

2005 No. ///

TRANSPORT

HEALTH AND SAFETY

RAILWAYS

**The Railways (Accident Investigation and Reporting) Regulations
2005**

<i>Made</i> - - - -	2005
<i>Laid before Parliament</i>	2005
<i>Coming into force</i> - -	2005

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The Secretary of State for Transport, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to measures relating to railways and railway transport, in exercise of the powers conferred upon him by that subsection and in exercise of the powers conferred by sections 2, 6, 7(1), 9, 11 and 13(1) of the Railways and Transport Safety Act 2003⁽³⁾ hereby makes the following Regulations:—

Citation and commencement

1.—(1) These regulations may be cited as the Railways (Accident Investigation and Reporting) Regulations 2005.

(2) These regulations shall come into force on // 2005 in England and Wales and Scotland and on // 2005 in Northern Ireland.

Interpretation

2.—(1) In these regulations—

“the 2003 Act” means the Railways and Transport Safety Act 2003;

“accident” means a railway accident;

“the Branch” means the Rail Accident Investigation Branch;

“Channel Tunnel system” has the same meaning given by section 1(7) of the Channel Tunnel Act 1987⁽⁴⁾ to the words “the tunnel system”;

“Chief Inspector” means the Chief Inspector of Rail Accidents appointed under section 3(2) of the 2003 Act;

“constable” means any person who is—

(a) a member or special constable of any police force who has been attested as a constable under section 29 of the Police Act 1996⁽⁵⁾ or declared a constable under section 16 of the Police (Scotland) Act 1967⁽⁶⁾; or

(b) a member of the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve;

“dangerous goods” has the meaning in section 1.2.2 of the Regulations which came into force on 1st January 2003 concerning the international carriage of dangerous goods by rail which—

(a) form Annex 1 to Appendix B to the Convention concerning International Carriage by Rail⁽⁷⁾, as amended from time to time up to the date of the making of these regulations;

(b) are contained in the Annex to Council Directive 96/49/EC of 23rd July 1996, as amended, on the approximation of the laws of the member States with regard to the transport of dangerous goods by rail⁽⁸⁾; and

⁽¹⁾ S.I. 1996/266.

⁽²⁾ 1972 c. 68.

⁽³⁾ 2003 c. 20.

⁽⁴⁾ 1987 c. 53.

⁽⁵⁾ 1996 c. 16.

⁽⁶⁾ 1997 c. 77.

⁽⁷⁾ Cmnd. 2232.

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(c) include the 2004 Supplement which came into force on 1st January 2004⁽⁹⁾;

“European Railway Agency” means the agency for railway safety and interoperability established by Regulation (EC) No 881/2004 of the European Parliament and the Council of 29th April 2004 establishing a European Railway Agency⁽¹⁰⁾;

“evidence” means anything involved in or relating to an accident or incident, whether at the site of the accident or incident or remote from it, including—

(d) written, electronic, photographic or other records;

(e) electronic or recording equipment;

(f) rolling stock, infrastructure, equipment and signalling systems;

(g) any personal, personnel, medical or other similar record or document; and

(h) anything else that an inspector identifies to a railway industry body or a manufacturer, supplier of equipment or components or services to a railway industry body, as being relevant to the accident or incident;

“incident” means a railway incident;

“infrastructure” means fixed assets used for the operation of a railway;

“infrastructure manager” means any person who is responsible for establishing and maintaining infrastructure or a part thereof, which may also include the management of infrastructure control and safety systems, but does not include a maintenance contractor;

“inspector” means a person appointed as an inspector of rail accidents under section 3(1) of the 2003 Act;

“Intergovernmental Commission” has the meaning given by section 49 of the Channel Tunnel Act 1987 to those words;

“level crossing” means any place where a railway crosses on a level any land used as a highway or other road or passageway, whether or not there is public access to such land;

“maintenance contractor” means a person providing maintenance, renewals or new works services in relation to railway property;

“motor vehicle” has the meaning given by section 185 of the Road Traffic Act 1988⁽¹¹⁾;

“railway” has the same meaning as in section 1(1) of the 2003 Act;

“railway industry body” means a person who is an infrastructure manager, a railway undertaking, a maintenance contractor or an owner or operator of rolling stock or railway assets;

“railway property” has the same meaning as in section 1(1) of the 2003 Act;

“safety authority”—

(i) in relation to Great Britain, excluding the Channel Tunnel system, means the Health and Safety Executive;

(j) in relation to Northern Ireland, means the Department for Regional Development; and

(k) in relation to the Channel Tunnel system, means the Intergovernmental Commission; and

“Safety Directive” means Directive 2004/49/EC of the European Parliament and the Council of 29th April 2004 on safety on the Community’s railways and amending Council Directive 95/18/EC on the

⁽⁸⁾ OJ No. L235, 17.9.1996, p.25; relevant amending Directives are Directive 2000/62/EC of the European Parliament and the Council of 10th October 2000 (OJ No. L279, 1.11.2000, p.44) and Commission Directive 2003/29/EC of 7th April 2003 (OJ No. L90, 8.4.2003, p.47).

