

RAILWAYS AND TRANSPORT SAFETY ACT 2003

EXPLANATORY NOTES

THE ACT

Schedule 6 – Convention on International Carriage by Rail

163. [Paragraph 1](#) defines the word “regulations” in Schedule 6 as meaning regulations made in connection with COTIF either under section 103(1) or section 2 of the European Communities Act 1972.
164. [Paragraphs 2, 3, 4,](#) and 5 list the provisions which may be included in regulations. The powers may only be exercised for the purposes of giving effect to the new COTIF. They include, but are not limited to, the power to:
- give effect to the new COTIF in UK law,
 - change UK law for the purposes of giving effect to the new COTIF,
 - make provision for certain future changes to the new COTIF automatically to form part of UK law; and
 - impose conditions before any person may exercise a right or do something to which the Convention applies.
165. In particular paragraph 3 will enable regulations to provide that most changes to the new COTIF which take place in future will flow through directly into UK law. This is intended to cater for the provisions in the new COTIF which allow certain technical changes to the terms of the Convention to be made by a Committee process and automatically to come into effect: an example might be the adoption of a new uniform technical prescription under the APTU appendix to the new Convention. Although the Government proposes that most modifications to the new COTIF and its appendices will flow through in to UK law, the Government’s intention is that modifications made by the General Assembly (which is composed of the new COTIF’s signatory states) should require specific approval by Parliament. This is because such modifications could potentially be of greater impact in the UK.
166. [Paragraph 6](#) enables the creation of sanctions (including criminal sanctions) for the purposes of ensuring that a duty under the new COTIF may be enforced.
167. Since the new COTIF covers damages and compensation arising from the international carriage of passengers and freight, paragraph 7 would allow regulations to make provision to prevent double recovery. Provision could also be made to allow a UK court to take account of actual or potential legal proceedings outside the UK, when taking decisions during UK proceedings.
168. [Paragraph 8](#) enables regulations to be made which deal with the enforcement of judgements, which may in particular deal with the enforcement of foreign judgements.

169. [Paragraph 9](#) provides that the regulations may make provision for the “Special Drawing Right” (the new COTIF’s international currency unit) to be converted into sterling.

Public sector financial and manpower cost

170. It is not expected that implementation of COTIF into UK law will require any significant additional public expenditure, nor that there will be an additional public manpower burden.

Human Rights assessment

171. The COTIF provisions of this Act are considered to be compatible with the ECHR. One particular effect of the COTIF provisions of this Act, and the regulations which may be made under those provisions, will be to ensure that certain dangerous goods may not be carried by rail. It is considered that where this interferes with a person’s economic interests in running a business (protected by Article 1 of the First Protocol), this prohibition may be justified on general public interest grounds. The prohibition also goes towards ensuring that the UK upholds the Article 8 right to respect for a person’s home which right could otherwise be affected by environmental blight or pollution from the carriage of those goods.

Section 104: Office of Rail Regulation: general duties

172. [Section 104](#) makes a minor amendment to Section 4(5) of the Railways Act 1993 by repealing the words shown in bold:

“The Office of Rail Regulation shall also be under a duty in exercising the functions assigned or transferred to it under this Part;

- (a) to have regard to the financial position of the [Strategic Rail] Authority in discharging its functions **under this Part.**”

This ensures that the Office has regard to the Strategic Rail Authority’s financial position in respect of all of its functions. It is a consequential amendment not picked up in the Transport Act 2000 arising from the creation of the Strategic Rail Authority in place of the Franchising Director. The Authority’s financial position, unlike that of the Franchising Director, is not limited to discharging its functions under the Part of the 1993 Act referred to in the deleted words.

Section 105: Railway safety levy

173. [Section 105](#) extends to England, Scotland and Wales.

Background

174. Under the Health and Safety at Work etc Act 1974, the Health and Safety Executive (HSE) is responsible for a range of regulatory work including inspection activities applied to the rail industry. Since October 1999, there has been a charge for this work, on an hourly basis. Such charges only cover part of the cost of HSE’s work on railway safety; for example they do not cover work relating to policy-making or all operational activities.
175. Ministers agreed that the impact of charging would be reviewed after two years. The review revealed that the existing charging regime was seen as bureaucratic, and stakeholders could not easily budget for charges. HSE held a consultation exercise with industry stakeholders on the principle of a railway safety levy between the end of November and 20 December 2002.
176. Regulations to require the payment of a levy require primary legislation, because levies cannot be imposed under Regulations made under section 43(2) of the Health and Safety at Work etc Act 1974 (which provides vires for the existing charging regime).

