

SCHEDULE 2

Regulation 10

Enforcement

Appointment of inspectors

1.—(1) [^{F1}The Office of Rail and Road] may appoint as inspectors (under whatever title it may from time to time determine) such persons having suitable qualifications as it thinks necessary for carrying into effect these Regulations within its field of responsibility, and may terminate any appointment made under this paragraph.

(2) Every appointment of a person as an inspector under this paragraph must be made by an instrument in writing specifying which of the powers conferred on inspectors by these Regulations are to be exercisable by the person appointed; and an inspector in right of an appointment under this paragraph—

- (a) is entitled to exercise only such of those powers as are so specified; and
- (b) is entitled to exercise the powers so specified only within the field of responsibility of [^{F1}the Office of Rail and Road].

(3) So much of an inspector's instrument of appointment as specifies the powers which the inspector is entitled to exercise may be varied by [^{F1}the Office of Rail and Road].

(4) An inspector must, if so required when exercising or seeking to exercise any power conferred on the inspector by these Regulations, produce the inspector's instrument of appointment or a duly authenticated copy of it.

Textual Amendments

F1 Words in Sch. 2 substituted (16.10.2015) by [The Office of Rail Regulation \(Change of Name\) Regulations 2015 \(S.I. 2015/1682\)](#), reg. 1(2), **Sch. para. 10(u)(iv)**

Powers of inspectors

2.—(1) Subject to the provisions of paragraph 1 and this paragraph, an inspector may, for the purpose of carrying into effect these Regulations within the field of responsibility of [^{F1}the Office of Rail and Road], exercise the powers set out in sub-paragraph (2).

(2) The powers of an inspector referred to in sub-paragraph (1) are the following, namely—

- ^{F2}(a)
- ^{F3}(b)
- ^{F4}(c)
- (d) to make such examination and investigation as may in any circumstances be necessary for the purpose mentioned in sub-paragraph (1);
- (e) to require any person whom the inspector has reasonable cause to believe to be able to give any information relevant to any examination or investigation under Paragraph (d) to answer (in the absence of persons other than a person nominated by the inspector to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of the person's answers;
- (f) to require the production of, inspect, and take copies of or of any entry in—
 - (i) any records which by virtue of these Regulations are required to be kept, and

- (ii) any other books, records or documents which it is necessary for the inspector to see for the purposes of any examination or investigation under Paragraph (d);
- (g) to require any person to afford the inspector such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on the inspector by this paragraph;
- (h) any other power which is necessary for the purpose mentioned in sub-paragraph (1).
- (3) No answer given by a person in pursuance of a requirement imposed under sub-paragraph (2) (e) above is admissible in evidence against that person or the husband or wife of that person in any proceedings.
- (4) Nothing in this paragraph is to be taken to compel the production by any person of a document of which the person would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court or, as the case may be, on an order for the production of documents in an action in the Court of Session.

Textual Amendments

- F1** Words in [Sch. 2](#) substituted (16.10.2015) by [The Office of Rail Regulation \(Change of Name\) Regulations 2015 \(S.I. 2015/1682\)](#), [reg. 1\(2\)](#), [Sch. para. 10\(u\)\(iv\)](#)
- F2** [Sch. 2 para. 2\(2\)\(a\)](#) revoked (1.7.2012) by [Protection of Freedoms Act 2012 \(c. 9\)](#), [s. 120](#), [Sch. 2 para. 14\(1\)](#), [Sch. 10 Pt. 2](#) (with [s. 97](#))
- F3** [Sch. 2 para. 2\(2\)\(b\)](#) revoked (1.7.2012) by [Protection of Freedoms Act 2012 \(c. 9\)](#), [s. 120](#), [Sch. 2 para. 14\(1\)](#), [Sch. 10 Pt. 2](#) (with [s. 97](#))
- F4** [Sch. 2 para. 2\(2\)\(c\)](#) revoked (1.7.2012) by [Protection of Freedoms Act 2012 \(c. 9\)](#), [s. 120](#), [Sch. 2 para. 14\(1\)](#), [Sch. 10 Pt. 2](#) (with [s. 97](#))

Improvement notices

3. If an inspector is of the opinion that a person—
- (a) is contravening one or more of these Regulations;
- (b) has contravened one or more of these Regulations in circumstances that make it likely that the contravention will continue or be repeated,

the inspector may serve on the person a notice (in this Schedule referred to as “an improvement notice”) stating that the inspector is of that opinion, specifying the provision or provisions as to which the inspector is of that opinion, giving particulars of the reasons why the inspector is of that opinion, and requiring that person to remedy the contravention or, as the case may be, the matters occasioning it within such period (ending not earlier than the period within which an appeal against the notice can be brought under paragraph 6) as may be specified in the notice.

