



Number 31 of 2005

RAILWAY SAFETY ACT 2005

REVISED

Updated to 14 August 2024

This Revised Act is an administrative consolidation of the *Railway Safety Act 2005*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Courts, Civil Law, Criminal Law and Superannuation (Miscellaneous Provisions) Act 2024* (30/2024), enacted 23 July 2024, and all statutory instruments up to and including the *Commission for Railway Regulation (Employees) Superannuation Scheme 2024* (S.I. No. 407 of 2024), made 14 August 2024, were considered in the preparation of this Revised Act.

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ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY

Section

1. Short title.
2. Interpretation.
3. Laying of orders and regulations.
4. Application.
5. Repeals.
6. Expenses.

PART 2

RAILWAY SAFETY COMMISSION

7. Establishment day.
8. Establishment of Railway Safety Commission.
9. Independence of Commission.
- 9A. Commission to operate in an open, non-discriminatory and transparent manner. *(Repealed)*
10. Functions of Commission.
- 10A. Safety authority. *(Repealed)*
11. Conferral of additional functions.
12. Transfer of functions.
13. Policy directions by Minister to Commission.
14. Members of Commission.
15. Staff of Commission.
16. Transfer of staff from Minister to Commission.
17. Deputy member of Commission.
18. Consultants and advisers.

19. Membership of House of Oireachtas, European Parliament and local authorities.
20. Disclosure of Interests.
21. Disclosure of confidential information.
22. Superannuation for members of Commission.
23. Superannuation for staff of Commission.
24. Resources made available by Minister.
25. Grants to Commission.
26. Levy.
27. Borrowings.
28. Accounts and annual report of Commission.
- 28A. Report to European Railway Agency. *(Repealed)*
29. Statement of strategy.
30. Publication of reports of Commission.
31. Accountability of Commission to Committees of Oireachtas.
32. Premises of Commission.
33. Seal of Commission.
34. Commission to keep itself informed on certain matters.
35. Provision of services.

PART 3

GENERAL DUTIES OF RAILWAY UNDERTAKINGS, PERSONS WORKING ON RAILWAYS AND OTHER PERSONS

36. General duties of railway organisations.
37. General duties of persons working on railways and other persons.

PART 4

SAFETY MANAGEMENT SYSTEMS AND SAFETY CASE

38. Commencement *(Part 4)*.
- 38A. Definitions and Scope *(Part 4)*. *(Repealed)*
39. Safety management systems and safety management document.
- 39A. Targets for safety management systems. *(Repealed)*
- 39B. Reports to Commission. *(Repealed)*
40. Co-operation between railway organisations.
41. International Services.
42. Safety assessment of new works.
43. Safety assessment of new rolling stock.
- 43A. Placing in service rolling stock authorised in another Member State. *(Repealed)*
- 43B. Maintenance of vehicles. *(Repealed)*
- 43C. Certain certificates to be valid in State. *(Repealed)*
44. Transfer of ownership.

- 45. Submission and assessment of safety management document.
- 46. Acceptance of safety management document by Commission.
- 46A. Access to training facilities. *(Repealed)*
- 47. Compliance with safety management document.
- 48. Revision of safety management document.
- 49. Appointment of independent persons for assessments and audits.
- 50. Safety audits.
- 50A. Safety rules. *(Repealed)*
- 50B. Qualification. *(Repealed)*

PART 5

REPORTING AND INVESTIGATION OF RAILWAY INCIDENTS

- 51. "railway incident". *(Repealed)*
- 52. Reportable railway incidents. *(Repealed)*
- 53. Investigations by railway organisations.
- 54. Reporting of risks, etc. by staff of railway organisations and contractors.
- 55. Railway Incident Investigation Unit. *(Repealed)*
- 56. Chief Investigator and staff of the Investigation Unit. *(Repealed)*
- 57. Independence of Investigation Unit. *(Repealed)*
- 58. Investigations by Investigation Unit. *(Repealed)*
- 59. Re-opening of investigation by Investigation Unit. *(Repealed)*
- 60. Publication of report of investigations. *(Repealed)*
- 61. Contents of report. *(Repealed)*
- 61A. Annual safety report. *(Repealed)*
- 62. Preparation of draft report and observations of affected persons. *(Repealed)*
- 63. Recommendations of Investigation Unit. *(Repealed)*
- 64. Tribunal of inquiry.
- 65. Suspension of investigation by Investigation Unit where inquiry directed.
- 66. Re-opening of inquiry.
- 67. Inquest in case of railway incident.
- 68. Transitional provision (opening of railways).

PART 6

REGULATIONS AND REVIEW OF LEGISLATION

- 69. Regulations.
- 70. Regulations for protection of railway incident sites.
- 71. Offence.
- 72. Review of legislation by Commission.

PART 7

ENFORCEMENT

- 73. Inspectors.
- 74. Provision of records and other information.
- 75. Requirement to give name and address, obstruction, arrest, offence.
- 76. Improvement plan.
- 77. Improvement notice.
- 78. Prohibition notice.
- 79. Application to High Court by Commission.
- 80. Indemnification for actions in good faith.

PART 8

RAILWAY SAFETY ADVISORY COUNCIL

- 81. Appointed day.
- 82. Railway Safety Advisory Council.
- 83. Functions of Council.

PART 9

INTOXICANTS AND PERSONS WORKING ON RAILWAY INFRASTRUCTURE

- 84. Commencement (*Part 9*).
- 85. Interpretation (*Part 9*).
- 86. Application (*Part 9*).
- 87. Duties of safety critical workers and railway organisations.
- 88. Codes of conduct, etc., in relation to intoxicants.
- 89. Sampling for drugs.
- 90. Disciplinary measures.
- 91. Proof of certificate of analysis.

PART 10

OFFENCES BY PERSONS WORKING ON RAILWAY INFRASTRUCTURE

CHAPTER 1

Preliminary

- 92. Commencement, (*Part 10*).
- 93. Definitions, (*Part 10*).
- 94. Power of Garda Síochána to enter railway property and to stop train.
- 95. Application and authorised persons.

CHAPTER 2

Intoxicants

- 96. Functions of the Bureau in relation to analysis under Chapter.
- 97. Offences involving intoxicants by persons working on railway property.
- 98. Obligation to provide specimen of breath.
- 99. Arrest without warrant.
- 100. Obligation to provide specimen following arrest.
- 101. Obligation to provide blood or urine specimen while in hospital.
- 102. Detention of intoxicated persons where a danger to themselves or others.
- 103. Procedure following provision of breath specimen under *section 100*.
- 104. Procedure to be followed relating to specimens taken or provided.
- 105. Procedure at Bureau regarding specimens.
- 106. Frustrating prosecution.
- 107. Evidence in proceedings under this Chapter.
- 108. Defences.
- 109. Penalties.

