
STATUTORY INSTRUMENTS

2011 No. 3066

The Railways (Interoperability) Regulations 2011

PART 6

Appeals and Enforcement

Appeals in Great Britain

37.—(1) A person who is aggrieved by a decision of the Safety Authority under regulations 5 to 11 may appeal to the Secretary of State.

(2) The Secretary of State may, in such cases as the Secretary of State considers it appropriate to do so, having regard to the nature of the questions which appear to the Secretary of State to arise, direct that an appeal under this regulation is determined on the Secretary of State's behalf by a person appointed by the Secretary of State for that purpose.

(3) Before the determination of an appeal the Secretary of State must ask the appellant and the Safety Authority whether they wish to appear and be heard on the appeal and—

- (a) the appeal may be determined without a hearing of the parties if both of them express a wish not to appear and be heard;
- (b) the Secretary of State must, if either of the parties expresses a wish to appear and be heard, afford to both of them an opportunity of doing so.

(4) The Tribunals and Inquiries Act 1992(1) applies to a hearing held by a person appointed in pursuance of paragraph (2) to determine an appeal as it applies to a statutory inquiry held by the Secretary of State, but as if in section 10(1) of that Act (statement of reasons for decisions) the reference to any decision taken by the Secretary of State included a reference to a decision taken on the Secretary of State's behalf by that person.

(5) A hearing held by a person appointed in pursuance of paragraph (2) is a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007(2) (functions etc of Administrative Justice and Tribunals Council).

(6) Without prejudice to the right of any person to make an application for judicial review—

- (a) a determination by the Secretary of State, or by a person appointed to make a determination on the Secretary of State's behalf, on an appeal brought under this regulation is binding on all parties affected by that determination;
- (b) the Secretary of State, or person so appointed, may give such directions as they consider appropriate to give effect to the determination; and
- (c) it is the duty of any person to whom a direction is given under this regulation to comply with and give effect to that direction.

(1) 1992 c.53.
(2) 2007 c.15.

(7) The Secretary of State may pay to any person appointed to determine an appeal under paragraph (2) on the Secretary of State's behalf such remuneration and allowances as the Secretary of State may with the approval of the Treasury determine.

(8) Where under paragraph (3)(b) a party expresses a wish to appear and be heard, for hearings held in England and Wales, the Health and Safety Licensing Appeals (Hearing Procedure) Rules 1974(3), and for hearings held in Scotland, the Health and Safety Licensing Appeals (Hearing Procedure)(Scotland) Rules 1974(4), apply to an appeal under paragraph (1) as they apply to an appeal under section 44(1) of the 1974 Act, but with the modification that references to a licensing authority in those rules are to be read as references to the Safety Authority.

(9) Where an appeal is made under this regulation, the decision in question is suspended pending the final determination of the appeal.

(10) This regulation does not apply to a decision of DRDNI under regulations 5 to 11.

Appeals in Northern Ireland

38.—(1) A person who is aggrieved by a decision of the Safety Authority in Northern Ireland under regulations 5 to 11 may appeal to DRDNI.

(2) The appellant must lodge the appeal by way of an application in such form or manner as DRDNI may decide.

(3) DRDNI must within two months of the date of receipt of the information necessary for DRDNI to make its determination—

- (a) make a determination; and
- (b) where DRDNI considers it appropriate in order to give effect to the determination—
 - (i) arrange for the Safety Authority to take any necessary action; and
 - (ii) give directions.

(4) Without prejudice to the right of any person to make an application for judicial review—

- (a) a determination by DRDNI on appeal brought under this regulation is binding on all parties affected by that determination; and
- (b) it is the duty of any person to whom a direction is given under this regulation to comply with and give effect to that direction.

(5) Where an appeal is made under this regulation, the decision in question is suspended pending the final determination of the appeal.

Enforcement in Great Britain

39.—(1) It is the duty of the Office of Rail Regulation to make adequate arrangements for the enforcement of these Regulations in Great Britain.

(2) Subject to paragraph (5), the provisions of the 1974 Act specified in paragraph (3) (the “specified provisions”) apply for the purposes of the enforcement of these Regulations in Great Britain as if in the specified provision—

- (a) a reference to the “enforcing authority” was a reference to the Office of Rail Regulation;
- (b) a reference to the “relevant statutory provisions” was a reference to these Regulations and to the specified provisions; and
- (c) a reference to “health and safety regulations” was a reference to these Regulations.

(3) [S.I. 1974/2040](#).

(4) [S.I. 1974/2068](#).