⁽⁹⁾ ISBN 0-11-55-2553-X.

⁽¹⁰⁾ OJ No. L164, 30.04.04, p.1.

⁽¹¹⁾ 1998 c. 52.

licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification⁽¹²⁾.

(2) The following words have the meaning given to them in section 83 of the Railways Act 1993 or such equivalent definition in relation to a tramway⁽¹³⁾—

- (a) operator;
- (b) network;
- (c) railway asset;
- (d) railway services;
- (e) rolling stock;
- (f) station;
- (g) track; and
- (h) train.

(3) “Serious accident” means a derailment or collision of rolling stock which has an obvious impact on railway safety regulation or management of safety and includes such an accident that results in—

- (a) the death of at least one person;
- (b) serious injuries to five or more persons; or
- (c) extensive damage to rolling stock, the infrastructure or the environment; and

“extensive damage” means damage that can immediately be assessed by the Branch to cost at least 2 million Euros in total.

(4) “Serious injury” means—

- (a) a fracture other than to fingers, thumbs or toes;
- (b) amputation;
- (c) dislocation of the shoulder, hip, knee or spine;
- (d) loss of sight, whether temporary or permanent, in one or both eyes;
- (e) a chemical or hot metal burn or any penetrating injury to one or both eyes;
- (f) an injury leading to hypothermia or heat-induced illness;
- (g) an injury requiring resuscitation of the injured person;
- (h) an injury requiring admittance to hospital for more than 24 hours;
- (i) an injury directly leading to loss of consciousness; or
- (j) an injury resulting from the absorption of a substance by inhalation, ingestion or through the skin that causes acute illness requiring medical treatment.

(5) Any expression used both in these regulations and the Safety Directive and not otherwise defined in these regulations has the same meaning for the purposes of these regulations as it has for the purposes of the Safety Directive.

Accidents and incidents excluded from the scope of Part 1 of the Railways and Transport Safety Act 2003

3.—(1) An accident or incident that occurs within an industrial curtilage shall not be treated as an accident or incident for the purposes of Part 1 of the 2003 Act except where the accident or incident—

- (a) involves a train being used within an industrial curtilage for the purpose of carrying passengers for reward; or

⁽¹²⁾ OJ No. L164, 30.04.04, p.44.

⁽¹³⁾ 1993 c. 43.

- (b) occurs on track that connects directly with track forming part of a railway outside the industrial curtilage for the purpose of facilitating entry to and exit from that curtilage.

(2) An accident or incident that occurs on a railway which is operated by a cable haulage system and has a track of a length not exceeding 1 kilometre shall not be treated as an accident or incident for the purposes of Part 1 of the 2003 Act.

(3) An accident or incident that occurs within the curtilage of—

- (a) premises used for the purpose of a museum, amusement park, funfair or other place of public recreation or entertainment; or
- (b) grounds of a dwelling house or other private land the main use of which is not related to the operation of a railway,

shall not be treated as an accident or incident for the purposes of Part 1 of the 2003 Act except where the railway on which it occurred connects directly with track forming a railway outside those curtilages.

(4) In this regulation—

- (a) “industrial curtilage” means a curtilage of a harbour, freight terminal, mine, quarry or factory premises;
- (b) “factory” means a factory within the meaning of section 175 of the Factories Act 1961⁽¹⁴⁾ and premises to which section 123(1) or (2) or 125(1) of that Act apply;
- (c) “mine” has the same meaning as in section 180 of the Mines and Quarries Act 1954⁽¹⁵⁾; and
- (d) “quarry” has the same meaning as in regulation 3 of the Quarries Regulations 1999⁽¹⁶⁾.

Duty to notify the Rail Accident Investigation Branch of accidents and incidents

4.—(1) A railway industry body whose property or staff have been involved in an accident or incident of a type listed in Schedule 1 shall notify the Branch of its occurrence immediately it learns of the occurrence and by the quickest means available.

(2) A railway industry body whose property or staff have been involved in an accident or incident of a type listed in Schedule 2 shall notify the Branch of its occurrence as soon as practicable and in any event within three days of its occurrence.

(3) The notification referred to in paragraphs (1) and (2) shall contain as much of the following information relating to the accident or incident as is available at the time of the notification—

- (a) the geographical position of the accident or incident and the nearest point of access to that position;
- (b) the date and time of the accident or incident;
- (c) the point of departure and intended destination of any rolling stock involved;
- (d) brief details of the accident or incident and the sequence of events leading to it;
- (e) in the case of an accident, the number of crew and passengers seriously or fatally injured;
- (f) an estimate of the number of passengers on board any rolling stock involved at the time of the accident or incident;
- (g) the extent of damage caused to any railway, railway property or the environment;
- (h) the weather conditions at the time of the accident or incident;

⁽¹⁴⁾ 1961 (c. 34). Section 175(2)(n) was amended by regulation 3(1) of and Schedule 1 to the Factories Act 1961 etc. (Metrication) Regulations 1983 (S.I. 1983/978).

