

SCHEDULES

SCHEDULE 3

Section 2

TRANSFER OF SAFETY FUNCTIONS

Railway safety purposes

- 1 (1) Subject to sub-paragraph (4), in this Schedule “railway safety purposes” means so much of the general purposes of Part 1 of the 1974 Act (within the meaning of section 1 of that Act) as—
 - (a) relates to risks that are exclusively relevant to one or more of the purposes specified in sub-paragraph (2); or
 - (b) relates to so much of any risks that are primarily so relevant as arises in connection with anything mentioned in that sub-paragraph.
- (2) The purposes mentioned in sub-paragraph (1) are—
 - (a) securing the proper construction and safe operation of transport systems falling within sub-paragraph (3);
 - (b) securing the proper construction and safe operation of locomotives, rolling stock or other vehicles used, or to be used, on such systems;
 - (c) protecting the public (whether or not they are passengers) from personal injury and other risks arising from the construction and operation of such systems;
 - (d) protecting persons at work from personal injury and other risks so arising.
- (3) A transport system falls within this sub-paragraph if it is—
 - (a) a railway;
 - (b) a tramway;
 - (c) a trolley vehicle system; or
 - (d) a transport system using any other mode of guided transport.
- (4) The Secretary of State may, by regulations, modify the definition of “railway safety purposes”.
- (5) Before making any regulations under sub-paragraph (4), the Secretary of State must consult—
 - (a) the Office of Rail Regulation;
 - (b) the Health and Safety Commission; and
 - (c) such other persons as he considers appropriate.
- (6) Regulations under sub-paragraph (4) are subject to the negative resolution procedure.
- (7) In this paragraph—

“guided transport”, “railway”, “tramway”, “trolley vehicle system” and “vehicle” have the same meanings as in the Transport and Works Act 1992 (c. 42) except that, for this purpose, paragraph (b) of the definition of

Status: This is the original version (as it was originally enacted).

“railway” in section 67(1) of that Act (which includes a condition as to the minimum gauge of track) is to be disregarded; and

“person at work” has the same meaning as it for the time being has in Part 1 of the 1974 Act (see section 52 of that Act).

ORR’s principal railway safety functions

- 2 (1) It shall be the general duty of the Office of Rail Regulation—
- (a) to do such things and make such arrangements as it considers appropriate for the railway safety purposes; and
 - (b) to assist and encourage persons concerned with matters relevant to any of those purposes to further those purposes.
- (2) It shall be the duty of the Office of Rail Regulation—
- (a) to make such arrangements as it considers appropriate for the carrying out of research in connection with the railway safety purposes and for the publication of the results of such research; and
 - (b) to encourage research by others in that connection.
- (3) It shall be the duty of the Office of Rail Regulation—
- (a) to make such arrangements as it considers appropriate for the provision of training and information in connection with the railway safety purposes;
 - (b) to encourage the provision by others of training and information in that connection; and
 - (c) to make such arrangements as it considers appropriate for securing that the persons mentioned in sub-paragraph (4)—
 - (i) are provided with an information and advisory service with respect to matters relevant to the railway safety purposes;
 - (ii) are kept informed about such matters; and
 - (iii) are adequately advised about them.
- (4) Those persons are—
- (a) government departments;
 - (b) employers;
 - (c) employees;
 - (d) organisations representing employers and employees respectively; and
 - (e) other persons concerned with matters relevant to any of the railway safety purposes.
- (5) It shall be the duty of the Office of Rail Regulation from time to time to submit such proposals as it considers appropriate for the making of regulations for the railway safety purposes to the authorities having power to make regulations for those purposes under any of the relevant statutory provisions.
- (6) Before submitting proposals under sub-paragraph (5), the Office of Rail Regulation must consult—
- (a) such government departments, and
 - (b) such other persons,
- as it considers appropriate.
- (7) Before—

Status: This is the original version (as it was originally enacted).

- (a) making regulations for the railway safety purposes independently of any proposals submitted under sub-paragraph (5), or
- (b) making regulations which give effect to such proposals but with modifications,

the authority having the power to make the regulations must consult the Office of Rail Regulation.

- (8) In this paragraph “employer”, “employee” and “the relevant statutory provisions” have the same meanings as in Part 1 of the 1974 Act (see section 53(1) of that Act).

