
STATUTORY INSTRUMENTS

2000 No. 2688

HEALTH AND SAFETY

The Railways (Safety Case) Regulations 2000

Made - - - - *2nd October 2000*
Laid before Parliament *2nd October 2000*
Coming into force - - *31st December 2000*

The Secretary of State, in exercise of the powers conferred on him by section 15(1), (2), (4)(a), (5) (b), (6)(b), 43(2) and 82(3)(a) of, and paragraphs 1(1)(c), 8(1), 9, 15(1) and 16 of Schedule 3 to, the Health and Safety at Work etc Act 1974(1) (“the 1974 Act”) and for the purpose of giving effect without modifications to proposals submitted to him by the Health and Safety Commission under section 11(2)(d) of the 1974 Act after the carrying out by the said Commission of consultations in accordance with section 50(3) of that Act, hereby makes the following Regulations:—

PART 1

INTRODUCTION

Citation and commencement

1. These Regulations may be cited as the Railways (Safety Case) Regulations 2000 and shall come into force on 31st December 2000.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the 1994 Regulations” means the Railways (Safety Case) Regulations 1994(2) and any reference to a safety case prepared or accepted under the 1994 Regulations is a reference to a safety case within the meaning of those Regulations;

“assessment body” means a body of persons corporate or unincorporate (other than the infrastructure controller in question) which is, in relation to an assessment referred to in regulations 4(2)(a) or 5(3)(a) or an audit referred to in regulation 9(1)—

(1) 1974 c. 37; sections 15 and 50 were amended by the Employment Protection Act 1975 (c. 71) Schedule 15, paragraphs 6 and 16 respectively; the general purposes of Part 1 referred to in section 15(1) were extended by section 117 of the Railways Act 1993 (c. 43).
(2) S.I. 1994/237; the Regulations are revoked by regulation 18 of these Regulations.

- (a) competent to carry out the assessment or audit, and
- (b) sufficiently independent of the infrastructure controller to ensure that the assessment or audit is objective;

“audit report” means a report made pursuant to regulation 9 or to the arrangements referred to in paragraph 5(b) of Schedule 1;

“building operation” means the construction, structural alteration, repair or maintenance of a building (including repointing, redecoration and external cleaning of the structure), the demolition of a building, and preparation for, and laying the foundation of, an intended building, but does not include any operation which is a work of engineering construction;

“the Executive” means the Health and Safety Executive;

“factory” means a factory within the meaning of section 175 of the Factories Act 1961 and premises to which section 123(1) or (2) or 125(1) of that Act applies;

“harbour” and “harbour area” have the meanings assigned to them by regulation 2(1) of the Dangerous Substances in Harbour Areas Regulations 1987⁽³⁾;

“infrastructure controller” means a person who controls railway infrastructure;

“mine” has the meaning assigned to it by section 180 of the Mines and Quarries Act 1954⁽⁴⁾;

“notified” means notified in writing, and related expressions shall be construed accordingly;

“quarry” has the meaning assigned to it by regulation 3 of the Quarries Regulations 1999⁽⁵⁾;

“railway” has the meaning assigned to it by section 67(1) of the Transport and Works Act 1992⁽⁶⁾ except that it does not include any part of a railway—

- (a) within a harbour or harbour area, or which is part of a factory, mine or quarry unless, in each case, it is being used or is intended to be used for the carriage of fare paying passengers,
- (b) used solely for the purpose of carrying out construction work, or
- (c) within a maintenance or goods depot;

“railway infrastructure” means fixed assets used for the operation of a railway including its permanent way and plant used for signalling or exclusively for supplying electricity for operational purposes to the railway, but it does not include a station;

“railway operator” means a person who is an infrastructure controller or operates trains or stations;

“relevant infrastructure controller” means—

- (a) in relation to the operation of trains, the person in control of the railway infrastructure in relation to which the trains are to be operated and, where there are different such persons for different parts of that infrastructure, each of them,
- (b) in relation to the operation of stations, the person in control of the railway infrastructure serving the station the subject of the safety case and, where there are different persons in control of different parts of the railway infrastructure serving such station, each of them;

“revision” means proposed revision where by virtue of regulation 7(3), 8(1) and 16(2) or (3) the revision has not been made;

“safety case” shall be construed in accordance with paragraph (2);

(3) S.I. 1987/37.

(4) 1954 c. 70; section 180 was modified by S.I. 1974/2013.

(5) S.I. 1999/2024.

(6) 1992 c. 42.

“station” means a railway passenger station or terminal, but does not include any permanent way or plant used for signalling or exclusively for supplying electricity for operational purposes to the railway;

“train” includes any rolling stock (within the meaning of the Railways Act 1993(7));

“work of engineering construction” means the construction of any railway line or siding otherwise than on an existing railway, and the construction, structural alteration or repair (including repointing and repainting) or demolition of any tunnel, bridge or viaduct, except where carried on upon a railway.

(2) Any reference in these Regulations to a safety case is a reference to a document containing the particulars required by the provisions of these Regulations pursuant to which the safety case is prepared; and a safety case may—

(a) contain the particulars so required by reference to the same particulars contained in another safety case prepared by the same person;

(b) be prepared by a person in respect of more than one operation intended to be undertaken by him.