⁽¹⁵⁾ 1954 c. 70.

⁽¹⁶⁾ S.I. 1999/2024

- (i) the type and an estimate of the quantity of any dangerous goods on board the rolling stock involved at the time of the accident or incident;
- (j) the number of crew on board the rolling stock involved at the time of the accident or incident;
- (k) the name of the railway industry body whose property is involved in the accident or incident;
- (l) the name of the owner of the railway and railway property involved;
- (m) the name and address of the driver of rolling stock involved;
- (n) the vehicle numbers and type of any rolling stock involved;
- (o) details of any emergency service attending the site of the accident or incident; and
- (p) contact details of the person in command or control of the accident or incident site.

(4) The railway industry body that notifies the Branch in accordance with paragraphs (1) or (2) shall provide, within such time as the Branch specifies, such other information about the accident or incident as is not contained in the notification sent to the Branch that the Branch may reasonably require.

(5) A railway industry body that fails to notify the Branch of an accident or incident in accordance with paragraphs (1), (2) or (4) shall be guilty of an offence.

Conduct of investigations by the Rail Accident Investigation Branch

5.—(1) The Branch shall conduct every investigation of an accident or incident in a manner that will not undermine its independence from—

- (a) an infrastructure manager;
- (b) a railway undertaking;
- (c) a charging body;
- (d) an allocation body;
- (e) a notified body; or
- (f) any other party whose interests could conflict with the tasks of the Branch.

(2) The Branch may investigate occurrences other than accidents or incidents provided that such investigation does not undermine its independence from the parties referred to in paragraph (1)(a) to (f).

(3) Within seven days of being notified of an accident or incident the Branch shall make the necessary arrangements to commence an investigation—

- (a) where the accident is a serious accident; or
- (b) where it is not a serious accident but is an accident or incident which, under slightly different conditions, might have led to a serious accident and the Branch has determined that it will conduct an investigation.

(4) In making a determination referred to in paragraph (3)(b) the Branch shall take into account—

- (a) the seriousness of the accident or incident;
- (b) whether it forms part of a series of accidents or incidents;
- (c) its impact on railway safety;
- (d) requests from railway industry bodies, the safety authority, or other member States;
- (e) the extent to which an investigation will improve the safety of railways and prevent accidents and incidents, and
- (f) any other matter that the Chief Inspector considers to be reasonable in the circumstances.

(5) The Branch may undertake a preliminary examination of the circumstances surrounding the accident or incident to determine—

- (a) whether it is an accident or incident of a type described in paragraph (3)(a); or
- (b) where it is not an accident or incident of a type described in paragraph (3)(a), whether an investigation is to be conducted.

(6) Within seven days of its determination to investigate an accident or incident the Branch shall provide the European Railway Agency with details of the time, place and type of the accident or incident, the number of persons injured or killed and the damage caused as a result of the accident or incident.

(7) The Chief Inspector may appoint a person to conduct or participate in an investigation by the Branch.

(8) A person appointed under paragraph (7) may exercise such powers of an inspector as are necessary to enable him to perform his functions under the terms of his appointment.

(9) In relation to an investigation of an accident or incident that the Branch is conducting, the Chief Inspector may—

(a) request assistance from a constable, the safety authority, any public body, any person acting under a duty conferred by an enactment, an accident investigating body of another member State or the European Railway Agency; or

(b) request assistance (including assistance with the retrieval, delivery, storage, disposal or destruction of evidence) from a person other than a person mentioned in sub-paragraph (a),

at such times and in such manner the Chief Inspector may reasonably determine.

(10) Where the Chief Inspector requests assistance from a person referred to in sub-paragraph (9)(b), that person shall assist him.

(11) Subject to paragraph (12) the Branch shall pay such reasonable compensation as may be requested by a person who assists the Chief Inspector pursuant to paragraph (9).

(12) Where the person who assists the Chief Inspector pursuant to paragraph (9) is—

(a) a railway industry body, or a manufacturer or supplier of equipment, components or services to a railway industry body, whose property or staff is involved in the accident or incident being investigated; and

(b) under a statutory duty to investigate the causes of the accident or incident,

the Branch is not required to pay compensation to that person for assistance concerning any matter to which the statutory duty to investigate referred to in sub-paragraph (b) relates.

(13) The Chief Inspector shall determine the extent of an investigation and the procedure to be followed in carrying out an investigation conducted by the Branch or a by person appointed pursuant to paragraph (7).

(14) Where an accident or incident of a type described in paragraph (3) occurs close to a border installation between two member States the Branch—

(a) shall use its best endeavours to agree with the investigating body of the other member State which accident investigating body will conduct the investigation;

(b) shall permit the investigating body in the other member State to participate in an investigation of such accident or incident conducted by the Branch;

(c) shall share the results of the investigation of such accident or incident by the Branch with the investigating body in the other member State; and

(d) may agree to carry out the investigation of the accident or incident in co-operation with the investigating body in the other member State.

