)(b) omit "or paragraph 9 of Schedule 5";

(b) in paragraph (5) omit the wording from "except";

(c) for paragraph (7) substitute—

"(7) If a request for information is made under paragraph (5), the period of 4 months for the Office of Rail Regulation to make a decision referred to in regulations 7(3), 8(4), 10(2) and 11(3) shall not start to run until the date of receipt of the last information requested.";

(d) omit paragraph (8);

(e) in paragraph (9) omit the words, "or paragraph 9 of Schedule 5".

(7) In regulation 18A (maintenance of vehicles on the mainline railway) for paragraph (1) substitute—

"(1) No person may place in service or use a vehicle on the mainline railway unless that vehicle has an entity in charge of maintenance assigned to it, and that entity in charge of maintenance—

(a) is registered in relation to that vehicle in the National Vehicle Register; and

(b) holds an ECM certificate if the vehicle is a freight wagon.".

(8) In regulation 20 (annual safety reports) for paragraph (1) substitute the following—

"(1) Subject to paragraph (2), any transport operator who carries out operations on the mainline railway shall send to the Office of Rail Regulation an annual safety report in respect of its operations on the mainline railway relating to the previous calendar year, which shall contain—

(a) information on how the transport operator's safety targets, referred to in paragraph 2(b) of Schedule 1, are met;

(b) the results achieved through putting the transport operator's safety plans, referred to in paragraph 2(b) of Schedule 1, into effect;

(c) statistics for the common safety indicators listed in Schedule 3 insofar as they are relevant to the operations in question;

(d) the findings of safety auditing carried out pursuant to the procedures referred to in paragraph 2(k) of Schedule 1; and

(e) comments on any deficiencies or malfunctions relating to the running of vehicles or the management of infrastructure relating to the operation in question that may be relevant to the safety of that transport system,

and where an operation is carried out in part on the mainline railway and in part on another transport system the report shall include only information in respect of the part carried out on the mainline railway.".

(9) In regulation 21 (sending, issuing, and keeping of documents and making them available for public inspection)—

(a) in paragraph (4)(b) omit the words, "or any revision made pursuant to paragraph 8 of Schedule 5";

(b) in paragraph (4)(e) omit the words, "or paragraph 9 of Schedule 5".

(10) In regulation 24 (competence and fitness), in paragraph (1)(d) between "place" and "arrangements" insert "suitable and sufficient".

(11) In regulation 27 (appeals)—

(a) for paragraph (1)(a)(i), substitute—

"(i) a safety certificate, a safety authorisation or an ECM certificate;";

(b) at the end of paragraph (1)(b), omit "or";

(c) after paragraph (1)(c), insert—

"(d) decision of the Office of Rail Regulation taken pursuant to Articles 7(3), (4) or (7) of the ECM Regulation concerning his ECM certificate; or

(e) determination of the Office of Rail Regulation under regulation 2A or a decision of the Office of Rail Regulation under that regulation to revoke or vary such a determination,".

(d) after paragraph (1), insert—

"(1A) A person who is aggrieved by a decision of a certification body accredited or recognised in Great Britain for the purposes of the ECM Regulation either to refuse an application for an ECM certificate or taken by that body pursuant to Articles 7(3), (4) or (7) of the ECM Regulation, may—

(a) appeal to the Secretary of State; and

(b) for the purposes of such appeal, references to the Office of Rail Regulation in this regulation shall be construed as references to that certification body, except for paragraph (7) which does not apply to such appeal.";

(e) in paragraph (2), for "paragraph (1)", substitute "paragraphs (1) and (1A)".

(12) In regulation 29 (transitional provisions and savings) omit paragraph (7).

(13) In Schedule 2 (application for a safety certificate) in paragraph 1(b)(i) omit ", other than a deemed safety certificate,".

(14) In Schedule 3 (common safety indicators)—

(a) in Part 1 (common safety indicators)—

(i) in paragraph 2(1)(b), insert "persons" between "or" and "killed";

(ii) at the end of paragraph 2(1)(b)(ii), insert "at the time of the accident";

(iii) for paragraph 6(1)(a), substitute—

"(a) number of persons killed and persons seriously injured multiplied by the Value of Preventing a Casualty (VPC);";

(b) in Part 2 (common definitions and methods to calculate the economic impact of accidents)—

(i) omit paragraphs 1(12) and 1(15);

(ii) in paragraph 1(16), for "Deaths (killed person)" substitute "Persons killed";

(iii) in paragraph 1(17), for "Injuries (seriously injured person)" substitute "Persons seriously injured".

(15) In the heading to Schedule 4 (written safety verification scheme requirements) omit "5(4)(a) and".

(16) Omit Schedule 5.

Amendments to the Train Driving Licences and Certificates Regulations 2010

4.—(1) The Train Driving Licences and Certificates Regulations 2010(**a**) are amended as follows.

(2) In regulation 2, after the definition of "employed", insert—

""in code form" is a reference to a code representing additional information or a medical restriction, as provided for in Annex I to Commission Regulation (EU) No 36/2010 on Community models for train driving licences, complementary certificates, certified copies of complementary certificates and application forms for train driving licences, under Directive 2007/59/EC of the European Parliament and the Council(**b**), as that Annex to that Regulation is amended from time to time;".

(3) In regulation 3, after paragraph (1), insert—

"(1A) These Regulations do not apply in relation to the driving of trains which the Office of Rail Regulation has determined under regulation 2A(2) of ROGS are deemed not to operate on the mainline railway.".

(4) After part 14 (transitional provisions), insert—

(**a**) S.I. 2010/724.
(**b**) O.J. No. L13, 19.01.2010, p1.

