
STATUTORY INSTRUMENTS

2006 No. 397

The Railways (Interoperability) Regulations 2006

PART 6

Enforcement

Enforcement in Great Britain

34.—(1) It shall be the duty of the Office of Rail Regulation to make adequate arrangements for the enforcement of these Regulations in Great Britain and accordingly a reference to the enforcing authority in the provisions applied for those purposes by paragraph (3) shall be construed as a reference to the Office of Rail Regulation.

(2) Subject to paragraph (4), the provisions of the 1974 Act⁽¹⁾ specified in paragraph (3) shall apply for the purposes of the enforcement in Great Britain of these Regulations as if they were Health and Safety Regulations for the purposes of that Act.

(3) The provisions of the 1974 Act referred to in paragraph (2) are—

- (a) sections 19 to 22 (enforcement);
- (b) sections 23 (provisions supplementary to sections 21 and 22) and 24 (appeal against improvement or prohibition notice);
- (c) section 26 (power to indemnify inspectors); and
- (d) sections 33 to 42 (provision as to offences).

(4) A failure to discharge a duty placed on the—

- (a) Office of Rail Regulation; or
- (b) Safety Authority,

by these Regulations shall not be an offence under section 33(1)(c) of the 1974 Act.

(1) 1974 c. 37. Section 20(7) was amended by the Civil Partnership Act 2004 (c. 33), s. 261(1), Schedule 27, paragraph 49. Section 22(1) and (2) was amended by the Consumer Protection Act 1987 (c. 43), section 3, Schedule 3. Section 22(4) was substituted by the Consumer Protection Act 1987, section 3, Schedule 3. Section 24 was amended by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 1(2)(a). Words omitted in 33(1)(c) were repealed by the Employment Protection Act 1975 (c. 71), subsection 116, 125(3), Schedule 15, paragraph 11, Schedule 18. Section 33(1)(h) was amended by the Consumer Protection Act 1987, section 36, Schedule 3. Words omitted in section 33(1)(m) were repealed by the Forgery and Counterfeiting Act 1981 (c. 45), section 30, Schedule, Part 1. Section 33(1A) and (2A) was inserted by the Offshore Safety Act 1992 (c. 15), section 4(2), (3) and (6). Section 33(2) was amended by the Criminal Law Act 1977 (c. 45), section 31, Schedule 6. Section 33(3) was amended by the Offshore Safety Act 1992, section 4(4), (6) and the Magistrates' Court Act 1980 (c. 43), section 32(2). Section 33(5) was repealed by the Offshore Safety Act 1992, sections 4(5), (6), 7(2), Schedule 2. Section 33(6) was repealed by the Forgery and Counterfeiting Act 1981, section 30, Schedule, Part 1. Section 33(6) was amended by the Gas Act 1986 (c. 44), section 67(1), Schedule 7, paragraph 18. So far as relevant to these Regulations, section 34 was amended by the Criminal Procedure (Scotland) Act 1975, section 461(1), Schedule 9, paragraph 51.

Enforcement in Northern Ireland

35.—(1) It shall be the duty of the Health and Safety Executive for Northern Ireland(2) to make adequate arrangements for the enforcement of these Regulations in Northern Ireland and accordingly a reference to an “enforcing authority” by the provisions applied for the purposes of such enforcement by paragraph (3) shall be construed as a reference to the Health and Safety Executive for Northern Ireland.

(2) Subject to paragraph 4, the provisions of the Health and Safety at Work (Northern Ireland) Order 1978(3) (“the 1978 Order”) specified in paragraph (3) shall apply for the purposes of the enforcement in Northern Ireland of these Regulations as if they were Health and Safety Regulations for the purpose of that Order, and any function of the Health and Safety Executive for Northern Ireland under any other provisions of that Order which is exercisable in relation to any function of the Health and Safety Executive for Northern Ireland under or in respect of Health and Safety Regulations (including their enforcement) shall be exercisable as if these Regulations were Health and Safety Regulations for the purposes of that Order.

(3) The provisions of the 1978 Order referred to in paragraph (2) are—

- (a) article 20 to 24 (enforcement);
 - (b) articles 25 (provisions supplementary to articles 23 and 24) and 26 (appeal against improvement or prohibition notice);
 - (c) article 28 (power to indemnify inspectors);
 - (d) articles 31 to 39 (provision as to offences); and
 - (e) article 44(1) to (3) (application to Crown).
- (4) A failure to discharge a duty placed on the—
- (a) Health and Safety Executive for Northern Ireland; or
 - (b) Safety Authority,

by these Regulations shall not be an offence under article 31(1)(c) of the 1978 Order.

Notices relating to interoperability constituents not meeting the essential requirements

36.—(1) If the Office of Rail Regulation or the Health and Safety Executive for Northern Ireland is of the opinion that an interoperability constituent in relation to which an EC declaration of conformity or suitability for use has been drawn up does not meet the essential requirements relating to it, the Office of Rail Regulation or the Health and Safety Executive for Northern Ireland may serve a notice on the person who is using or intending to use that interoperability constituent in a project subsystem in relation to which that person is a contracting entity, to prohibit the use of or restrict the area of use of that interoperability constituent.