CHAPTER 3

Carelessly or dangerously working or working while unfit, on railway

- 110. Careless working on railway.
- 111. Dangerous working on railway.
- 112. Medical fitness for duty.

PART 11

WORKS BY ROAD AUTHORITIES, ETC.

- 113. Works on public roads in the vicinity of railway infrastructure.

PART 12

GENERAL ENFORCEMENT AND OFFENCE PROVISIONS RELATING TO
RAILWAY SAFETY AND CONDUCT OF PERSONS ON RAILWAYS

- 114. Unlawful use of railway.
- 115. Deliberate or wanton damage to railway.
- 116. Obligation to notify danger caused to railway.
- 117. Obligation not to expose person to danger on railway.
- 118. Unlawful use of system of communication between passengers and train drivers.
- 119. Attempting to obstruct, damage or derail a train, etc.
- 120. Penalty.
- 121. Power to arrest by member of Garda Síochána.

PART 13

PROCEDURAL

- 122. Prosecution of summary offences.
- 123. Offences by bodies corporate.
- 124. Cost of prosecutions.
- 125. Service of notices, etc.
- 126. Disclosure of records.

PART 14

PROVISIONS RELATING TO CÓRAS IOMPAIR ÉIREANN

- 127. Compulsory acquisition of land.
- 128. Matters relating to bye-laws, etc.
- 129. Powers of authorised officers.
- 130. Borrowing by CIE for capital purposes.
- 131. Failure to shut and fasten gates of level crossing or passage.

PART 15

FARE EVASION AND FIXED PAYMENT NOTICES

- 132. Penalty for avoiding payment of fare.
- 133. Fixed payment notice.

PART 16

LIGHT RAILWAY AND METRO

- 134. Amendment of Transport (Railway Infrastructure) Act 2001.
- 135. Increase of fines.
- 136. Amendment of timeframe for submissions on railway order.

PART 17

ROAD TRAFFIC — BRIDGE STRIKES

- 137. Collective citation and construction (*Part 17*).
- 138. Bridge strikes.

SCHEDULE 1

ENACTMENTS REPEALED

SCHEDULE 2

FUNCTIONS TRANSFERRED FROM MINISTER TO COMMISSION

ACTS REFERRED TO

Acquisition of Land (Assessment of Compensation) Act 1919	9 & 10 Geo. 5, c. 57
Companies Acts 1963 to 2005	
Comptroller and Auditor General (Amendment) Act 1993	1993, No. 8
Coroners Act 1962	1962, No. 9
Data Protection Act 1988	1988, No. 25
European Parliament Elections Act 1997	1997, No. 2
Fire Services Act 1981	1981, No. 30
Freedom of Information Act 1997	1997, No. 13
Land Clauses Acts	
Local Government Act 1946	1946, No. 24
Local Government Act 2001	2001, No. 37
Malicious Damage Act 1861	24 & 25 Vic., c. 97
Minimum Notice and Terms of Employment Acts 1973 to 2001	
Misuse of Drugs Act 1977	1977, No. 12
Organisation of Working Time Act 1997	1997, No. 20
Petty Sessions (Ireland) Act 1851	14 & 15 Vic., c. 93
Planning and Development Act 2000	2000, No. 30
Railway Act 1924	1924, No. 29
Railway Clauses Act 1863	26 & 27 Vic., c. 92
Railway Clauses Consolidation Act 1845	8 Vic., c. 20
Railway Employment (Prevention of Accidents) Act 1900	63 & 64 Vic., c. 27
Railway Regulation Act 1842	5 & 6 Vic., c. 55
Railway Returns (Continuous Brakes) Act 1878	41 Vic., c. 20
Redundancy Payments Acts 1967 to 2003	
Regulation of Railways Act 1868	31 & 32 Vic., c. 119
Regulation of Railways Act 1871	34 & 35 Vic., c. 78
Regulation of Railways Act 1889	52 & 53 Vic., c. 57
Regulation of Railways Acts 1840 to 1893	
Road Act 1993	1993, No. 14
Road Traffic Act 1961	1961, No. 24
Road Traffic Act 1994	1994, No. 7
Road Traffic Act 2002	2002, No. 12
Road Traffic Acts 1961 to 2004	
State Guarantees (Transport) Act 1962	1962, No. 25
Terms of Employment (Information) Act 1994	1994, No. 5
Transport Act 1950	1950, No. 12
Transport Act 1958	1958, No. 19
Transport Act 1964	1964, No. 30
Transport Act 1974	1974, No. 1
Transport Act 1985	1985, No. 15
Transport Act 1987	1987, No. 27

[No. 31.]

Railway Safety Act 2005

[2005.]

Transport (Miscellaneous Provisions) Act 1971	1971, No. 14
Transport (Railway Infrastructure) Act 2001	2001, No. 55
Unfair Dismissals Acts 1977 to 2001	
Worker Protection (Regular Part-Time Employees) Act 1991	1991, No. 5



Number 31 of 2005

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AN ACT TO MAKE PROVISION FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS, IN THE IRISH LANGUAGE, AN COIMISIÚN SÁBHÁILTEACHTA IARNRÓID, OR IN THE ENGLISH LANGUAGE, THE RAILWAY SAFETY COMMISSION, TO DEFINE ITS FUNCTIONS, TO PROVIDE FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS, IN THE IRISH LANGUAGE, AN CHOMHAIRLE SÁBHÁILTEACHTA IARNRÓID, OR IN THE ENGLISH LANGUAGE, THE RAILWAY SAFETY ADVISORY COUNCIL, TO DEFINE ITS FUNCTIONS, TO PROVIDE FOR THE GENERAL DUTIES OF RAILWAY UNDERTAKINGS AND PERSONS WORKING ON RAILWAYS AND OTHER PERSONS, TO PROVIDE FOR MEASURES TO PREVENT PERSONS FROM WORKING ON RAILWAYS WHO ARE UNFIT TO CARRY OUT THAT WORK THROUGH ALCOHOL OR DRUGS, TO PROVIDE FOR OFFENCES BY PERSONS WORKING ON RAILWAYS, TO PROVIDE FOR MATTERS RELATING TO CARRYING OUT WORKS ON PUBLIC ROADS IN THE VICINITY OF RAILWAYS, TO PROVIDE FOR OFFENCES AND OTHER MATTERS RELATING TO THE CONDUCT OF PERSONS ON RAILWAYS, TO PROVIDE FOR MATTERS RELATING TO CÓRAS IOMPAIR ÉIREANN, AND FOR THAT PURPOSE TO AMEND THE TRANSPORT ACT 1950 AND OTHER ENACTMENTS RELATING TO CÓRAS IOMPAIR ÉIREANN, TO PROVIDE FOR MATTERS RELATING TO LIGHT RAILWAYS AND METRO, AND FOR THAT PURPOSE TO AMEND THE TRANSPORT (RAILWAY INFRASTRUCTURE) ACT 2001, TO REPEAL CERTAIN PROVISIONS OF THE REGULATION OF RAILWAYS ACTS 1840 TO 1893 AND OTHER ENACTMENTS RELATING TO RAILWAYS, TO AMEND THE ROAD TRAFFIC ACTS 1961 TO 2004, AND TO PROVIDE FOR RELATED MATTERS.

