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## STATUTORY INSTRUMENTS

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# 2006 No. 599

## The Railways and Other Guided Transport Systems (Safety) Regulations 2006

### PART 5

#### MISCELLANEOUS

#### Appeals

27.—(1) A person who is aggrieved by a—

(a) decision of the [<sup>F1</sup>Office of Rail and Road] to refuse his application for—

[<sup>F2</sup>(i) a safety certificate, a safety authorisation or [<sup>F3</sup>an EU ECM certificate, a cross-border UK-issued ECM certificate or a UK-issued ECM certificate];]

(ii) an amended safety certificate or safety authorisation;

(b) direction of the [<sup>F1</sup>Office of Rail and Road] to make an application to amend his safety certificate or safety authorisation; <sup>F4</sup> ...

(c) decision of the [<sup>F1</sup>Office of Rail and Road] to revoke his—

(i) safety certificate or part of it; or

(ii) safety authorisation,

[<sup>F5</sup>[<sup>F6</sup>(d) decision of the Office of Rail and Road, concerning his EU ECM Certificate taken pursuant to either—

(i) Article 7(3), (4) or (7) of the 2011 EU ECM Regulation; or

(ii) Article 7(5) or (8) or 8(2) of the 2019 EU ECM Regulation;]

[ decision of the Office of Rail and Road taken pursuant to paragraph 7(3), (4) or (7) of <sup>F7</sup>(dd) Schedule 10 concerning his UK-issued ECM certificate;

(de) decision of the Office of Rail and Road, concerning his cross-border UK-issued ECM certificate, taken pursuant to Article 7(5) or (8) or 8(2) of the retained 2019 EU ECM Regulation; or]

(e) determination of the [<sup>F1</sup>Office of Rail and Road] under regulation 2A or a decision of the [<sup>F1</sup>Office of Rail and Road] under that regulation to revoke or vary such a determination,]

may appeal to the Secretary of State.

[<sup>F8</sup>(1A) A person who is aggrieved by—

(a) a decision taken either—

(i) to refuse an application for an EU ECM certificate or taken pursuant to Article 7(4) or (7) of the 2011 ECM Regulation by a certification body accredited or recognised in Great Britain for the purposes of the 2011 EU ECM Regulation; or

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*Changes to legislation: There are currently no known outstanding effects for the The Railways and Other Guided Transport Systems (Safety) Regulations 2006, Section 27. (See end of Document for details)*

- (ii) to refuse an application for an EU ECM certificate or taken pursuant to Article 7(8) or 8(2) of the 2019 EU ECM Regulation by a certification body accredited or recognised in Great Britain for the purposes of the 2019 EU ECM Regulation;
- (b) a decision of a certification body accredited or recognised for the purposes of Schedule 10 either to refuse an application for a UK-issued ECM certificate or taken by that body pursuant to paragraph 7(3), (4) or (7) of Schedule 10; or
- (c) a decision of a certification body accredited or recognised for the retained 2019 EU ECM Regulation, either to refuse an application for a cross-border UK-issued ECM certificate or taken by that body pursuant to Article 7(3), (4) or (7) of the retained 2019 EU ECM Regulation,

may appeal to the Secretary of State.]

[<sup>F9</sup>(1B) For the purposes of an appeal under paragraph (1A), references to the Office of Rail and Road in this regulation are to be construed as references to the relevant certification body (except for paragraph (7), which does not apply to such appeal).]

(2) For the purposes of [<sup>F10</sup>paragraphs (1) and (1A)] the Secretary of State may, in such cases as he considers it appropriate to do so, having regard to the nature of the questions which appear to him to arise, direct that an appeal under that paragraph shall be determined on his behalf by a person appointed by him for that purpose.

(3) Before the determination of an appeal the Secretary of State shall ask the appellant and the [<sup>F1</sup>Office of Rail and Road] whether they wish to appear and be heard on the appeal and—

- (a) The appeal may be determined without a hearing of the parties if both of them express a wish not to appear and be heard as aforesaid;
- (b) The Secretary of State shall, if either of the parties expresses a wish to appear and be heard, afford to both of them an opportunity of doing so.

(4) The Tribunals and Inquiries Act 1992 shall apply to a hearing held by a person appointed in pursuance of paragraph (2) to determine an appeal as it applies to a statutory inquiry held by the Secretary of State, but as if in section 10(1) of that Act (statement of reasons for decisions) the reference to any decision taken by the Secretary of State included a reference to a decision taken on his behalf by that person.

