
STATUTORY INSTRUMENTS

2002 No. 1166

TRANSPORT

RAILWAYS

The Railways (Interoperability) (High-Speed) Regulations 2002

<i>Made</i>	- - - -	<i>24th April 2002</i>
<i>Laid before Parliament</i>		<i>25th April 2002</i>
<i>Coming into force</i>	- -	<i>16th May 2002</i>

The Secretary of State for Transport, Local Government and the Regions, being a Minister designated⁽¹⁾ for the purposes of subsection (2) of section 2 of the European Communities Act 1972⁽²⁾ in relation to measures relating to the railways and railway transport, in exercise of the powers conferred on him by that subsection and in exercise of the powers conferred by section 247 of the Transport Act 2000⁽³⁾ hereby makes the following Regulations:—

PART I

Preliminary

Citation and commencement

1. These Regulations may be cited as the Railways (Interoperability) (High-Speed) Regulations 2002 and shall come into force on 16th May 2002.

Interpretation etc.

2.—(1) In these Regulations “the high-speed Directive” means Council Directive No.96/48/EC of 23rd July 1996 on the interoperability of the trans-European high-speed rail system⁽⁴⁾, and any reference in the Schedules to “the Directive” shall be construed accordingly.

(2) Except for the references to the European Communities in the definition of “the Commission” and in relation to the Official Journal, a reference to the European Community includes a reference to the EEA, and a reference to a Member State includes a reference to an EEA State.

(1) S.I.1996/266.

(2) 1972 c. 68.

(3) 2000 c. 38.

(4) O.J. No. L235, 17.9.97, p.6, corrected by O.J. L262, 16.10.96, p.18.

- (3) For the purposes of paragraph (2)—
- (a) the “EEA” means the European Economic Area;
 - (b) an “EEA State” means a State which is a Contracting Party to the EEA Agreement; and
 - (c) the “EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993⁽⁵⁾.
- (4) In these Regulations,—
- (a) Annexes I to VII of the high-speed Directive are respectively set out in Schedules 1 to 7 hereto;
 - (b) a reference to a numbered regulation or Schedule is a reference to the regulation or Schedule in these Regulations so numbered;
 - (c) a reference to a numbered paragraph is a reference to the paragraph so numbered in the regulation in which that reference occurs; and
 - (d) a reference to an Article is a reference to the Article so numbered in the high-speed Directive and a reference to a paragraph of an Article shall be construed accordingly.
- (5) In these Regulations unless the context otherwise requires—
- “the 1974 Act” means the Health and Safety at Work etc. Act 1974⁽⁶⁾;
- “the 1978 Order” means the Health and Safety at Work (Northern Ireland) Order 1978⁽⁷⁾;
- “the 2000 Regulations” means the Railways (Interoperability)(Notified Bodies) Regulations 2000⁽⁸⁾;
- “accessibility compliance certificate” means a certificate which is obtained in respect of any high-speed rolling stock that constitutes a rail vehicle within the meaning of section 46 of the Disability Discrimination Act 1995⁽⁹⁾ issued pursuant to the procedure in regulation 22, and which includes details of any exemption orders made under section 47(1) of that Act in respect of that high-speed rolling stock;
- “Article 21 Committee” means the Committee set up pursuant to Article 21 of the high-speed Directive;
- “the Authority” means the Strategic Rail Authority⁽¹⁰⁾ except in relation to Northern Ireland where it means the Department;

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- (5) Cmnd. 2972 and 2183. The application of the high-speed Directive was extended to the EEA from 1 May 1997 by virtue of Decision No. 25/97 of the EEA Joint Committee (O.J. No. L242, 4.9.97, p.74.) which inserted a reference to the high-speed Directive after point 37 in Annex XIII to the EEA Agreement.
- (6) 1974 c. 37. Section 22(1) and (2) was amended by the Consumer Protection Act 1987, section 3, Schedule 3. Section 22(4) was substituted by the Consumer Protection Act 1987, section 3, Schedule 3. Section 24(2) and (4) was amended by the Employment Rights (Dispute Resolution) Act 1998, section 1(2)(a). Section 33(1)(c) was amended by the Employment Protection Act 1975, subsection 116, 125(3), Schedule 15, paragraph 11, Schedule 18. Section 33(1)(h) was amended by the Consumer Protection Act 1987, section 36, Schedule 3. Words omitted in section 33(1)(m) were repealed by the Forgery and Counterfeiting Act 1981, section 30, Schedule, Part 1. Section 33(2A) was inserted by the Offshore Safety Act 1992, section 4(2), (3) and (6). Section 33(2) was amended by the Criminal Law Act 1977, section 31, Schedule 6. Section 33(3) amended by the Offshore Safety Act 1992, section 4(4), (6) and the Magistrates Court Act 1980, section 32(2). Section 33(5) was repealed by the Offshore Safety Act 1992, sections 4(5), (6), 7(2), Schedule 2. Section 33(6) was repealed by the Forgery and Counterfeiting Act 1981, section 30, Schedule, Part 1. Section 34(5) was amended by the Criminal Procedure (Scotland) Act 1975, section 461(1), Schedule 9, paragraph 51. Section 33(6) was amended by the Gas Act 1986, section 67(1), Schedule 7, paragraph 18.
- (7) S.I. 1978/1039 (N.I. 9). Article 20 was amended by S.I. 1998/2795 (N.I. 18), Article 6(1) and Schedule 1, paragraph 13(a). Article 24 was amended by S.I. 1987/2049 (N.I. 20), Article 28 and Schedule 2, paragraph 3. Article 26 was amended by S.I. 1984/1159 (N.I. 9), Article 35 and Schedule 4. Article 31 was amended by: S.I. 1987/2049 (N.I. 20), Article 28 and Schedule 2 paragraph 7; S.I. 1988/595 (N.I. 3), Article 10(1)(c); S.I. 1986/1883 (N.I. 15), Article 13(3) and Schedule 5; S.I. 1992/1728 (N.I. 17), article 6(1), (3), (4), (5), (7), Article 8 and Schedule 2; S.I. 1998/2795 (N.I. 18), Article 6 and Schedule 1, paragraph 15, and Schedule 2, Forgery and Counterfeiting Act 1981 c. 45 section 30 and Schedule.
- (8) S.I. 2000/1674.
- (9) 1995 c. 50.
- (10) Established under s.201 of the Transport Act 2000 c. 38.

“British standard implementing a European standard” means a European standard transposed into a British standard by the British Standards Institution;

“certificate of conformity” means a certificate drawn up by the notified body in relation to a structural subsystem as part of the verification assessment procedures for that structural subsystem; and the reference in Schedule 6 to certificate shall be construed as a reference to the certificate of conformity;

“the Channel Tunnel system” has the meaning given by section 1(7) of the Channel Tunnel Act 1987(11) to the words “the tunnel system”;

“the Commission” means the Commission of the European Communities;

“common technical specification” means a technical specification, drawn up in accordance with a procedure recognised by the Member States with a view to uniform application in all Member States which has been published in the Official Journal and is in force, and includes a TSI;

“conformity declaration” means an EC declaration of conformity of an interoperability constituent drawn up for the purposes of regulation 11;

“conformity or suitability for use assessment procedures” means the procedures specified in regulation 19 and includes any combination of those procedures which the circumstances so require;

“contracting entity” means any person who, in relation to a structural subsystem used in or intended for use in the construction, upgrading or operation of the rail network schemes—

- (a) has contracted with another person for the manufacture or construction by that other person of that structural subsystem; or
- (b) manufactures or constructs that structural subsystem for his own use, or for sale to, or use by, another person but not where he is contracted to do so by a person falling under paragraph (a),

and includes an authorised representative established in the Community of such a person;

“the Department” means the Department for Regional Development established by article 3(1) of the Departments (Northern Ireland) Order 1999(12);

“essential requirements”, except in the definition of European technical approval, means the requirements set out in Schedule 3;

“European specification” means a common technical specification, a European technical approval or a British standard implementing a European standard;

“European standard” means a standard approved by the European Committee for Standardisation or by the European Committee for Electrotechnical Standardisation as a European Standard or a Harmonisation Document, according to the Common Rules of those organisations or by the European Telecommunications Standards Institute according to its own rules as a European Telecommunications Standard;

“European technical approval” means an approval of the fitness of a product for a particular use given by an approval body designated for the purpose by a Member State following a technical assessment of whether the product fulfils all essential requirements for such a product, having regard to the inherent characteristics of the product and any such defined conditions of application and use as are provided for in any Council Directive applicable to the product;

(11) 1987 c. 53.

(12) S.I. 1999/283 (N.I. 1).

“the Executive” means the Health and Safety Executive⁽¹³⁾ except in relation to Northern Ireland where it means the Health and Safety Executive for Northern Ireland⁽¹⁴⁾;

“high-speed infrastructure” means the infrastructure described in paragraph 1 of Schedule 1;

“high-speed rolling stock” means the subsystem constituting rolling stock described in paragraph 2 of Schedule 1, capable of use on a rail network scheme; and “rolling stock” means a vehicle falling within the definition of rolling stock in section 83(1) of the Railways Act 1993⁽¹⁵⁾ except that where such a vehicle can only be operated as part of a fixed formation multiple unit it means all of that unit;

“interoperability” means the ability of the trans-European high-speed rail system to allow the safe and uninterrupted movement of high-speed rolling stock; and cognate expression shall be construed accordingly;

“interoperability constituent” means any elementary component, group of components, sub-assembly or complete assembly of equipment that is incorporated or intended to be incorporated into a structural subsystem upon which the interoperability of the trans-European high-speed rail system depends and that has been specified by—

- (a) a TSI covering a particular subsystem as being an interoperability constituent; or
- (b) the Secretary of State in a notification given under regulation 27 as an interoperability constituent to which any standards, technical specifications and technical rules covered by that notification relate;

“major works” in relation to a structural subsystem means any works that do not constitute minor works; and “minor works” includes—

- (a) minor alterations;
- (b) replacement of components, assemblies or sub-assemblies in accordance with current technology;
- (c) maintenance; and
- (d) like for like replacement;

“notified body” has the meaning given by regulations 4 and 37 and the references in paragraph 5.3 of Schedule 6 to a body notified, in paragraph 6 of Schedule 6 to each body, and in paragraphs 1, 2, 3, 6 and 7 of Schedule 7 to the body and that body shall be construed as a reference to a notified body;

“notified standards” means the standards, technical specifications and technical rules notified by the Secretary of State to the Commission pursuant to regulation 27;

“Official Journal” means the Official Journal of the European Communities;

“operator” in relation to the use of an interoperability constituent or structural subsystem means the person having the management of that interoperability constituent or structural subsystem for the time being;

“owner” in relation to a structural subsystem means any person who has an estate or interest in, or right over that subsystem, and whose permission is needed before another may use it;

“person responsible” in relation to an interoperability constituent means the manufacturer of that interoperability constituent or his authorised representative established in the Community;

(13) Established under section 10 of the Health and Safety at Work etc. Act 1974 (c. 37).