(15) Where an accident or incident of a type described in paragraph (3) involves a railway undertaking established and licensed in another member State the Branch shall invite the investigating body in the other member State to participate in an investigation of that accident or incident.

(16) The Branch shall conclude its examination at the site of an accident or incident in the shortest possible time in order to enable the infrastructure that is closed as a result of the accident or incident to be restored and opened to railway services as soon as possible.

(17) The Chief Inspector may discontinue an investigation conducted by the Branch at any time and shall publish his reasons for doing so.

(18) The Branch may undertake an investigation into the circumstances of an accident or incident where it has previously determined that no investigation will be conducted.

(19) A person who fails to assist an inspector when required to do so in accordance with paragraph (10) shall be guilty of an offence.

Access to the site of an accident or incident

6.—(1) Subject to paragraph (2), no person other than an inspector or a person appointed under regulation 5(7) shall—

- (a) have access to the site of an accident or incident of a type described in Schedule 1, including the rolling stock, infrastructure or traffic control and signalling systems involved in such accident or incident; or
- (b) remove from or interfere with, or cause to be removed from or interfered with, anything at the site of an accident or incident of a type described in Schedule 1, including the rolling stock, infrastructure or traffic control and signalling systems involved in such accident or incident,

without the consent of an inspector until such time as the Branch has concluded its examination or removal of evidence at the site or determined that it will not conduct an investigation.

(2) A person to whom the prohibition in paragraph (1) applies may have access to, or remove something from such site, rolling stock, infrastructure or traffic control and signalling systems as are described in paragraph (1), only in so far as may be necessary for the purpose of—

- (a) saving life or preventing further injury or suffering;
- (b) preventing further damage or destruction;
- (c) preventing danger, including from dangerous goods;
- (d) protecting the site; or
- (e) exercising a power conferred on that person by an enactment.

(3) Where a person intends to enter a site referred to in paragraph (1) in exercise of a power conferred on him by an enactment—

- (a) he shall, where practicable, notify an inspector of his intention to do so, together with details of any action he proposes to take while on the site; and
- (b) where it is not practicable to notify an inspector in accordance with sub-paragraph (a), he shall inform an inspector as soon as practicable after he has entered the site and provide details of any action he has taken while on the site.

(4) In determining whether it is practicable to notify an inspector under paragraph (3)(a) a person intending to enter a site referred to in paragraph (1) shall have regard to whether the delay that would occur by the giving such notification would, or would be likely to, adversely affect the result sought to be obtained from the exercise of his power.

(5) Where an inspector receives notification under paragraph (3)(a) of action proposed by a person exercising a power conferred under an enactment and a question arises as to the desirability of the proposed action to be taken, the inspector shall refer the question without delay to the Chief Inspector or an inspector acting on behalf of the Chief Inspector for determination pursuant to section 8(6) of the 2003 Act.

(6) A person who fails to comply with the requirements of paragraph (1) shall be guilty of an offence.

Preservation of evidence

7.—(1) Subject to paragraph (2), a constable, the safety authority or any other person acting pursuant to a power conferred under an enactment who is investigating an accident or incident shall—

- (a) preserve any evidence that he obtains in the course of his investigation into an accident or incident;
- (b) where practicable, notify an inspector of his intention to collect, examine or analyse evidence, or interview a witness, for his investigation;
- (c) where it is not practicable to notify an inspector in accordance with sub-paragraph (b), inform an inspector as soon as practicable after he has taken that action;
- (d) provide details of the action he has taken;
- (e) provide to the Branch a list of the evidence that he has taken; and

- (f) upon request by the Branch, provide the Branch with access to or copies of any evidence he has taken or information he has obtained.

(2) Paragraph (1) shall apply until such time as the Branch has concluded its investigation or determined that it will not conduct an investigation.

(3) In determining whether it is practicable to notify an inspector under paragraph (1)(b) a person intending to collect, examine or analyse evidence or interview a witness for his investigation pursuant to paragraph (1)(b) shall have regard to whether the delay that would occur by the giving such notification would, or would be likely to, adversely affect the result sought to be obtained from the exercise of his power.

(4) Where an inspector receives notification under paragraph (1)(b) of action proposed by a person exercising a power conferred under an enactment and a question arises as to the desirability of the proposed action the inspector shall refer the question without delay to the Chief Inspector or an inspector acting on behalf of the Chief Inspector for determination pursuant to section 8(6) of the 2003 Act.

(5) A railway industry body, or a manufacturer or supplier of equipment, components or services to a railway industry body, shall preserve all evidence—

- (a) which is, or which he reasonably considers may become, relevant to an investigation by the Branch; or
(b) that the Branch directs him to preserve,

until the Branch has concluded its investigation or determined that it will not conduct an investigation.