(3) Any provision of these Regulations requiring particulars to be included in a safety case which are also required to be included by virtue of a more general provision of the Regulations is without prejudice to the generality of the more general provision.

(4) Any reference in these Regulations to an infrastructure controller recommending acceptance of a safety case or revision is a reference to that controller notifying the Executive that he is satisfied that the procedures and arrangements described in it which affect or are likely to affect the performance of his own health and safety duties will, when properly implemented with those described in any other safety case or revision thereof which that controller has prepared or which has been accepted pursuant to these Regulations and which relates to the railway infrastructure under his control, be capable of ensuring compliance by that controller with those duties in relation to the operation to which the first mentioned safety case or revision relates.

(5) Without prejudice to regulation 8, any reference in these Regulations to the Executive accepting a safety case or revision is a reference to the Executive notifying the person who prepared it that it is satisfied with the case for health and safety made out in it.

(6) Any reference in these Regulations to the health and safety duties of an infrastructure controller is a reference to the duties imposed on him by the relevant statutory provisions (other than these Regulations).

(7) Where a railway operator is succeeded by a new railway operator, anything done in pursuance of these Regulations by the former railway operator shall, for the purposes of these Regulations, be treated as having been done by his successor; and for this purpose a person shall be treated as a successor in so far as control of the relevant railway infrastructure or the operation of the trains or stations concerned, as appropriate, has been transferred to him.

(8) Any reference in these Regulations to a person in control of any railway infrastructure is a reference to a person who, in the course of a business or other undertaking carried on by him (whether for profit or not), is in operational control of that infrastructure, except that where such control is for the time being exercised by a person undertaking maintenance, repair or alteration work on the infrastructure, it is a reference to a person who would be in operational control of the infrastructure if such work were not being undertaken.

(9) Any reference in these Regulations to a person operating a train or station is a reference to the person operating the train or station for the time being in the course of a business or other undertaking carried on by him (whether for profit or not), but it does not include a self-employed person by reason only that he himself drives or otherwise controls the movement of a train.

(10) Any requirement in these Regulations for a safety case, revision, recommendation, audit report or other document to be sent, submitted or otherwise delivered includes delivery by electronic means.

- (11) Unless the context otherwise requires, any reference in these Regulations to—
- (a) a numbered regulation or Schedule is a reference to the regulation or Schedule in these Regulations so numbered;
 - (b) a numbered paragraph is a reference to the paragraph so numbered in the regulation or Schedule in which the reference appears.

Application

3. The duties imposed on an infrastructure controller by regulation 4(2) and (3), regulation 5(3), (4)(d) and (6)(b) and regulation 9 shall apply only where the railway infrastructure under the control of that controller—

- (a) is used for the operation of passenger trains by an operator other than the infrastructure controller; or
- (b) serves a station operated by an operator other than the infrastructure controller.

PART II

SAFETY CASES

Use of railway infrastructure

4.—(1) Subject to regulation 16 (transitional provisions) a person in control of any railway infrastructure shall not use it or permit it to be used for the operation of trains or stations unless—

- (a) he has prepared a safety case containing the particulars specified in Schedule 1 and, where that infrastructure is to be used for the operation of trains or stations by persons other than the infrastructure controller, Schedule 2;
 - (b) the Executive has accepted that safety case;
 - (c) where he is not the person operating those trains or stations, the person undertaking that operation has agreed in writing to comply with any reasonable request he may make as respects any aspect of the operation which affects or is likely to affect the performance of the health and safety duties of the person in control of the railway infrastructure; and
 - (d) the person operating those trains or stations has complied with regulation 5(1).
- (2) An infrastructure controller who prepares a safety case shall—
- (a) procure the carrying out of an assessment of that safety case by an assessment body; and
 - (b) obtain from that body a report of that assessment which shall include—
 - (i) a recommendation as to whether in the view of that body the safety case should or should not be accepted;
 - (ii) where acceptance is recommended, a statement that in its view the case for health and safety is satisfactorily made out; and
 - (iii) where acceptance is not recommended, the reasons for that recommendation.

(3) When submitting the safety case prepared pursuant to paragraph (1) to the Executive, the infrastructure controller shall send to the Executive a copy of the report of the assessment body relating to that safety case obtained under paragraph (2).

(4) Where a person who prepares a safety case for the purpose of paragraph (1) has submitted a safety case to the Executive for acceptance, the Executive shall notify that person whether the safety case is accepted or not and, where the safety case is not accepted, give reasons for that decision.

Safety case for train operations and for station operations

5.—(1) Subject to regulation 16 (transitional provisions) a person shall not operate a train in relation to any railway infrastructure and a person shall not operate a station unless—

- (a) he has prepared a safety case containing the particulars specified in Schedule 1; and
- (b) the Executive has accepted that safety case.

(2) A person who prepares a safety case for acceptance pursuant to paragraph (1) shall submit the safety case to the Executive and at the same time, unless he is the relevant infrastructure controller, to the relevant infrastructure controller.