[18th December, 2005]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Modifications (not altering text):

- C1** Terms “Railway Safety Commission”, “An Coimisiún Sábháilteachta Iarnróid”, and “Commissioner for Railway Safety” construed (29.02.2016) by *Public Transport Act 2016* (3/2016), s. 4(1) and (2), S.I. No. 69 of 2016.

Change of name of Railway Safety Commission to Commission for Railway Regulation

4. (1) The name of the body (established by section 8 of the Railway Safety Act 2005) the present name of which is, in the English language, the Railway Safety Commission, and, in the Irish language, An Coimisiún Sábháilteachta Iarnróid, shall, on and from such day as the Minister for Transport, Tourism and Sport appoints by order, be, in the English language, the Commission for Railway Regulation, and in the Irish language, An Coimisiún um Rialáil Iarnróid.

(2) On and from the day appointed under *subsection (1)* any reference in the *Railway Safety Act 2005* or in any other enactment, statutory instrument, legal proceedings or other document, to—

- (a) the Railway Safety Commission, shall be construed as reference to the Commission for Railway Regulation,
- (b) An Coimisiún Sábháilteachta Iarnróid, shall be construed as reference to An Coimisiún um Rialáil Iarnróid, and
- (c) a Commissioner for Railway Safety, shall be construed as reference to a Commissioner for Railway Regulation.

...

- C2** Application of Act restricted (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 20, in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Application of Act of 2005

20. On and from the appointed day—

- (a) subject to subparagraphs (b), (c) and (d) of this Regulation, the Act of 2005 does not apply in relation to the investigation of accidents and incidents by the Investigation Unit to which these Regulations apply,
- (b) reference to Investigation Unit in each place it occurs in sections 2, 64, 65, 66, 89 and 126 of the Act of 2005 and any reference in any enactment to the Railway Accident Investigation Unit established under section 55 of the Act of 2005 is to be read as a reference to the Investigation Unit established under Regulation 4,
- (c) reference to Chief Investigator in each place it occurs in sections 64(3), 65 and 70 of the Act of 2005 is to be read as a reference to the Chief Investigator appointed under Regulation 4, and
- (d) reference in section 89(7) (as amended by Regulation 20(1)(d) of the Regulations of 2013) of the Act of 2005 to an investigation carried out by the Investigation Unit under section 58 is to be read as a reference to an investigation carried out by the Investigation Unit under the Regulations of 2014.

- C3** Application of Act restricted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 8(4).

Applications for safety certification or authorisation

8. ...

(4) The provisions in the Act of 2005 in respect of safety certification and safety authorisation do not apply to safety certification and safety authorisation that is required under the Directive in respect of the railway system in the State to which these Regulations apply.

- C4** Application of collectively cited *Road Traffic Acts 1961 to 2010* restricted (28.10.2011) by *Road Traffic Act 2010* (25/2010), s. 87(1), S.I. No. 543 of 2011, as substituted (20.03.2014) by *Road Traffic Act 2014* (3/2014), s. 23, S.I. No. 147 of 2014.

Exemptions for emergency vehicles.

87.— [(1) Requirements under the Road Traffic Acts 1961 to 2010 relating to vehicles and requirements, restrictions and prohibitions relating to the driving and use of vehicles, other than those provided under sections 49, 50, 51A, 52 and 53 of the Principal Act, sections 12, 13 and 15 of the Act of 1994 and sections 4, 5, 11, 12 and 14 of this Act, do not apply to—

- (a) the driving or use by a member of the Garda Síochána, an ambulance service (provided by a pre-hospital emergency care service provider recognised by the Pre-Hospital Emergency Care Council established by the Pre-Hospital Emergency Care Council (Establishment) Order 2000 (S.I. No. 109 of 2000)) or a fire brigade of a fire authority (within the meaning of the *Fire Services Act 1981*) of a vehicle in the performance of the duties of that member, or

(b) a person driving or using a vehicle under the direction of a member of the Garda Síochána, where such use does not endanger the safety of road users.]

...

- C5** Application of collectively cited *Road Traffic Acts 1961 to 2010* restricted (21.09.2011) by *European Communities (Birds and Natural Habitats) Regulations 2011* (S.I. No. 477 of 2011), reg. 42(22) and sch. 2.

42.— ...

(22) Notwithstanding any provision of any statute listed in the Second Schedule that provides for the consent for a plan or project to which this Regulation applies to be obtained by default on the failure of the public authority to provide a response within a specified timescale or otherwise, that provision shall not have effect in respect of any plan or project to which this Regulation applies.

...

SECOND SCHEDULE

Number	Year	Short Title/Citation
...	...	...
...	...	Road Traffic Acts 1961 to 2010
...	...	...

- C6** Functions transferred and references to “Department of Finance” and “Minister for Finance” construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3, 5 and sch. 1 part 2, in effect as per art. 1(2), subject to transitional provisions in arts. 6-9.

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and

(b) the statutory instruments specified in Schedule 2,

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

Enactments

...

Part 2

1922 to 2011 Enactments

Number and Year (1)	Short Title (2)	Provision (3)
...	...	...
No. 31 of 2005	Railway Safety Act 2005	Sections 10(3), 11, 13(1), 24(1), 25, 26, 28, 32, 49(16), 64(1), (8) and (9) and 82(5) and (6)
...	...	...

- C7** Term “Commissioner” construed (1.06.2011) by *Road Traffic Act 2010* (25/2010), s. 83(1), S.I. No. 255 of 2011.

Functions of Commissioner of Garda Síochána.

83.— (1) Any reference to the Commissioner in the *Road Traffic Acts 1961 to 2010* or the *Roads Acts 1993 to 2007* is to be read as a reference to the Commissioner or another member of the Garda Síochána not below the rank of Chief Superintendent authorised by the Commissioner to act or carry out a function or requirement on his or her behalf.

...

- C8** Application of collectively cited *Road Traffic Acts 1961 to 2006* restricted (4.05.2009) by *Road Traffic (Specialised Vehicle Permits) Regulations 2009* (S.I. No. 147 of 2009), reg. 6(1)(b)(ii), in effect as per reg. 2.

Grant of specialised vehicle permits

6. (1) The Permits Officer may grant a specialised vehicle permit if— ...

(b) he or she is satisfied that— ...

(ii) the vehicle and that operation will not otherwise contravene the *Road Traffic Acts 1961 to 2006*, Regulations made under those Acts, or any other law.

...