[<sup>F11</sup>(4A) A hearing held by a person appointed in pursuance of paragraph (2) shall be a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007 (Administrative Justice and Tribunals Council).]

(5) A person who determines an appeal under this regulation on behalf of the Secretary of State and the Secretary of State, if he determines such an appeal, may give such directions as he considers appropriate to give effect to his determination.

(6) The Secretary of State may pay to any person appointed to hear or determine an appeal under paragraph (2) on his behalf such remuneration and allowances as the Secretary of State may with the approval of the [<sup>F12</sup>Treasury] determine.

(7) For the purposes of paragraph (1)(a), a failure by the [<sup>F1</sup>Office of Rail and Road] to make a decision on whether or not to issue or amend a safety certificate or safety authorisation within the four month period for making a decision calculated in accordance with regulation 17(7) shall be treated as a refusal of the application.

(8) The Health and Safety Licensing Appeals (Hearing Procedure) Rules 1974 <sup>M1</sup>, as respects England and Wales, and the Health and Safety Licensing Appeals (Hearing Procedure)(Scotland) <sup>M2</sup> Rules 1974, as respects Scotland, shall apply to an appeal under paragraph (1) as they apply to an appeal under [<sup>F13</sup>section 44(1) of the Health and Safety at Work etc. Act 1974], but with the

modification that references to a licensing authority are to be read as references to the [F1Office of Rail and Road].

(9) Where an appeal is made under paragraphs (1)(a) or (1)(c), the decision in question shall be suspended pending the final determination of the appeal.

### Textual Amendments

- F1** Words in reg. 27 substituted (16.10.2015) by The Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), reg. 1(2), **Sch. para. 6(r)**
- F2** Reg. 27(1)(a)(i) substituted (21.5.2013) by The Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/950), regs. 1, **3(11)(a)**
- F3** Words in reg. 27(1)(a) substituted (31.12.2020) by S.I. 2019/837, reg. 3(10)(a) (as substituted by The Railways (Miscellaneous Amendments, Revocations and Transitional Provisions) (EU Exit) Regulations 2020 (S.I. 2020/786), regs. 1(2)(b)(i), **7(5)(a)**)
- F4** Word in reg. 27(1)(b) omitted (21.5.2013) by virtue of The Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/950), regs. 1, **3(11)(b)**
- F5** Reg. 27(1)(d)(e) inserted (21.5.2013) by The Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/950), regs. 1, **3(11)(c)**
- F6** Reg. 27(1)(d) substituted (31.12.2020) by S.I. 2019/837, reg. 3(10)(b) (as substituted by The Railways (Miscellaneous Amendments, Revocations and Transitional Provisions) (EU Exit) Regulations 2020 (S.I. 2020/786), regs. 1(2)(b)(i), **7(5)(b)**)
- F7** Reg. 27(1)(dd)(de) inserted (31.12.2020) by S.I. 2019/837, regs. 1, **3(10)(c)**; 2020 c. 1, **Sch. 5 para. 1(1)** (as amended by The Railways (Miscellaneous Amendments, Revocations and Transitional Provisions) (EU Exit) Regulations 2020 (S.I. 2020/786), regs. 1(2)(b)(i), **7(5)(c)(i)(ii)**)
- F8** Reg. 27(1A) substituted (31.12.2020) by The Railways (Miscellaneous Amendments, Revocations and Transitional Provisions) (EU Exit) Regulations 2020 (S.I. 2020/786), regs. 1(2)(b)(i), **7(5)(d)**
- F9** Reg. 27(1B) inserted (31.12.2020) by The Rail Safety (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/837), regs. 1, **3(10)(e)**; 2020 c. 1, Sch. 5 para. 1(1)
- F10** Words in reg. 27(2) substituted (21.5.2013) by The Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/950), regs. 1, **3(11)(e)**
- F11** Reg. 27(4A) inserted (26.8.2011) by The Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011 (S.I. 2011/1860), regs. 1, **2(8)(a)**
- F12** Word in reg. 27(6) substituted (26.8.2011) by The Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011 (S.I. 2011/1860), regs. 1, **2(8)(b)**
- F13** Words in reg. 27(8) substituted (26.8.2011) by The Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011 (S.I. 2011/1860), regs. 1, **2(8)(c)**

### Marginal Citations

- M1** S.I. 1974/2040.
- M2** S.I. 1974/2068 [Scots.]

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the The Railways and Other Guided Transport Systems (Safety) Regulations 2006, Section 27.