(3) An infrastructure controller who receives a safety case shall—

- (a) procure the carrying out of an assessment of that safety case by an assessment body; and
- (b) obtain from that body a report of that assessment which shall include—
 - (i) a recommendation as to whether in the view of that body the safety case is satisfactory for the purpose of the matters set out in regulation 2(4) on which the infrastructure controller must be satisfied;
 - (ii) where acceptance is recommended, a statement that in its view the procedures and arrangements described in it which affect or are likely to affect the performance of the infrastructure controller's own health and safety duties will, when properly implemented with those described in any other safety case which the infrastructure controller has prepared, or which has been accepted pursuant to these Regulations and which relates to the railway infrastructure under the control of that infrastructure controller, be capable of ensuring compliance by the infrastructure controller with those duties in relation to the operation to which the first mentioned safety case relates; and
 - (iii) where acceptance is not recommended, the reasons for that decision.

(4) The infrastructure controller shall scrutinise a safety case submitted to him under paragraph (2) and shall send to the Executive—

- (a) where the safety case submitted under paragraph (2) has been modified by agreement between the infrastructure controller and the person who has prepared the safety case, a copy of the safety case so modified;
- (b) the recommendation of the infrastructure controller as to whether the safety case should or should not be accepted and, if the recommendation is that the safety case should not be accepted, the reasons for that recommendation;
- (c) a copy of the record prepared by him pursuant to regulation 14(3); and
- (d) a copy of the report of the assessment body obtained pursuant to paragraph (3).

(5) A recommendation made by an infrastructure controller pursuant to paragraph (4)(b) shall be accompanied by a statement identifying—

- (a) the procedures and arrangements described in the safety case which do not affect or which are unlikely to affect the performance of his health and safety duties; and
- (b) where any procedures or arrangements described in the safety case affect or are likely to affect the performance of his health and safety duties only to a limited extent, the extent to which they do or are likely to do so.

(6) The infrastructure controller shall send to the person who has submitted the safety case—

- (a) a copy of the recommendation and the statement referred to in paragraph (5); and
 - (b) a copy of the report of the assessment body obtained under paragraph (3) relating to that safety case.
- (7) The Executive shall, having regard to any recommendation made by the infrastructure controller under paragraph (4)(b)—
- (a) notify the infrastructure controller and the person who has prepared the safety case whether the safety case has been accepted or not;
 - (b) where the decision differs from the recommendation of the infrastructure controller provided under paragraph (4)(b) or where the Executive does not accept the safety case, give reasons for that decision; and
 - (c) where the accepted safety case is different from that submitted to the Executive under paragraph (2) or, where paragraph (3)(a) applies, under that paragraph, notify the infrastructure controller of the changes made.
- (8) The Executive may in writing direct the infrastructure controller to comply with the requirements imposed by paragraph (4) within such reasonable time, being a period of not less than 28 days, as may be specified by the Executive and where such direction is made the infrastructure controller shall comply with the direction.
- (9) Nothing in paragraph (7) shall prevent the Executive determining, in the absence of a recommendation from the relevant infrastructure controller or, where applicable, the assessment body, whether a safety case should be accepted or not provided the Executive has given reasonable notice to the controller and, where applicable, the assessment body of its decision to do so.

Review of safety cases

6. A person who has prepared a safety case which has been accepted pursuant to these Regulations shall make a thorough review of its contents at such intervals as the Executive may in writing direct or, in the absence of such direction, at least every three years.

Revision of safety cases

7.—(1) A person who has prepared a safety case which has been accepted pursuant to these Regulations shall revise its contents—

- (a) in accordance with regulation 16(2);
- (b) whenever it is appropriate; and
- (c) whenever required to do so by the Executive pursuant to regulation 8.

(2) Nothing in these Regulations shall require the revision referred to in sub-paragraph (b) of paragraph (1) to be sent to another person except that, where such a revision will render the safety case materially different from the version last accepted pursuant to these Regulations, the revision shall not be made unless the Executive has accepted the revision.

(3) A person who proposes a revision to his safety case which he requires to be accepted by virtue of paragraph (2) shall submit the revision to the Executive and, unless he is the relevant infrastructure controller, to the relevant infrastructure controller.

(4) The infrastructure controller shall scrutinise the revision submitted to him under paragraph (3) and shall send to the Executive—

- (a) where the revision submitted under paragraph (3) has been modified by agreement between that controller and the person who submitted the revision, the revision so modified;