Prohibition notices

4.—(1) This paragraph applies to any activities which are being or are likely to be carried on by or under the control of any person, being activities to or in relation to which any of these Regulations apply or will, if the activities are so carried on, apply.

(2) If as regards any activities to which this paragraph applies an inspector is of the opinion that, as carried on or likely to be carried on by or under the control of the person in question, the activities involve or, as the case may be, will involve a risk of serious personal injury, the inspector may serve on that person a notice (in this Schedule referred to as “a prohibition notice”).

- (3) A prohibition notice must—

- (a) state that the inspector is of that opinion;
 - (b) specify the matters which in the inspector's opinion give or, as the case may be, will give rise to that risk;
 - (c) where in the inspector's opinion any of those matters involves or, as the case may be, will involve a contravention of any of these Regulations, state that the inspector is of that opinion, specify the regulation or regulations as to which the inspector is of that opinion, and give particulars of the reasons why the inspector is of that opinion; and
 - (d) direct that the activities to which the notice relates must not be carried on by or under the control of the person on whom the notice is served unless the matters specified in the notice in pursuance of Paragraph (b) and any associated contraventions of provisions so specified in pursuance of Paragraph (c) have been remedied.
- (4) A direction contained in a prohibition notice in pursuance of sub-paragraph (3)(d) takes effect—
- (a) at the end of the period specified in the notice; or
 - (b) if the notice so declares, immediately.

Provisions supplementary to paragraphs 3 and 4

- 5.—(1) In this paragraph “a notice” means an improvement notice or a prohibition notice.
- (2) A notice may (but need not) include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates; and any such directions—
- (a) may be framed to any extent by reference to any approved code of practice; and
 - (b) may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter.
- (3) Where an improvement notice or a prohibition notice which is not to take immediate effect has been served—
- (a) the notice may be withdrawn by an inspector at any time before the end of the period specified in the notice in pursuance of paragraph 3 or paragraph 4(4) as the case may be; and
 - (b) the period so specified may be extended or further extended by an inspector at any time when an appeal against the notice is not pending.

Appeal against improvement or prohibition notice

- 6.—(1) In this paragraph “a notice” means an improvement or a prohibition notice.
- (2) A person on whom a notice is served may within 21 days from the date of its service appeal to an employment tribunal; and on such an appeal the tribunal may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the tribunal may in the circumstances think fit.
- (3) Where an appeal under this paragraph is brought against a notice within the period allowed under sub-paragraph (2), then—
- (a) in the case of an improvement notice, the bringing of the appeal has the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal;
 - (b) in the case of a prohibition notice, the bringing of the appeal shall have the like effect if, but only if, on the application of the appellant the tribunal so directs (and then only from the giving of the direction).

(4) One or more assessors may be appointed for the purposes of any proceedings brought before an employment tribunal under this paragraph.

Power to indemnify inspectors

7. Where an action has been brought against an inspector in respect of an act done in the execution or purported execution of these Regulations and the circumstances are such that the inspector is not legally entitled to require [^{F1}the Office of Rail and Road] to indemnify the inspector, [^{F1}the Office of Rail and Road] may, nevertheless, indemnify the inspector against the whole or part of any damages and costs or expenses which the inspector may have been ordered to pay or may have incurred, if [^{F1}the Office of Rail and Road] is satisfied that the inspector honestly believed that the act complained of was within the inspector's powers and that the inspector's duty as an inspector required or entitled the inspector to do it.

Textual Amendments

F1 Words in Sch. 2 substituted (16.10.2015) by *The Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682)*, reg. 1(2), **Sch. para. 10(u)(iv)**

Restrictions on disclosure of information

8.—(1) In this paragraph—

“the 1974 Act” means the Health and Safety at Work etc Act 1974 ^{M1};

“the Executive” means the Health and Safety Executive referred to in section 10(1) ^{M2} of the 1974 Act;

“the recipient”, in relation to any relevant information, means the person by whom that information was so obtained or to whom that information was so furnished, as the case may be;

“relevant information” means information obtained by an inspector in pursuance of a requirement imposed under paragraph 2(2)(e) or (f); and

“relevant statutory requirement” means—

- (a) the provisions of the 1974 Act and any regulations made under powers contained in that Act; and
- (b) while and to the extent that they remain in force, the provisions of the Acts mentioned in Schedule 1 to the 1974 Act and which are specified in the third column of that Schedule and the regulations, orders and other instruments of a legislative character made or having effect under a provision so specified.