(6) A railway industry body, or a manufacturer or supplier of equipment, components or services to a railway industry body, that fails to preserve evidence in accordance with paragraph (5) shall be guilty of an offence.

Use of evidence

8.—(1) Subject to paragraph (2), a railway industry body, or a manufacturer or supplier of equipment, components or services to a railway industry body, shall not use any evidence that is or may become relevant to an investigation by the Branch except where it is necessary to do so for the purpose of—

- (a) saving life or preventing further injury or suffering;
(b) preventing further damage or destruction;
(c) preventing danger, including from dangerous goods; or
(d) protecting the site,

until the Branch has concluded its investigation or determined that it will not conduct an investigation.

(2) A railway industry body, or a manufacturer or supplier of equipment, components or services to a railway industry body, may—

- (a) with the consent of the Branch, use equipment that is evidence relating to an accident or incident of a type described in Schedule 1; and
(b) unless the Branch gives notice to the contrary, use equipment that is evidence relevant to an accident or incident of a type described in Schedule 2 provided that there is no practicable alternative to the use of that equipment and such use is essential for the safe operation of the railway.

(3) Subject to paragraph (4), in the course of an investigation into an accident or incident, an inspector or a person appointed under regulation 5(7) may, for the purpose of examining or analysing an article, dismantle or alter the composition of it, whether or not such dismantling or altering has the effect of destroying it.

(4) Where an inspector or a person appointed under regulation 5(7) decides to analyse or examine an article under paragraph (3), and a constable, the safety authority or any other person exercising a power conferred on him under an enactment would be entitled to analyse or examine that article for the purpose of their own investigation into that accident or incident, he shall in relation to those other persons—

- (a) before commencing such examination or analysis, give notice to each of them of his intention to do so;

(b) permit any of them to be present during such examination or analysis; and

(c) provide any of them with access to all records and reports relating to the examination or analysis.

(5) In relation to any evidence that is no longer required by the Branch for the purposes of an investigation, the Branch may retain it if it is or may be required for the purposes of another investigation conducted by the Branch.

(6) In relation to any evidence that is no longer required by the Branch for the purpose referred to in paragraph (5), where a constable or the safety authority or any other person exercising a power conferred on him under an enactment would be entitled to collect that evidence for the purpose of their own investigations, the Branch shall release it to one or more of them for the purposes of their investigations or for the purpose of proceedings taken by them, provided that such evidence is not prohibited from being disclosed under regulation 9(2) or any other enactment.

(7) In relation to any evidence that is no longer required by the Branch under paragraph (5) and which the Branch is not required to release to a person referred to in paragraph (6), the Branch shall release it to its owner.

(8) Where evidence is released to the owner pursuant to paragraph (7), from the moment of release of the evidence to him he shall be responsible for the storage, destruction or disposal of it.

(9) A railway industry body, or a manufacturer or supplier of equipment, components or services to a railway industry body, that uses evidence relating to an accident or incident other than for a purpose specified in paragraph (1) shall be guilty of an offence unless the use of the evidence by that body is in compliance with paragraph (2).

(10) A railway industry body, or a manufacturer or supplier of equipment, components or services to a railway industry body, that either—

(a) uses evidence that is relevant to an accident or incident of a type described in Schedule 1 without the consent of the Branch required under paragraph (2)(a); or

(b) uses evidence that is relevant to an accident or incident of a type described in Schedule 2 having received notice from the Branch under paragraph (2)(b),

shall be guilty of an offence unless that use of such evidence is for a purpose specified in paragraph (1).

Disclosure of evidence

9.—(1) Except as provided in paragraphs (2) and (3) the Branch

(a) may publish or make available for inspection any evidence or information it may acquire during the course of an investigation where such disclosure would not obstruct it in its general aims referred to in section 4 of the 2003 Act; and

(b) shall disclose to a constable or the safety authority investigating an accident or incident, or any other person exercising a power conferred on him by an enactment to investigate an accident or incident, any evidence obtained in the course of an investigation of that accident or incident conducted by the Branch, but only where the recipient would be entitled by an enactment to collect that evidence for the purpose of their own investigation.

(2) Except by order of a relevant court the Branch shall not disclose to anyone—

(a) the name, address, or any other information relating to a person supplying a statement, declaration, recording or other note or record to the Branch in the course of an investigation;

(b) a statement or declaration provided to the Branch or any recording or other note or record relating to such statement or declaration; or

(c) a medical record relating to a person involved in the accident or incident.

(3) Except by order of a relevant court the Branch shall not be required to disclose to anyone—

(a) personal information relating to a person involved in the accident or incident (other than personal information referred to in paragraph (2));

(b) the opinion of an inspector which is unsubstantiated by evidence;

(c) an inspector's notes, whether written or held electronically;

- (d) any trade secret or other information which, in the opinion of the Chief Inspector would, or would be likely to, prejudice the commercial interests of the person holding it; or
- (e) except for the purposes of regulation 10(1), working documents of the Branch.