(2) The information to be contained in a notice served under paragraph (1) is—

- (a) a statement that the Office of Rail Regulation or the Health and Safety Executive for Northern Ireland is of the opinion referred to in paragraph (1);
- (b) the reasons for that opinion;

(2) Formerly known as the Health and Safety Agency for Northern Ireland which was established under Article 12 of the [Health and Safety at Work \(Northern Ireland\) Order 1978 \(S.I. 1978/ 1039 \(N.I. 9\)\)](#). Article 3(1) of the [Health and Safety at Work \(Amendment\) \(Northern Ireland\) Order 1998 \(S.I. 1998/ 2795 \(N.I. 18\)\)](#) changed its name to the Health and Safety Executive for Northern Ireland.

(3) [S.I. 1978/ 1039 \(N.I. 9\)](#). Article 20 was amended by [S.I. 1998/2795 \(N.I. 18\)](#), Article 6(1) and Schedule 1, paragraph 13(a). Article 24 was amended by [S.I. 1987/2049 \(N.I. 20\)](#), Article 28 and Schedule 2, paragraph 3. Article 26 was amended by [S.I. 1984/1159 \(N.I. 9\)](#), Article 35 and Schedule 4. Article 31 was amended by: [S.I. 1987/2049 \(N.I. 20\)](#), Article 28 and Schedule 2 paragraph 7; [S.I. 1988/595 \(N.I. 3\)](#), Article 10(1)(c); [S.I. 1986/1883 \(N.I. 15\)](#), Article 13(3) and Schedule 5; [S.I. 1992/1728 \(N.I. 17\)](#), article 6(1), (3), (4), (5), (7), Article 8 and Schedule 2; [S.I. 1998/2795 \(N.I. 18\)](#), Article 6 and Schedule 1, paragraph 15, and Schedule 2, Forgery and Counterfeiting Act 1981 (c. 45) section 30 and Schedule.

- (c) a direction that the interoperability constituent to which that notice relates shall not be used, or that its area of use shall be restricted; and
- (d) the date by which the contracting entity shall comply with the notice.

(3) Any notice served under paragraph (1) may be withdrawn by the Office of Rail Regulation or the Health and Safety Executive for Northern Ireland by serving written notice of the withdrawal on the contracting entity.

(4) Where a notice has been served on the contracting entity in accordance with this regulation the contracting entity shall—

- (a) comply with that notice; and
- (b) notify the person, (if any), who supplied him with the interoperability constituent in relation to which the notice under paragraph (1) was served—
 - (i) that a notice under paragraph (1) has been served,
 - (ii) of what the notice says, and
 - (iii) that he requires that person in turn to notify his supplier (if any) with the same information required by this paragraph.

Notice of improper drawing up of the EC declaration of conformity for an interoperability constituent

37.—(1) Where the Office of Rail Regulation or the Health and Safety Executive for Northern Ireland has reasonable grounds for suspecting that the EC declaration of conformity has not been drawn up in accordance with the requirements of regulation 16 by the manufacturer of the interoperability constituent or his authorised representative established in the Community, it may give notice in writing to the manufacturer or his authorised representative established in the Community.

- (2) A notice which is given under paragraph (1) shall—
 - (a) state that the Office of Rail Regulation or the Health and Safety Executive for Northern Ireland considers that the EC declaration of conformity has not been properly drawn up in accordance with regulation 16;
 - (b) specify the respect in which it is so considered and give particulars;
 - (c) require the manufacturer or his authorised representative established in the Community—
 - (i) to secure that any interoperability constituent to which the notice relates conforms as regards the provisions concerning the proper drawing up of the declaration within such period as may be specified in the notice, or
 - (ii) to provide evidence within that period, to the satisfaction of the Office of Rail Regulation or the Health and Safety Executive for Northern Ireland, as the case may be, that the declaration has been properly drawn up; and
 - (d) inform the manufacturer or his authorised representative established in the Community that if the non-conformity continues (or if satisfactory evidence has not been provided) within the period specified in the notice, further action may be taken in respect of that non-conformity under these Regulations.

(3) Where a notice has been served on the manufacturer or his authorised representative established in the Community, the person served shall comply or secure compliance with the notice.

Defence of due diligence

38.—(1) Subject to the following provisions of this regulation, in any proceedings against any person for an offence under these Regulations it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against any person for such an offence the defence provided in paragraph (1) involves an allegation that the commission of the offence was due to—

- (a) the act or default of another; or
- (b) reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless, within a period ending 7 clear days before the commencement of the hearing of the proceedings (or in Scotland, the trial diet), he has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying, or assisting in the identification of, the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) A person shall not be entitled to rely on the defence provided by paragraph (1) by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular—

- (a) to the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether he had any reason to disbelieve the information.

Liability of persons other than the principal offender

39.—(1) Where the commission by any person of an offence under these Regulations is due to the act or default of some other person in the course of any business of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) shall apply in relation to the acts and defaults of a member in connection with its functions of management as if he were a director of the body corporate.

(4) In this regulation, references to a “body corporate” include references to a partnership in Scotland and, in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.