“PART 15

Review

Review

40.—(1) Before the end of each review period, the Secretary of State must—

(a) carry out a review of these Regulations;

(b) set out the conclusions of the review in a report; and

(c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive is implemented in other member States.

(3) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;

(b) assess the extent to which those objectives are achieved; and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) “Review period” means—

(a) the period of five years beginning with the day on which the Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013 come into force; and

(b) subject to paragraph (5), each successive period of five years.

(5) If a report under this regulation is published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.”.

(5) In Schedule 2 (community model train driving licence and harmonised complementary train driving certificate), omit the sentence at the end of paragraph 2.

Signed by authority of the Secretary of State for Transport

Simon Burns
Minister of State
Department for Transport

20th April 2013

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (the "Rail Safety Regulations"). They also make other minor amendments to the Heath and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (the "Enforcing Authority Regulations") and the Train Driving Licences and Certificates Regulations 2010 (the "Driver Licensing Regulations").

Regulation 2(1) and (2) amends the Enforcing Authority Regulations to give inspectors from the Office of Rail Regulation jurisdiction to enter and undertake enforcement in respect of maintenance performed on railway vehicles in certain premises not otherwise within their remit. These are premises such as warehouses and factories which are used for such maintenance by the entity in charge of maintenance of those vehicles under the Rail Safety Regulations. Regulation 2(3) further amends the Enforcing Authority Regulations so as to require the Secretary of State to review the Enforcing Authority Regulations within the period of five years of these Regulations coming into force and during each successive five year period and to publish a report on each such review.

Regulation 3 amends the Rail Safety Regulations.

Regulation 3(2) introduces certain new definitions into the Rail Safety Regulations and amends some existing definitions.

Regulation 3(3) inserts a new regulation 2A into the Rail Safety Regulations which gives the Office of Rail Regulation the power to determine that a railway does not form part of the mainline railway for the purposes of the Rail Safety Regulations and to determine that heritage vehicles that operate over the mainline railway are deemed not to so operate for the purposes of those Regulations. This (together with the revised definition of "mainline railway" inserted into regulation 2(1) by Regulation 3(2)(f)) means that any such railway or vehicle in respect of which such a determination is made is not subject to the requirements of the Rail Safety Regulations in relation to mainline railways or vehicles operating on such railways. These measures apply the exclusions from scope permitted under Article 2 of Directive 2004/49/EC of the European Parliament and of the Council on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (the "Railway Safety Directive") (OJ No L164 30.4.2004, p.44). New Regulation 2A(5) requires the Office of Rail Regulation to maintain and publish a list of railways and heritage vehicles subject to such determinations by the Office of Rail Regulation.

Regulations 3(4), (5) and (15) revoke the requirement in the Rail Safety Regulations for train operators on the mainline railway to carry out a safety verification procedure in relation to new or altered vehicles, since an equivalent requirement has been introduced by Commission Regulation (EC) 352/2009 on the adoption of a common safety method on risk evaluation and assessment as referred to in Article 6(3)(a) of Directive 2004/49/EC of the European Parliament and of the Council (OJ No L108, 29.4.2009, p.4).

Regulation 3(6) amends Regulation 17 of the Rail Safety Regulations so as to shorten the period during which the Office of Rail Regulation is required to notify decisions in relation to applications under those regulations for the issue or amendment of safety certificates or safety authorisations.

Regulation 3(7) amends Regulation 18A of the Rail Safety Regulations. Pursuant to Regulation 18A, no person may place a vehicle in service on a mainline railway or use it on that railway unless the vehicle has had assigned to it an entity in charge of maintenance. Regulation 3(7) amends Regulation 18A to further provide that where the vehicle in question is a freight wagon the entity in charge of maintenance must hold a certificate (an "ECM Certificate") issued in accordance with Commission Regulation (EU) No 445/2011 on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) No 653/2007 (the "ECM Regulation"). This meets a requirement of article 14a(4) of the Railway Safety Directive,

as inserted by Directive 2008/110/EC of the European Parliament and of the Council amending Directive 2004/49/EC on safety on the Community's railways (OJ No L345, 23.12.2008, p.62) and as read with and supplemented by Commission Regulation (EU) No 445/2011.

Regulation 3(8) revokes the requirement in Regulation 20 of the Rail Safety Regulations for train operators operating on railway that does not form part of the mainline railway to send annual safety reports to the Office of Rail Regulation.

Regulation 3(10) clarifies that controllers of safety-critical work for the purposes of Regulation 24 of the Rail Safety Regulations must have "suitable and sufficient" arrangements in place to monitor the competence and fitness of a person to carry out safety critical work.

Regulation 3(11) amends Regulation 27 of the Rail Safety Regulations to allow appeals to the Secretary of State against decisions of the Office of Rail Regulation or other bodies relating to ECM certificates.

Regulation 3(14) clarifies the meaning of certain aspects of Schedule 3 (common safety indicators) of the Rail Safety Regulations.

Certain spent transitional provisions in the Rail Safety Regulations are revoked and consequential amendments are made by Regulations 3(2)(b), (9), (12), (13) and (16).

Regulation 4 amends the Driver Licensing Regulations: to clarify the meaning of "in code form"; to stop the Driver Licensing Regulations from applying in respect of vehicles which the Office of Rail Regulation has determined, under Regulation 2A of the Railways Safety Regulations, shall be deemed not to operate on the mainline railway; and to require the Secretary of State to review the Driver Licensing Regulations within the period of five years after these Regulations come into force and during each successive five year period after that and to publish a report on each such review.

A copy of the impact assessment prepared in respect of these Regulations can be obtained from the Office of Rail Regulation, One Kemble Street, London WC2B 4AN. A copy has been placed in the library of each House of Parliament.

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ISBN 978-0-11-153861-6

9 780111 538616

£5.75

E6414 04/2013 136414T 19585