
STATUTORY INSTRUMENTS

2006 No. 397

The Railways (Interoperability) Regulations 2006

PROSPECTIVE

PART 2

Subsystems

Requirement for authorisation

4.—(1) No person shall place in service on the high-speed rail system or the conventional TEN rail system any structural subsystem which has been constructed, upgraded or renewed as a project unless, for the particular rail system—

- (a) the Safety Authority has given an authorisation for the placing in service of that subsystem; or
- (b) the Competent Authority has decided under regulation 5 that for the upgrading or renewal of the subsystem, an authorisation is not required for the subsystem to be placed in service.

(2) An application for an authorisation under paragraph (1)(a) shall be made in writing to the Safety Authority and be accompanied by—

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

(3) Subject to paragraph (4), the Safety Authority in considering an application may not require checks carried out under the appropriate verification assessment procedure to be carried out again.

(4) The Safety Authority may require the applicant to carry out any additional checks which the Safety Authority considers necessary in relation to the project subsystem if that subsystem appears to the Safety Authority not to meet the essential requirements in accordance with regulation 7.

(5) Where additional checks are required under paragraph (4) the Safety Authority—

- (a) shall inform the applicant that the application cannot be determined before the additional checks are carried out; and
- (b) shall notify the Commission in writing forthwith of the additional checks it requires and the reasons for requiring those checks.

(6) The Safety Authority shall issue an authorisation for the placing in service of a project subsystem on or as part of the high-speed rail system or conventional TEN rail system, where it is satisfied that—

- (a) the verification declaration has been drawn up in accordance with Schedule 8;
- (b) the project subsystem has been so designed, constructed and installed as to meet the essential requirements in accordance with regulation 7 relating to that subsystem when placed in service on that rail system; and

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- (c) the project subsystem is compatible with the particular rail system into which it is being placed in service.
- (7) The Safety Authority shall determine an application by—
- (a) authorising the placing in service of the project subsystem; or
 - (b) refusing the application for authorisation.
- (8) An authorisation issued by the Safety Authority for the placing in service of an item of rolling stock shall be treated, subject to the conditions in paragraph (9), as also being an authorisation for additional rolling stock that the contracting entity constructs or contracts with another person to construct under the same contract or project and where the construction is to the same standards and specifications.
- (9) For the purposes of paragraph (8), a contract for the purchase of further items of rolling stock for construction to the same standards and specifications shall be taken to include an option for their purchase but only where the option—
- (a) was agreed at the time the contract was made; and
 - (b) it is exercised by the contracting entity—
 - (i) within 24 months from the date of authorisation under paragraph (7); or
 - (ii) within 5 years of the date the contract was made,
 whichever is the earliest.
- (10) A structural subsystem is placed in service in relation to the high-speed rail system or the conventional TEN rail system when, having been constructed, upgraded or renewed, it is first used on or as part of that rail system in the transportation of passengers or freight or for the purpose for which it was designed, but does not include any testing or trials conducted in the verification assessment procedure or for additional checks required by the Safety Authority.

Commencement Information

II Reg. 4 in force at 2.4.2006, see [reg. 1\(3\)](#)

Renewal or upgrading of subsystems

- 5.—(1)** The contracting entity in relation to a project for the renewal or upgrading of an existing structural subsystem shall apply in writing to the Competent Authority for a decision as to whether an authorisation is required for that subsystem to be placed in service.
- (2) An application made under paragraph (1) shall be accompanied by the following information—
- (a) a file setting out details of the project;
 - (b) an assessment of whether and how the overall safety level of the subsystem concerned may be adversely affected by the works envisaged;
 - (c) identification of any TSI, or parts thereof, for which derogations may or will be sought pursuant to regulation 6;
 - (d) an indication of any TSI, or parts thereof, which it is proposed should not apply if the Competent Authority determines that the subsystem requires authorisation.
- (3) The Competent Authority may give notice in writing to the applicant requiring the applicant to provide additional information that the Competent Authority considers necessary in order to make a decision.

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(4) The applicant shall provide the Competent Authority with such additional information requested under paragraph (3) as he is reasonably able to supply and the applicant shall give a written explanation where he is unable to provide the information requested.