Removal of corresponding functions from HSC

- 3 (1) In section 11 of the 1974 Act (which confers functions on the HSC for general purposes that are equivalent to those conferred on the ORR for railway safety purposes by paragraph 2)—
- (a) in subsection (1), for “subject to subsection (3)” substitute “subject to subsections (2A) and (3)”; and
 - (b) after subsection (2) insert the subsection set out in sub-paragraph (2).

- (2) The subsection to be inserted is—

“(2A) In subsections (1) and (2) above—

- (a) references to the general purposes of this Part do not include references to the railway safety purposes; and
- (b) the reference to a power to make regulations under the relevant statutory provisions does not include a reference to any power so far as it is exercisable for the railway safety purposes.”

Reports and investigations

- 4 (1) The Office of Rail Regulation may authorise a person to investigate and make a special report on any accident, occurrence, situation or other matter of any sort which that Office thinks it necessary or expedient to investigate—
- (a) for any of the railway safety purposes; or
 - (b) with a view to the making of regulations for any of those purposes.
- (2) The Office of Rail Regulation may cause—
- (a) the contents of a special report made under this paragraph, or
 - (b) so much of them as it considers appropriate,
- to be made public at such time, and in such manner, as it thinks fit.
- (3) Where a person who is not a member, officer or employee of the Office of Rail Regulation carries out an investigation and makes a special report under this paragraph, that Office may pay him such remuneration and expenses as the Secretary of State determines.
- (4) The Office of Rail Regulation may, to such extent as the Secretary of State may determine, defray the other costs (if any) of—
- (a) an investigation under this paragraph; or
 - (b) the making of a special report following such an investigation.
- (5) In section 14(1) of the 1974 Act (matters about which investigations etc. may be required or authorised by the HSC), for “it is” substitute—

Status: This is the original version (as it was originally enacted).

- “(a) those general purposes shall be treated as not including the railway safety purposes; but
 (b) it is otherwise”.
- 5 (1) This paragraph applies where, before the commencement of paragraph 4, the Health and Safety Commission directed or authorised a person to investigate and make a special report under section 14(2)(a) of the 1974 Act on any accident, occurrence, situation or other matter which the Commission thought it necessary or expedient to investigate—
- (a) for any of the railway safety purposes; or
 (b) with a view to the making of regulations for any of those purposes.
- (2) For the purposes of the carrying out or continuation of an investigation and the making of a report after the commencement of paragraph 4, the direction or authorisation shall be treated as an authorisation by the Office of Rail Regulation under paragraph 4.
- (3) If —
- (a) the person to whom the Health and Safety Commission gave the direction or authorisation has made a special report to the Commission, but
 (b) the Commission has not yet caused the report, or a part of it, to be made public under section 14(5) of the 1974 Act,
- the report shall be treated as if it had been made to the Office of Rail Regulation under paragraph 4.
- (4) If the person to whom the Health and Safety Commission gave the direction or authorisation has not yet made a special report to the Commission, the Office of Rail Regulation may direct that person—
- (a) to abandon the investigation without making a special report; or
 (b) to continue the investigation in such manner as that Office may direct.
- (5) Where the Health and Safety Commission agreed before the commencement of paragraph 4 to exercise its power by virtue of section 14(6)(a) or (c) of the 1974 Act to pay remuneration or expenses to any person in respect of the investigation and special report or to defray costs of the investigation and report—
- (a) the Commission must pay amounts accruing in respect of the agreed matters before the commencement of paragraph 4; and
 (b) the Office of Rail Regulation must pay amounts so accruing after that time; and paragraph (b) does not affect the power of that Office under that paragraph, in relation to times after the commencement of that paragraph, to make other payments of remuneration or expenses or to defray costs.
- 6 (1) This paragraph applies where, before the commencement of paragraph 4, the Health and Safety Commission directed an inquiry to be held under section 14(2)(b) of the 1974 Act into any accident, occurrence, situation or other matter which the Commission thought it necessary or expedient to investigate—
- (a) for any of the railway safety purposes; or
 (b) with a view to the making of regulations for any of those purposes.
- (2) Subject to sub-paragraph (3), section 14 of the 1974 Act shall continue to apply in relation to that inquiry after the commencement of paragraph 4 but as if all things done or required to be done by or in relation to the Health and Safety Commission

under that section were done or required to be done by or in relation to the Office of Rail Regulation.