(14) Formerly known as the Health and Safety Agency for Northern Ireland which was established under Article 12 of the Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/1039 (N.I. 9)). Article 3(1) of the Health and Safety at Work (Amendment) (Northern Ireland) Order 1998 (S.I. 1998/2795 (N.I. 18)) changed its name to the Health and Safety Executive for Northern Ireland.

(15) 1993 c. 43.

“placing into service” means, in respect of a structural subsystem, first using that subsystem on or as part of a rail network scheme for use in the transportation of passengers or freight; and cognate expressions shall be construed accordingly;

“placing on the market” means making an interoperability constituent available for purchase with a view to its use on the trans-European high-speed rail system; and cognate expressions shall be construed accordingly;

“project” means a discrete scheme for the construction or upgrading of the whole or a part of a rail network scheme; provided that where it is intended to carry out that construction or upgrading in parts, each of which are to be placed into service on a permanent basis independently on the other parts, it means any such part;

“RVAR” means the requirements imposed by the Rail Vehicle Accessibility Regulations 1998⁽¹⁶⁾; except in relation to Northern Ireland where it means the requirements imposed by the Rail Vehicle Accessibility Regulations (Northern Ireland) 2001⁽¹⁷⁾;

“rail network scheme” means one of the lines specified in Schedule 8 (which form part of the trans-European high-speed rail system);

“screening decision” has the meaning given by regulation 16(1);

“staged works decision” has the meaning given by regulation 17(2);

“subsystem” means—

- (a) high-speed rolling stock; and
- (b) a subsystem of one of the other kinds specified in paragraphs 1.1 and 1.2 of Schedule 2 which forms or is intended to form part of a rail network scheme;

and “structural subsystems” means—

- (a) high-speed rolling stock; and
- (b) the whole, or, a part, of an infrastructure subsystem, an energy subsystem and a control and command and signalling subsystem which is constructed or upgraded as a project;

“suitability declaration” is an EC declaration of suitability for use of an interoperability constituent prepared for the purposes of regulation 11;

“supervisory authority” means the Executive, except in relation to—

- (a) the Channel Tunnel system, where it means the Intergovernmental Commission; and for this purpose “the Intergovernmental Commission” has the same meaning as in the Channel Tunnel Act 1987⁽¹⁸⁾; and
- (b) Northern Ireland, where it means the Department;

“technical file” means a file relating to a structural subsystem which contains the matters required by regulation 13(9) and regulation 24(1)(b) and (c), and any reference in the schedules to the “technical record” shall be construed as a reference to the technical file;

“trans-European high-speed rail system” means the high-speed infrastructure and high-speed rolling stock described in Schedule 1;

“TSIs” means technical specifications for interoperability which are published in the Official Journal pursuant to Article 6(1) of the high-speed Directive and in force; and “relevant TSI” in relation to a structural subsystem includes any provision of a TSI which is relevant to the construction, upgrade or operation of a structural subsystem of that type;

“upgrading” means any major work on a structural subsystem which changes the performance of that structural subsystem and which either—

⁽¹⁶⁾ S.I. 1998/2456, the relevant amending instrument is S.I. 2000/3215.

⁽¹⁷⁾ S.R. (N.I.) 2001 No. 264.

⁽¹⁸⁾ 1987 c. 53.

- (a) the contracting entity is satisfied; or
 - (b) the supervisory authority has determined, in accordance with regulation 16, is upgrading for the purposes of these Regulations; and cognate expressions shall be construed accordingly;
- “verification assessment procedure” means the procedures specified in regulation 20;
- “verification declaration” means an EC declaration of verification in relation to a structural subsystem, drawn up pursuant to regulation 13(6); and
- “writing” apart from its usual meaning includes any text transmitted using electronic communications that is received, or accessible by the person to whom it is sent, in legible form.

Application of the Regulations

3. These Regulations apply to subsystems and interoperability constituents other than any—
- (a) structural subsystem that is placed into service; or
 - (b) interoperability constituent that is placed on the market,
- within three months after the date of the coming into force of these Regulations.

PART II

Notified Bodies

Notified bodies

4. For the purposes of these Regulations, a notified body is a body which has been—
- (a) appointed by the Authority as a notified body for the purpose of these Regulations and notified to the Commission and other Member States pursuant to regulation 5; or
 - (b) appointed by a Member State other than the United Kingdom, and notified by the Member State concerned to the Commission and the other Member States pursuant to Article 20(1) of the high-speed Directive.

Appointment of notified bodies by the Authority

- 5.—(1) The Authority may from time to time appoint such persons as it thinks fit to be notified bodies for the purposes of these Regulations.
- (2) The Authority shall not appoint any person as a notified body in accordance with paragraph (1) unless it is satisfied that that person is capable of meeting the criteria specified in Schedule 7.
- (3) An appointment—
- (a) shall relate to such descriptions of structural subsystems and interoperability constituents as the Authority may specify; and
 - (b) shall be made subject to such conditions as the Authority may specify, including any such conditions as are to apply upon or following termination of the appointment.
- (4) Subject to paragraphs (5)(b) and (c) and (6), and appointment under this regulation shall be for such period as may be specified in the appointment.
- (5) An appointment shall terminate—
- (a) upon the expiry of any period specified in the appointment pursuant to paragraph (4);
 - (b) upon the expiry of 90 days notice in writing given by the notified body to the Authority; or

(c) on any date specified for the termination of the appointment in accordance with paragraph (6),

whichever is the earliest.

(6) If at any time it appears to the Authority in relation to a notified body appointed by it that—

(a) any of the conditions of the appointment of that notified body are not being complied with; or

(b) the notified body is not meeting the criteria specified in Schedule 7,

the Authority may, by notice in writing to that notified body, specify a date on which the appointment of that person as a notified body shall terminate.

(7) Where the Authority is minded to terminate the appointment of a person as a notified body pursuant to the grounds specified in paragraph (6) it shall—

(a) give notice in writing to the notified body of the reasons why it is minded to do so;

(b) give the notified body the opportunity to make representations within a period of 14 days beginning with the day on which such notice is given; and

(c) consider any representations made within that period by the notified body before making its decision.

(8) When the appointment of a notified body terminates in accordance with paragraph (5) the Authority may—

(a) give such directions as the Authority considers appropriate, either to that notified body or to another notified body, for the purpose of making such arrangements as may be necessary or expedient for the determination of any matters which would, apart from the termination, have fallen to be determined by the notified body whose appointment is terminating; and

(b) without prejudice to the generality of sub-paragraph (a), authorise another notified body, to take over the functions of the notified body whose appointment has terminated, in respect of such matters as the Authority may specify.

(9) The Authority shall notify in writing the Commission and other Member States of the appointment or termination or appointment, as the case may be, of a notified body.

(10) Where it appears to the Authority that a notified body appointed by another Member State fails to meet the criteria set out in Schedule 7, it shall notify the Article 21 Committee of that fact forthwith.

Requirement on notified bodies to carry out functions

6.—(1) Save as provided in paragraph (2) where a contracting entity, person responsible or other interested person so requests in writing, a notified body appointed by the Authority shall carry out, in relation to a structural subsystem or interoperability constituent, the procedures and checks (including, where so provided as part of those procedures and checks, surveillance) required to ensure that the contracting entity or the person responsible, as the case may be, duly fulfils the obligations arising from the appropriate conformity or suitability for use assessment procedure or the appropriate verification assessment procedure.

(2) A notified body appointed by the Authority shall not be required to comply with a request under paragraph (1) if—

(a) the request relates to a structural subsystem or interoperability constituent of a description to which the appointment of that body does not relate;

(b) to do so would place that body in breach of a condition of its appointment;

(c) the documents submitted to it in relation to carrying out such functions are not in a language acceptable to that body;

- (d) the person making the request has not submitted with its request the amount of the fee which the body requires to be submitted with the request pursuant to regulation 9; or
 - (e) when a contracting entity, person responsible or other interested person makes its request pursuant to paragraph (1), the notified body reasonably believes that it will be unable to commence the required work in relation to that request within three months of receiving it.
- (3) In this regulation “interested person” means a person who is or expects to be subject to the duties imposed by regulation 12.

Notified bodies: certificates of conformity etc.

7.—(1) Where a notified body is minded to decline to draw up a certificate of conformity in relation to a structural subsystem, or is minded to decline to confirm that a conformity declaration or suitability for use declaration can be drawn up in respect of an interoperability constituent, it shall—

- (a) give notice in writing to the applicant of the reasons why it is minded to do so;
- (b) give the applicant the opportunity to make representations within a period of 28 days beginning with the day on which such notice is given; and
- (c) consider any representations made within that period by the applicant before making its decision.

(2) A notified body shall not draw up a certificate of conformity in relation to a structural subsystem unless satisfied that subsystem conforms to such of the TSIs or notified standards as it is required to conform by regulation 13(4).

(3) A notified body shall not confirm that a conformity declaration or suitability for use declaration can be drawn up in respect of an interoperability constituent unless satisfied that that constituent conforms to the such of the European specifications or notified standards as are required by regulation 11(2)(a).

Duties on notified bodies to consult

8. Notified bodies appointed by the Authority shall consult other notified bodies appointed pursuant to the high-speed Directive throughout the European Community in relation to the assessment procedures specified in regulations 19 and 20 with a view to ensuring that, particularly in the absence of TSIs, the conformity or suitability for use assessment procedures and the verification assessment procedures required under the high-speed Directive are consistently applied within the European Community.

Notified bodies: fees

9.—(1) Subject to paragraph (2), a notified body may charge such a fee in connection with or incidental to, carrying out its functions under these Regulations as it may determine.

(2) The fee charged pursuant to paragraph (1) shall not exceed the sum of the following—

- (a) the costs incurred or to be incurred by the notified body in carrying out relevant work; and
- (b) an amount of profit which is reasonable in the circumstances having regard to—
 - (i) the character and extent of the work carried out by the notified body on behalf of the person commissioning the work, and
 - (ii) the commercial rate normally charged on account of profit for that work or similar work.