- (b) a recommendation as to whether the revision should or should not be accepted and the reasons for that recommendation; and
 - (c) a copy of the record prepared by him pursuant to regulation 14(3).
- (5) A recommendation made by an infrastructure controller pursuant to paragraph (4) shall be accompanied by a statement identifying—
- (a) the procedures and arrangements described in the revision which do not affect or which are unlikely to affect the performance of his health and safety duties; and
 - (b) where any procedures or arrangements described in the revision affect or are likely to affect the performance of his health and safety duties only to a limited extent, the extent to which they do or are likely to do so.
- (6) The infrastructure controller shall send to the person who has submitted a revision to him pursuant to paragraph (3) a copy of the recommendation and statement referred to in paragraph (5).
- (7) The Executive shall, having regard to any recommendation made by the infrastructure controller under paragraph (4)(b)—
- (a) in relation to a revision of a safety case of a train operator or station operator submitted under paragraph (3)—
 - (i) notify the relevant infrastructure controller and, where different, the person who has submitted the revision whether the revision has been accepted or not;
 - (ii) where the decision differs from the recommendation of the infrastructure controller provided under paragraph (5) or where the Executive does not accept the revision, give reasons for that decision; and
 - (iii) where the accepted revision is different from that submitted to the Executive under paragraph (2) or, where paragraph (4)(a) applies, under that paragraph, notify the infrastructure controller of the changes made; and
 - (b) in relation to a revision of a safety case of an infrastructure controller, notify the infrastructure controller whether the revision has been accepted or not and, where it is not accepted, give reasons for that decision.
- (8) The Executive may direct an infrastructure controller to comply with the requirements imposed by paragraph (4) within such reasonable time, being a period of not less than 28 days, as may be specified by the Executive, and where such direction is given, the infrastructure controller shall comply with the direction.
- (9) Nothing in paragraph (7) shall prevent the Executive determining in the absence of a recommendation from the relevant infrastructure controller or, where applicable, the assessment body whether a revision should be accepted or not provided the Executive has given reasonable notice to the controller and, where applicable, the assessment body of its decision to do so.
- (10) Regulation 4(2) and (3) and regulation 5(3), (4)(d) and (6)(b) shall apply in relation to a revision submitted pursuant to paragraph (3) as if any reference in those regulations to a safety case prepared for the purposes of those regulations was a reference to a revision of that safety case prepared pursuant to this regulation.

Power of Executive in relation to safety cases

8.—(1) Where a safety case has been accepted pursuant to these Regulations, the Executive may in writing direct the person who prepared that safety case to prepare revisions to it in relation to such matters as may be notified to that person by the Executive, and a direction made for the purposes of this regulation shall state the reasons why in the opinion of the Executive a revision is necessary and shall specify a time, not being less than 28 days, within which such revision shall be submitted to the Executive and, where appropriate, to the infrastructure controller.

(2) The procedures for revisions set out in regulation 7 shall apply to a revision submitted pursuant to paragraph (1) as if the revision had been made pursuant to paragraph (3) of regulation 7.

Audit

9.—(1) The infrastructure controller shall procure an assessment body to undertake at intervals or not more than 12 months an audit of—

- (a) those operations of the infrastructure controller arising from control of railway infrastructure and stations; and
- (b) those operations of any other person operating trains or stations in relation to railway infrastructure in the control of the infrastructure controller,

and obtain from that body a report or reports of such audit.

(2) The infrastructure controller shall as soon as reasonably practicable after its completion send a copy of any report prepared for the purpose of paragraph (1) to—

- (a) the person (not being the infrastructure controller) to whose operations the report relates;
- (b) any other railway operator who may be affected by matters to which the report relates; and
- (c) the Executive.

(3) In this regulation—

- (a) “audit” means a systematic assessment of the adequacy of the management system of the railway operator to achieve compliance by him with the relevant statutory provisions in relation to the operations undertaken by him;
- (b) “management system” means the organisation and arrangements established by the railway operator for managing his undertaking.

PART III GENERAL DUTIES

Duty to conform with safety case

10.—(1) Where a person has had accepted a safety case pursuant to these Regulations, he shall ensure that the procedures and arrangements described in the safety case and any revision thereof are followed.

(2) In criminal proceedings for a contravention of paragraph (1) it shall be a defence for the accused to prove that—

- (a) in the particular circumstances of the case it was not in the best interests of the health and safety of persons to follow the procedures or arrangements concerned and there was insufficient time to revise the safety case pursuant to regulation 7; or
- (b) the commission of the offence was due to a contravention by another person of regulation 11 and the accused had taken all reasonable precautions and exercised all due diligence to ensure that the procedures or arrangements were followed.

Co-operation

11.—(1) Every person to whom this regulation applies shall—

- (a) co-operate so far as is necessary with a railway operator (in this regulation referred to as “the duty holder”) to enable him to comply with the provisions of these Regulations; and

- (b) co-operate so far as is necessary with an assessment body to enable it to make any recommendation pursuant to regulations 4 or 5 and to carry out any audit referred to in regulation 9.
- (2) This regulation applies to—
- (a) any railway operator whose operations affect or are affected by operations carried out by the duty holder;
 - (b) an employer of persons or a self-employed person carrying out work on or in relation to premises or plant owned or controlled by the duty holder; and
 - (c) an assessment body required to make a recommendation pursuant to regulations 4 or 5 or to carry out an audit pursuant to regulation 9.

Duties of infrastructure controller

12.—(1) Subject to paragraph (2), an infrastructure controller shall take all reasonable steps to ensure that—

- (a) any person operating trains in relation to railway infrastructure controlled by that controller; and
- (b) any person operating a station served by railway infrastructure controlled by that controller,

carries out those operations so as to conform with the safety case prepared by that person and any revisions to it made under these Regulations.

(2) The duty imposed on an infrastructure controller under paragraph (1) shall extend only to those parts of a safety case which affect or are likely to affect the performance of the health and safety duties of the infrastructure controller.