- (3) Where the Health and Safety Commission agreed before the commencement of paragraph 4 to exercise its power by virtue of section 14(6)(b) or (c) of the 1974 Act to pay remuneration or expenses to any person in respect of the inquiry or to defray costs of the inquiry—
- (a) the Commission must pay amounts accruing in respect of the agreed matters before the commencement of paragraph 4; and
 - (b) the Office of Rail Regulation must pay amounts so accruing after that time; and paragraph (b) does not affect the power of that Office, in relation to times after the commencement of paragraph 4, to make other payments of remuneration or expenses under section 14(6)(b), or to defray costs under section 14(6)(c).

ORR acting as agent of government departments and other public authorities

- 7 (1) Where the Secretary of State considers that any of his statutory or other functions can appropriately be carried out by the Office of Rail Regulation in connection with the carrying out of its safety functions, he and that Office may enter into an agreement for that Office to carry out those functions on his behalf.
- (2) Where the Secretary of State considers that any of the statutory or other functions of—
- (a) a government department, or
 - (b) any other public authority,
- can appropriately be carried out by the Office of Rail Regulation in connection with the carrying out of its safety functions, he may authorise the Office and that department or authority to enter into an agreement for that Office to carry out those functions on behalf of that department or authority.
- (3) An agreement under this paragraph—
- (a) may include provision for payments to be made to the Office of Rail Regulation for the carrying out of the functions that it is authorised or required to carry out under the agreement; but
 - (b) may not authorise or require the Office of Rail Regulation to carry out any function consisting in a power to make regulations or other instruments of a legislative character.

Government departments and other public authorities acting as agent of ORR

- 8 (1) Where the Office of Rail Regulation considers that any of its safety functions can appropriately be carried out—
- (a) by a government department, or
 - (b) by any other public authority,
- that Office and the department or authority may enter into an agreement for the department or authority to carry out those functions on that Office's behalf.
- (2) An agreement under this paragraph may include provision for payments to be made by the Office of Rail Regulation to a government department or public authority for the carrying out of the functions that it is authorised or required to carry out under the agreement.

Status: This is the original version (as it was originally enacted).

Restrictions on codes of practice by HSC

- 9 (1) In subsection (1) of section 16 of the 1974 Act (codes of practice with respect to the requirements of certain provisions), for “sections 2 to 7 or of health and safety regulations or of any of the existing statutory provisions” substitute “any of the enactments or instruments mentioned in subsection (1A) below”.
- (2) After that subsection insert—
- “(1A) Those enactments and instruments are—
- (a) sections 2 to 7 above;
 - (b) health and safety regulations, except so far as they make provision exclusively in relation to transport systems falling within paragraph 1(3) of Schedule 3 to the Railways Act 2005; and
 - (c) the existing statutory provisions that are not such provisions by virtue of section 117(4) of the Railways Act 1993.”

Co-operation with the HSC

- 10 (1) It shall be the duty of the Office of Rail Regulation and the Health and Safety Commission—
- (a) as soon as practicable after the commencement of this paragraph, to enter into arrangements with each other for securing co-operation and the exchange of information in connection with the carrying out of safety functions;
 - (b) to maintain and from time to time to review those arrangements; and
 - (c) to revise them whenever they consider it appropriate to do so.
- (2) In sub-paragraph (1) “safety functions” means all the functions of the Health and Safety Commission and of the Health and Safety Executive and the safety functions of the Office of Rail Regulation.
- (3) In section 18(5)(b) of the 1974 Act (duty of enforcing authority to act in accordance with guidance of HSC), at the beginning insert “except where that authority is the Office of Rail Regulation,”.