- C9** Term “provisional licence” construed (30.10.2007) by *Road Traffic Act 2006* (23/2006), s. 11(3), S.I. No. 718 of 2007.

Learner permit.

11.— ...

(3) A reference to a provisional licence in the *Road Traffic Acts 1961 to 2006* or an instrument made thereunder is to be read as a reference to a learner permit.

...

- C10** Application of collectively cited *Road Traffic Acts 1961 to 2006* extended (21.07.2006) by *Road Traffic Act 2006* (23/2006), s. 2, S.I. No. 384 of 2006.

Regulations to give effect to acts of European Communities.

2.— The power to make regulations under the *Road Traffic Acts 1961 to 2006* includes the power to make provision in such regulations to give effect to—

(a) a provision of the treaties of the European Communities, or

(b) an act adopted by an institution of those Communities.

PART 1

PRELIMINARY

Short title. 1.—This Act may be cited as **the Railway Safety Act 2005**.

Interpretation. 2.—(1) In this Act, except where the context otherwise requires—

F1[“accident” means an unwanted or unintended sudden event or a specific chain of such events which have harmful consequences; accidents are divided into the following categories: collisions, derailments, level-crossing accidents, accidents to persons caused by rolling stock in motion, fires and others;]

F2[...]

F1[“causes” means actions, omissions, events or conditions, or a combination thereof, which led to an accident or incident, and includes a direct and immediate cause of the accident or incident including contributory factors relating to actions taken by persons involved or condition of the rolling stock or technical installations, underlying causes relating to skills, procedures or maintenance and root causes relating to the regulatory framework conditions and application of the safety management system;]

F3[“Commission” means Commission for Railway Regulation;]

F2[...]

“Council” means the Railway Safety Advisory Council established under **section 82**;

F2[...]

“establishment day” means the day appointed by the Minister under **section 7** to be the establishment day for the purposes of *Part 2*;

F2[...]

F2[...]

F1[“extensive damage” means damage that can immediately be assessed by the Investigation Unit to cost at least €2 million in total;]

“functions” includes powers and duties and references to the performance of functions include, as respects powers and duties, references to the exercise of the powers and the carrying out of the duties;

“heritage railway” means a person who only operates train services or railway infrastructure of historical or touristic interest or such other person whom the Commission has by regulations under **section 4(6)** specified to be a heritage railway;

F1[“incident” means any occurrence, other than an accident or serious accident, associated with the operation of trains and affecting the safety of operation;]

“inspector” means a person appointed under **section 73** to be an inspector;

“international service” means the operation of a railway service between the State and another state;

“intoxicant” includes alcohol and drugs and any combination of drugs or of drugs and alcohol;

F1[“investigation” means a process conducted for the purpose of accident and incident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of causes and, when appropriate, the making of safety recommendations;]

“investigation report” means a report published by the Investigation Unit of an investigation undertaken by it;

F1[“investigation unit” means the Railway Accident Investigation Unit established under Regulation 4 of the Regulations of 2014;

“investigator” has the meaning assigned to it in the Regulations of 2014;]

“local authority” has the meaning assigned to it by the Local Government Act 2001;

“medical practitioner” means a person registered in the General Register of Medical Practitioners;

“Minister” means Minister for Transport;

“operation” in relation to a F4[railway organisation], includes the operation of railway services or the operation of railway infrastructure, or both, and any other ancillary activities;

“public road” means a road over which a public right of way exists and the responsibility for the maintenance of which lies on a road authority;

“qualified person” and “suitably qualified person” shall be construed in accordance with section 49(18);

“railway” means—

- (a) a railway which has a gauge of not less than 350 mm and which is used for the carrying of fare-paying passengers, or fee-paying members, or the conveyance of merchandise,
- (b) any part of such other railway that has a physical interface with a railway mentioned in paragraph (a), or a physical interface with a public road, or
- (c) any other infrastructure that may be specified by the Commission under section 4;

F5[...]

“railway infrastructure” means the fixed assets used for the operation of a railway including, but not limited to, rail track, railway stations, permanent way and plant used for signalling or exclusively for supplying electricity for operational purposes to the railway;

F2[...]

“railway property” has the meaning assigned to it by section 73(15);

F6[“railway organisation” means—

- (a) an organisation with responsibility in operating:
 - (i) a metro, tram or other light railway system,
 - (ii) a heritage railway, museum railway or tourist railway that operates on its own network, including workshops, vehicles and staff,
 - (iii) a heritage railway that runs on the railway system in the State,
- (b) a railway undertaking or an infrastructure manager to which the European Union (Railway Safety) Regulations 2020 (S.I. No. 476 of 2020) apply except in the case of sections 39, 45, 46, 47, 48 and 50 of this Act, or
- (c) any other person who operates a railway;]

“record” means any memorandum, book, plan, map, drawing, diagram, pictorial or graphic work or other document, any photograph, film or recording (whether of sound or images or both), any form F7[...] (including machine-readable form) or thing in which information is held or stored manually, mechanically or electronically and any

thing that is a part or a copy, in any form, of any of the foregoing or is a combination of two or more of the foregoing;

F1[“Regulations of 2014” means European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014 (S.I. No. 258 of 2014);

“Regulations of 2013” means European Union (Railway Safety) Regulations 2013 (S.I. No. 444 of 2013);

“Regulations of 2008” means European Union (Railway Safety) Regulations 2008 (S.I. No. 61 of 2008);]

F8[“reportable accident or incident” means a railway accident or incident that is required to be reported to the Investigation Unit and to the Commission in accordance with Regulation 7 of the Regulations of 2014.]

“road authority” means—

(a) in the case of a national road, the National Roads Authority, and

(b) in the case of a regional or local road, the city, county, borough or town council, in whose administrative area the road is located;

“rolling stock”, in relation to a railway, means any train or any other vehicle with flanged wheels which is designed to operate on a railway;

F9[“safety management certificate” means a safety management certificate issued under section 46(1)(a);]

“F10[safety management document]” shall be construed in accordance with section 39;

F1[“serious accident” means any train collision or derailment of trains, resulting in the death of at least one person or serious injuries to five or more persons or extensive damage to rolling stock, the infrastructure or the environment, and any other similar accident with an obvious impact on railway safety regulation or the management of safety;]

“train” means a vehicle with flanged wheels designed to operate on a railway for whatever purpose, and includes carriages and rolling stock.

F2[...]

(2) In this Act—

(a) a reference to a section, Part or Schedule is a reference to a section or Part of or Schedule to this Act unless it is indicated that a reference to some other enactment is intended,

(b) a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended, and

(c) a reference to an enactment shall be construed as a reference to that enactment as amended, adapted or extended by any subsequent enactment including this Act.

F11[(3) F12[...]]

F13[(4) In this Act, a reference to accident is to be read as a reference to a serious accident when the investigation of a serious accident is being carried out.]