Notification of non-compliance

13. Where, in respect of a person operating trains or stations referred to in regulation 12—

- (a) an infrastructure controller is aware that that person is failing to conform to his safety case in a manner which, in the opinion of the infrastructure controller, is likely to increase the risk of serious personal injury to any person; or
- (b) that person fails to comply with a reasonable request of the infrastructure controller as respects any matter referred to in regulation 4(1)(c),

the infrastructure controller shall (whether or not the failure has been rectified) within 7 days notify the Executive of that fact and of the steps he has taken or proposes to take to achieve compliance with the safety case or the request as the case may be.

Notifications, consultations and documents

14.—(1) A person who prepares a safety case pursuant to these Regulations shall—

- (a) when submitting that safety case for acceptance, notify the Executive of an address in Great Britain for the purposes of this regulation (and the address so notified is referred to in this regulation as “the notified address”);
- (b) keep the accepted safety case and any revision thereof or a copy thereof at the notified address;
- (c) make available for public inspection at the notified address at reasonable times and on reasonable notice a copy of the accepted safety case and any revision made thereto, save that nothing in this sub-paragraph shall require the disclosure of any information relating

to a named individual or which is commercially confidential or of any information the disclosure of which is detrimental to national security or to the security of the railway;

- (d) keep each audit report relating to his operations or a copy thereof at the notified address;
- (e) ensure that a record is made of any action taken in consequence of such an audit report and keep that record or a copy thereof at the notified address;
- (f) ensure that a report is made of every review carried out pursuant to regulation 6 and ensure that a copy of it is sent to the Executive and, except where the report relates to the safety case of the relevant infrastructure controller, the relevant infrastructure controller; and
- (g) keep such report or a copy thereof at the notified address.

(2) The person to whose operations an audit report prepared pursuant to the arrangements referred to in paragraph 5(d) of Schedule 1 relates shall, as soon as reasonably practicable after its completion, send a copy of that audit report to—

- (a) the Executive;
- (b) each railway operator affected by matters to which the report relates; and
- (c) in the case of a report prepared in relation to the operation of a train or a station, the relevant infrastructure controller.

(3) Where an infrastructure controller scrutinises a safety case submitted to him pursuant to regulation 5 or a revision submitted to him pursuant to regulation 7, he shall make a record of the steps he has taken in that scrutiny and of the results thereof.

(4) Where an infrastructure controller has made a recommendation to the Executive in respect of a safety case or revision, the controller shall keep a copy of that safety case or revision as accepted by the Executive, every report sent to him pursuant to paragraph (1)(f) and the record referred to in paragraph (3) at the notified address.

(5) Each report and record required to be kept by this regulation shall be kept for a period of 5 years after it has been made, and each safety case and revision required to be kept by this regulation shall be kept for so long as it is current.

(6) It shall be sufficient compliance with paragraphs (1) and (4) for the information in the documents to be kept at the notified address on film or by electronic means, provided that the information is capable of being reproduced as a written copy at that address and it is secure from loss or unauthorised interference.

(7) A person who has notified an address pursuant to paragraph (1)(a) may subsequently notify to the person who has accepted the safety case a different address in Great Britain and, where he does so, references in this regulation to the notified address shall be construed as the address in the last notification made under this paragraph.

(8) An employer who prepares a safety case or revision thereto pursuant to these Regulations shall, in relation to its preparation, consult—

- (a) safety representatives (within the meaning of regulation 2(1) of the Safety Representatives and Safety Committees Regulations 1977⁽⁸⁾), and
- (b) such other employees as he is required to consult by virtue of regulation 3 of the Health and Safety (Consultation with Employees) Regulations 1996⁽⁹⁾.

(9) Regulation 7(1) of the Safety Representatives and Safety Committees Regulations 1977 shall have effect as if the reference to safety representatives being entitled to inspect and take copies of documents were, in a case where by virtue of paragraph (6) information is kept on film or in

⁽⁸⁾ S.I. 1997/500.

⁽⁹⁾ S.I. 1996/1513.

electronic form, a reference to them being entitled to be given appropriate facilities to enable them to read it and to take a copy of it.

PART V

MISCELLANEOUS

Appeals

15.—(1) A person who is aggrieved by—

- (a) a refusal of the Executive to accept a safety case or a revision of a safety case submitted by him under these Regulations; or
- (b) a direction of the Executive to prepare a revision of his safety case pursuant to regulation 8(1),

may appeal to the Secretary of State.

(2) For the purposes of paragraph (1), a failure of the Executive to accept within a reasonable time a safety case or revision submitted to it pursuant to these Regulations shall be treated as a refusal to accept it.

(3) Sub-sections (2) to (6) of section 44 of the 1974 Act shall apply for the purposes of paragraph (1) as they apply to an appeal under section 44(1) of that Act.

(4) The Health and Safety Licensing Appeals (Hearing Procedure) Rules 1974(**10**), as respects England and Wales, and the Health and Safety Licensing Appeals (Hearing Procedure) (Scotland) Rules 1974(**11**), as respects Scotland, shall apply to an appeal under paragraph (1) as they apply to an appeal under sub-section (1) of the said section 44, but with the modification that references to a licensing authority are to be read as references to the Executive.

Transitional provisions

16.—(1) A safety case accepted pursuant to the 1994 Regulations and which is current immediately before the coming into force of these Regulations shall, subject to the requirements imposed by paragraph (3), be treated as if it had been accepted pursuant to these Regulations.

