
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement articles 19 to 25 and Annex V of Directive 2004/49/EC of the European Parliament and the Council of 29th April 2004 on the safety of the Community's railways and amending Council Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, in so far as those articles have not already been implemented by Part 1 of the Railways and Transport Safety Act 2003 (c. 20) ("the 2003 Act"), which establishes the Rail Accident Investigation Branch, ("the Branch"), being a permanent body given power to investigate railway accidents and incidents.

The Regulations set out the procedures for dealing with specified accidents and incidents, including notification requirements, dealing with evidence and publishing reports and recommendations. The regulations —

- (a) contain a list of definitions the purposes of the Regulations (*regulation 2*);
- (b) provide for an accident or incident occurring on a railway of a type described in regulation 3 not to be treated as an accident or incident for the purposes of Part 1 of the 2003 Act (*regulation 3*);
- (c) require railway industry bodies (as defined in regulation 2(1)) to notify to the Branch the accidents and incidents listed in schedules 1 to 5 within the prescribed time limits, to provide the Branch with such information about the accident or incident listed in regulation 4(7) as the railway industry body is reasonably able to provide at the time of the notification and to provide further information subsequently (*regulation 4*);
- (d) require the Branch to conduct its investigations in a manner that will not undermine its independence from the persons listed in the regulations, describe the manner in which the Branch will determine whether to investigate an accident or incident, when it is to involve other member States in its investigations and empower it to determine the extent and procedure to be followed in carrying out an investigation (*regulation 5*);
- (e) provide for the appointment of persons to conduct or participate in an investigation by the Branch, and for persons to provide assistance to the Branch (*regulation 6*);
- (f) prohibit access to the site of an accident or incident, or the removal of anything from the site of an accident or incident, except for the limited purposes described and provided the Branch is notified of such action (*regulation 7*);
- (g) require evidence relating to an accident or incident to be preserved and confer a right for the inspector carrying out an investigation to require an immediate listing of evidence (*regulation 8*);
- (h) restrict the movement or use of evidence relating to an accident or incident, provide for the testing or analysis by the Branch of certain evidence to be carried out with the knowledge and in the presence of others, and provide for the disposal of evidence no longer required by the Branch or another investigator (*regulation 9*);
- (i) permit or require the disclosure of certain evidence or information and prohibit the disclosure of certain evidence unless disclosure is ordered by a court (*regulation 10*);
- (j) provide for the making and publication of a report into an accident or incident and for certain reports to include the information described in Schedule 6 (*regulation 11*);
- (k) require a person to whom recommendations made by the Branch are addressed to ensure that these are considered and, where appropriate, acted on (*regulation 12*);

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- (l) require the Branch to consider representations by persons affected by the accident or incident (*regulation 13*);
- (m) provide for the publication of an annual report on the activities of the Branch (*regulation 14*);
- (n) permit the Branch to conduct studies into, monitor and analyse any matter it considers may be relevant to the effective investigation of accidents and incidents, publish information and advice that is relevant to its general aims and require the Branch to actively exchange information with the investigation bodies established in other member States (*regulation 15*); and
- (o) create offences and penalties (*regulation 16, as read with regulations 4(12), 6(7), 7(6), 8(7), 9(13) to (16), 10(9), 12(5) and 13(6)*).
- (p) disapply certain provisions in Scotland (*regulation 17*).

A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available from the Rail Accident Investigation Branch, The Wharf, Stores Road, Derby, DE21 4BA.

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