Annotations**Amendments:**

- F1** Inserted (12.06.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 21(a)(i).
- F2** Deleted (31.10.2020) by *European Union (Railway Safety) Regulations 2020* (S.I. No. 476 of 2020), reg. 6(1), in effect as per reg 1(2).
- F3** Substituted (29.02.2016) by *Public Transport Act 2016* (3/2016), s. 4(4)(a), commenced as per subs. (1) and S.I. No. 69 of 2016.
- F4** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).
- F5** Deleted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 3(1)(c).
- F6** Substituted (31.10.2020) by *European Union (Railway Safety) Regulations 2020* (S.I. No. 476 of 2020), reg. 6(2), in effect as per reg. 1(2).
- F7** Deleted (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 203, S.I. No. 174 of 2018.
- F8** Substituted (12.06.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 21(a)(ii).
- F9** Inserted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(a)(ii).
- F10** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(c).
- F11** Inserted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 3(2).
- F12** Deleted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(b).
- F13** Inserted (12.06.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 21(a)(iii).

Modifications (not altering text):

- C11** References to “General Register of Medical Practitioners ” construed (1.05.2010) by *Medical Practitioners Act 2007* (25/2007), s. 108(2), S.I. No. 150 of 2010, as amended by (21.12.2007) by *Health (Miscellaneous Provisions) Act 2007* (42/2007), s. 20 and sch. 2, commenced on enactment.

Construction of references to registered medical practitioner and Medical Council, etc.

108.— (1) Every reference to a registered medical practitioner contained in any enactment or any statutory instrument shall be construed as a reference to a registered medical practitioner within the meaning of *section 2*.

(2) Every reference to the General Register of Medical Practitioners contained in any other enactment or [, on and after the register establishment day,] be construed as a reference to [...] the register.

...

- C12** References to “Investigation Unit” construed (14.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 20(b), in effect as per reg. 4(11) and Iris Oifigiúil of 24 June 2014, p. 937.

Application of Act of 2005

20. On and from the appointed day— ...

(b) reference to Investigation Unit in each place it occurs in sections 2, 64, 65, 66, 89 and 126 of the Act of 2005 and any reference in any enactment to the Railway Accident Investigation Unit established under section 55 of the Act of 2005 is to be read as a reference to the Investigation Unit established under Regulation 4,

...

C13 References to “county council”, “city council”, “a county council and a city council”, “the administrative area of a county council”, “the administrative area of a city council”, “the administrative area of a county council and the administrative area of a city council” and “function of a town council” construed (1.06.2014) by *Local Government Reform Act 2014* (1/2014), ss. 9(2), (3) and 25(2), S.I. No. 214 of 2014.

Cesser and amalgamation of certain local government areas

9. (1) On and from the 2014 establishment day and for the purposes of local government— ...

(2) Except where otherwise provided for by this Act, a reference, however expressed, in any enactment—

(a) to a county council or a city council (including a reference construed by section 3(2) of, and Schedule 2 to, the Principal Act as a reference to a county council or to a city council, as the case may be) shall, if the context permits, be read as a reference to a county council, a city council or a city and county council, and

(b) to a county council and a city council (including a reference so construed) shall, if the context permits, be read as a reference to a county council, a city council and a city and county council.

(3) Except where otherwise provided for by this Act, a reference, however expressed, in any enactment—

(a) to the administrative area of a county council or the administrative area of a city council shall, if the context permits, be read as a reference to the administrative area of a county council, the administrative area of a city council or the administrative area of a city and county council, and

(b) to the administrative area of a county council and the administrative area of a city council shall, if the context permits, be read as a reference to the administrative area of a county council, the administrative area of a city council and the administrative area of a city and county council.

...

Dissolution of town councils — consequential provisions

25. (1) (a) All acts done and decisions duly made, whether by resolution, manager’s order or otherwise, before the transfer date in respect of a town council shall, subject to this Act, continue to have all such force and effect as they had immediately before that date.

...

(2) A function of a town council (including a reference construed by section 3(2) of, and Schedule 2 to, the Principal Act as a reference to a town council and whether of general application to town councils or otherwise under an enactment) that—

(a) has not been repealed or otherwise provided for by this Act, or

(b) is neither spent nor obsolete,

shall, if the context permits in respect of one or more than one town council concerned, be read as a reference to a function of the local authority in whose administrative area the town council so dissolved is situated.

...

Editorial Notes:

- E1** Previous affecting provision: definition of "railway organisation" substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(a)(i); substituted as per F-note above.
- E2** Previous affecting provision: definitions of "annual report", "Railway Interoperability Directive" and "vehicle" inserted (17.02.2011) by *European Communities (Railway Safety) Regulations 2011* (S.I. No. 70 of 2011), reg. 2(a)(i); deleted as per F-note above.
- E3** Previous affecting provision: definitions of "Commission Regulation 851/2006/EC", "European Commission" and "European Railway Agency" inserted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 3(1)(a), (b); deleted as per F-note above.
- E4** Previous affecting provision: definition of "Directive" inserted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 3(1)(a); substituted (17.02.2011) by *European Communities (Railway Safety) Regulations 2011* (S.I. No. 70 of 2011), reg. 2(a)(ii); deleted as per F-note above.

Laying of orders and regulations.

3.—Every order other than an order under [section 5](#), [7](#), [38](#), [81](#), [84](#) or [92](#) or regulation (other than a regulation under [section 97\(3\)](#)) made by the Minister or Commission under this Act shall, as soon as may be after it is made, be laid before each of the Houses of the Oireachtas and if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Application.

4.—(1) This Act applies to all F14[railway organisation]s.

(2) Notwithstanding [section 69 of the Transport \(Railway Infrastructure\) Act 2001](#), this Act applies to any railway works authorised by a railway order under section 43 of that Act.

(3) This Act does not apply to the operation of railway infrastructure solely for industrial use, except insofar as it has an interface with a public road or with a F14[railway organisation].

(4) This Act does not apply to fairground equipment which has been granted a valid certificate of safety in accordance with [section 239 of the Planning and Development Act 2000](#), unless, in the opinion of the Commission, it is appropriate to apply it in the interest of the safety of persons.

(5) The Commission may by regulations specify any other infrastructure to be a railway for the purposes of this Act where, in the opinion of the Commission, it is appropriate to do so in the interest of the safety of persons.

(6) The Commission may by regulations specify any person to be a heritage railway for the purposes of this Act where, in the opinion of the Commission, it is appropriate to do so in the interest of the safety of persons.

Annotations**Amendments:**

- F14** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Editorial Notes:

- E5** Power pursuant to subs. (5) exercised (10.11.2021) by *Railway Safety Act 2005 (Section 4(5)) (Specified Infrastructure, Monorail) Regulations 2021* (S.I. No. 589 of 2021).

Repeals.