(2) In relation to a safety case referred to in paragraph (1) an infrastructure controller shall—

- (a) prepare a revision to that safety case for the purposes of including such matters as are required to be included in the safety case by these Regulations and which were not required by the 1994 Regulations; and
- (b) submit the revision to the Executive within 6 months of the coming into force of these Regulations.

(3) In relation to a safety case referred to in paragraph (1) a railway operator (other than an infrastructure controller) shall—

- (a) prepare a revision to that safety case for the purposes of including such matters as are required to be included in the safety case by these Regulations and which were not required by the 1994 Regulations; and
- (b) submit the revision to the relevant infrastructure controller and to the Executive by the date by which the periodic review would have been required by virtue of regulation 6(3) of the 1994 Regulations, save that—

(10) S.I. 1974/2040.

(11) S.I. 1974/2068.

- (i) where the date of that review would fall within the period of 6 months from the coming into force of these Regulations, the revision shall be submitted not later than 6 months after the coming into force of these Regulations; and
- (ii) where the date of that review would fall outside the period of 2 years from the coming into force of these Regulations, the revision shall be submitted not later than 2 years after the coming into force of these Regulations.

(4) The provisions of these Regulations shall apply to a revision submitted under paragraphs (2) or (3) as they apply to a revision submitted under regulation 7(3).

(5) Until 31st December 2003, regulation 6 shall apply to a safety case accepted pursuant to the 1994 Regulations and which is still current immediately before the coming into force of these Regulations as if the reference to 3 years were a reference to 3 years from the date of the last review undertaken pursuant to regulation 6(3) of the 1994 Regulations.

(6) Any exemption granted by the Executive under regulation 11 of the 1994 Regulations and which has not been revoked shall, notwithstanding the revocation of the 1994 Regulations, continue in force and shall have effect as if it had been granted pursuant to regulation 17 of these Regulations.

Exemptions

17.—(1) Subject to paragraph (2) and to any Community obligation of the United Kingdom the Executive may, by a certificate in writing, exempt any person or class of persons from any requirement or prohibition imposed by these Regulations and any such exemption may be granted subject to conditions and with or without limit of time and may be revoked by a certificate in writing at any time.

(2) The Executive shall not grant any such exemption unless, having regard to the circumstances of the case, and in particular to—

- (a) the conditions, if any, which it proposes to attach to the exemption; and
- (b) any other requirements imposed by or under any enactment which apply to the case,

it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it.

(3) Subject to any Community obligation of the United Kingdom, the Secretary of State for Defence may, in the interests of national security, by a certificate in writing exempt any person or class of persons from the requirements of these Regulations and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by the said Secretary of State by a further certificate in writing at any time.

Amendment and revocation

18.—(1) The enactments referred to in Schedule 3 shall be amended in accordance with the provisions of that Schedule.

(2) The Railways (Safety Case) Regulations 1994⁽¹²⁾ are hereby revoked.

2nd October 2000

John Prescott
Signed by the Secretary of State for the
Environment, Transport and the Regions.

(12) [S.I. 1994/237](#).

SCHEDULE 1

Regulations 4 and 5

PARTICULARS TO BE INCLUDED IN A SAFETY CASE

1. The name and address of the person who has prepared the safety case (in this Schedule referred to as “the duty holder”).
2. A description of the operation undertaken by the duty holder.
3. A general description of the railway infrastructure, premises or plant intended to be used by the duty holder for the operation undertaken by him.
4. Particulars of risk assessments carried out by the duty holder in relation to railway operations undertaken by him including—
 - (a) a statement of the assessment process undertaken, the methods of any calculation used and any assumptions made;
 - (b) a statement of the significant findings of the risk assessment including the measures in place and any further measures the duty holder intends to take to comply with the relevant statutory provisions; and
 - (c) particulars of the arrangements the duty holder has made for the effective planning, organisation, control, monitoring and review of the measures identified in sub-paragraph (b) above.
5. Particulars to demonstrate that the management system of the duty holder is adequate to ensure that the relevant statutory provisions will be complied with by him in relation to the operation he undertakes, including—
 - (a) a statement of the duty holder’s general policy with respect to the health and safety of persons affected by the operation he undertakes and of the health and safety objectives he intends to achieve in relation to it;
 - (b) particulars to demonstrate that the duty holder has an adequate organisation for carrying out the policy referred to in sub-paragraph (a) above and adequate arrangements for ensuring the competence of his employees as respects health and safety;
 - (c) particulars of the arrangements that the duty holder has established for implementing the policy referred to in sub-paragraph (a) above, for setting health and safety objectives and for measuring health and safety performance; and
 - (d) particulars of the arrangements that the duty holder has established for the carrying out of audits, for the making of audit reports and for the review of health and safety performance.
6. Particulars of the—
 - (a) technical specifications; and
 - (b) procedures or arrangements relating to operations or maintenance, which the duty holder intends to follow in connection with the operation undertaken by him, in so far as they affect the health and safety of persons.
7. Particulars of the arrangements relating to health and safety that the duty holder has established for the design and procurement of premises and plant to be used by him or under his control.
8. Particulars of the arrangements that the duty holder has established for consulting his employees on matters of health and safety including the arrangements for complying with regulation 14(8).
9. Particulars of the arrangements that the duty holder has established for the making and keeping of records relating to the training and competence of his employees as respects health and safety.

