

EXPLANATORY MEMORANDUM TO
THE RAILWAYS (ACCIDENT INVESTIGATION AND REPORTING)
(AMENDMENT) REGULATIONS

2005 No. 3261

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

The Regulations remedy two defects in the Railways (Accident Investigation and Reporting) Regulations 2005 (S.I. 2005/1992) (“the principal Regulations”). To regulation 2(1) has been added a definition of “working days”, an expression used in regulation 4 of the principal Regulations to describe the time limit within which accidents or incidents must be reported. By inserting the word “reasonably” before the word “determine” in regulation 12(4) of the principal Regulations the Department for Transport is making explicit what it considered to be implicit in how the power of the safety authority to consider or act upon a recommendation of the Rail Accident Investigation Branch and to provide it with certain information should be exercised.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

The instrument corrects the two errors in the principal Regulations identified by the JCSI in its report dated 19 October 2005.

4. **Legislative Background**

4.1 The Regulations are made to amend the principal Regulations which were made on 19 July 2005. They are the second to be made under Part 1 of the Railways and Transport Safety Act 2003 which established the Rail Accident Investigation Branch (RAIB), an independent body to investigate railway accidents and incidents.

4.2 For the full background please see paragraphs 4 and 7 of the Explanatory Memorandum to the principal Regulations which is attached.

5. **Extent**

This instrument applies to the whole of the United Kingdom.

6. **European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The instrument is made to correct the errors at the earliest opportunity.

7.2 Please see paragraph 7 of the attached Explanatory Memorandum.

7.3 No consultation has taken place in respect of the instrument.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 There are no public sector impacts.

9. Contact

Carolyn Griffiths of the Rail Accident Investigation Branch will answer any queries regarding the instrument. She may be contacted at 2A Dukes Court, Duke Street, Woking GU21 5BH, telephone 01932 440003, mail: Carolyn.griffiths@dft.gsi.gov.uk.

EXPLANATORY MEMORANDUM TO
THE RAILWAYS (ACCIDENT INVESTIGATION AND REPORTING)
REGULATIONS 2005

2005 No. 1992

1. Introduction

1.1. This explanatory memorandum has been prepared by the Rail Accident Investigation Branch (RAIB) of the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. The regulations make detailed provision for the type of accident or incident that RAIB must investigate, those it may investigate, the manner in which it will investigate and the content of its accident reports.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None

4. Legislative Background

4.1. The regulations implement Articles 19 to 25 of the Railway Safety Directive (2004/49/EC) (the Directive), which require each member State to establish an independent body to investigate the causes of railway accidents and incidents.

4.2. RAIB is established under Part I of the Railways and Transport Safety Act 2003 (c20). The Act establishes RAIB's general aims, and the objectives and key parameters for its investigations. It defines the powers of inspectors and provides regulation-making powers for the Secretary of State.

4.3. These Regulations are made under Part I of the Act and are the first use of the powers in that Part, but where that Part provides insufficient powers fully to implement Articles 19 - 25 of the Directive, Regulations are also made under section 2(2) of the European Communities Act 1972.

4.4. No undertakings were made by Ministers during passage of the Railways and Transport Safety Bill that relate to this instrument.