(2) Subject to the sub-paragraph (3), no relevant information must be disclosed without the consent of the person by whom it was furnished.

(3) Sub-paragraph (2) does not apply to—

- (a) disclosure of information to the Executive, a government department or [^{F1}the Office of Rail and Road];
- (b) without prejudice to Paragraph (a), disclosure by the recipient of information to any person for the purpose of any function conferred on the recipient by or under any of the relevant statutory provisions or under these Regulations;
- (c) without prejudice to Paragraph (a), disclosure by the recipient of information to a constable authorised by a chief officer of police to receive it; or

- (d) disclosure by the recipient of information in a form calculated to prevent it from being identified as relating to a particular person or case.

(4) In sub-paragraph (3) any reference to the Executive, a government department or [F1the Office of Rail and Road] includes respectively a reference to an officer of that body (including in the case of [F1the Office of Rail and Road], any inspector appointed by it), and also, in the case of a reference to the Executive, includes a reference to—

- (a) a person performing any functions of the Executive by virtue of section 13(3) M3 of the 1974 Act;
- (b) an officer of a body which is so performing any such functions; and
- (c) an adviser appointed in pursuance of section 13(7) of the 1974 Act.

(5) A person to whom information is disclosed in pursuance of sub-paragraph (3) must not use the information for a purpose other than—

- (a) in a case falling within sub-paragraph (3)(a), a purpose of the recipient in question in connection with these Regulations or with the relevant statutory provisions, as the case may be;
- (b) in the case of information given to a constable, the purposes of the police in connection with these Regulations, the relevant statutory provisions or any enactment whatsoever relating to working time, public health, public safety or the safety of the State.

(6) A person must not disclose any information obtained by the person as a result of the exercise of any power conferred by paragraph 2 (including in particular any information with respect to any trade secret obtained by the person in any premises entered by the person by virtue of any such power) except—

- (a) for the purposes of the person's functions;
- (b) for the purposes of any legal proceedings; or
- (c) with the relevant consent.

In this sub-paragraph “the relevant consent” means the consent of the person who furnished it, and, in any other case, the consent of a person having responsibilities in relation to the premises where the information was obtained.

(7) Notwithstanding anything in sub-paragraph (6) an inspector must, in circumstances in which it is necessary to do so for the purpose of assisting in keeping persons (or the representatives of persons) employed at any premises adequately informed about matters affecting their health, safety and welfare or working time, give to such persons or their representatives the following descriptions of information, that is to say—

- (a) factual information obtained by the inspector as mentioned in sub-paragraph (6) which relates to those premises or anything which was or is in the premises or was or is being done in them; and
- (b) information with respect to any action which the inspector has taken or proposes to take in or in connection with those premises in the performance of the inspector's functions;

and, where an inspector does this, the inspector must give the same information to the employer of the persons employed at the premises.

(8) Notwithstanding anything in sub-paragraph (6), a recipient who has obtained such information as is referred to in sub-paragraph (6) may furnish to a person who appears to the recipient to be likely to be a party to any civil proceedings arising out of any accident, occurrence, situation or other matter, a written statement of the relevant facts observed by the recipient in the course of exercising any of the powers conferred by paragraph 2.

Changes to legislation: There are currently no known outstanding effects for the The Cross-border Railway Services (Working Time) Regulations 2008, SCHEDULE 2. (See end of Document for details)

Textual Amendments

- F1** Words in [Sch. 2](#) substituted (16.10.2015) by [The Office of Rail Regulation \(Change of Name\) Regulations 2015 \(S.I. 2015/1682\)](#), reg. 1(2), **Sch. para. 10(u)(iv)**
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Marginal Citations

- M1** [1974 c.37](#).
- M2** Section 10 has been amended by article 4 of the [Legislative Reform \(Health and Safety Executive\) Order 2008 \(S.I. 2008/960\)](#).
- M3** Section 13 has been amended by article 5 of the [Legislative Reform \(Health and Safety Executive\) Order 2008 \(S.I. 2008/960\)](#).

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There are currently no known outstanding effects for the The Cross-border Railway Services (Working Time) Regulations 2008, SCHEDULE 2.