- (3) The provisions of the 1974 Act referred to in paragraph (2) are—
- (a) sections 19 and 20 (appointment and powers of inspectors)(**5**), excluding section 20(3);
 - (b) sections 21 and 22 (improvement and prohibition notices)(**6**);
 - (c) section 23 (provisions supplementary to sections 21 and 22)(**7**), excluding section 23(3) and (6);
 - (d) section 24 (appeal against improvement and prohibition notices)(**8**);
 - (e) section 26 (power to indemnify inspectors);
 - (f) section 28 (restrictions on disclosure of information);(**9**)
 - (g) sections 33(1)(c), (e) to (h), (j) to (o), 34(2) to (5), 36(1) and (2), 37 to 41 and 42(1) to (3) (provision as to offences)(**10**); and
 - (h) section 46 (service of notices).

(4) The mode of trial and maximum penalty applicable to each offence under section 33 of the 1974 Act so applied and listed in the first column of the following table are set out opposite that offence in the subsequent columns of the table.

<i>Offence</i>	<i>Mode of trial</i>	<i>Penalty on summary conviction</i>	<i>Penalty on conviction on indictment</i>
An offence under section 33(1)(c), (e), (f), (g), (j), (k), (l), (m) or (o).	Summarily or on indictment.	Imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the standard scale as it has effect from time to time (as if the offence was triable only summarily), or both.	Imprisonment for a term not exceeding two years, or a fine, or both.
An offence under section 33(1)(h).	Summarily only.	Imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the standard scale as it has effect from time to time, or both.	
An offence under section 33(1)(n).	Summarily only.	A fine not exceeding level 5 on the standard scale as it has effect from time to time.	

(5) Section 20(7) was amended by the Civil Partnership Act 2004 (c.33), Schedule 27, paragraph 49.

(6) Section 22(1) and (2) were amended by, and section 22(4) was substituted by, the Consumer Protection Act 1987 (c.43), Schedule 3.

(7) Section 23(4) was amended for England and Wales by the Fire and Rescue Services Act 2004 (c.21), Schedule 1, paragraph 44, and by S.I. 2005/1541. Corresponding amendments were made for Scotland by S.S.I. 2005/383 and S.S.I. 2006/475.

(8) Section 24(2) and (4) were amended by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 1(2) (a).

(9) Section 28(4) was substituted by S.I. 2008/960. Section 28(5) was amended by S.I. 2004/3363. Section 28(9) was inserted by the Employment Protection Act 1975 (c.71), Schedule 15, paragraph 9. There are other amendments to section 28 not relevant to these Regulations.

(10) Section 33(1)(c) was amended by the Employment Protection Act 1975 (c.71), Schedule 15, paragraph 11, and Schedule 18. Section 33(1)(m) was amended by the Forgery and Counterfeiting Act 1981 (c.45), the Schedule, Part 1.

(5) A failure to discharge a duty placed on the Office of Rail Regulation, the Secretary of State, or the Intergovernmental Commission by these Regulations is not an offence under section 33(1) (c) of the 1974 Act.

Enforcement in Northern Ireland

40.—(1) It is the duty of the Health and Safety Executive for Northern Ireland⁽¹¹⁾ to make adequate arrangements for the enforcement of these Regulations in Northern Ireland.

(2) Subject to paragraph (5), the provisions of the Health and Safety at Work (Northern Ireland) Order 1978⁽¹²⁾ (“the 1978 Order”) specified in paragraph (3) (the “specified provisions”) apply for the purposes of the enforcement in Northern Ireland of these Regulations as if in the specified provision—

- (a) a reference to the “enforcing authority” was a reference to the Health and Safety Executive for Northern Ireland;
- (b) a reference to the “relevant statutory provisions” was a reference to these Regulations and to the specified provisions; and
- (c) a reference to “health and safety regulations” was a reference to these Regulations.

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

- (a) articles 21 and 22 (appointment and powers of inspectors), excluding article 22(3);
- (b) articles 23 and 24 (improvement and prohibition notices);
- (c) article 25 (provisions supplementary to articles 23 and 24), excluding article 25(3);
- (d) article 26 (appeal against improvement and prohibition notices);
- (e) article 28 (power to indemnify inspectors);
- (f) article 30 (restrictions on disclosure of information); and
- (g) articles 31(1)(c), (e) to (h), (j) to (o), 32(2) to (4), 34 (1) and (2), 34A to 38 and 39(1) to (3) (provision as to offences).

(4) The mode of trial and maximum penalty applicable to each offence under article 31 of the 1978 Order so applied and listed in the first column of the following table are set out opposite that offence in the subsequent columns of the table.