Commentary on section

177. [Section 105\(1\)](#) inserts a new section 43A in the Health and Safety at Work etc Act 1974, giving the Secretary of State power to make regulations introducing a compulsory railway safety levy on the railway industry. The Health and Safety Commission will be able to propose such regulations to the Secretary of State after consultation.
178. [Section 105\(2\)](#) amends section 28(1)(a) of the Health and Safety at Work etc Act 1974 so that information provided under the proposed regulations will be subject to the provisions of that section.

Public sector financial and manpower cost

179. As the purpose of a rail safety levy would be to fund the existing and planned railway safety activities of HSE in a different way, it is not considered that there will be any additional public sector financial or manpower costs.

Human Rights assessment

180. This section potentially engages Article 1 (right to the peaceful enjoyment of possessions) of the European Convention on Human Rights. The right under Article 1 is qualified by Article 1(2), which says that:
- ““this shall not in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest, or to secure the payment of taxes or other contributions or penalties.”
181. The Government considers that the provisions of new section 43A are compatible with the Convention.

Section 106: Railway security services

182. This section extends to England, Wales and Scotland. It amends the Railways Act 1993 by adding a new section 121A.

Background

183. The Secretary of State for Transport has the power to serve instructions (under the Railways Act 1993) on owners and operators of relevant railway assets (networks, stations, light maintenance depots, track or rolling stock) and anyone who provides a railway service. These would detail the security provisions they must implement to protect the travelling public, staff and infrastructure.
184. Revised instructions covering the security of stations are currently being drafted, and are expected to be served on the industry in the summer of 2003. Further instructions covering other aspects of the rail network will be issued through 2003 and 2004. These instructions will give legal force to current security requirements contained in the National Railways Security Programme.
185. It is expected that the instructions will include requirements for the searching of stations, trains and other facilities and screening of baggage at left-luggage facilities.
186. Where the person who is required to comply with the instruction chooses to contract out such security work, the new section will allow the Secretary of State to ensure that only persons approved by him can carry out the work (or train others to carry it out).
187. A similar section in the Anti-Terrorism, Crime and Security Act 2001, gave the Secretary of State the same listing powers with regard to security providers to the aviation industry. Under the Channel Tunnel Act 1987, similar powers are already available covering the Channel Tunnel industries. The new section will ensure that the Railway industry is consistent with these.

Commentary on section

188. This section only creates an enabling power. Regulations will have to be drafted, made and laid before the Parliament before listing can have statutory effect.

Public sector financial and manpower cost

189. The railway security measures will probably require slight additional public expenditure over and above that already required to administer the listing of aviation security providers, but this is unlikely to amount to more than a few days of staff time in processing applications.

Human Rights assessment

190. The amendment to the Railways Act 1993 does not appear to involve any conflicts with the Human Rights Act 1998. Article 6 (right to fair trial) of the European Convention on Human Rights is potentially engaged, but there must be provision in the regulations for an appeal if a person ceases to be approved and is withdrawn from the list. Similarly Article 7 (no punishment without law) is potentially relevant, but any criminal offences created by the new regulations will not operate retrospectively, so it is considered that this section is compatible with the Convention.

Section 107 & Schedule 7 – Road traffic: testing for drink and drugs

191. **Schedule 7** contains six new sections designed to replace section 6 of the Road Traffic Act 1988 (breath tests) with new powers for the police to administer three preliminary tests – a breathalyser test, a test indicating whether a person is unfit to drive due to drink or drugs and a test for the presence of drugs in a person's body. Schedule 7 also makes consequential amendments.
192. The new section 6 enables a constable to require a person to co-operate with any one or more preliminary tests in certain circumstances. The person would commit an offence if without reasonable excuse he failed to co-operate. The circumstances include –
- a) where a constable reasonably suspects that the person –
 - has been driving, attempting to drive or in charge of a motor vehicle on a road or other public place while having alcohol or a drug in his body or while unfit to drive because of a drug and still has alcohol or a drug in his body or is still under the influence of a drug;
 - has committed a traffic offence while the vehicle was in motion,
 - b) where an accident occurs owing to the presence of a motor vehicle on a road or other public place.
193. The preliminary tests are:
- a breath test whereby a specimen of breath is taken by means of a device approved by the Secretary of State which indicates whether the proportion of alcohol in a person's breath or blood is likely to exceed the prescribed limit (section 6A).
 - an impairment test which consists of a series of physical tasks set by the constable. By observing the person's ability to perform these tasks, and making such other observations of the person's physical state as the constable thinks expedient, the constable can obtain an indication whether the person is unfit to drive and, if he is, whether his unfitness is likely to be due to drink or drugs. The Secretary of State is required to issue and to keep under review a code of practice regarding such tests (section 6B).

