

# **RAILWAY SAFETY ACT**

## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Railway Safety Act (Northern Ireland) 2002. The Department for Regional Development (“the Department”) has prepared them to assist with a proper understanding of the Act. They do not however form part of the Act.
2. The notes need to be read in conjunction with the Act. They do not, and are not meant to be, a comprehensive description of the Act. Accordingly, where a section or part of a section or Schedule does not seem to require explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. Legislation governing the operations of railways in Northern Ireland goes back to the 1840s and much of the regulation still in force was in place by 1871. Although there have been additions, amendments and repeals, the basic legislation remains Victorian in drafting and concept. The initial focus of the legislation was operational, i.e. based around licensing and empowering of rail operations.
4. Whilst it has long been recognised that rail legislation in NI is outdated, its replacement was not considered a sufficiently high priority to attract resources. Because the railways have been operating within the public sector with limited risk of safety principles being eroded by the profit motive, new legislation was not regarded as being essential. However following three minor accidents in NI in 1998, Northern Ireland Railways, commissioned a report on rail safety – the A D Little Review. A key recommendation of this report was that the legislation be updated. Major rail traffic accidents in England also heightened public awareness of rail safety issues.

5. Furthermore effective rail safety legislation would have to be in place before a Public Private Partnership, which would involve the private sector operating trains in Northern Ireland could be introduced. We could not risk the profit motive tempting the private sector to cut corners on safety measures.
6. The decision was therefore taken to bring forward new safety-focused legislation in Northern Ireland. The principal policy objective of the Act is to provide a legislative basis for modern, safe, travel by railway. It will do so by introducing a system based on safety case legislation, following the GB model. A safety case will be a formal written document that will include information about the operator's activities, organisation, safety management systems and safety measures. The development of a safety case is heavily dependent on risk assessment. This will identify areas of concern and importance and allow provision of detailed information on the extent of identified risks, their quantification and how the risks will be dealt with. Risk assessment will also form the basis for any exemptions that may be granted, for example to heritage operators, on the basis of a clear statement of the risks they face and how they will deal with them. Much of the information will already be in place or be readily available.
7. Safety cases serve two main purposes:
  - a) to give confidence that the operator has the ability, commitment and resources to properly assess and effectively control risks to the health and safety of staff and the general public; and
  - b) to provide comprehensive working documents to provide evidence that the accepted risk control measures and safety management systems have been properly put into place and continue to operate in the way they were intended.
8. The objective of the Act is to provide powers under which subordinate legislation can be made to improve railway safety in Northern Ireland. These powers will also enable less rigorous regulatory regimes to be applied to smaller heritage operators, where lower levels of risk make this appropriate.

## **CONSULTATION**

9. The Act is largely technical in nature and its provisions have not been controversial. Discussions have been held with the railway operating company who will be directly affected by the legislation and who have welcomed the proposals and with heritage operators, who will also come within the scope of the legislation. Meetings have also been held with the Health and Safety Executive, in Northern Ireland and GB, as staff from HSE will be involved in enforcement, as agents of the Department for Regional Development. A more general consultation

exercise was undertaken on the draft Bill and ended on 28<sup>th</sup> September 2001. Six hundred sets of papers were issued and twenty-seven responses were received. Of these twelve raised substantive points which were dealt with by correspondence. Additional provisions were added (Schedule 1) as a result of comments received.

## **OPTIONS CONSIDERED**

10. The introduction of updated legislation is the only possible means of achieving the required aim.

## **OVERVIEW**

11. The Act has nine sections and 2 Schedules. Schedule 1 deals with detailed provisions on Section 5 and Schedule 2 deals with repeals. The Act also provides for amendments to the Regulation of Railways Act 1871 (c. 78).

## **COMMENTARY ON CLAUSES**

12. The following are the main sections of the Act.

### Section 1: Safety of Railways:

This section provides for existing legislation relevant to rail safety to be made “existing statutory provisions” under the terms of Part II of the Health & Safety at Work (Northern Ireland) Order 1978 (NI 9). The legislation in question is listed in subsection (4) of the section. This will allow the Department to make regulations using the broader range of general powers available in that Order. The intention is to use these powers to make regulations requiring safety cases to be made under Article 17 of that Order. Access to these general powers will also allow the Department to implement relevant European legislation in the Railway Safety field. These powers are modelled on Section 117 of the Railways Act 1993 (c 43).

### Section 2: Approval of railway works, plant and equipment:

This section provides powers to make regulations requiring prior departmental approval be obtained before new works, plant or equipment are first brought into use. It will also provide powers requiring approval be obtained before new works, plant or equipment are first brought into use after alterations have been made to them. Prior approval is an important part of the safety regime. These powers are modelled on Section 41 of the Transport and Works Act 1992 (c 42), which does not extend to Northern Ireland. Once the secondary legislation has been introduced the powers in the old legislation to approve new works will be repealed.

Section 3: Accidents:

Existing legislation provides powers to carry out investigations following accidents. This section provides powers to make regulations requiring accidents to be reported to the Department. The section is similar to Section 43 of the Transport and Works Act 1992 (c 42) and will enable accident reporting and follow-up action, to include investigations where appropriate, to be brought into line with modern practice.

Section 4: Directions limiting speed and loads:

Currently there is no Northern Ireland legislation giving the Department power to give directions limiting speeds and loads. This Section, mirroring Section 45 of the Transport and Works Act 1992 (c 42), provides such powers, which are required for the safe regulation of all railways. However they are likely to be especially useful for the appropriate regulation of heritage railways. It may be possible to exempt heritage operators from the burden of producing a full safety case where their risk assessment indicates that they are content to operate light trains at relatively low speeds.

Section 5: Signs and Barriers at private crossings:

This section makes provision for the placing of signs and barriers on or near a private road or path, which crosses a railway. Contravention of this section will, on summary conviction, attract a fine not exceeding level 3 on the standard scale. These powers are modelled on Sections 52 to 56 of the Transport and Works Act 1992 (c 42).

Section 6: Interpretation:

This section provides for definitions of “the Department” “operator” “railway” and railway “vehicle” for the purposes of this Act.

Section 7: Consequential Amendments and Repeals:

This section provides for amendments to the Regulation of Railways Act 1871 (c.78). Clause 1 (4)(b) makes the Regulation of Railways Act (1871) “existing statutory provision” (see commentary on Section 1). This section amends that Act to refer to regulations made under this Act. The definition of an accident is also extended. This section also provides for the legislation listed in Schedule 2 to be repealed.

Section 8: Commencement:

This section provides for most of the Act to come into operation two months after the date it receives Royal Assent. However, Sections 2 and 3 provide powers for the Department to make regulations that will replace existing legislation. Section 7 and Schedule 2 are connected to Sections 2 and 3. This Section provides for Sections 2, 3 and 7 and Schedule 2 to come into operation later than the rest of the Act. The intention is to bring these provisions into operation at the same time as the new regulations come into operation. This mechanism will ensure that the old

legislation remains in force until it is superseded by the new legislation in the regulations.

**Section 9: Short Title:**

This section provides for the Act to be called the Railway Safety Act (Northern Ireland) 2002.

**Schedules:**

**Schedule 1:**

This contains the provisions for the placing of signs and barriers at private crossings.

**Schedule 2:**

This lists the repeals of existing legislation no longer necessary due to new powers provided by the Act.