<i>Offence</i>	<i>Mode of trial</i>	<i>Penalty on summary conviction</i>	<i>Penalty on conviction on indictment</i>
An offence under article 31(1)(c), (e), (f), (g), (k), (j), (l), (m) or (o).	Summarily or on indictment.	Imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the standard scale as it has effect from	Imprisonment for a term not exceeding two years, or a fine, or both.

⁽¹¹⁾ 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.

⁽¹²⁾ [S.I. 1978/ 1039 \(N.I. 9\)](#). 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 and the Health and Safety (Offences) Act 2008 (c.20) section 1(3). There are other amendments to the 1978 Order not relevant to these Regulations.

<i>Offence</i>	<i>Mode of trial</i>	<i>Penalty on summary conviction</i>	<i>Penalty on conviction on indictment</i>
		time to time (as if the offence was triable only summarily), or both.	
An offence under article 31(1)(h).	Summarily only.	Imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the standard scale as it has effect from time to time, or both.	
An offence under article 31(1)(n).	Summarily only.	A fine not exceeding level 5 on the standard scale as it has effect from time to time.	

(5) A failure to discharge a duty placed on the Health and Safety Executive for Northern Ireland, DRDNI or the Secretary of State by these Regulations is not an offence under article 31(1)(c) of the 1978 Order.

Notices relating to interoperability constituents not meeting the essential requirements

41.—(1) If the Office of Rail Regulation or the Health and Safety Executive for Northern Ireland is of the opinion that an interoperability constituent in relation to which an EC declaration of conformity or suitability for use has been drawn up is unlikely when used as intended to meet the essential requirements relating to it, the Office of Rail Regulation or the Health and Safety Executive for Northern Ireland may serve a notice in writing on any person who is using or intending to use that interoperability constituent in a project subsystem—

- (a) prohibiting the use of or restricting the area of use of that interoperability constituent; or
- (b) where there is a serious safety risk, requiring the recall or withdrawal of the interoperability constituent.

(2) The information to be contained in a notice served under paragraph (1) is—

- (a) a statement that the Office of Rail Regulation or the Health and Safety Executive for Northern Ireland 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 must not be used, or that its area of use shall be restricted, or that it must be recalled or withdrawn; and
- (d) the date by which the person must comply with the notice.

(3) Any notice served under paragraph (1) may be withdrawn by the Office of Rail Regulation or the Health and Safety Executive for Northern Ireland by serving notice of the withdrawal on the person.

(4) Where a notice has been served on a person (“P”) in accordance with this regulation P must—

- (a) comply with that notice; and
- (b) notify the person (if any) who supplied P 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 P requires that person in turn to notify the supplier (if any) with the same information contained in the notice from P.

Notice of improper drawing up of the EC declaration of conformity or suitability for use for an interoperability constituent

42.—(1) Where the Office of Rail Regulation or the Health and Safety Executive for Northern Ireland has reasonable grounds for suspecting that the EC declaration of conformity or suitability for use has not been drawn up in accordance with the requirements of regulation 25, it may give notice in writing to any person who made the declaration.

(2) A notice which is given under paragraph (1) must—

- (a) state that the Office of Rail Regulation or the Health and Safety Executive for Northern Ireland considers that the EC declaration of conformity or suitability for use has not been properly drawn up in accordance with regulation 25;
- (b) specify the respect in which it is so considered and give particulars;
- (c) require the person who made the declaration to—
 - (i) secure that any interoperability constituent to which the notice relates conforms as regards the provisions concerning the proper drawing up of the declaration within such period as may be specified in the notice; and
 - (ii) provide evidence within that period, to the satisfaction of the Office of Rail Regulation or the Health and Safety Executive for Northern Ireland, as the case may be, that the declaration has been properly drawn up; and
- (d) inform the relevant person that if the non-conformity continues (or if satisfactory evidence of conformity has not been provided) within the period specified in the notice, further action may be taken in respect of that non-conformity under these Regulations.

(3) Where a notice has been served under this regulation on a person, the person served must comply or secure compliance with the notice.

Defence of due diligence

43.—(1) Subject to the following provisions of this regulation, if proceedings are brought against a person (“P”) for an offence under these Regulations it is a defence for P to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where P’s defence 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,

P is not, without the leave of the court, entitled to rely on the defence unless, within a period ending 7 clear days before the commencement of the hearing of the proceedings (or in Scotland, the trial diet), P has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph must 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 P serving the notice at the time it is served.

(4) P is not entitled to rely on the defence provided by paragraph (1) by reason P’s reliance on information supplied by another, unless P shows that it was reasonable in all the circumstances to have relied on the information, having regard in particular—

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