- a drug test whereby a specimen of sweat or saliva is used, by means of a device approved by the Secretary of State, for the purpose of obtaining an indication whether a person has a drug in his body (section 6C).
194. Sections 6A, 6B and 6C also make provision as to where a test may be carried out.
195. Sections 6D and 6E make provision about powers of arrest and powers of entry respectively in connection with the administration of the preliminary tests.

Section 108: Traffic regulation on long-distance routes

196. An order made under section 108 extends to England. The section gives the Secretary of State power to make an order restricting vehicular traffic on long-distance routes designated under the National Parks and Access to the Countryside Act 1949.

Section 109: Road traffic: fixed penalty

197. **Section 109** is a drafting amendment to correct an error to ensure that section 76(2) of the Road Traffic Offenders Act 1988 makes sense. It now reads:

“No proceedings shall be brought against any person for the offence to which the conditional offer relates until—

- a) in England and Wales, the person by or on whose behalf the conditional offer was sent receives notice in accordance with subsection (4) or (5) below

Section 110: Seat belts: delivery drivers

198. **Section 110** replaces the current provisions of section 14(2)(b)(i) of the Road Traffic Act 1988. Section 14 is an enabling power under which the Secretary of State may make regulations requiring persons to wear seat belts when driving or riding in motor vehicles. Subsection (2)(b) provides that any such regulations must include the specified exceptions.
199. The revised exception would apply to goods vehicle drivers and passengers when undertaking deliveries or collections. It would be based on the prescribed distance that may be travelled without a seat belt. At present the exception is available to those vehicle users “engaged in making local rounds of deliveries or collections” without prescribing clear criteria for establishing when a person is so engaged.

Section 111: Highways: snow and ice

200. This section extends to England and Wales. Section 111 provides a duty on a highway authority to ensure, so far as is reasonably practicable, that safe passage along a highway is not endangered by snow and ice.

Background

201. On 15 June 2000, in the case of *Goodes v East Sussex County Council*¹, the House of Lords decided that the duty of a highway authority, under section 41 of the Highways Act 1980, to maintain a highway did not include a duty to keep the highway safe by preventing ice from forming. They considered that if such a duty were desirable, that would be a matter for Parliament.
202. The duty provided by this section is similar to one already existing in Scotland, contained in section 34 of the Roads (Scotland) Act 1984.

¹ [2000] 3 All ER 603

Section 112: Shipping legislation: application to structures, craft &c.

203. This section extends throughout the United Kingdom.
204. **Section 112** provides a new, extended power for the Secretary of State to make an order so that any shipping provision may be applied, disapplied or modified in relation to things used on water.
205. A “shipping provision” is defined so that it could include a provision made in this Act (when enacted) or in the Merchant Shipping Act 1995, or in subordinate legislation made under either Act, or a provision made in or under another Act. To be a shipping provision it must also expressly apply in relation to ships, vessels or boats.
206. The order may provide for other legislation to take precedence, for example where there are relevant harbour byelaws in place.
207. The Secretary of State may use the power in order to apply the provisions of the Act relating to alcohol testing of mariners to users of personal watercraft (such as jetskisTM), or to those in charge of chain ferries. Current case law casts doubt on whether these things would otherwise be “ships” for the purposes of Part 4 of the Act.
208. An order could also be made in order to apply the UK’s merchant shipping regulations relating to the prevention of collisions to personal watercraft, even if they are not being used “at sea”. Regulations relating to the survey of ships could be made to apply to chain ferries by means of such an order.
209. An order could be used to clarify the application of other legislation. For example, various Acts relating to public health and regulation of activities near the seashore confer byelaw-making powers on local authorities with regard to vessels used for pleasure purposes or pleasure boats. These powers (e.g. under section 76 of the Public Health Act 1961 and section 231 of the Public Health Act 1936) are currently used occasionally to prosecute users of personal watercraft for breaches of byelaws. However, if it were considered necessary to create an order under the Merchant Shipping Act 1995 in relation to personal watercraft, this order might cast doubt on the application of these other Acts to such craft. An order under section 112 of this Act might therefore be necessary to clarify the application of other Acts.

Section 113: Maritime security services

210. This section extends to the whole of the United Kingdom. It amends the Aviation and Maritime Security Act 1990 by adding a new section 36A.