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10. Particulars to demonstrate that the duty holder has established adequate arrangements for the passing and receiving of information relevant to health and safety to and from—

- (a) persons within his undertaking;
- (b) railway operators whose operations affect or are affected by the operation undertaken by the duty holder; and
- (c) railway operators who may require the information in order to comply with their health and safety duties.

11. Particulars of the arrangements that the duty holder has established for securing the health and safety of persons and for managing work carried out by persons who are not his employees on or in relation to premises or plant which he owns or controls.

12. Particulars of the arrangements that the duty holder has established to enable him to comply with regulation 11, including particulars to demonstrate that the duty holder has established adequate arrangements for enabling the infrastructure controller to follow with respect to that safety case the arrangements described in his own safety case pursuant to paragraphs 3 and 4 of Schedule 2.

13. Particulars to demonstrate that the duty holder has established adequate arrangements—

- (a) for investigating accidents and other incidents which could endanger persons;
- (b) for identifying the causes of such accidents or incidents;
- (c) for co-ordinating such investigations with the investigations carried out by other railway operators; and
- (d) for participating in investigations carried out by other railway operators.

14. Particulars of the arrangements that the duty holder has established for dealing with accidents and with emergencies or other incidents which could endanger persons.

15. Particulars of the arrangements the duty holder has established—

- (a) to prevent risks to the health and safety of persons arising from the movement or overcrowding of persons at stations operated by the duty holder;
- (b) for the evacuation of persons in an emergency from stations operated by the duty holder; and
- (c) for the provision of equipment and arrangements for the evacuation of persons in an emergency from trains operated by the duty holder.

16. The duty holder's proposals for improvements to his safety case and to the health and safety measures referred to in it, together with his proposed time-scales for the making of such improvements.

17. In this Schedule—

- (a) “audit” means systematic assessment of the adequacy of the management system to achieve the purpose referred to in paragraph 5(d) carried out by persons who are sufficiently independent of the system (but who may be employed by the duty holder) to ensure that such assessment is objective;
- (b) “management system” means the organisation and arrangements established by the duty holder for managing his undertaking;
- (c) any reference to an operation undertaken by a duty holder is—
 - (i) where the safety case is prepared pursuant to these Regulations by an infrastructure controller, a reference to the operations he carries out in relation to the railway infrastructure concerned; and

- (ii) where the safety case is prepared pursuant to these Regulations by a person who operates trains or a station, a reference to the train or station operations concerned; and
- (d) any reference to operations undertaken includes operations which are intended to be undertaken.

SCHEDULE 2

Regulation 4

ADDITIONAL PARTICULARS TO BE INCLUDED IN A SAFETY CASE OF AN INFRASTRUCTURE CONTROLLER

1. Particulars of the arrangements established by the infrastructure controller who has prepared the safety case for scrutinising any safety cases or revisions thereof sent to him pursuant to regulation 5 or 7 and the criteria he will use for making a recommendation to the Executive in relation thereto.
2. Particulars to demonstrate that the arrangements and criteria referred to in paragraph 1 will enable him before making a recommendation in respect of a safety case or revision thereof to be satisfied on the matters referred to in regulation 2(4).
3. Particulars of—
 - (a) the arrangements he has established for ensuring that railway operators who have had their safety cases accepted by the Executive follow the procedures and arrangements described in them in so far as those procedures and arrangements affect or are likely to affect the performance of that controller’s health and safety duties; and
 - (b) the steps he intends to take where such operators fail to comply with the procedures and arrangements referred to.
4. Particulars of—
 - (a) the arrangements which the infrastructure controller has made for requiring an operator of trains on railway infrastructure under the control of that controller or an operator of a station served by such infrastructure to comply with his reasonable requests as respects any aspect of the operation which affects or is likely to affect the performance of the health and safety duties of the controller;
 - (b) the nature and circumstances of the requests which may be made; and
 - (c) the steps he intends to take where a request referred to in sub-paragraph (a) above is not complied with.

SCHEDULE 3

Regulations 18, 19 and 20

AMENDMENT OF REGULATIONS

The Railways (Safety Critical Work) Regulations 1994

In the definition of “railway operator” in regulation 2(1) of the Railways (Safety Critical Work) Regulations 1994(13), in place of “the Railways (Safety Case) Regulations 1994” there shall be substituted “the Railways (Safety Case) Regulations 2000”.

(13) S.I. 1994/299.

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The Carriage of Dangerous Goods by Rail Regulations 1996

In the definition of “infrastructure controller” in regulation 2(1) of the Carriage of Dangerous Goods by Rail Regulations 1996(14), in place of “the Railways (Safety Case) Regulations 1994” there shall be substituted “the Railways (Safety Case) Regulations 2000”.

The Packaging, Labelling and Carriage of Radioactive Material by Rail Regulations 1996

In the definition of “infrastructure controller” in the Packaging, Labelling and Carriage of Radioactive Material by Rail Regulations 1996(15), in place of “the Railways (Safety Case) Regulations 1994” there shall be substituted “the Railways (Safety Case) Regulations 2000”.