(3) Subject to paragraph (4) the power in paragraph (1) includes the power to require the payment of a fee, or a reasonable estimate of the fee, in respect of work commissioned in advance of carrying out that work.

(4) Unless the parties otherwise agree, an amount charged in accordance with paragraph (3) shall not exceed a reasonable estimate of the fee for the work for the three months subsequent to the request for the advance payment.

The Strategic Rail Authority: fees

10. The Strategic Rail Authority may charge such reasonable fee in connection with, or incidental to, carrying out its functions under regulation 5 as it may determine.

PART III

General Provisions

Interoperability constituents: prohibition on placing on the market

11.—(1) No person who is the person responsible in respect of an interoperability constituent shall place that interoperability constituent on the market unless—

- (a) the requirements of paragraph (2) have been met in relation to that interoperability constituent; or
 - (b) the interoperability constituent that he places on the market is identical to an interoperability constituent that he has already placed on the market and in relation to which the requirements of paragraph (2) have been met.
- (2) The requirements referred to in paragraph (1) are that—
- (a) the interoperability constituent—
 - (i) conforms to such European specifications as have been published in the Official Journal that are relevant to an interoperability constituent of that type, or
 - (ii) where no such European specifications have been so published, or in the circumstances provided for in regulation 15, conforms to notified standards (if any) in relation to an interoperability constituent of that type;
 - (b) the interoperability constituent meets such of the essential requirements as relate to an interoperability constituent of that type;
 - (c) the appropriate conformity or suitability for use assessment procedure in respect of the interoperability constituent has been carried out;
 - (d) where required by a TSI, a notified body is appointed to carry out the appropriate conformity or suitability for use assessment procedure in respect of that interoperability constituent;
 - (e) either a conformity declaration or a suitability declaration, or both (as the case may be) has been drawn up in relation to the interoperability constituent by the person responsible in accordance with the requirements in Schedule 4; and
 - (f) enables interoperability to be achieved within the trans-European high-speed rail system.

(3) Where there is a requirement to prepare a conformity declaration or suitability declaration in relation to an interoperability constituent and that interoperability constituent is also subject to other requirements pursuant to a European Community Directive other than the high-speed Directive, the person who prepares that conformity declaration or suitability declaration shall state in that declaration whether or not the interoperability constituent in question meets those other requirements.

Interoperability constituents: duties on persons other than the person responsible

12. Where in the case of an interoperability constituent, any of the requirements of regulation 11 have not been met by the person responsible, such requirements shall be met by any person who—

- (a) places that interoperability constituent on the market; or
- (b) uses that interoperability constituent, or any part of it, in any interoperability constituent that he is manufacturing or assembling, or in any subsystem that he is constructing or upgrading.

Structural subsystems: duties on a contracting entity

13.—(1) This regulation applies where—

- (a) a contracting entity is—
 - (i) intending to contract with another person for the design, manufacture or construction by that other person of a structural subsystem, or
 - (ii) proposing himself to design, manufacture or construct a structural subsystem; or
- (b) a contracting entity has—
 - (i) contracted with another person for the design, manufacture or construction of a structural subsystem, or
 - (ii) has himself commenced work on the design, manufacture or construction of a structural subsystem.

(2) The contracting entity shall appoint a notified body in relation to the structural subsystem in question—

- (a) forthwith, when contracting with another person who is to design the structural subsystem;
- (b) before selecting or completing the design for the structural subsystem, where he is designing that structural subsystem himself; or
- (c) within three months of the coming into force of these Regulations where the contracting entity—
 - (i) is himself in the course of designing or constructing the structural subsystem, or
 - (ii) has contracted with another person for, the design, manufacture or construction of the structural subsystem.

(3) Where the contracting entity is required by paragraph (2) to appoint a notified body, that contracting entity shall ensure that a notified body (whether that originally appointed or another) continues to be appointed in relation to the structural subsystem in question until authorisation pursuant to regulation 14 is given or refused.

(4) The contracting entity shall ensure that the structural subsystem conforms to all relevant TSIs; except that where—

- (a) there are no relevant TSIs;
- (b) a relevant TSI does not govern all elements of the structural subsystem;
- (c) the structural subsystem is not required to conform with the whole or part of a relevant TSI pursuant to regulation 15; or
- (d) permitted by an exemption granted by the supervisory authority in accordance with paragraph (5),

the structural subsystem, or part of the structural subsystem, not governed by any relevant TSI shall conform with the notified standards (if any) that relate to it.

(5) Where a relevant TSI permits non-conformity with part or all of its provisions on the basis that conformity with those provisions would result in the structural subsystem being technically incompatible with the existing rail network schemes in which it is proposed to be placed into service, a contracting entity may apply to the supervisory authority for an exemption from those provisions.

(6) Provided the contracting entity has satisfied the requirements of paragraphs (4) and (7), he shall draw up a verification declaration in relation to the structural subsystem in accordance with the procedure required by Schedule 5.

(7) The requirements referred to in paragraph (6) are that—

- (a) the structural subsystem meets such of the essential requirements as relate to that type of structural subsystem;
- (b) the appropriate verification assessment procedure in respect of the structural subsystem has been carried out in accordance with regulation 20;
- (c) the certificate of conformity has been drawn up in relation to the structural subsystem in accordance with the procedures required by Schedule 6; and
- (d) the technical file contains the information and documents required by paragraph (9).

(8) Where the RVAR constitute part of the notified standards, and pursuant to paragraph (4) they are standards with which high-speed rolling stock is required to comply, a contracting entity may apply—

- (a) in relation to Great Britain to the Secretary of State, or
- (b) in relation to Northern Ireland to the Department,

for an accessibility compliance certificate in respect of that high-speed rolling stock pursuant to the procedure set out in regulation 22.

(9) The following shall be placed in the technical file—

- (a) the items required by paragraph 4 of Schedule 6;
- (b) records relating to the conditions and limits of use of the structural subsystem;
- (c) manuals and instructions relating to the servicing, maintenance and configuration control of the structural subsystem;
- (d) in respect of high-speed rolling stock in circumstances falling within paragraph (8), the accessibility compliance certificate (if any);
- (e) details of any exemption orders granted in respect of the structural subsystem under section 47(1) of the Disability Discrimination Act 1995; and
- (f) documentation or records demonstrating compliance with the notified standards where those standards are used.

(10) Where a contracting entity is the owner of a structural subsystem, he shall, from the time that the structural subsystem is placed into service until it is permanently withdrawn from service (whether such service is in the United Kingdom or in the territory of another Member State), retain—

- (a) the technical file, which shall include the documentation it contained at the date of authorisation pursuant to regulation 14;
- (b) the certificate of conformity; and
- (c) the verification declaration.

(11) Where a contracting entity who is the owner of a structural subsystem disposes of his interest in it, he shall transfer to the person who acquires that interest the items specified in sub-paragraphs (a) to (c) of paragraph (10) and thereafter, for the purposes of paragraph (10) and this paragraph, the acquirer shall be regarded as being the contracting entity.

(12) Where a contracting entity is not the owner of the structural subsystem, he shall transfer to the owner of the structural subsystem the items specified in sub-paragraphs (a) to (c) of paragraph (10) within 60 days of obtaining an authorisation under regulation 14 in respect of that structural subsystem, and thereafter, for the purposes of paragraphs (10) and (11) and this paragraph, the owner shall be regarded as being the contracting entity.

(13) In this regulation “design” includes the selection of a design.

Structural subsystems: authorisation

14.—(1) No person shall place into service a structural subsystem that he has constructed or upgraded unless the supervisory authority has given an authorisation for its placing into service (but see regulation 17).

(2) A request for an authorisation under paragraph (1) shall be made in writing and be accompanied by, in relation to the structural subsystem in question—

- (a) the certificate of conformity;
- (b) the technical file; and
- (c) the verification declaration.

(3) The supervisory authority shall not give an authorisation for the placing into service of a structural subsystem unless it is satisfied in relation to that structural subsystem that—

- (a) the verification declaration has been drawn up in accordance with Schedule 5;
- (b) the technical file is complete; and
- (c) it has been designed, constructed and installed in such a way so as not to hinder satisfaction of the essential requirements when it is placed into service as part of the rail network schemes.

(4) The supervisory authority shall not refuse to give an authorisation for placing into service of a structural subsystem if the structural subsystem—

- (a) satisfies the conditions set out in paragraph (3)(a) and (b); and
- (b) meets the essential requirements relating to it.

(5) After receiving a request for authorisation under paragraph (2), the supervisory authority may require a contracting entity to carry out any additional checks which it considers to be necessary in relation to a structural subsystem if that subsystem appears to the supervisory authority not to meet the requirements of regulation 13(4) and (7) and in particular the essential requirements.

(6) After receiving a request for authorisation under paragraph (2) the supervisory authority shall—

- (a) authorise the placing into service of the structural subsystem;
- (b) inform the contracting entity that additional checks will be required pursuant to paragraph (5) before the request can be considered further; or
- (c) refuse the request for authorisation.

(7) Subject to paragraph (8) where a contracting entity—

- (a) contracts with another person for the construction of; or
- (b) is himself constructing,

a number of items of high-speed rolling stock, to the same standards and specifications, he shall only be required to obtain authorisation pursuant to this regulation in respect of the first of those items placed into service that has been constructed to those standards and specifications.

(8) For the purposes of paragraph (7) the items of high-speed rolling stock to be taken into account shall include only items that are the subject of the same contract or the same project; and for these

purposes a contract shall be taken to include an option to purchase further items of high-speed rolling stock to the same standards and specifications provided that the option—

- (a) was agreed at the time the contract was made; and
- (b) is exercised by the contracting entity within five years of the time that the contract was made; except that where an item of high-speed rolling stock constructed under that contract is authorised pursuant to regulation 14 within four years from that time, the option must be exercised within 12 months of the date of that authorisation.

Exemption from need to conform with the TSIs

15.—(1) The circumstances in which the subsystems and interoperability constituents comprised in a project need not conform with the whole or part of any relevant TSI are where a derogation relating to that project has been—

- (a) notified by the Secretary of State to the Commission as provided for in Article 7(a) of the high-speed Directive;
- (b) notified by the Secretary of State to the Commission as provided for in Article 7(b) or (c) of the high-speed Directive; or
- (c) notified by the Secretary of State to the Commission and permitted by the Commission as provided for in Article 7(d) of the high-speed Directive.