5.—(1) The enactments specified in *column (2)* of *Schedule 1* are repealed to the extent specified in *column (3)* thereof.

(2) This section comes into operation on such day or days as the Minister may by order or orders appoint and different days may be so appointed for the application of this section to different enactments specified in *Schedule 1* and to different provisions specified in that Schedule of those enactments.

Annotations**Editorial Notes:**

- E6** Power pursuant to section exercised (1.05.2006 and 1.09.2006) by *Railway Safety Act 2005 (Section 5 and Parts 4, 9 and 10) (Commencement) Order 2006* (S.I. No. 215 of 2006).

3. The day appointed as the day on which section 5, Part 4 (other than section 43 and Parts 9 and 10 of the Act) come into operation is 1 May 2006.

4. In Part 4 of the Act the day appointed as the day on which section 43 comes into operation is 1 September 2006.

Expenses.

6.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

PART 2

RAILWAY SAFETY COMMISSION

Annotations**Modifications (not altering text):**

- C14** Terms “Railway Safety Commission”, “An Coimisiún Sábháilteachta Iarnróid”, and “Commissioner for Railway Safety” construed (29.02.2016) by *Public Transport Act 2016* (3/2016), s. 4(1) and (2), S.I. No. 69 of 2016.

Change of name of Railway Safety Commission to Commission for Railway Regulation

4. (1) The name of the body (established by section 8 of the Railway Safety Act 2005) the present name of which is, in the English language, the Railway Safety Commission, and, in the Irish language, An Coimisiún Sábháilteachta Iarnróid, shall, on and from such day as the Minister for Transport, Tourism and Sport appoints by order, be, in the English language, the Commission for Railway Regulation, and in the Irish language, An Coimisiún um Rialáil Iarnróid.

(2) On and from the day appointed under *subsection (1)* any reference in the *Railway Safety Act 2005* or in any other enactment, statutory instrument, legal proceedings or other document, to—

(a) the Railway Safety Commission, shall be construed as reference to the Commission for Railway Regulation,

(b) An Coimisiún Sábháilteachta Iarnróid, shall be construed as reference to An Coimisiún um Rialáil Iarnróid, and

(c) a Commissioner for Railway Safety, shall be construed as reference to a Commissioner for Railway Regulation.

...

Establishment day.

7.—The Minister may by order appoint a day to be the establishment day for the purposes of this Part.

Annotations

Editorial Notes:

E7 Power pursuant to section exercised (1.01.2006) by *Railway Safety Act 2005 (Part 2) (Establishment Day) Order 2005* (S.I. No. 841 of 2005), in effect as per art. 2.

Establishment of Railway Safety Commission.

8.—(1) There shall stand established, on the establishment day, a body to be known as, in the Irish language, An Coimisiún Sábháilteachta Iarnróid, or in the English language, the Railway Safety Commission, in this Act referred to as the “Commission”, to perform the functions assigned to it under this Act.

(2) The Commission shall be a body corporate with perpetual succession and shall have a seal and power to sue and be sued in its corporate name and to acquire, hold and dispose of land or an interest in land, and to acquire, hold and dispose of any other property.

(3) The Commission shall have all such powers as are necessary for or incidental to the performance of its functions under this Act.

Annotations

Modifications (not altering text):

C15 Terms “Railway Safety Commission”, “An Coimisiún Sábháilteachta Iarnróid”, and “Commissioner for Railway Safety” construed (29.02.2016) by *Public Transport Act 2016* (3/2016), s. 4(1) and (2), S.I. No. 69 of 2016.

Change of name of Railway Safety Commission to Commission for Railway Regulation

4. (1) The name of the body (established by section 8 of the Railway Safety Act 2005) the present name of which is, in the English language, the Railway Safety Commission, and, in the Irish language, An Coimisiún Sábháilteachta Iarnróid, shall, on and from such day as the Minister for Transport, Tourism and Sport appoints by order, be, in the English language, the Commission for Railway Regulation, and in the Irish language, An Coimisiún um Rialáil Iarnróid.

(2) On and from the day appointed under *subsection (1)* any reference in the *Railway Safety Act 2005* or in any other enactment, statutory instrument, legal proceedings or other document, to—

(a) the Railway Safety Commission, shall be construed as reference to the Commission for Railway Regulation,

(b) An Coimisiún Sábháilteachta Iarnróid, shall be construed as reference to An Coimisiún um Rialáil Iarnróid, and

(c) a Commissioner for Railway Safety, shall be construed as reference to a Commissioner for Railway Regulation.

...

Independence of Commission.

9.—Subject to this Act, the Commission shall be independent in the exercise of its functions.

F15[Commission to operate in an open, non-discriminatory and transparent manner.

9A.— F16[...]

Annotations

Amendments:

- F15** Inserted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 4(1).
- F16** Repealed (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 21(a).

Functions of Commission.

10.—(1) The principal functions of the Commission shall be—

- (a) to foster and encourage railway safety,
- (b) to enforce this Act and any other legislation relating to railway safety, and

F17[(c) to investigate and report on railway accidents and incidents for the purposes of determining compliance with safety management systems and safety targets.]

(2) The Commission shall, in carrying out its functions, have regard to any matters arising from the operation of railways which may affect the safety of persons.

(3) The Commission, subject to the approval of the Minister given with the consent of the Minister for Finance, may—

- (a) enter into agreements or make arrangements with any Minister of the Government, or any other person for that Minister or person to perform on behalf of the Commission (with or without payment) any of its functions; and
- (b) enter into agreements or make arrangements with any Minister of the Government or the Health and Safety Authority for the Commission to perform on behalf of that Minister or that Authority (with or without payment) such functions as may appropriately be performed by it in connection with its functions under this Act.

(4) The Commission shall have all such powers as are necessary or expedient for the performance of its functions under *subsection (3)(b)*.

(5) The Commission shall provide advice to the Minister as may be requested by the Minister from time to time in relation to railway safety.

(6) For the purposes of its functions, the Commission shall encourage and foster activities and measures which are directed towards the promotion of railway safety, including such arrangements as it considers appropriate to undertake, to promote, to sponsor, to evaluate and to publish the results of research, surveys and studies relating to railway safety.

Annotations

Amendments:

- F17** Substituted (12.06.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 21(1)(b).

F18[Safety
authority.

10A.— F19[...]]

Annotations

Amendments:

- F18** Inserted (6.03.3008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 4(2).
- F19** Repealed (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 21(a).

Conferral of
additional
functions.

11.—(1) The Minister may, by order, made with the consent of the Minister for Finance, confer on the Commission such additional functions in relation to railway safety as, from time to time, he or she considers appropriate.

(2) The Minister or any other Minister of the Government with the consent of the Minister may, with the consent of the Minister for Finance, by order provide that any function relating to railway safety conferred on him or her under any enactment (including this Act), shall, where the relevant Minister is satisfied that the function could be more conveniently performed by the Commission, in lieu of being performed by him or her, be performed by the Commission with effect from a date specified in the order.

