

SCHEDULE 5

Regulation 29(7)

TRANSITIONAL PROVISIONS AND SAVINGS-SAFETY
CERTIFICATES AND SAFETY AUTHORISATIONS

1. Subject to the following paragraphs of this Schedule—

(a) a notification of acceptance by the Office of Rail Regulation of a safety case in relation to the operation of trains pursuant to regulation 5(7)(a) of the 2000 Regulations in relation to a safety case—

(i) which is current immediately before 1st October 2006; or

(ii) which is issued pursuant to paragraph 3,

shall be deemed to be a safety certificate for that operation;

(b) a notification of acceptance by the Office of Rail Regulation of a safety case in relation to the use of railway infrastructure pursuant to regulation 4(4), or the operation of a station pursuant to regulation 5(7)(a), of the 2000 Regulations in relation to a safety case—

(i) which is current immediately before 1st October 2006; or

(ii) which is issued pursuant to paragraph 3,

shall be deemed to be a safety authorisation for the infrastructure in question,

and the holder of a deemed safety certificate shall also be deemed to have met the applicable requirements of regulations 3(1)(a) and 4(1)(a) and the holder of a deemed safety authorisation shall also be deemed to have met the applicable requirements of regulations 3(2)(a) and 4(2)(a).

2. In paragraph 1 a notification of acceptance shall be construed as including the original notification referred to in paragraph 1(a) or 1(b) together with any notification of acceptance of a revision of the safety case in question by the Office of Rail Regulation pursuant to regulation 7(7) of the 2000 Regulations or that regulation as saved by paragraph 3 in relation to the operation in question.

3. Notwithstanding their revocation the 2000 Regulations shall continue in force as they had effect on 30th September 2006 for the purposes of—

(a) the consideration, acceptance or refusal of acceptance of safety cases and revisions to safety cases submitted to the Office of Rail Regulation for acceptance before 1st October 2006 under regulations 4, 5, 7 or 8 of the 2000 Regulations;

(b) the making and determination of appeals under regulation 15 of the 2000 Regulations in relation to—

(i) the determination of any such appeals made before but not determined on 30th September 2006; and

(ii) the making and determination of any such appeals in relation to decisions on submissions falling within paragraph (a).

4. A deemed safety certificate or safety authorisation shall—

(a) in the case of a deemed safety certificate or safety authorisation falling within paragraph 1(a)(i) or 1(b)(i), be deemed to be issued on 1st October 2006;

(b) in the case of a deemed safety certificate or safety authorisation falling within paragraph 1(a)(ii) or 1(b)(ii), be deemed to be issued on the date of the notification of acceptance in question; and

(c) be deemed to be held by the person to whom the notification of acceptance in question was addressed or, in the case of a deemed safety certificate or authorisation falling within

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paragraph 1(a)(i) or 1(b)(i), the person who is a successor of that person or a previous successor pursuant to regulation 2(7) of the 2000 Regulations on 30th September 2006.

5. A deemed safety certificate or safety authorisation shall be valid until—
- (a) in the case of a deemed—
 - (i) safety certificate, the holder has applied for a safety certificate under regulation 7 for the operation in question and the Office of Rail Regulation has issued a safety certificate in response to that application; or
 - (ii) safety authorisation, the holder has applied for a safety authorisation for the operation in question under regulation 10 and the Office of Rail Regulation has issued a safety authorisation in response to that application;
 - (b) subject to paragraph 6, the date by which the periodic review of the safety case to which the deemed safety certificate or deemed safety authorisation relates would have been required under regulation 6 of the 2000 Regulations had it still been in force; or
 - (c) 1st October 2008,

whichever is the first to occur.

6. Where the date of the periodic review referred to in paragraph 5(b) would fall on or before 1st April 2007 then a deemed safety certificate or safety authorisation shall be valid up to and including 1st April 2007.

7. Where a transport operator—
- (a) holds a deemed safety certificate or deemed safety authorisation; and
 - (b) the control of the operation in question is transferred to another person after 1st October 2006 so that regulation 2(7) of the 2000 Regulations would have operated to treat that other person as a successor had it still been in force,

then that other person may rely upon the deemed safety certificate or safety authorisation and if he does so rely shall comply with the provisions of these Regulations as though he were the holder of that deemed safety certificate or safety authorisation for a period of 6 months from the date he becomes a successor and may do so notwithstanding the prior expiry of such a certificate or authorisation in accordance with paragraph 5.

8. The holder of a deemed safety certificate or safety authorisation shall revise the contents of the safety case to which the deemed safety certificate or safety authorisation relates whenever it is appropriate to do so.

9. Where the revision referred to in paragraph 8 renders the safety case materially different from that accepted in the deemed safety certificate or safety authorisation then the holder of the deemed safety certificate or authorisation shall, without delay, notify the Office of Rail Regulation of such revision.

10. Where a holder of a deemed safety certificate or safety authorisation proposes a change to the operation to which a deemed safety certificate or safety authorisation relates which would have been a change falling within regulation 8(1) or 11(1) if those regulations had applied, then he shall not make such a change until he has applied for and the Office of Rail Regulation has issued a new safety certificate or safety authorisation for that operation pursuant to regulation 7 or 10 as the case may be.

11. Where a person—
- (a) was granted an exemption, which has not been revoked, from the prohibition relating to the holding of an accepted safety case in regulation 4(1) or 5(1) of the 2000 Regulations; or
 - (b) was not subject to the requirements of the 2000 Regulations immediately before 1st October 2006 by virtue of their operation falling wholly within sub-paragraphs (a) to (c)

of the definition of “railway” in the 2000 Regulations or because they were carrying out an operation on a transport system other than a railway,

then notwithstanding the revocation of the 2000 Regulations, that person shall not be required to comply with the provisions of Part 2 of these Regulations until 1st April 2007.

12. The 2000 Regulations shall apply in relation to—

- (a) a deemed safety certificate as if regulations 8, 9 and 15 did not apply; and
- (b) a deemed safety authorisation as if regulation 11, 12 and 16 did not apply;
- (c) a deemed safety certificate or a deemed safety authorisation as if—
 - (i) regulations 13, 14 and 18 did not apply;
 - (ii) sub-paragraphs (a) and (b) of regulation 20(1) did not apply;
 - (iii) regulation 20(1)(d) referred to “the findings of an audit carried out pursuant to the arrangements referred to in paragraph 5(d) of Schedule 1 to the 2000 Regulations;”;
and
 - (iv) regulation 21(4)(a) and 21(5)(a) referred to a deemed safety certificate or a deemed safety authorisation and the safety case to which it relates and as if the notified address referred to in regulation 21(3) were that notified in relation to the safety case in question under regulation 14 of the 2000 Regulations.

13. Notwithstanding the revocation of the 2000 Regulations, regulation 10 of the 2000 Regulations shall continue in effect in relation to the safety case to which a deemed safety certificate or deemed safety authorisation relates as it had effect on 30th September 2006 except that for the purposes of this Schedule the references in that regulation to—

- (a) “any revision” shall be construed to include a revision pursuant to paragraph 8; and
- (b) regulations 7 and 11 shall be construed as a reference to paragraph 8 of this Schedule and regulation 22(1) respectively.

14. For the purposes of this Schedule “the 2000 Regulations” means the Railways (Safety Case) Regulations 2000.