(5) In making a decision as to the requirement for authorisation, factors to be taken into account by the Competent Authority shall include—

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

(6) Except where the Competent Authority and the Safety Authority are the same person, the Competent Authority shall not decide authorisation is not required unless it has consulted the Safety Authority.

(7) If it appears to the Competent Authority that the proposed works may adversely affect the overall safety of the relevant subsystem the Competent Authority shall decide that the subsystem requires authorisation to be placed in service.

(8) Where the Competent Authority determines that the subsystem requires an authorisation and the project subsystem is part of the conventional TEN rail system—

- (a) the Competent Authority shall, subject to any derogations under regulation 6, decide to what extent TSIs shall apply to the project subsystem; and
- (b) the Secretary of State shall notify that decision to the Commission and other Member States.

Commencement Information

I2 Reg. 5 in force at 2.4.2006, see [reg. 1\(3\)](#)

Exemption from need to conform with TSIs (derogations)

6.—(1) The Competent Authority may determine that, in the circumstances or cases specified in paragraph (2), the whole or part of a relevant TSI, including those relating to rolling stock, shall not apply in relation to a subsystem or interoperability constituent (“a derogation”).

(2) The circumstances and cases are—

- (a) for a proposed new line, for the renewal or upgrading of an existing line, or any element referred to in article 1(1) of the High-Speed Directive or article 1(1) of the Conventional Directive, which is at an advanced stage of development or is the subject of a contract in the course of performance when the relevant TSI is published;
- (b) for any project concerning the renewal or upgrading of an existing line where the loading gauge, track gauge, space between tracks, or electrification voltage in the relevant TSI is not compatible with those of the existing line;
- (c) for a proposed new line or for the proposed renewal or upgrading of an existing line where the rail network is separated or isolated by the sea from the rail network of the rest of the Community;
- (d) for any proposed renewal, extension or upgrading of an existing line when the application of a relevant TSI would compromise the economic viability of the project or the compatibility of the rail system;
- (e) following an accident or natural disaster, where the conditions for the rapid restoration of the network do not economically or technically allow for partial or total application of a relevant TSI.

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(3) The Competent Authority shall not make a derogation from the application of a TSI or part of a TSI unless the Secretary of State has first—

- (a) given notice of any intended derogation to the Commission;
- (b) forwarded a file to the Commission setting out the TSIs or parts of TSIs that are not to be applied; and
- (c) set out the specification that the Competent Authority wishes to apply to the subsystem or interoperability constituent.

(4) Save for matters concerning the loading gauge and the track gauge, a derogation in relation to the circumstances or cases set out in paragraph (2)(b) shall have no effect unless the derogation has been permitted by the Commission before commencement of the physical construction of the project in which the subsystem or interoperability constituent is to be used.

(5) In the circumstances or cases set out in paragraph (2)(d) a derogation shall have no effect unless the derogation has been permitted by the Commission before commencement of the physical construction of the project in which the subsystem or interoperability constituent is to be used.

Commencement Information

I3 Reg. 6 in force at 20.3.2006, see [reg. 1\(2\)](#)

Essential requirements for project subsystems

7.—(1) For the purposes of regulations 4(4), 4(6), 8(3)(a), 10(1) and 27(2) the essential requirements for a project subsystem shall be met by conformity with—

- (a) all relevant TSIs (if any); and
- (b) where paragraph (2) applies, the requirements of all relevant notified national technical rules (if any).

(2) This paragraph applies to the project subsystem, (insofar as it is not subject to requirements by a relevant TSI), where—

- (a) there are no relevant TSIs; or
- (b) a relevant TSI does not govern all elements of the project subsystem; or
- (c) a derogation from conformity with the whole or part of a relevant TSI has been granted pursuant to regulation 6 in respect of that subsystem; or
- (d) the Competent Authority has determined under regulation 5(8) that the whole or part of a relevant TSI does not apply to that subsystem.