(4) No order may be made under paragraphs (2) or (3) unless the court is satisfied that the interests of justice outweigh any adverse impact such disclosure may have on the investigation by the Branch to which the evidence relates, upon any future investigation or upon public safety.

(5) Nothing in paragraphs (2) or (3) shall preclude the Branch from—

- (a) publishing the opinion of a person in a report of the accident or incident;
- (b) publishing information referred to in paragraph (2)(b) or (c) in a report of the accident or incident; or
- (c) providing a person who makes a statement or declaration with a copy of such statement or declaration.

(6) A person who discloses evidence in contravention of paragraph (2) shall be guilty of an offence.

(7) In this regulation “relevant court” means—

- (a) the Crown Court or High Court in England and Wales or Northern Ireland; or
- (b) the Court of Sessions or the High Court of Judiciary in Scotland.

Reports of accidents and incidents investigated by the Rail Accident Investigation Branch

10.—(1) Subject to the requirements in the following paragraphs the Branch may at any time provide a report, advice, recommendations or information relating to an accident or incident to such persons, and in such form and in such manner, as the Chief Inspector considers appropriate in the circumstances, taking account of—

- (a) the nature and seriousness of the accident or incident;
- (b) the speed at which the report, advice, recommendations or information needs to be given or acted upon;
- (c) the stage which the investigation has reached; and
- (d) the relevance or importance of the examination or investigation findings.

(2) The Branch may publish an interim report of an investigation into an accident or incident in such form and in such manner as the Chief Inspector may determine to be appropriate in the circumstances.

(3) Upon the conclusion of an investigation conducted by the Branch into a serious accident or one which, under slightly different conditions might have led to a serious accident, the Branch shall within twelve months, or as soon as reasonably practicable thereafter, publish a report which shall contain such of the information described in Schedule 3 as is relevant to the accident or incident.

(4) Upon the conclusion of an investigation conducted by the Branch, other than one to which paragraph (3) applies, the Branch shall as soon as reasonably practicable publish a report in such form as may be determined by the Chief Inspector.

(5) A report published under this regulation may relate to more than one accident or incident.

(6) The Branch shall address a recommendation contained in a report prepared under paragraph (3)—

- (a) to the safety authority; and
- (b) to such other public body or authority it reasonably considers it appropriate to do so by reason of the character of the recommendation.

(7) The authority to whom a recommendation is addressed under paragraph (6) shall, in relation to that recommendation, —

- (a) ensure that the recommendation is duly taken into consideration and where appropriate acted upon;
- (b) report to the Branch without undue delay or within such other period, not exceeding twelve months, as may be agreed with the Chief Inspector—
 - (i) giving full details of any measure taken to implement the recommendation;

- (ii) giving full details of any proposed measure to implement the recommendation and the proposed timetable for securing that implementation; or
- (iii) giving a full explanation as to why the recommendation is not to be the subject of measures to be taken to implement; and

(c) give notice to the Branch if at any time the information provided to the Branch pursuant to sub-paragraph (b) is rendered inaccurate.

(8) The requirement to report under paragraph (7)(b) or to give notice under paragraph (7)(c) only applies to the extent that it is reasonably practicable for the authority that is required to report to have the specified information or for it to become aware that the information has been rendered inaccurate.

(9) Having regard to the nature of a recommendation addressed to it, the safety authority may require a railway industry body, within such period as the safety authority may determine, to—

- (a) take that recommendation into consideration and where appropriate act upon it;
- (b) send to the safety authority—
 - (i) full details of any measure that body has taken to implement the recommendation;
 - (ii) full details of any measure proposed by that body to implement or give effect to the recommendation and the proposed timetable for securing that implementation; and
 - (iii) a full explanation as to why the recommendation is not to be the subject of a measure to be taken by that body to implement the recommendation; and
- (c) give notice to the safety authority if at any time any information provided to the safety authority under sub-paragraph (b)(ii) above is rendered inaccurate.

(10) Before publishing a report the Branch shall serve a notice in writing to every person referred to in paragraph (11) of its intention to publish the report, supply a copy of the report or part of the report to each person and invite each person to make representations to the Branch in response to the contents of the report.

(11) The persons referred to in paragraph (10) are—

- (a) any person whose reputation the Branch considers may be adversely affected by a report referred to in paragraph (3), or, if that person is deceased, upon such person as appears to the Chief Inspector, at the time he proposes to serve notice pursuant to paragraph (10), as best represents the interest and reputation of the deceased in the matter; and
- (b) any relevant railway industry body, or a manufacturer or supplier of equipment, components or services to a railway industry body, the safety authority, victims and their relatives, owners of damaged property, manufacturers, the emergency services involved and representatives of staff and users of the railways, including relevant persons in other Member States.

(12) A person served notice pursuant to paragraph (10) may make a representation in response to the report within seven days from service of the notice or within such longer period as may be determined by the Chief Inspector.

(13) The Branch shall consider any representation it receives under paragraph (12) and may amend the report in consequence of any such representation.