Information powers corresponding to section 27 of the 1974 Act

- 11 (1) The Office of Rail Regulation may serve a notice under this paragraph on any person for the purpose of obtaining information which that Office needs for the carrying out of its safety functions.
- (2) A notice under this paragraph is one requiring the person on whom it is served—
- (a) to provide the Office of Rail Regulation with information about such matters as may be specified in the notice; and
 - (b) to do so in the form and manner so specified.
- (3) The consent of the Secretary of State is required for the service of a notice under this paragraph.
- (4) The consents that may be given for the purposes of sub-paragraph (3) include a general consent relating to notices of a specified description.
- (5) Nothing in the Statistics of Trade Act 1947 (c. 39) is to be construed as preventing or penalising the disclosure by a Minister of the Crown or government department to—

Status: This is the original version (as it was originally enacted).

- (a) the Office of Rail Regulation,
 - (b) a member, officer or employee of that Office, or
 - (c) a committee established by that Office,
- of information falling within sub-paragraph (6) about an undertaking (within the meaning of that Act).
- (6) Information about an undertaking falls within this sub-paragraph if it consists of—
- (a) the names and addresses of the persons carrying on the undertaking;
 - (b) the nature of the undertaking’s activities;
 - (c) the number of persons of different descriptions who work in the undertaking;
 - (d) the addresses or places where activities of the undertaking are or were carried on;
 - (e) the nature of the activities carried on there; or
 - (f) the number of persons of different descriptions who work or worked in the undertaking there.
- (7) A person to whom a disclosure that is authorised by sub-paragraph (5) is made must not use the information except for the purposes of the safety functions of the Office of Rail Regulation.
- (8) It is an offence for a person—
- (a) to contravene a requirement imposed by a notice under this paragraph; or
 - (b) to use information in contravention of sub-paragraph (7).
- (9) A person guilty of an offence under sub-paragraph (8) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment—
 - (i) in the case of an offence of contravening a notice, to a fine; and
 - (ii) in the case of an offence of using information in contravention of sub-paragraph (7), to imprisonment for a term not exceeding two years or to a fine, or to both.
- (10) Section 52 of the 1974 Act (meaning of “work” and related expressions) applies for the purposes of this paragraph as it applies for the purposes of Part 1 of that Act.

Railway safety levy

- 12 (1) Section 43A of the 1974 Act (railway safety levy) is amended as follows.
- (2) In subsection (2) (expenses in respect of which levy raised), for paragraphs (a) and (b) substitute—
- “(a) in respect of activities undertaken by the Office of Rail Regulation under or by virtue of this Act or Schedule 3 to the Railways Act 2005; or
 - (b) in respect of activities in relation to a transport system falling within paragraph 1(3) of that Schedule that are undertaken by that Office under or by virtue of any other enactment.”
- (3) In subsections (5) and (6), for “Commission or the Executive” substitute “Office of Rail Regulation”.

Status: This is the original version (as it was originally enacted).

- (4) In subsection (9), for “to which section 117 of the Railways Act 1993 applies” substitute “falling within paragraph 1(3) of Schedule 3 to the Railways Act 2005”.

Removal of requirement of consultation with HSC for railway safety regulations

- 13 In section 50 of the 1974 Act (consultation with HSC), after subsection (1) insert—
- “(1A) Subsection (1) does not apply to the exercise of a power to make regulations so far as it is exercised—
- (a) for giving effect (with or without modifications) to proposals submitted by the Office of Rail Regulation under paragraph 2(5) of Schedule 3 to the Railways Act 2005; or
 - (b) otherwise for or in connection with the railway safety purposes.”

Regulatory Reform Act 2001

- 14 The effect of the preceding provisions of this Schedule is to be disregarded in determining for the purposes of section 1 of the Regulatory Reform Act 2001 (power by order to make provision reforming law which imposes burdens) whether any provision of the 1974 Act falls within subsection (4)(a) of that section (provision amended by Act within previous two years).

Interpretation

- 15 (1) In this Schedule—
- “the 1974 Act” means the Health and Safety at Work etc. Act 1974 (c. 37);
 - and
 - “railway safety purposes” has the meaning given by paragraph 1.
- (2) In this Schedule a reference to the safety functions of the Office of Rail Regulation is a reference to—
- (a) its functions under this Schedule;
 - (b) its functions under the 1974 Act; and
 - (c) its other functions so far as carried out for the railway safety purposes.
- (3) In section 53(1) of the 1974 Act (interpretation of Part 1), after the definition of “prohibition notice” insert—
- ““railway safety purposes” has the same meaning as in Schedule 3 to the Railways Act 2005;”.