Commencement Information

I4 Reg. 7 in force at 2.4.2006, see [reg. 1\(3\)](#)

Duties on a contracting entity

8.—(1) The contracting entity in relation to a project subsystem shall—

- (a) appoint a notified body to act in carrying out the verification assessment procedure; and
- (b) ensure that a notified body (whether that originally appointed or another) continues to be appointed until authorisation under regulation 4 is given or refused.

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(2) Subject to regulation 15(2), the appointment of a notified body under paragraph (1) shall be made—

- (a) before completion of the design stage of the project subsystem; or
- (b) before commencement of the manufacture stage of the project subsystem,

whichever is the earlier.

(3) The contracting entity shall draw up a verification declaration in relation to that project subsystem where—

- (a) he is satisfied the essential requirements are met in accordance with regulation 7, (including interfaces with the rail system on which it will be placed in service);
- (b) the appropriate verification assessment procedure has been carried out by a notified body in accordance with regulation 9;
- (c) a certificate of conformity has been drawn up by a notified body in accordance with the procedures required by Schedule 9; and
- (d) a technical file has been prepared containing the information and documents specified in regulation 11(1)(a) to (g).

Commencement Information

I5 Reg. 8 in force at 2.4.2006, see [reg. 1\(3\)](#)

Project subsystems: verification assessment procedure

9.—(1) Subject to regulation 15(3), the appropriate verification assessment procedure in relation to a project subsystem for the purpose of regulation 8(3)(b), shall be—

- (a) in so far as that subsystem is required to conform with all or part of a TSI, the procedures specified in the TSI or part of the TSI, with which that subsystem is required to conform;
- (b) in so far as that subsystem is required to conform with notified national technical rules, such procedures as are reasonably appropriate to assess that project subsystem against the notified national technical rules with which it is required to conform; and
- (c) the procedures set out in Schedule 9.

(2) The notified body shall—

- (a) compile the technical file; and
- (b) verify the interface between the project subsystem and the rail system in which it will be placed in service.

Commencement Information

I6 Reg. 9 in force at 2.4.2006, see [reg. 1\(3\)](#)

Project subsystems: verification declaration

10.—(1) A project subsystem in relation to which a verification declaration has been drawn up shall be taken to meet the essential requirements in accordance with regulation 7 unless there are reasonable grounds for believing that it does not so conform.

(2) Paragraph (1) does not apply in relation to the Safety Authority where a person fails or refuses to make available to the Safety Authority the documentation which he is required to

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retain by the verification assessment procedure applying to the project subsystem or pursuant to regulation 11, or a copy of that documentation.

Commencement Information

I7 Reg. 10 in force at 2.4.2006, see [reg. 1\(3\)](#)

Technical file and retention of documents

11.—(1) The technical file shall contain—

- (a) the items required by paragraph 4 of Schedule 9, including the certificate of conformity;
- (b) documents relating to the conditions and limits of use of the project subsystem;
- (c) documents relating to the characteristics of the project subsystem;
- (d) manuals and instructions relating to the servicing, constant or routine monitoring, adjustment, maintenance and configuration controls of the project subsystem;
- (e) documentation or records demonstrating compliance with the notified national technical rules where they are used;
- (f) documentation or records of notifications to the Commission pursuant to regulation 5(8) identifying to what extent TSIs apply to the project subsystem;
- (g) documentation or records of notifications to the Commission in relation to a derogation, pursuant to regulation 6; and
- (h) documents added to the file pursuant to paragraph (3).

(2) From the time a project subsystem authorised under regulation 4 is placed in service until it is permanently withdrawn from service (whether such service is in the United Kingdom or another Member State), the contracting entity shall keep the following documents—

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

(3) The contracting entity shall ensure that after the technical file has been lodged with it by the notified body—

- (a) any alterations made to the project subsystem are documented; and
- (b) the documentation and any maintenance manuals in relation to the project subsystem are added to and kept as part of the technical file.

(4) Where the contracting entity is not the owner of the project subsystem when it is authorised under regulation 4, he shall within 60 days of the date of authorisation transfer the documents referred to in paragraph (2) to the owner of that subsystem, and thereafter for the purpose of paragraphs (2) and (3) the owner shall be regarded as the contracting entity.