(14) In relation to a report referred to in paragraph (3), the Branch shall provide a copy of such report to the European Railway Agency and to every person referred to in paragraph (11).

(15) A person to whom a report or part of a report has been supplied pursuant to paragraph (10) who discloses that report without the permission of the Branch shall be guilty of an offence.

(16) A person who fails to comply with a requirement referred to in paragraph (9) imposed on him by the safety authority shall be guilty of an offence.

Annual report of the Chief Inspector

11.—(1) On or before 30th September each year the Chief Inspector shall publish an annual report on the activities of the Branch in the previous calendar year.

(2) Every annual report shall contain in respect of the calendar year—

- (a) a summary of the investigations conducted by the Branch;
- (b) a list of the recommendations issued; and
- (c) details of the measures that have been reported to the Branch as having been taken in response to its recommendations.

(3) The annual report may contain any other information relating to the activities and aims of the Branch referred to in section 4 of the 2003 Act as the Chief Inspector may determine.

(4) The Branch shall send the European Railway Agency a copy of each annual report published pursuant to paragraph (1)

Miscellaneous functions

12.—(1) The Branch may conduct studies into, monitor and analyse any matter it considers may be relevant to the effective investigation of accidents or incidents including—

- (a) the responses of those persons to whom the recommendations of the Branch are addressed;
- (b) technological and other developments; and
- (c) statistics and trends relating to the railway industry including those relating to accidents and incidents.

(2) In order to assist the Branch in carrying out the activities described in paragraph (1), the Chief Inspector may request assistance or information from the police, safety authority or any person at times and in a manner the Chief Inspector may reasonably determine.

(3) The Branch shall pay such reasonable compensation as may be requested by a person who assists the Chief Inspector pursuant to paragraph (2).

(4) The Chief Inspector may arrange for the publication, in such form and in such manner as he considers appropriate, of such information and advice that is relevant to the general aims of the Branch referred to in section 4 of the 2003 Act.

(5) The Branch shall use its best endeavours to conduct an active exchange of information and views with the investigation bodies established under the Safety Directive for the purpose of —

- (a) developing common investigation methods;
- (b) drawing up common principles for the follow-up of safety recommendations; or
- (c) adapting to the development of technical and scientific progress.

Offences

13.—(1) A person guilty of an offence under regulation 4(5), 6(6), 7(6), 8(9) or 8(10) shall be liable—

- (a) on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding £20,000, or both; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding six months, or a fine, or both.

(2) A person guilty of an offence under regulation 5(19) shall be liable—

- (a) on summary conviction to a fine not exceeding £20,000; and
- (b) on conviction on indictment to a fine.

(3) A person guilty of an offence under regulation 9(5), 10(15) or 10(16) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

SCHEDULE 1

Regulation 4(1)

Types of accidents and incidents which must be notified to the Rail Accident Investigation Branch immediately and by the quickest means available

14. A serious accident.
15. An accident, other than a serious accident, resulting in death or serious injury to a person who is travelling on the rolling stock involved in such accident.
16. An accident, other than a serious accident, involving moving rolling stock resulting in death or serious injury to a person who is not travelling on the rolling stock involved in such accident.
17. A collision or derailment, other than a serious accident, on a level crossing involving a motor vehicle and rolling stock, whether or not a person suffers death or injury.
18. An accident involving the release or combustion of dangerous goods that necessitates the evacuation of the area.
19. An accident or incident involving rolling stock carrying radioactive material.
20. An accident or incident that is likely to result in substantial disruption to a railway service in excess of 6 hours.
21. An accident that causes extensive damage to rolling stock, the infrastructure or the environment.
22. An accident or incident in Schedules 1 or 2 which, under slightly different conditions might have led to a serious accident.

SCHEDULE 2

Regulation 4(2)

Types of accidents and incidents which must be notified to the Rail Accident Investigation Branch as soon as practicable and in any event within 3 days of occurrence

23. A collision between, or derailment of, rolling stock, which is not notifiable under regulation 4(1).
24. A collision of rolling stock which is not notifiable under regulation 4(1) with an arrestor mechanism or buffer stop, other than in a siding, that causes damage.
25. A collision of rolling stock with an animal or obstruction which is not notifiable under regulation 4(1) but which under slightly different conditions, might have caused a derailment.
26. Rolling stock running onto a level crossing when not authorised to do so.
27. An obstruction on or damage to railway property caused by a road vehicle, vessel or aircraft.
28. A fire or arcing or fusing which adversely affects the functioning of signalling or rolling stock control equipment.
29. A fire that results in the suspension of railway services or closure of a part of railway property affecting the track, for a period—
 - (a) in the case of a fire affecting any part of railway property below ground, of more than 30 minutes; and
 - (b) in any other case, of more than an hour.
30. A fire other than a fire falling within point 9 of this Schedule which causes damage that may affect the operation of a railway.