(2) For the purposes of paragraph (1)(a), a derogation notified pursuant to Article 7(a) of the high-speed Directive shall have no effect in relation to a subsystem or interoperability constituent unless—

- (a) the project in which that subsystem or interoperability constituent is to be used is at an advanced stage of development at the time the relevant TSI was published; and
- (b) the derogation has been notified to the Commission before authorisation is given pursuant to regulation 14.

(3) For the purposes of paragraph (1)(b), a derogation notified pursuant to Article 7(b) or (c) of the high-speed Directive shall have no effect in relation to a subsystem or interoperability constituent unless the derogation has been notified to the Commission before the physical construction of the project in which that subsystem is to be used has commenced.

(4) For the purposes of paragraph (1)(c), a derogation notified pursuant to Article 7(d) of the high-speed Directive shall have no effect in relation to a subsystem unless the derogation is notified to and permitted by the Commission before the physical construction of the project in which that subsystem is to be used has commenced.

Structural subsystems: screening decisions

16.—(1) A contracting entity shall unless satisfied that those works constitute upgrading of the relevant rail network scheme—

- (a) before—
 - (i) entering into a contract with another person for major works in relation to, or
 - (ii) commencing major work himself on,an existing structural subsystem or part of a structural subsystem which changes the performance of that structural subsystem; or
- (b) within three months of the coming into force of these Regulations, where he has—
 - (i) already contracted with another person for major works in relation to an existing structural subsystem or part of a structural subsystem which changes the

performance of that structural subsystem and those works have not been completed,
or

- (ii) has himself commenced major works on an existing structural subsystem or part of a structural subsystem which changes the performance of that structural subsystem and these works have not been completed,

make a request in writing to the supervisory authority for a decision as to whether or not those works constitute upgrading of a rail network scheme (a “screening decision”) for the purpose of these Regulations.

(2) Any question as to whether proposed works constitute major works that change the performance of a structural subsystem shall be determined by the supervisory authority.

(3) A request made pursuant to paragraph (1) shall be accompanied by the following information—

- (a) a description of the nature and scope of the proposed works;
- (b) the dates when the works are due to commence, finish and be placed into service;
- (c) in relation to works in Great Britain falling under paragraph (1)(b), a list of any approvals given by the Executive under the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994(19);
- (d) if it is likely that the contracting entity will in relation to the works—
 - (i) seek not to conform with the whole or part of a TSI pursuant to regulation 15, or
 - (ii) make an application for an exemption pursuant to regulation 13(5),a description of the nature and extent of any such proposed non-conformity or exemption; and
- (e) an implementation plan in respect of the works.

(4) If the supervisory authority considers that the information provided by the contracting entity in or with a request made under paragraph (1) is insufficient to enable it to make a screening decision the supervisory authority shall notify the contracting entity in writing of the additional information that it considers it requires in order to make that decision.

(5) On receiving a notification under paragraph (4), the contracting entity shall provide the supervisory authority with such of the additional information specified in that notification as the contracting entity is reasonably able to supply and, where any of the additional information so specified is not provided, a written explanation as to why the contracting entity is unable to provide that information.

(6) In making its screening decision, the factors the supervisory authority shall take into account shall include—

- (a) the implementation strategy provided in any relevant TSI; and
- (b) the scale of the proposed works.

(7) If the supervisory authority considers that the proposed works would be likely to affect the overall level of safety of the relevant rail network scheme or any part of it, its screening decision shall be that the works constitute an upgrade of that structural subsystem for the purpose of these Regulations.

(8) The supervisory authority shall notify the contracting entity of its screening decision in writing.

(9) If the supervisory authority decides that the proposed works constitute upgrading of the rail network schemes for the purpose of these Regulations, the supervisory authority shall give reasons for that decision in the notification given under paragraph (8).

(10) If at any stage of the execution of the works there is a change in the information provided by the contracting entity to the supervisory authority under paragraphs (3) or (5), the contracting entity shall notify the supervisory authority of that change and the supervisory authority shall then consider whether that change affects the screening decision given under paragraph (8).

(11) If the supervisory authority considers that the change notified under paragraph (10) affects the screening decision the supervisory authority shall confirm or vary that decision and the requirements of paragraphs (8) and (9) will apply to that confirmation or variation.

(12) At the same time as the contracting entity sends to the supervisory authority the information required by paragraphs (3), (5) and (10) it shall send a copy of that information to the Authority.

(13) For the purpose of this regulation “implementation plan” means a description of how a contracting entity will manage and undertake the works, the interface of infrastructure with rolling stock, and the impact of the works on other persons who may be affected by those works.

Structural subsystems: staged works decisions

17.—(1) Nothing in regulation 14 prevents a stage of a relevant upgrading project being placed into service prior to an authorisation being given pursuant to regulation 14, if it is placed into service in accordance with the following paragraphs of this regulation.

(2) A contracting entity may at any time during a relevant upgrading project make a request in writing to the supervisory authority for a decision on whether a stage of that project may be placed into service prior to an authorisation being given pursuant to regulation 14 (a “staged works decision”).

(3) A request made under paragraph (2) shall be accompanied by the following information—

- (a) a description of the upgrading project;
- (b) the dates when each stage of the project is due to commence and finish and be placed into service;
- (c) a description of how the work will be carried out in each stage;
- (d) the arrangements to be put in place by the contracting entity to ensure the continued safety of any part of a rail network scheme affected by the upgrading project for the duration of that project; and
- (e) the date when an authorisation under regulation 14 will be sought.

(4) If the supervisory authority considers that the information provided by a contracting entity in a request made under paragraph (2) is insufficient to enable it to make a staged works decision the supervisory authority shall notify the contracting entity in writing of the additional information that it considers it requires in order to make that decision.

(5) On receiving a notification under paragraph (4), the contracting entity shall provide the supervisory authority with such of the additional information specified in that notification as the applicant is reasonably able to supply and, where any of the additional information so specified is not provided, a written explanation as to why the applicant is unable to provide that information.

(6) The supervisory authority shall notify the contracting entity in writing of its staged works decision.

(7) The staged works decision may contain such conditions as the supervisory authority considers necessary to ensure that the overall level of safety of the relevant part of a rail network scheme is not adversely affected.

(8) If at any stage of the upgrading project there is a change in the information provided by the contracting entity to the supervisory authority under paragraphs (3) or (5), the contracting entity shall notify the supervisory authority of that change and the supervisory authority shall then consider whether it affects the staged works decision given under paragraph (6) or the conditions attached to that decision under paragraph (7).

(9) If a change notified under paragraph (8) affects the staged works decision, or the conditions attached to that decision, the supervisory authority—

- (a) shall confirm or vary the staged works decision; and
- (b) may remove or amend the conditions given under paragraph (7) or attach new conditions to the staged works decision,

and the requirements of paragraphs (6) and (7) shall apply to any action taken by the supervisory authority under this paragraph.

(10) For the purpose of this regulation “a relevant upgrading project” means a project to upgrade an infrastructure subsystem, an energy subsystem, or a control and command and signalling subsystem.

Fees payable to the supervisory authority

18.—(1) A fee shall be payable by the contracting entity to the supervisory authority for work carried out in Great Britain by or on behalf of the supervisory authority in relation to—

- (a) a request by that contracting entity pursuant to—
 - (i) regulation 14(2) for an authorisation,
 - (ii) regulation 16(1) for a screening decision, or
 - (iii) regulation 17(2) for a staged works decision; and
- (b) the re-consideration of a—
 - (i) screening decision pursuant to regulation 16(10), or
 - (ii) staged works decision pursuant to regulation 17(8).

(2) The fee payable under paragraph (1) shall—

- (a) not exceed the sum of the costs reasonably incurred by the supervisory authority in carrying out the work referred to in paragraph (1); and
- (b) be payable within 30 days from the date of the invoice that the supervisory authority has sent or given to the person who is required to pay the fees, such invoice to include a statement of the work done and the costs reasonably incurred including the period to which the statement relates.

(3) A fee payable under this regulation shall be recoverable as a civil debt.

(4) Failure to pay a fee under this regulation shall not constitute an offence under these Regulations.

(5) This regulation does not apply to the Intergovernmental Commission in respect of work carried out under regulations 14, 16 and 17 in relation to the Channel Tunnel system.

PART IV

Assessment Procedures

Interoperability constituents: appropriate assessment procedure

19. For the purposes of regulation 11(2)(c) the appropriate conformity or suitability for use assessment procedure in relation to an interoperability constituent shall be—

- (a) the procedure specified:
 - (i) in the TSI (if any) with which the interoperability constituent must comply; and
 - (ii) by any relevant European specification (if any) with which the interoperability constituent must comply; or
- (b) in the absence of such a TSI or such a European specification, such conformity or suitability for use assessment procedure that is considered to be appropriate by the notified body; and

in any such case any relevant procedures set out in Schedule 4.

Structural subsystems: appropriate verification assessment procedure

20.—(1) Subject to paragraph (3) for the purposes of regulation 13(7)(b) the appropriate verification assessment procedure in relation to a structural subsystem shall be—

- (a) in so far as that subsystem is required to conform with part or all of a TSI, the procedures specified in the TSI or part of the TSI with which it is required to conform;
- (b) in so far as that structural subsystem is required to conform with notified standards, such procedures as the notified body considers appropriate to assess that structural subsystem against the notified standards with which it is required to conform; and
- (c) the procedures set out in Schedule 6.

(2) The notified body shall compile the technical file.

(3) Where the contracting entity has already commenced work on the construction or upgrade of a structural subsystem prior to these Regulations coming into force, the notified body may, with the agreement of the contracting entity, determine, having regard to documentation or other evidence produced by the contracting entity in respect of that work, that there is no need for it to assess the work that was carried out prior to its appointment and in those circumstances the notified body need not assess that work.

(4) Where the RVAR constitute part of the notified standards, and pursuant to regulation 13(4) they are standards with which high-speed rolling stock is required to comply, before drawing up the certificate of conformity the notified body shall—

- (a) assess the compliance of that high-speed rolling stock with the RVAR; and
- (b) ensure that where there is not full compliance with the RVAR that high-speed rolling stock is exempt from those provisions of the RVAR by virtue of an exemption order granted under section 47(1) of the Disability Discrimination Act 1995.