(5) Where the owner of the project subsystem disposes of his interest in it, he shall within 60 days of the disposal transfer the documents referred to in paragraph (2) to the person acquiring that interest, and thereafter for the purpose of paragraphs (2) and (3) and this paragraph, the person acquiring that interest shall be regarded as the contracting entity.

(6) The contracting entity for the purpose of paragraphs (2) and (3) shall make the technical file available to the Safety Authority on demand.

Commencement Information

I8 Reg. 11 in force at 2.4.2006, see [reg. 1\(3\)](#)

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Duty on operator to ensure essential requirements are met

12.—(1) This regulation applies where a project subsystem is in use on, or is part of, the high-speed rail system or the conventional TEN rail system pursuant to an authorisation under regulation 4.

(2) The operator of the project subsystem shall ensure that the project subsystem, notwithstanding any alterations, is operated and maintained—

- (a) in accordance with the essential requirements relevant to that subsystem;
- (b) subject to paragraph (c), in conformity with the TSIs and notified national technical rules against which the subsystem was assessed for that authorisation;
- (c) where a TSI and notified national technical rule referred to in paragraph (b) has been varied and replacement parts which conform to the TSI or notified national technical rule against which it was assessed are no longer available, in conformity with that varied TSI or rule; and
- (d) in conformity with any functional TSI applying to that subsystem.

Commencement Information

I9 Reg. 12 in force at 2.4.2006, see [reg. 1\(3\)](#)

Fees payable to the Safety Authority

13.—(1) A person applying to the Safety Authority for authorisation of a project subsystem under regulation 4 shall be liable to pay such fee to the Safety Authority as the Safety Authority may charge in respect of the Safety Authority's work in relation to the application.

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

- (a) not exceed the sum of the costs reasonably incurred by the Safety 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 Safety 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 shall not apply in relation to the Channel Tunnel system and the Intergovernmental Commission.

Commencement Information

I10 Reg. 13 in force at 2.4.2006, see [reg. 1\(3\)](#)

Fees payable to the Competent Authority

14.—(1) The Competent Authority may charge such reasonable fee in connection with, or incidental to, carrying out its functions under regulations 5 and 6, as it may determine.

(2) This regulation shall not apply in relation to the Channel Tunnel system and the Intergovernmental Commission.

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Commencement Information

I11 Reg. 14 in force at 20.3.2006, see [reg. 1\(2\)](#)

Transitional conventional TEN projects and renewal projects on the high-speed rail system

15.—(1) This regulation applies to—

- (a) any project for the construction, upgrading or renewal of conventional rolling stock or any other subsystem of the conventional TEN rail system; and
- (b) any project for the renewal of high-speed rolling stock or any other subsystem of the high-speed rail system,

which, on 2nd April 2006, has reached the design stage.

(2) Where the contracting entity is required to appoint a notified body under regulation 8(1), the appointment may be made by 1st July 2006, notwithstanding that the design stage has been completed or the manufacture stage has commenced by that date.

(3) Notwithstanding anything in regulation 9, the notified body—

- (a) shall have regard to any documentation or evidence provided by the contracting entity on the assessment of work on the structural subsystem carried out before the notified body's appointment;
- (b) shall, so far as reasonably practicable, treat the assessment of work on the structural subsystem carried out before its appointment as the notified body's work under the verification assessment procedure;
- (c) shall not require any assessment work carried out before the notified body was appointed to be duplicated unless it would be unreasonable not to do so.

Commencement Information

I12 Reg. 15 in force at 2.4.2006, see [reg. 1\(3\)](#)

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Changes and effects yet to be applied to :

- Regulations revoked by [S.I. 2011/3066 reg. 47\(1\)](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 4(9A) inserted by [S.I. 2008/1746 reg. 4\(4\)\(c\)](#)
- reg. 4A4B inserted by [S.I. 2008/1746 reg. 4\(5\)](#)
- reg. 11(7) inserted by [S.I. 2008/1746 reg. 4\(7\)](#)
- reg. 12(3)-(6) inserted by [S.I. 2008/1746 reg. 4\(8\)\(b\)](#)
- reg. 33(1A) inserted by [S.I. 2008/1746 reg. 4\(9\)](#)