Background

211. The Secretary of State for Transport has the power to serve directions (under the Aviation & Maritime Security Act 1990) on various classes of people operating in the maritime industry, detailing the security provisions which they must implement to protect the travelling public, staff and infrastructure from unlawful acts of violence.
212. Directions served on operators include such requirements as the screening of passengers, staff, visitors, luggage and ships’ stores.
213. Where the directed person chooses to contract out such security work, section 107 will allow the Secretary of State to ensure that only companies listed by him can carry out the work (or train others to carry it out).
214. A similar section in the Anti-Terrorism, Crime and Security Act 2001, gave the Secretary of State the same listing powers with regard to security providers to the aviation industry. Under the Channel Tunnel Act 1987, similar powers are already available covering the Channel Tunnel industries. The new section will ensure that the maritime industry is consistent with these.

Commentary on section

215. This section only creates an enabling power. Regulations will have to be drafted, made and laid before Parliament before listing can have statutory effect.

Public sector financial and manpower cost

216. The maritime security measures will probably require slight additional public expenditure over and above that already required to administer the aviation security providers listing, but this is unlikely to amount to more than a few days of staff time in processing applications.

Human Rights assessment

217. This amendment to the Aviation and Maritime Security Act 1990 does not appear to involve any conflicts with the Human Rights Act 1998. Article 6 (right to fair trial) of the European Convention on Human Rights is potentially engaged, but there must be provision in the regulations for an appeal if a person ceases to be approved and is withdrawn from the list. Similarly Article 7 (no punishment without law) is potentially relevant, but any criminal offences created by the new regulations will not operate retrospectively, so it is considered that this section is compatible with the Convention.

Sections 114 and 115: Railways in London: transfers & information

218. These sections extend to England, Wales and Scotland.

Background

219. The Greater London Authority Act 1999 (GLA Act) envisaged the transfer of London Underground (LUL) from London Regional Transport (LRT) to Transport for London (TfL) after the Public Private Partnership agreements for the London Underground had come into effect. This Act provides a mechanism to allow contracts to operate as intended on transfer from London Regional Transport to Transport for London, and on any subsequent transfer between Transport for London's subsidiaries.
220. The Greater London Authority Act 1999 did not contemplate the possibility of a significant delay between completion of a Public Private Partnership agreement and transfer of the London Underground to Transport for London. This Act therefore also allows for certain provisions in the GLA Act relating to public private partnership agreements for the London Underground and the special insolvency provisions to come into effect before the transfer of the London Underground to Transport for London.

Commentary on sections

221. [Section 114\(1\)](#) will enable a transfer scheme made under section 409 of the GLA Act to exempt LRT's/LUL's contracts from section 412(3) of that Act, and subsection (4) ensures that the exemption will continue to apply where a subsequent transfer scheme is made under paragraph 2(3) of Schedule 12 to that Act. Subsection (2) will enable Transport for London to exempt contracts from paragraph 2(3) of Schedule 12 to that Act. These parts of the GLA Act may otherwise frustrate parts of contracts made by LRT/LUL or Transport for London, such as change of control provisions, which are designed to operate when transfer schemes are made.
222. Subsection (3) ensures that London Transport and Transport for London, when exempting contracts from section 412(3) of the GLA Act or paragraph 2(3) of Schedule 12 to that Act, may exempt either all the contracts being transferred, or a specific contract, or particular provisions within those contracts.
223. [Section 114\(5\)](#) enables provisions of the GLA Act which relate to the insolvency and winding up of a London Underground public private partnership company, and the return of its assets to the public sector, to come into effect before the transfer of London

These notes refer to the Railways and Transport Safety Act 2003 (c.20) which received Royal Assent on 10 July 2003

Underground to Transport for London. The GLA Act did not contemplate the possibility of a significant delay between completion of a PPP agreement and transfer of the London Underground to Transport for London. Section 114(6) will allow the insolvency provisions in sections 220 to 224 of the GLA Act to come into force before the transfer of LUL to Transport for London.

224. [Section 115](#) enables the London Underground PPP Arbiter to receive information from those statutory bodies to whom he is permitted by the GLA Act to release information. The GLA Act allows the PPP Arbiter to release information about specific individuals and their businesses to regulators of other industries to help them fulfil their statutory functions, but without section 115 it does not allow him to receive such information from them.

Public sector financial and manpower cost

225. The railways in London measures will not require any additional public expenditure over and above that envisaged in LRT's/LUL's contracts, or entail any additional public sector manpower burden.

Human Rights assessment

226. The amendments to the Greater London Authority Act 1999 do not appear to involve any human rights implications, so the provisions of the Act concerning the Greater London Authority Act 1999 are compatible with the Convention.