The Railways Regulations 1998

In regulation 13(2)(a) of the Railways Regulations 1998(16), in place of “regulation 4 of the Railways (Safety Case) Regulations 1994” there shall be substituted “regulation 5 of the Railways (Safety Case) Regulations 2000”.

The Railway Safety Regulations 1999

In the definition of “infrastructure controller” in regulation 2(1) of the Railway Safety Regulations 1999(17), in place of “the Railways (Safety Case) Regulations 1994” there shall be substituted “the Railways (Safety Case) Regulations 2000”.

The Health and Safety (Fees) Regulations 2000

The Health and Safety (Fees) Regulations 2000(18) shall be amended as follows—

- (a) in regulation 20(2), in place of “the 1994 Regulations”, there shall be substituted “the Railways (Safety Case) Regulations 1994 or the 2000 Regulations”;
- (b) in regulation 20(5)—
 - (i) in place of “the “1994 Regulations” means the Railways (Safety Case) Regulations 1994”, there shall be substituted “the “2000 Regulations” means the Railways (Safety Case) Regulations 2000”; and
 - (ii) in place of “the “1994 Regulations”” where it appears for the second time, there shall be substituted “the “2000 Regulations””;
- (c) in regulation 22(6), in place of “the Railways (Safety Case) Regulations 1994”, there shall be substituted “the Railways (Safety Case) Regulations 2000”; and
- (d) in Schedule 17—
 - (i) in the first entry in column 1, in place of “the 1994 Regulations”, there shall be substituted “the Railways (Safety Case) Regulations 1994 or the 2000 Regulations”;
 - (ii) in the second entry in column 1, in place of “regulation 11 of the 1994 Regulations”, there shall be substituted “regulation 17 of the 2000 Regulations”; and
 - (iii) in the third entry of column 1, in place of “the 1994 Regulations”, there shall be substituted “the Railways (Safety Case) Regulations 1994 or the 2000 Regulations”.

(14) S.I. 1996/2089.

(15) S.I. 1996/2090.

(16) S.I. 1998/1340.

(17) S.I. 1999/2244.

(18) S.I. 2000/2482.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations revoke and re-enact with modifications the Railways (Safety Case) Regulations 1994 which provided for railway operators to prepare safety cases and to submit them for acceptance to the infrastructure controller or to the Health and Safety Executive (“the Executive”).

2. In addition to minor and drafting amendments, the Regulations make the following changes of substance.

3. The Regulations—

- (a) extend the requirement for safety cases to be accepted by the Executive to every person who operates trains or stations (*regulation 5(1)*);
- (b) require an infrastructure controller to make a recommendation to the Executive with regard to the acceptability of a safety case or revision thereto prepared by a train or station operator (*regulation 5(4)*);
- (c) in relation to railway infrastructure specified in regulation 3, require an infrastructure controller—
 - (i) to procure from an assessment body (as defined in regulation 2(1)) an assessment of his safety case and of any safety case submitted to him by a train or station operator (*regulations 4(2) and 5(3)*);
 - (ii) to procure from that body a report of that assessment including a recommendation as to whether the safety case should be accepted and whether it is satisfactory for the purposes of regulations 2(4) or 2(5) as the case may be (*regulation 4(2) and 5(3)*); and
 - (iii) to provide a copy of those reports to the Executive (*regulations 4(3) and 5(4)*);
- (d) apply the requirements referred to in paragraph (c) above also in respect of revisions to safety cases (*regulation 7(10)*);
- (e) confer upon the Executive—
 - (i) a duty to notify its determination as to acceptance of a safety case or revision to the person who has made that safety case or revision and, where different, to the infrastructure controller (*regulations 4(4), 5(7) and 7(7)*);
 - (ii) a power to direct an infrastructure controller to scrutinise an operator’s safety case and to make a recommendation upon it (*regulation 5(8)*);
 - (iii) a power to require a review of a safety case (*regulation 6*); and
 - (iv) a power to direct that a revision be made to a safety case (*regulation 8*);
- (f) in relation to railway infrastructure specified in regulation 3, require an infrastructure controller to procure from an assessment body at least every 12 months an audit of specified operations and to obtain a report of that audit (*regulation 9*);
- (g) extend the duty to co-operate to an assessment body and in respect of the functions to be carried out by such body (*regulation 11*);
- (h) require an infrastructure controller to ensure that operators of trains or stations conform with their safety cases (*regulation 12*) and to notify non-compliance to the Executive in specified circumstances (*regulation 13*);

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- (i) require safety cases and revisions to be made available for public inspection and require audit reports to be sent to the Executive and other specified persons (*regulation 14*); and
 - (j) provide for an appeal to the Secretary of State against a refusal by the Executive to accept a safety case or revision and against a direction of the Executive to revise a safety case (*regulation 15*).
4. The Regulations contain transitional provisions (*regulation 16*).
5. The Regulations make consequential amendments and revoke the Railways (Safety Case) Regulations 1994 (*regulation 18*).
6. A copy of the regulatory impact assessment prepared in respect of these Regulations can be obtained from the Railways Directorate, Department of the Environment, Transport and the Regions, Zone 3/29 Great Minster House, 76 Marsham Street, London, SW1P 4DR. A copy has been placed in the library of each House of Parliament.