Effect of declarations

21.—(1) Subject to paragraph (3), an interoperability constituent in relation to which such conformity declaration or suitability declaration as is required by regulation 11(2)(f) has been prepared shall be taken to—

- (a) meet such of the essential requirements as relate to an interoperability constituent of that type; and
- (b) conform to such of the European specifications or notified standards as are required by regulation 11(2)(a),

unless there are reasonable grounds for believing that it does not so conform.

(2) Subject to paragraph (4), a structural subsystem in relation to which a verification declaration has been prepared in accordance with regulation 13(6) shall be taken to—

- (a) meet such of the essential requirements as relate to a structural subsystem of that type; and
- (b) conform to such of the TSIs or notified standards as are required by regulation 13(4),

unless there are reasonable grounds for believing that it does not so conform.

(3) Paragraph (1) does not apply in relation to the Executive where a person fails or refuses to make available to the Executive the documentation which he is required to retain by any of the conformity or suitability for use assessment procedures which apply to the interoperability constituent in question or a copy of that documentation.

(4) Paragraph (2) does not apply in relation to the Executive where a person fails or refuses to make available to the Executive the documentation which he is required to retain—

- (a) by the verification assessment procedure which applies to the structural subsystem in question; and
- (b) pursuant to regulation 13; or

a copy of that documentation.

PART V

Miscellaneous

Accessibility compliance certificates

22.—(1) Where a contracting entity makes an application for an accessibility compliance certificate pursuant to regulation 13(8), the application shall be made in writing and be accompanied by the following information—

- (a) a description of the high-speed rolling stock to which the application relates;
- (b) a description of how the high-speed rolling stock complies with each individual requirement of the RVAR;
- (c) details of any exemption orders made under section 47(1) of the Disability Discrimination Act 1995; and
- (d) documentation demonstrating how the notified body assessed the high-speed rolling stock with the RVAR.

(2) If the Secretary of State considers that the information provided by the contracting entity with an application made under paragraph (1) is insufficient to enable him to issue an accessibility compliance certificate, the Secretary of State shall notify the contracting entity in writing of the additional information that he requires in order to be able to consider whether he may issue the accessibility compliance certificate.

(3) On receiving a notification under paragraph (2) the contracting entity shall provide the Secretary of State with such of the additional information specified in that notification as the contracting entity is reasonably able to supply and, where any of the additional information so

specified is not provided, a written explanation as to why the contracting entity is unable to provide that information.

(4) The Secretary of State shall issue an accessibility compliance certificate provided he is satisfied that the high-speed rolling stock in respect of which the application is made—

- (a) complies with the RVAR; or
- (b) though not complying fully with the RVAR is exempt from those provisions of the RVAR with which it does not comply by virtue of an exemption order granted under section 47(1) of the Disability Discrimination Act 1995.

(5) For the purposes of the application of this regulation to Northern Ireland, references in the preceding paragraphs to the Secretary of State should be construed as references to the Department.

Interoperability constituents: duties on operators

23. The operator of any interoperability constituent that is in use on, or is part of, a rail network scheme, shall ensure that while it is so in use it is—

- (a) correctly installed for the purpose for which it is intended to be used;
- (b) not used for any purpose other than the purpose for which it was designed; and
- (c) maintained in an efficient state, effective working order and good repair.

Structural subsystems: duties on owners

24.—(1) The owner of any structural subsystem that is in use on, or is part of, a rail network scheme, shall ensure that while it remains in his ownership—

- (a) it continues to conform to any TSIs and any notified standards against which it was assessed; except that where those standards have been varied and appropriate replacement parts which conform to them are no longer available, it conforms to those varied TSIs or notified standards;
- (b) any maintenance manuals in relation to that structural subsystem are added to and kept as part of the technical file; and
- (c) any alterations made to the structural subsystem are documented and that documentation is added to and kept as part of the technical file.

(2) The owner of a structural subsystem will be deemed to fulfil the requirements of paragraph (1) if another person with a legal interest in that structural subsystem is fulfilling those requirements.

Interoperability constituents: position after placing on the market

25. Nothing in these Regulations shall preclude any person from drawing up a conformity declaration or suitability declaration at any time in relation to an interoperability constituent which has been placed on the market provided that person has followed the requirements of these Regulations in relation to that interoperability constituent.

Structural subsystems: duties in respect of registers

26.—(1) The owner of authorised high-speed rolling stock shall create and maintain a register in accordance with paragraph (3) (“the rolling stock register”).

(2) The owner of authorised high-speed infrastructure shall create and maintain a register in accordance with paragraph (4) (“the infrastructure register”).

(3) The rolling stock register shall contain the following information in respect of authorised high-speed rolling stock—

- (a) all the information required by any relevant TSI; and
 - (b) where conformity with the whole or part of a TSI is not required pursuant to regulation 15, or in the circumstances provided for in regulation 13(5), details of the part of the TSI that has not been conformed to.
- (4) The infrastructure register shall contain the following information in respect of authorised high-speed infrastructure—
- (a) all the information required by any relevant TSI; and
 - (b) where conformity with the whole or part of a TSI is not required pursuant to regulation 15, or in the circumstances provided for in regulation 13(5), details of the part of the TSI that has not been conformed to.
- (5) The owner of—
- (a) authorised high-speed rolling stock shall maintain the rolling stock register; and
 - (b) authorised high-speed infrastructure shall maintain the infrastructure register,
- from the time that a structural subsystem owned by him is authorised for placing into service pursuant to regulation 14 and for the period that it remains in use and under his ownership.
- (6) The owner of authorised high-speed rolling stock and the owner of authorised high-speed infrastructure shall update any register that he is required to create and maintain in accordance with this regulation—
- (a) each time he obtains an authorisation for a structural subsystem pursuant to regulation 14; and
 - (b) each time he acquires ownership of a structural subsystem to which these Regulations apply.
- (7) The owner of authorised high-speed rolling stock and the owner of authorised high-speed infrastructure shall send to the Authority a copy of—
- (a) any register that he is required to create under this regulation; and
 - (b) any information that he is required to add to any register in accordance with paragraph (6),
- within the period specified in paragraph (8).
- (8) The period referred to in paragraph (7) is—
- (a) as respects paragraph (7)(a), that of 21 days beginning with the date on which the authorisation under regulation 14 is given; and
 - (b) as respects paragraph 7(b), that of 21 days beginning with the date on which the authorisation under regulation 14 is given or the ownership is acquired.
- (9) Where the owner of authorised high-speed rolling stock or the owner of high-speed infrastructure is not the operator of that rolling stock or infrastructure he shall send to the operator of that rolling stock or infrastructure a copy of the rolling stock register or infrastructure register, as the case may be, at the same time that he is required to send the rolling stock register or infrastructure register to the Authority in accordance with paragraph (7).
- (10) Where the owner of high-speed rolling stock or the owner of high-speed infrastructure disposes of his interest in that rolling stock or infrastructure he shall give to the person who acquires that interest the register that he has kept in respect of that rolling stock or infrastructure and the acquirer shall be regarded as being the owner of that rolling stock or infrastructure, as the case may be, for the purposes of this regulation.
- (11) For the purposes of this regulation;

- (a) “authorised high-speed infrastructure” means infrastructure subsystems, energy subsystems, and control and command and signalling subsystems that have been authorised for placing into service under regulation 14; and
- (b) “authorised high-speed rolling stock” means high-speed rolling stock that has been authorised for placing into service under regulation 14.

Notification of standards, technical specifications and technical rules to the Commission

27.—(1) Subject to paragraph (2), the Secretary of State shall notify in writing the Commission and the other Member States of the standards, technical specifications and technical rules in use in the United Kingdom in relation to—

- (a) interoperability constituents—
 - (i) in the absence of European specifications, or
 - (ii) in the circumstances provided for in regulation 15; and
- (b) structural subsystems—
 - (i) in the absence of any relevant TSI,
 - (ii) where a TSI does not govern all elements in relation to a structural subsystem,
 - (iii) in the circumstances provided for in regulation 13(5), or
 - (iv) in the circumstances provided for in regulation 15.

(2) Paragraph (1) does not apply to any standard, technical specification or technical rule which could prevent interoperability constituents or subsystems, as the case may be, from meeting the essential requirements.

Interoperability constituents: notification to the Commission

28.—(1) Where it appears to the Executive that an interoperability constituent in relation to which a conformity declaration or suitability declaration has been prepared fails to meet the essential requirements it shall notify in writing the Commission, and where appropriate other Member States, of that fact forthwith.

- (2) Where a notice under paragraph (1) is given by the Executive, that notice shall specify—
 - (a) the steps taken to prohibit or restrict the use of that interoperability constituent;
 - (b) the reasons for taking those steps; and
 - (c) any measures taken against a person who prepared the conformity declaration or suitability declaration.

Notification to the Commission of additional checks

29.—(1) The supervisory authority shall notify the Commission in writing forthwith of any additional checks it requires pursuant to regulation 14(5).

- (2) Where a notice under paragraph (1) is given by the supervisory authority, that notice shall specify—
 - (a) the additional checks required; and
 - (b) the reasons for requiring those additional checks.

Interoperability constituents: recognition of assessments of other Member States

30. Nothing in these Regulations shall preclude any person from placing on the market an interoperability constituent that has successfully completed all the requirements of any scheme in force in another Member State for the purpose of implementing the high-speed Directive.

PART VI

Enforcement

Enforcement in Great Britain

31.—(1) It shall be the duty of the Executive to make adequate arrangements for the enforcement of these Regulations in Great Britain and accordingly a reference to the enforcing authority in the provisions applied for those purposes by paragraph (3) shall be construed as a reference to the Executive.

(2) Subject to paragraph (4), the provisions of the 1974 Act specified in paragraph (3) shall apply for the purposes of the enforcement in Great Britain of these Regulations as if they were Health and Safety Regulations for the purposes of that Act, and any function of the Health and Safety Commission under any other provisions of the 1974 Act which is exercisable in relation to any function of the Executive under or in respect of Health and Safety Regulations (including their enforcement) shall be exercisable as if these Regulations were Health and Safety Regulations for the purposes of that Act.

(3) The provisions of the 1974 Act referred to in paragraph (2) are—

- (a) sections 19 to 22 (enforcement);
- (b) sections 23 (provisions supplementary to sections 21 and 22) and 24 (appeal against improvement or prohibition notice);
- (c) section 26 (power to indemnify inspectors); and
- (d) sections 33 to 42 (provisions as to offences).