(3) Whenever an order under *subsection (2)* is in force in relation to a particular function, a reference in any enactment concerned to the Minister or the Minister of the Government concerned, as the case may be, shall be construed as including a reference to the Commission and the function to which the order relates shall be the function of the Commission.

(4) An order under *subsection (1)* or *(2)* may contain such incidental, supplementary, consequential and transitional provisions as appear to the Minister or the relevant Minister of the Government, as the case may be, to be necessary for the purpose or in consequence of, or to give full effect to, the order.

(5) The Minister or another Minister of the Government who has made an order under *subsection (2)* may—

- (a) where the order is made by the Minister, with the consent of the Minister for Finance, or
- (b) where the order is made by another Minister of the Government, with the consent of the Minister and the Minister for Finance,

amend or revoke the order that he or she has made.

Transfer of
functions.

12.—(1) The administration and business in connection with the exercise, performance or execution of any of the functions transferred by *subsection (2)* are transferred, on the establishment day, to the Commission.

(2) The functions vested in the Minister by or under—

- (a) the provisions of the enactments mentioned in *Part 1* of *Schedule 2*, and
- (b) the regulations mentioned in *Part 2* of *Schedule 2*,

are, on the establishment day, transferred to the Commission.

(3) References to the Minister contained in any Act or instrument relating to any functions transferred by *subsection (2)* shall, on the establishment day, be construed as references to the Commission.

(4) Anything commenced before the establishment day by or under the authority of the Minister may, in so far as it relates to functions transferred by this section, be carried on or completed on or after such day by the Commission.

(5) Where, immediately before the establishment day, any legal proceedings are pending to which the Minister is the plaintiff or the prosecutor and the proceedings have reference to functions transferred by this section to the Commission, the name of the Commission shall, in so far as the proceedings relate to any functions transferred by this section, be substituted in those proceedings for that of the Minister or added in those proceedings as may be appropriate and those proceedings shall not abate by reason of such substitution.

(6) Where, immediately before the establishment day, any legal proceedings are pending to which the Minister is a defendant and the proceedings have reference to any functions transferred to the Commission by this section, the Commission shall not be substituted for the Minister in those proceedings notwithstanding the transfer of functions under this Act.

(7) Every document (including any certificate or licence) granted or made in the exercise of a function transferred by this section shall, if and in so far as it was operative immediately before the establishment day, have effect on and after that day as if it had been granted or made by the Commission.

Policy directions
by Minister to
Commission.

13.—(1) Subject to *subsection (3)*, the Minister may, after consultation with the Minister for Finance, give such general policy directions in writing to the Commission in relation to its functions as he or she considers appropriate.

(2) The Commission shall comply with any direction given under *subsection (1)*.

(3) The Minister shall not give directions under *subsection (1)* in relation to any particular case with which the Commission is or may be concerned.

(4) The Minister shall lay a copy of any direction given by him or her under *subsection (1)* before each House of the Oireachtas.

(5) The Minister may give policy or other guidelines to the Commission in relation to its functions as he or she considers appropriate and the Commission shall have regard to the guidelines when performing such functions.

(6) The Minister shall lay a copy of any guidelines given by him or her under *subsection (5)* before each House of the Oireachtas.

Members of
Commission.

14.—(1) The Commission shall consist of at least one but not more than 3 members.

F20[(2) Each member of the Commission shall be known as a Commissioner for Railway Regulation and is in this Act referred to as a “commissioner”.]

(3) The person who holds, immediately before the establishment day, the position of Chief Railway Inspecting Officer of the Minister, shall, subject to his accepting such period for his holding office on such terms and conditions as fixed under *subsection (5)*, on the establishment day, become and be a commissioner and is deemed appointed under this subsection.

(4) A commissioner (other than the person referred to in *subsection (3)*) shall be appointed by the Minister.

(5) A commissioner shall be appointed to hold office in a full-time capacity for a period of not less than 3 years and not more than 7 years on such terms and conditions,

including remuneration, as the Minister, with the consent of the Minister for Finance, may fix.

(6) Where there is more than one commissioner, the Minister shall appoint one of them to be chairperson of the Commission on such terms and conditions, including remuneration, as the Minister may fix, with the consent of the Minister for Finance, to hold office in a full-time capacity for a period of not less than 3 and not more than 7 years.

(7) The chairperson shall have a casting vote in the case of decisions to be taken by the Commission in the event of a tied vote.

(8) Where the chairperson is unavailable to perform his or her duties, he or she, or if he or she is unable to do so, the Minister, shall appoint a commissioner to be an acting chairperson to assume the duties of the chairperson for a defined period not exceeding 12 months.

(9) With the exception of the person appointed under *subsection (3)*, a person shall not be appointed as a commissioner unless the Public Appointments Service, after holding a competition on behalf of the Commission, have selected him or her for appointment as a commissioner.

(10) A commissioner, including the chairperson, whose term of office expires by effluxion of time shall be eligible for re-appointment to serve a second term, subject to a limit of serving no more than 12 years on the Commission.

(11) A commissioner shall not be entitled to serve more than 2 terms of office.

(12) A commissioner may—

(a) at any time resign his or her office by letter addressed to the Minister and the resignation shall take effect from the date specified therein or upon the date of receipt of the letter, whichever is the later, and

(b) be removed from office by the Minister if, in his or her opinion, the member has become incapable through ill-health of effectively performing his or her duties or for stated misbehaviour and the Minister shall cause to be laid before each House of the Oireachtas a statement of the reasons for such removal.

(13) The Commission may act notwithstanding a vacancy in its membership.

(14) A commissioner shall not hold any other office or employment in respect of which emoluments are payable.

(15) A commissioner shall not, for a period of 12 months following his or her resignation, removal or retirement from the office of commissioner, accept any office, consultancy or employment, where he or she could or might use or disclose information of a confidential or commercially sensitive nature acquired by him or her in the exercise of the functions of the Commission.

(16) Notwithstanding *subsection (15)*, a person who was a commissioner shall not be precluded from holding office or engagement in any employment in the Civil Service or any statutory regulatory body or from acting as a consultant to the Commission, the Minister or any other Minister of the Government on the basis that the period referred to in that subsection has not expired.

(17) No action or other proceedings shall lie or be maintainable (except in the case of wilful neglect or default) against any commissioner arising from a failure to perform or to comply with any of the functions conferred on the Commission by this Act.

Annotations**Amendments:**

F20 Substituted (8.02.2016) by *Public Transport Act 2016* (3/2016), s. 4(4)(b), commenced on enactment.

Staff of
Commission.

15.—(1) The Commission may, subject to the consent of the Minister and the Minister for Finance, appoint such and so many persons to be members of its staff as it considers necessary to assist it in the performance of its functions.