- 31.** Any unintended division of rolling stock.
- 32.** The failure of rolling stock on the track caused by—
- (a) the failure of an axle;
 - (b) the failure of a wheel or tyre, including a tyre loose on its wheel;
 - (c) a fire or severe electrical arcing or fusing on rolling stock, whether or not extinguished by a fire-fighting service;
 - (d) the failure of a rope or the fastening thereof of the winding plant or other equipment involved in working a railway operated by a cable haulage system; or
 - (e) any other failure of rolling stock which under slightly different conditions may have caused death or injury or extensive damage to railway property or the environment.
- 33.** The failure of equipment at a level crossing which under slightly different conditions may have caused death or injury or extensive damage to railway property.
- 34.** The failure of a rail on a track or of a rack rail whether by a complete fracture through its cross section, or by the buckling or detachment of a piece of rail and which necessitates an immediate stoppage or speed reduction.
- 35.** The failure of a structure on railway property, including a tunnel, bridge, viaduct, culvert, station, signal or fixed electrical equipment which under slightly different circumstances may have led to a serious accident or otherwise adversely affects the safety of a railway.
- 36.** Any failure in the signalling system which endangers or potentially endangers the safe passage of rolling stock.
- 37.** The slippage of a railway cutting or embankment.
- 38.** Flooding of the track that causes suspension or closure of a railway.
- 39.** Over-crowding on a station for which either no plan to relieve over-crowding was in place or the plans when activated did not relieve the over-crowding within the time specified in the plan.
- 40.** Rolling stock passing a railway signal displaying a stop aspect, unless either the driver had been given authority to pass the signal or the signal did not display in sufficient time to enable the driver to stop safely at the signal.

SCHEDULE 3

Regulation 10(3)

Principal content of accident and incident investigation report

- 41. Summary**
- The summary shall contain a short description of the occurrence, when and where it took place and its consequences. It shall state the direct causes as well as contributing factors and underlying causes established by the investigation. The main recommendations shall be quoted and information shall be given on the addressees.
- 42. Immediate facts of the occurrence**
- (1) The occurrence—
 - date, exact time and location of the occurrence;
 - description of the events and the accident site including the efforts of the rescue and emergency services;

the decision to establish an investigation, the composition of the team of investigators and the conduct of the investigation.

- (2) The background to the occurrence—
 - staff and contractors involved and other parties and witnesses;
 - the trains and their composition including the registration numbers of the items of rolling stock involved;
 - the description of the infrastructure and signalling system - track types, switches, interlocking, signals, train protection;
 - means of communication;
 - works carried out at or in the vicinity of the site;
 - trigger of the railway emergency plan and its chain of events;
 - trigger of the emergency plan of the public rescue services, the police and the medical services and its chain of events.
- (3) Fatalities, injuries and material damage—
 - passengers and third parties, staff, including contractors;
 - cargo, luggage and other property;
 - rolling stock, infrastructure and the environment.
- (4) External circumstances—
 - weather conditions and geographical references.

43. Record of investigations and inquiries

- (1) Summary of testimonies (subject to the protection of identity of the persons)—
 - railway staff, including contractors;
 - other witnesses.
- (2) The safety management system—
 - the framework organisation and how orders are given and carried out;
 - requirements on staff and how they are enforced;
 - routines for internal checks and audits and their results;
 - interface between different actors involved with the infrastructure.
- (3) Rules and regulations—
 - relevant Community and national rules and regulations,
 - other rules such as operating rules, local instructions, staff requirements, maintenance prescriptions and applicable standards.
- (4) Functioning of rolling stock and technical installations—
 - signalling and control command system, including registration from automatic data recorders, infrastructure,
 - communications equipment,
 - rolling stock, including registration from automatic data recorders.
- (5) Documentation on the operating system—
 - measures taken by staff for traffic control and signalling;
 - exchange of verbal messages in connection with the occurrence, including documentation from recordings,
 - measures taken to protect and safeguard the site of the occurrence.
- (6) Man-machine-organisation interface—
 - working time applied to the staff involved;

medical and personal circumstances with influence on the occurrence, including existence of physical or psychological stress;
design of equipment with impact on man-machine interface.

- (7) Previous occurrences of a similar character.

44. Analysis and conclusions

- (1) Final account of the event chain—

establishing the conclusions on the occurrence, based on the facts established in heading (3)

- (2) Discussion—

analysis of the facts established in heading (3) with the aim of drawing conclusions as to the causes of the occurrence and the performance of the rescue services.

- (3) Conclusions—

direct and immediate causes of the occurrence including contributory factors relating to actions taken by persons involved or the condition of rolling stock or technical installations;

underlying causes relating to skills, procedures and maintenance;

root causes relating to the regulatory framework conditions and application of the safety management system.

- (4) Additional observations—

deficiencies and shortcomings established during the investigation, but without relevance to the conclusions on causes.

- (5) Measures that have been taken—

Record of measures already taken or adopted as a consequence of the occurrence.

- (6) Recommendations.

EXPLANATORY NOTE

(This note is not part of the Order)

[To be completed when finalising the draft]