(4) A failure to discharge a duty placed on the—

- (a) Executive; or
- (b) supervisory authority,

by these Regulations shall not be an offence under section 33(1)(c) of the 1974 Act.

Enforcement in Northern Ireland

32.—(1) It shall be the duty of the Executive to make adequate arrangements for the enforcement of these Regulations in Northern Ireland and accordingly a reference to an “enforcing authority” in the provisions applied for those purposes by paragraph (3) shall be construed as a reference to the Executive.

(2) Subject to paragraph (4), the provisions of the 1978 Order specified in paragraph (3) shall apply for the purposes of the enforcement in Northern Ireland of these Regulations as if they were Health and Safety Regulations for the purposes of that Order, and any function of the Health and Safety Executive for Northern Ireland under any other provisions of that Order which is exercisable in relation to any function of the Executive under or in respect of Health and Safety Regulations (including their enforcement) shall be exercisable as if these Regulations were Health and Safety Regulations for the purposes of that Order.

(3) The provisions of the 1978 Order referred to in paragraph (2) are—

- (a) Article 20 to 24 (enforcement);
 - (b) Articles 25 (provisions supplementary to Articles 23 and 24) and 26 (appeal against improvement or prohibition notice);
 - (c) Article 28 (power to indemnify inspectors);
 - (d) Articles 31 to 39 (provisions as to offences); and
 - (e) Article 44(1) to (3) (application to Crown).
- (4) A failure to discharge a duty placed on the—
- (a) Executive; or
 - (b) supervisory authority,

by these Regulations shall not be an offence under Article 31(1)(c) of the 1978 Order.

Notices relating to interoperability constituents not meeting the essential requirements

33.—(1) If the Executive is of the opinion that an interoperability constituent in relation to which a conformity declaration or suitability declaration has been prepared does not meet the essential requirements relating to it, the Executive may serve a notice on the person who is using or intending to use that interoperability constituent in the construction or upgrading of a structural subsystem in relation to which that person is a contracting entity, to prohibit the use of or restrict the area of use of that interoperability constituent.

- (2) The information to be contained in a notice served under paragraph (1) is—
- (a) a statement that the Executive is of the opinion referred to in paragraph (1);
 - (b) the reasons for that opinion;
 - (c) a direction that the interoperability constituent to which that notice relates shall not be used, or that its area of use shall be restricted; and
 - (d) the date by which the contracting entity shall comply with the notice.

(3) Any notice served under paragraph (1) may be withdrawn by the Executive serving written notice of the withdrawal on the contracting entity.

(4) Where a notice has been served on the contracting entity in accordance with this regulation the contracting entity shall—

- (a) comply with that notice; and
- (b) notify the person who supplied him with the interoperability constituent in relation to which the notice under paragraph (1) was served—
 - (i) that a notice under paragraph (1) has been served,
 - (ii) of what the notice says, and
 - (iii) that he requires that person in turn to notify his supplier with the same information required by this paragraph.

Defence of Due Diligence

34.—(1) Subject to the following provisions of this regulation, in any proceedings against any person for an offence under these Regulations it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against any person for such an offence the defence provided in paragraph (1) involves an allegation that the commission of the offence was due to—

- (a) the act or default of another; or

(b) reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless, within a period ending seven clear days before the hearing of the proceedings (or in Scotland, the trial diet), he has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying, or assisting in the identification of, the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) A person shall not be entitled to rely on the defence provide by paragraph (1) by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular—

- (a) to the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether he had any reason to disbelieve the information.

Liability of persons other than the principal offender

35.—(1) Where the commission by any person of an offence under these Regulations is due to the act or default of some other person in the course of any business of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) In this regulation, references to a “body corporate” include references to a partnership in Scotland and, in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.

PART VII

Consequential Amendment

Amendment of the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994

36. In regulation 4 of the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994~~(20)~~—

(a) after paragraph (2) there shall be inserted the following paragraph—

“(2A) Approval shall not be required in relation to any interoperability constituent or any subsystem to the extent that the interoperability constituent or subsystem, as the case may be, is subject to the requirements of regulations 11 to 17 of the Railways (Interoperability) (High-Speed) Regulations 2002.”; and

(20) S.I. 1994/157, amended by 1997 S.I. 1997/553.

(b) after paragraph (4) there shall be added the following paragraph—

“(5) In this regulation, “interoperability constituent” and “subsystem” shall have the same meanings as they have in the Railways (Interoperability) (High-Speed) Regulations 2002.”

PART VIII

Transitional Provisions and Revocations

Transitional provisions and revocations

37.—(1) Subject to paragraph (4), the 2000 Regulations are hereby revoked.

(2) Subject to paragraph (3) a notified body appointed by the Secretary of State pursuant to the 2000 Regulations and notified to the Commission and the other Member States pursuant to Article 20(1) of the high-speed Directive shall be a notified body for the purposes of these Regulations, as if its appointment under the 2000 Regulations was an appointment under regulation 5 of these Regulations.

(3) Paragraphs (5) to (9) of regulation 5 shall not apply in relation to a notified body to which paragraph (2) applies.

(4) Paragraphs (4), (5) and (6) of regulation 4 and regulation 6 of the 2000 Regulations shall continue to have effect in relation to a notified body referred to in paragraph (2).

Signed by the authority of the Secretary of State for Transport, Local Government and the Regions

John Spellar
Minister of State,
Department for Transport, Local Government
and the Regions

24th April 2002

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SCHEDULE 1

Regulation 2

(Annex I to the high-speed Directive)
THE TRANS-EUROPEAN HIGH-SPEED RAIL SYSTEM

Infrastructure

- (a) (a) The infrastructure of the trans-European high-speed rail system shall be that on the lines of the trans-European transport network identified in the framework of the guidelines referred to in Article 129c of the Treaty **(21)**:
- those specially built for high-speed travel,
 - those specially upgraded for high-speed travel.

They may include connecting lines, in particular junctions of new lines or lines upgraded for high-speed with town centre stations located on them, on which speeds must take account of local conditions.

- (b) High-speed lines shall comprise:
- specially built high-speed lines equipped for speeds generally equal to or greater than 250 km/h,
 - specially upgraded high-speed lines equipped for speeds of the order of 200 km/h,
 - specially upgraded high-speed lines which have special features as a result of topographical, relief or town-planning constraints, on which the speed must be adapted to each case.

Rolling Stock

2. The high-speed advanced-technology trains shall be designed in such a way as to guarantee safe, uninterrupted travel:
- at a speed of at least 250 km/h on the lines specially built for high-speed, while enabling speeds of over 300 km/h to be reached in appropriate circumstances;
 - at a speed of the order of 200 km/h on existing lines which have been or are to be specially upgraded;
 - at the highest possible speed on other lines.

Compatibility of infrastructure and rolling stock

3. High-speed train services presuppose excellent compatibility between the characteristics of the infrastructure and those of the rolling stock. Performance levels, safety, quality of service and cost depend upon that compatibility.

SCHEDULE 2

Regulation 2

(Annex II to the high-speed Directive)
SUBSYSTEMS

1. For the purposes of this Directive, the system constituting the trans-European high-speed rail system may be broken down into subsystems, as follows:

(21) This is a reference to the Treaty establishing the European Community, now Article 155 of the consolidated version of the Treaty. The lines comprising the trans-European network are identified in Schedule 8 to these Regulations.

1.1 basically structural areas:

- infrastructures
- energy
- control and command and signalling
- rolling stock;

1.2 basically operational areas:

- maintenance
- environment
- operation
- users.

2. For each subsystem, the list of aspects relating to interoperability is indicated in the order given to the representative joint body for drawing up draft TSIs.

Under the provisions of Article 6(1), this order shall be established in accordance with the procedure laid down in Article 21(2).

Where necessary, the list of aspects relating to interoperability indicated in the order is specified by the representative joint body in accordance with the provisions of Article 5(3)(e).

3. Within the meaning of Article 5(3)(b), the following are regarded as basic parameters for achieving interoperability:

BASIC PARAMETERS

- Minimum infrastructure gauges
- Minimum radius of curvature
- Track gauge
- Maximum track stressing
- Minimum platform length
- Platform height
- Power-supply voltage
- Catenary geometry
- ERTMS characteristics(22)
- Axle loading
- Maximum train length
- Gauge of rolling stock
- Minimum braking characteristics
- Boundary electrical characteristics of rolling stock
- Boundary mechanical characteristics of rolling stock
- Operating characteristics linked to train safety
- Boundary characteristics linked to outside noise
- Boundary characteristics linked to outside vibrations
- Boundary characteristics linked to outside electromagnetic interference

(22) European Rail Traffic Management System.

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- Boundary characteristics linked to inside noise
- Boundary characteristics linked to air conditioning
- Characteristics linked to the carriage of disabled persons.

SCHEDULE 3

Regulation 2

(Annex III to the high-speed Directive) ESSENTIAL REQUIREMENTS

General requirements

1

1.1 *Safety*

1.1.1 The design, construction or assembly, maintenance and monitoring of safety-critical components, and more particularly of the components involved in train movements must be such as to guarantee safety at the level corresponding to the aims laid down for the network, including those for specific degraded situations.

1.1.2 The parameters involved in the wheel/rail contact must meet the stability requirements needed in order to guarantee safe movement at the maximum authorised speed.

1.1.3 The components used must withstand any normal or exceptional stresses that have been specified during their period in service. The safety repercussions of any accidental failures must be limited by appropriate means.

1.1.4 The design of fixed installations and rolling stock and the choice of the materials used must be aimed at limiting the generation, propagation and effects of fire and smoke in the event of a fire.

1.1.5 Any devices intended to be handled by users must be so designed as not to impair their safety if used foreseeably in a manner not in accordance with the posted instructions.

1.2 *Reliability and availability*

The monitoring and maintenance of fixed or movable components that are involved in train movements must be organised, carried out and quantified in such a manner as to maintain their operation under the intended conditions.

1.3 *Health*

1.3.1 Materials likely, by virtue of the way they are used, to constitute a health hazard to those having access to them must not be used in trains and railway infrastructures.

1.3.2 Those materials must be selected, deployed and used in such a way as to restrict the emission of harmful and dangerous fumes or gases, particularly in the event of fire.

1.4 *Environmental protection*

1.4.1 The repercussions on the environment of the establishment and operation of the trans-European high-speed rail system must be assessed and taken into account at the design stage of the system in accordance with the Community provisions in force.