5. Extent

5.1. This instrument applies to the whole of the United Kingdom.

6. European Convention on Human Rights

6.1. As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1. The establishment of an independent investigator into the cause of railway accidents and incidents was recommended by Lord Cullen following his inquiry into the Ladbroke Grove railway accident. The Government accepted that recommendation. Member States are required by the Directive to establish an independent investigator of railway accidents and incidents.
- 7.2. The general aims of RAIB, as set out in sections 4 and 7 of the parent Act, are to investigate railway accidents and incidents to determine what caused them, and, wherever relevant, to improve the safety of railways and to prevent railway accidents and railway incidents. These Regulations make detailed provision about RAIB's powers and duties, the scope of its works and its dealings with people and organisations that are involved in railway accidents and incidents.
- 7.3. Between 2002 and 2004 a total of 2110 people, excluding trespassers, were injured, and a total of 88 people, excluding trespassers and suicides, died, in railway accidents involving moving rolling stock.
- 7.4. It is anticipated that in any 12-month period RAIB will receive immediate notification of the occurrence of about 60 of the more significant accidents and incidents, and expects to launch an investigation immediately into a high proportion of these. RAIB also expects it will be notified of the occurrence of up to 300 other incidents and in the order of 1000 precursor events, in respect of which the Branch will determine, given its resources, whether it should conduct an investigation in the pursuit of its statutory aims.
- 7.5. RAIB's investigations will, in relation to any accident or incident, help meet the Human Rights Act and public interest requirements to hold inquiries into major accidents, which in turn should mean that the public interest concerns arising from accidents should be addressed more effectively.
- 7.6. RAIB will have the power to investigate accidents and incidents on all railways, both surface and underground, with a gauge of 350mm or more except those specifically excluded by the regulations; all tramways except in Scotland; and all funicular railways greater than 1km in length.
- 7.7. RAIB conducted a public consultation on these Regulations from 29 October to 24 December 2004 and held seminars in Edinburgh, Derby and London, primarily for industry, the police and the safety authorities. 64 written responses were received, mainly from public or rail industry bodies. Interest shown by the general public and the media has been minimal.
- 7.8. The consultation confirmed that stakeholders are generally supportive of RAIB, the proposed provisions and the method of operation that they would establish. The concerns that were raised related principally to the practicability and ease of implementation for industry.
- 7.9. In summary, the principal concerns were that the Regulations should:
 - achieve as much harmony as possible with relevant extant and proposed legislation;
 - impose appropriate requirements as to timescale for notifying RAIB of the occurrence of an accident or incident;

- recognise that industry would not necessarily have immediately available details of injuries when notifying RAIB of an accident;
- require that RAIB releases evidence as quickly as possible back to the affected railway; and takes account of the cost implications where it decides to retain, as evidence, expensive pieces of equipment for long periods;
- ensure that affected parties receive appropriate prior notification of RAIB's intention to release items of evidence to them, so that adequate arrangements can be made for their reception;
- ensure that industry parties may be invited to be present when evidence is tested to destruction;
- allow sufficient time for comment to be given on the draft report;
- allow industry sufficient time to review and revise its systems and procedures in order to achieve compliance; and
- make adequate provision for the differences in the Scottish legal system.

7.10. The draft Regulations have therefore been amended as follows to address these concerns:

- definitions have been harmonised as closely as possible with other legislation;
- the Schedules to the Regulations, which list the accidents and incidents whose occurrence must be notified to RAIB, have been reviewed and simplified. A new schedule has been added, defining those events of which RAIB requires notification on a monthly basis. This in turn has reduced the number of events that are subject to a three day notification, thus reducing the burden on industry. New schedules listing accidents and incidents occurring in the Channel Tunnel system have been drawn to correspond as closely as possible with the existing obligations;
- the Regulations now provide that, if a person is taken to hospital with what the railway industry body suspects is a serious injury, then that is deemed to be a serious injury for notification purposes;
- RAIB's power to retain items of evidence has been amended so that where evidence is no longer required for the investigation in respect of which it was obtained, the Branch may continue to hold it only if it may be required for another RAIB investigation that is already under way;
- RAIB must give seven days' notice of its intent to release evidence to the police, the safety authority, or to its owner.
- the Regulations now enable RAIB to inform persons other than the police or safety authorities of its intention to carry out testing of evidence, and to invite them to be present, provided the inspector does not consider that to do so would be detrimental to the investigation. The regulation places controls on the disclosure of any evidence or information obtained by a person who is present, backed by criminal sanctions;
- The regulations now provide for comments to be made on the draft report within 14 days (previously 7 days);
- the Regulations will come into force on 17th October 2005 thus allowing industry the 12-week preparation period that they have requested, and the Intergovernmental Commission sufficient time to agree protocols between France and the UK in respect of the Channel Tunnel System; and
- amendments have been made to provide for differences in Scottish legal system.

8. Impact

- 8.1. A Regulatory Impact Assessment providing additional detail, including the cost impact on industry and other public bodies, is attached to this Memorandum.

9. Contact

Carolyn Griffiths of the Rail Accident Investigation Branch will answer any queries regarding the instrument. She may be contacted at 2A Dukes Court, Duke Street, Woking GU21 5BH, telephone 01932 440003, email Carolyn.griffiths@dft.gsi.gov.uk.