1.4.2 The materials used in the trains and infrastructures must prevent the emission of fumes or gases which are harmful and dangerous to the environment, particularly in the event of fire.

1.4.3 The rolling stock and energy-supply systems must be designed and manufactured in such a way as to be electromagnetically compatible with the installations, equipment and public or private networks with which they might interfere.

1.5 *Technical compatibility*

The technical characteristics of the infrastructures and fixed installations must be compatible with each other and with those of the trains to be used on the trans-European high-speed rail system.

If adherence to these characteristics proves difficult on certain sections of the network, temporary solutions, which ensure compatibility in the future, may be implemented.

Requirements specific to each subsystem

2

2.1 *Infrastructures*

2.1.1 Safety

Appropriate steps must be taken to prevent access to or undesirable intrusions into installations on lines travelled at high-speed.

Steps must be taken to limit the dangers to which persons are exposed, particularly in stations through which trains pass at high-speed.

Infrastructures to which the public has access must be designed and made in such a way as to limit any human health hazards (stability, fire, access, evacuation, platforms, etc.).

Appropriate provisions must be laid down to take account of the particular safety conditions in very long tunnels.

2.2 *Energy*

2.2.1 Safety

Operation of the energy-supply systems must not impair the safety either of high-speed trains or of persons (users, operating staff, trackside dwellers and third parties).

2.2.2 Environmental protection

The functioning of the energy-supply systems must not interfere with the environment beyond the specified limits.

2.2.3 The electricity supply systems used throughout the trans-European high-speed rail system must:

- enable trains to achieve the specified performance levels;
- be compatible with the collection devices fitted to the trains.

2.3 *Control and command and signalling*

2.3.1 Safety

The control and command and signalling installation and procedures used on the trans-European high-speed rail system must enable trains to travel with a level of safety which corresponds to the objectives set for the network.

2.3.2 Technical compatibility

All new high-speed infrastructures and all new high-speed rolling stock manufactured or developed after adoption of compatible control and command and signalling must be tailored to the use of those systems.

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The control and command and signalling equipment installed within the train drivers' cabs must permit normal operation, under the specified conditions, throughout the trans-European high-speed rail system.

2.4 Rolling stock

2.4.1 Safety

The rolling-stock structures and those of the links between vehicles must be designed in such a way as to protect the passenger and driving compartments in the event of collision or derailment.

The electrical equipment must not impair the safety and functioning of the control and command and signalling installations.

The braking techniques and the stresses exerted must be compatible with the design of the tracks, engineering structures and signalling systems.

Steps must be taken to prevent access to electrically-live constituents in order not to endanger the safety of persons.

In the event of danger devices must enable passengers to inform the driver and accompanying staff to contact him.

The access doors must incorporate an opening and closing system which guarantees passenger safety.

Emergency exits must be provided and indicated.

Appropriate provisions must be laid down to take account of the particular safety conditions in very long tunnels.

An emergency lighting system having a sufficient intensity and duration is an absolute requirement on board trains.

Trains must be equipped with a public address system which provides a means of communication to the public from on-board staff and ground control.

2.4.2 Reliability and availability

The design of the vital equipment and the running, traction and braking equipment and also the control and command system must, in a specific degraded situation, be such as to enable the train to continue without adverse consequences for the equipment remaining in service.

2.4.3 Technical compatibility

The electrical equipment must be compatible with the operation of the control and command and signalling installations.

The characteristics of the current-collection devices must be such as to enable trains to travel under the energy-supply systems for the trans-European high-speed rail system.

The characteristics of the rolling stock must be such as to allow it to travel on any line on which it is expected to operate.

2.5 Maintenance

2.5.1 Health

The technical installations and the procedures used in the maintenance centres must not constitute a danger to human health.

2.5.2 Environmental protection

The technical installations and the procedures used in the maintenance centres must not exceed the permissible levels of nuisance with regard to the surrounding environment.

2.5.3 Technical compatibility

The maintenance installations on high-speed trains must be such as to enable safety, health and comfort operations to be carried out on all trains for which they have been designed.

2.6 Environment

2.6.1 Health

Operation of the trans-European high-speed rail system must remain within the statutory noise-nuisance limits.

2.6.2 Environmental protection

Operation of the trans-European high-speed rail system must not cause a level of ground vibrations which is unacceptable for activities and the immediate environment in the vicinity of the infrastructure and in a normal state of maintenance.

2.7 Operation

2.7.1 Safety

Alignment of the network operating rules and the qualifications of drivers and on-board staff must be such as to ensure safe international operation.

The operations and maintenance intervals, the training and qualifications of maintenance staff and the quality assurance system set up in the maintenance centres of the operators concerned must be such as to ensure a high level of safety.

2.7.2 Reliability and availability

The operation and maintenance periods, the training and qualifications of the maintenance staff and the quality assurance system set up by the operators concerned in the maintenance centres must be such as to ensure a high level of system reliability and availability.

2.7.3 Technical compatibility

The alignment of the operating rules of the networks and the qualifications of drivers, on-board staff and managers in charge of traffic must be such as to ensure operating efficiency on the trans-European high-speed rail system.

SCHEDULE 4

Regulations 2, 11 and 19

(Annex IV of the high-speed Directive) INTEROPERABILITY CONSTITUENTS

EC declaration

- **of conformity**
- **of suitability for use**

1. Interoperability constituents

The EC declaration applies to the interoperability constituents involved in the interoperability of the trans-European high-speed rail systems, as referred to in Article 3. These interoperability constituents may be:

1.1 multiple-use constituents

These are constituents that are not specific to the railway system and which may be used as such in other areas;

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1.2 multiple-use constituents having specific characteristics

These are multiple-use constituents which are not, as such, specific to a railway system, but which must display specific performance levels when used for railway purposes;

1.3 specific constituents

These are constituents that are specific to railway applications.

2. *Scope*

The EC declaration covers:

- either the assessment by a notified body or bodies of the intrinsic conformity of an interoperability constituent, considered in isolation, to the technical specifications to be met;
- or the assessment/judgement by a notified body or bodies of the suitability for use of an interoperability constituent, considered within its railway environment and in particular in cases where the interfaces are involved, in relation to the technical specifications, particularly those of a functional nature, which are to be checked.

The assessment procedures implemented by the notified bodies at the design and production stages will draw upon the modules defined in Decision 93/465/EEC(23), in accordance with the conditions referred to in the TSIs.

3. *Contents of the EC declaration*

The EC declaration of conformity or of suitability for use, and the accompanying documents must be dated and signed.

That declaration must be written in the same language as the instructions and must contain the following:

- the Directive references;
- the name and address of the manufacturer or his authorised representative established within the Community (give trade name and full address and in the case of the authorised representative also give the trade name of the manufacturer or constructor);
- description of interoperability constituent (make, type, etc.);
- description of the procedure followed in order to declare conformity, suitability for use (Article 13);
- all of the relevant descriptions met by the interoperability constituent and in particular its conditions of use;
- name and address of notified body (bodies) involved in the procedure followed in respect of conformity or suitability for use and date of examination certificate together, where appropriate, with the duration and conditions of validity of the certificate;
- where appropriate, reference to the European specification;
- identification of signatory having received powers to engage the manufacturer or his authorised representative established within the Community.

(23) O.J. No. L220, 30.8.1993, p. 23.

SCHEDULE 5

Regulations 2, 13 and 14

(Annex V of the high-speed Directive) SUBSYSTEMS

EC declaration of verification

The EC declaration of verification and the accompanying documents must be dated and signed.

That declaration must be written in the same language as the technical file and must contain the following:

- the Directive references;
- name and address of the contracting entity or its authorised representative established within the Community. (Give trade name and full address, and in the case of the authorised representative also give the trade name of the contracting entity);
- a brief description of the subsystem;
- name and address of the notified body which has conducted the EC inspection referred to in Article 18;
- the references of the documents contained in the technical file;
- all of the relevant temporary or final provisions to be complied with by the subsystems and in particular, where appropriate, any operating restrictions or conditions;
- if temporary: duration of validity of the EC declaration;
- identity of signatory.

SCHEDULE 6

Regulations 2, 13 and 20

(Annex VI to the high-speed Directive) SUBSYSTEMS

EC verification

1. EC verification is the procedure whereby a notified body checks and certifies, at the request of a contracting entity or its authorised representative established within the Community, that a subsystem:

- complies with the Directive;
- complies with the other regulations deriving from the Treaty and may be put into operation.

2. The subsystem is checked at each of the following stages:

- overall design;
- structure of subsystem, including, in particular, civil-engineering activities, constituent assembly, overall adjustment;
- final testing of the subsystem.

3. The notified body responsible for EC verification draws up the certificate of conformity intended for the contracting entity or its authorised representative established within the Community, which in turn draws up the EC verification declaration intended for the supervisory authority in the Member State within which the subsystem is located and/or operates.

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- 4.** The technical record accompanying the verification statement must be made up as follows:
- for infrastructures: engineering-structure plans, approval records for excavations and reinforcement, testing and inspection reports on concrete;
 - for other subsystems: general and detailed drawings in line with execution, electrical and hydraulic diagrams, control-circuit diagrams, descriptions of data-processing and automatic systems, operating and maintenance manuals, etc.;
 - list of interoperability constituents, as referred to in Article 3, incorporated into the subsystem;
 - copies of the EC declarations of conformity or suitability for use with which said constituents must be provided in accordance with Article 13 of the Directive, accompanied where appropriate by the corresponding calculation notes and a copy of the records of the tests and examinations carried out by the notified bodies on the basis of the common technical specifications;
 - certificate from the notified body responsible for EC verification, accompanied by corresponding calculation notes and countersigned by itself, stating that the project complies with this Directive and mentioning, where appropriate, reservations recorded during performance of the activities and not withdrawn; the certificate should also be accompanied by the inspection and audit reports drawn up in connection with the verification, as specified in points 5.3 and 5.4.

5. Monitoring

5.1 The aim of EC monitoring is to ensure that the obligations deriving from the technical record have been met during production of the subsystem.

5.2 The notified body responsible for checking production must have permanent access to building sites, production workshops, storage areas and, where appropriate, prefabrication or testing facilities and, more generally, to all premises which it considers necessary for its task. The contracting entity or its authorised representative within the Community must send it or have sent to it all the documents needed for that purpose and in particular the implementation plans and technical records concerning the subsystem.

5.3 The body notified responsible for checking implementation must periodically carry out audits in order to confirm compliance with the Directive. It must provide those responsible for implementation with an audit report. It may require to be present at certain stages of the building operations.

5.4 In addition, the notified body may pay unexpected visits to the worksite or to the production workshops. At the time of such visits the notified body may conduct complete or partial “audits”. It must provide those responsible for implementation with an inspection report and, if appropriate, an audit report.

6. The complete record referred to in paragraph 4 must be lodged with the contracting entity or its authorised agent established within the Community in support of the certificate of conformity issued by the notified body responsible for checking the subsystem in working order. The record must be attached to the EC declaration of verification which the contracting entity sends to the supervisory authority in the Member State concerned.

A copy of the record must be kept by the contracting entity throughout the service life of the subsystem. It must be sent to any other Member States who so request.

- 7.** Each body must periodically pass on relevant information concerning the following:
- requests for EC verification received;
 - certificates of conformity issued;
 - certificates of conformity refused.

8. The records and correspondence relating to the EC verification procedures must be written in an official language of the Member State in which the contracting entity or its authorised representative is established within the Community, or in a language accepted by the Community.

SCHEDULE 7

Regulations 2 and 5

(Annex VII to the high-speed Directive)

MINIMUM CRITERIA WHICH MUST BE TAKEN INTO ACCOUNT BY THE MEMBER STATES WHEN NOTIFYING BODIES

1. The body, its Director and the staff responsible for carrying out the checking operations may not become involved either directly or as authorised representatives in the design, manufacture, construction, marketing or maintenance or the interoperability constituents or subsystems or in their use. This does not exclude the possibility of an exchange of technical information between the manufacturer or constructor and that body.

2. The body and the staff responsible for inspection must carry out the checking operations with the greatest possible professional integrity and the greatest possible technical competence and must be free of any pressure and incentive, in particular of a financial type, which may affect their judgement or the results of their inspection, and in particular those generated by persons or groups of persons affected by the results of the checks.

3. That body must employ staff and possess the means required to perform adequately the technical and administrative tasks linked with the conducting of checks. It should also have access to the equipment needed for exceptional checks.

4. The staff responsible for the checks must possess:

- proper technical and vocation training;
- a satisfactory knowledge of the requirements relating to the checks that they carry out and sufficient practice in those checks;
- the ability to draw up the certificates, records and reports which constitute the formal record of the inspections conducted.

5. The independence of the staff responsible for inspections must be guaranteed. No official must be remunerated either on the basis of the number of inspections performed or of the results of those inspections.

6. The body must take out civil liability insurance unless that liability is covered by the State under national law or unless the inspections are carried out directly by that Member State.

7. The staff of that body are bound by professional secrecy with regard to everything they learn in the performance of their duties (with the exception of the competent administrative authorities in the State where they perform those activities) in pursuance of this Directive or any provision of national law implementing the Directive.

SCHEDULE 8

Regulation 2

RAIL NETWORK SCHEMES

1. The rail network schemes are the following lines—

- (a) the part of the Channel Tunnel railway line passing through the Channel Tunnel system;

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- (b) the Channel Tunnel Rail Link from London St Pancras station to Cheriton;
- (c) London Euston station to Glasgow Central station, via Nuneaton, Stafford, Crewe, Preston, Penrith, Carstairs and Polmadie;
- (d) Colwich Junction to Stone station;
- (e) Norton Bridge to Manchester Piccadilly station via Macclesfield;
- (f) Crewe station to Stockport station via Wilmslow;
- (g) Weaver Junction to Liverpool Lime Street station via Runcorn;
- (h) Carstairs South Junction to Edinburgh Waverley station via Cobbinshaw Summit and Haymarket;
- (i) London King's Cross station to Edinburgh Waverley station via Peterborough, Doncaster, York and Newcastle;
- (j) London Paddington station to Cardiff Central station via Badminton;
- (k) Wootton Bassett Junction to Bristol Temple Meads station via Bath;
- (l) Stoke Gifford Junction to Bristol Temple Meads station via Filton Abbey Wood; and
- (m) Belfast Central station to the border with the Republic of Ireland.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in relation to the whole of the United Kingdom, Council Directive [96/48/EC](#) of 23rd July 1996 on the interoperability of the trans-European high-speed rail system (O.J. No. L235, 17.9.97, p.6 as corrected by O.J. 1262, 16.10.96. p.18). The purpose of that Directive is to bring about the inter-working (interoperability) of rolling stock on the trans-European high-speed rail system and, in particular to introduce common standards of construction across the EC. The Regulations apply to the United Kingdom lines on the high-speed trans-European rail system (“the rail network schemes”).

In Part I, regulation 1 provides for the Regulations to come into force on 16th May 2002 and regulation 2 (together with Schedules 1 to 7) deals with interpretation, including the definition of terms used in the Regulations. Regulation 3 provides for the Regulations to apply to the basic “structural subsystems” related to the rail network schemes (such as rolling stock and signalling) and their elementary components, called “interoperability constituents” (such as, in relation to rolling stock, the wheels), other than structural subsystems that are placed into service, or interoperability constituents that are placed on the market, within three months of the coming into force of the Regulations.

Part II relates to the bodies (“notified bodies”) responsible for assessing the conformity of structural subsystems and interoperability constituents to the relevant standards. Regulation 4 defines these as bodies appointed either by the Authority (the Strategic Rail Authority in Great Britain, and the Department for Regional Development in Northern Ireland), or by another Member State in accordance with the Directive. Regulation 5 and Schedule 7 provide for the appointment and termination of appointment of bodies appointed by the Authority, and regulations 6 to 8 impose duties on them. Regulation 9 provides for fees to be charged by notified bodies for work carried

out under the Regulations, and regulation 10 provides for fees to be charged by the Strategic Rail Authority in relation to the appointment of notified bodies in Great Britain.

Part III (read with Schedules 4, 5 and 6), contains general requirements in relation to the placing on the market of interoperability constituents by manufacturers or their agents (“persons responsible”) and the placing into service of structural subsystems by the persons who procured, or themselves undertook, their construction (“contracting entities”).

Regulation 11 (read with Schedule 4), prohibits the placing on the market of an interoperability constituent by the person responsible unless it meets the “essential requirements” (set out in Schedule 3). This is evidenced by a conformity declaration or a suitability declaration, or both, drawn up by the person responsible, following the assessment of the interoperability constituent against European specifications or notified standards by a notified body. Regulation 12 imposes requirements on others to comply with regulation 10 where the person responsible has not done so.

Regulation 13 (read with Schedules 5 and 6), sets out the duties to be fulfilled by a contracting entity when manufacturing, or contracting with another person for the manufacture of a structural subsystem. The contracting entity is required to draw up a verification declaration in respect of the structural subsystem. Before it may do so the contracting entity must appoint a notified body to assess the conformity of the structural subsystem with Technical Specifications for Interoperability (TSIs) or, in their absence, “notified standards” and compile a technical file (TSIs are standards drawn up by the Commission and notified standards are standards notified by the United Kingdom to the Commission for use where the TSIs do not apply). Before the verification declaration can be drawn up, the contracting entity must also be satisfied that the structural subsystem meets the essential requirements, that a “certificate of conformity” has been drawn up by the notified body and that the technical file is complete.

Regulation 14 prohibits the placing into service of structural subsystems that have been constructed or upgraded (other than certain exempted categories of high-speed rolling stock) until the “supervisory authority” (the Health and Safety Executive in Great Britain, and the Department for Regional Development in Northern Ireland) has given an authorisation. The supervisory authority cannot give an authorisation unless satisfied that the structural subsystem has been designed, constructed and installed so as not to hinder satisfaction of the essential requirements when installed as part of the rail network schemes, the technical file is complete and the verification declaration has been properly drawn up. The supervisory authority may require further checks to be carried out by a contracting entity before considering the application for authorisation further. Regulation 15 sets out certain exemptions from the need to conform with TSIs. Regulation 16 provides for a screening decision to be made by the supervisory authority as to whether major works in relation to an existing structural subsystem constitute “upgrading” for the purposes of the Regulations. Regulation 17 permits stages of upgrading work to be used before an authorisation for the project is given where a staged works decision undertaken by the supervisory authority so determines. Regulation 18 permits the supervisory authority to charge a fee for work undertaken in Great Britain pursuant to regulations 14, 16 and 17.

Part IV relates to the assessment procedures to be carried out in relation to interoperability constituents and subsystems.

Regulations 19 and 20 specify the appropriate conformity or suitability for use assessment and verification assessment procedures. Regulation 21 describes the circumstances under which interoperability constituents and structural subsystems are to be taken to meet the requirements of the Regulations.

Part V contains miscellaneous provisions in respect of interoperability constituents and structural subsystems.

Regulation 22 regulates the procedure for obtaining accessibility compliance certificates. Regulation 23 imposes duties on persons operating interoperability constituents, and regulations 24 and 25

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imposes ongoing duties in respect of the operation of structural subsystems. Regulation 26 requires the maintenance of registers in respect of structural subsystems.

Regulation 27 provides for the notification by the Secretary of State to the Commission of United Kingdom notified standards.

Regulations 28 and 29 provide for the notification by the Secretary of State to the Commission of, respectively, notices served on the contracting entity under regulation 33 and additional checks required by regulation 14(5).

Regulation 29 provides for interoperability constituents from other Member States to be recognised in the United Kingdom.

Part VI relates to enforcement. Regulations 31 and 32 provide for the Regulations to be enforced by the Health and Safety Executive in Great Britain and by the Health and Safety Executive for Northern Ireland in Northern Ireland. A defence of due diligence is provided in regulation 34 and the liabilities on persons other than the principal offender are imposed by regulation 35.

In Part VII, regulation 36 makes some consequential amendments.

In Part VIII (transitional provisions and revocations), regulation 37 revokes, subject to transitional provisions, the Railways (Interoperability) (Notified Bodies) Regulations 2000.

A list of TSIs and of notified standards applying in Great Britain can be obtained from the Strategic Rail Authority, 55 Victoria Street, London, SW1H 0EU.

A list of TSIs and of notified standards applying in Northern Ireland can be obtained from the Department for Regional Development, River House, 48 High Street, Belfast, BT1 2AR.

A copy of the regulatory impact assessment prepared in respect of these Regulation can be obtained from the Railways Directorate, Department for Transport, Local Government and the Regions, Zone 3/33, Great Minster House, 76 Marsham Street, London, SW1P 4DR. A copy has been placed in the library of each House of Parliament.