(2) The terms and conditions, including terms and conditions as to remuneration and grading, of persons appointed under *subsection (1)* shall be determined by the Minister with the consent of the Minister for Finance.

(3) The Commission may perform such of its functions as it may deem proper through or by any member of its staff.

Transfer of staff
from Minister to
Commission.

16.—(1) The Minister—

(a) shall designate his or her officers recruited specifically for transfer to the Commission, and

(b) may designate such and so many of his or her officers who are Railway Inspecting Officers,

to be transferred to the Commission.

(2) An officer of the Minister designated under *subsection (1)* shall be transferred to and become a member of the staff of the Commission on the establishment day.

(3) Save in accordance with a collective agreement negotiated with any recognised trade unions and staff associations concerned, an officer of the Minister transferred to the staff of the Commission under *subsection (2)* shall not, while he or she is in the service of the Commission, receive a lesser scale of pay or be made subject to less beneficial terms and conditions of service (including those relating to tenure of office) than the scale of pay to which he or she was entitled or the terms and conditions of service (including those relating to tenure of office) to which he or she was subject immediately before his or her transfer.

(4) In relation to persons transferred in accordance with *subsection (2)* to the staff of the Commission, previous service in the Civil Service shall be reckonable for the purposes of, but subject to any exceptions or exclusions in—

(a) the Redundancy Payments Acts 1967 to 2003,

(b) the Minimum Notice and Terms of Employment Acts 1973 to 2001,

(c) the Unfair Dismissals Acts 1977 to 2001,

(d) *the Terms of Employment (Information) Act 1994*,

(e) *the Organisation of Working Time Act 1997*, and

(f) *the Worker Protection (Regular Part-Time Employees) Act 1991*.

Deputy member
of Commission.

17.—(1) The Commission shall designate a member of its staff as a deputy member of the Commission (“deputy commissioner”) who shall assume and carry out all of the functions of the Commission in the absence of all members of the Commission or when the membership of the Commission is vacant.

(2) Subject to *subsection (3)*, a designation under *subsection (1)* shall be for a period not exceeding 12 months and on the expiry of the period the Commission shall—

- (a) renew the designation of the member of staff concerned, or
- (b) designate another member of staff to be the deputy commissioner.

(3) A designation under this section may be revoked at any time by the Commission.

Consultants and advisers.

18.—The Commission may, from time to time, engage such consultants or advisers as it may consider necessary to assist it in the discharge of its functions and any fees due to a consultant or adviser engaged under this section shall form part of the expenses of the Commission.

Membership of House of Oireachtas, European Parliament and local authorities.

19.—(1) Where a commissioner—

- (a) accepts nomination as a member of Seanad Éireann,
- (b) is elected as a member of either House of the Oireachtas or as a representative in the European Parliament,
- (c) is regarded pursuant to Part XIII of the Second Schedule to [the European Parliament Elections Act 1997](#), as having been elected to the European Parliament to fill a vacancy, or
- (d) becomes a member of a local authority,

he or she shall thereupon cease to be a commissioner.

(2) Where a member of the staff of the Commission—

- (a) accepts nomination as a member of Seanad Éireann,
- (b) is elected as a member of either House of the Oireachtas or as a representative in the European Parliament, or
- (c) is regarded pursuant to Part XIII of the Second Schedule to [the European Parliament Elections Act 1997](#) as having been elected to the European Parliament to fill a vacancy,

he or she shall thereupon stand seconded from his or her employment by the Commission and shall not be paid by, or be entitled to receive from, the Commission remuneration or allowances in respect of the period commencing on such nomination or election or when he or she is so regarded as having been elected, as the case may be, and ending when he or she ceases to be a member of either such House or such Parliament.

(3) A person who is, for the time being, entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament shall, while he or she is so entitled or is such a member, be disqualified from becoming a commissioner or a member of the staff of the Commission.

(4) A person who is a member of a local authority shall be disqualified from becoming a commissioner while he or she is a member of such local authority.

(5) The Commission shall not employ or otherwise retain in any capacity a person who would otherwise be disqualified under this section from becoming a commissioner while that person would be so disqualified.

(6) Without prejudice to the generality of *subsection (2)*, that subsection shall be construed as prohibiting, among other things, the reckoning of a period mentioned in that subsection as service with the Commission for the purposes of any superannuation benefits.

Disclosure of
Interests.

20.—(1) Where a commissioner, a member of the staff of the Commission, or a consultant, adviser or other person engaged by the Commission, has a pecuniary interest or other beneficial interest in, or material to, any matter which falls to be considered by the Commission, he or she shall—

- (a) disclose to the Commission and in the case of disclosure by a commissioner where there is only one commissioner, that commissioner shall disclose to the Minister, the nature of his or her interest in advance of any consideration of the matter,
- (b) neither influence nor seek to influence a decision in relation to the matter,
- (c) take no part in any consideration of the matter, unless there are compelling reasons requiring him or her to do so,
- (d) if he or she is a commissioner, withdraw from a meeting of the Commission for so long as the matter is being discussed or considered by the Commission, and unless there are compelling reasons requiring him or her to do so, shall not vote or otherwise act in relation to the matter, and
- (e) prepare and furnish in advance to the Commission or Minister, as appropriate, a statement in writing of the compelling reasons aforesaid.

(2) For the purposes of this section, but without prejudice to the generality of *subsection (1)*, a person shall be regarded as having a beneficial interest if—

- (a) he or she or any connected relative F21[or civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010], or any nominee of his or her or any connected relative F21[or civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010], is a member of an undertaking or any other body which has a beneficial interest in, or material to, a matter referred to in that subsection,
- (b) he or she or any connected relative F21[or civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010] is in partnership with or is in the employment of a person who has a beneficial interest in, or material to, such a matter,
- (c) he or she or any connected relative F21[or civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010] is a party to any arrangement or agreement (whether or not enforceable) concerning land to which such a matter relates, or
- (d) any connected relative F21[or civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010] has a beneficial interest in, or material to, such a matter.

(3) In *subsection (2)*, “connected relative F21[or civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010]” means, in relation to a person to whom that subsection applies, the person's spouse or partner, parent, brother, sister, child or a child of a spouse or partner.

(4) For the purposes of this section, a person shall not be regarded as having a beneficial interest in, or material to, any matter, by reason only of an interest of his or her or of any undertaking or of any other body or person mentioned in *subsection (2)* which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering, discussing or in voting on, any question with respect to the matter, or in performing any function in relation to that matter.

(5) Where a question arises as to whether or not a course of conduct, if pursued by a person, would be a failure by him or her to comply with the requirements of *subsection (1)*, the question shall be determined by the Commission or, where there is only one commissioner, in the case of that commissioner, by the Minister.

(6) Particulars of the determination under *subsection (5)* shall be recorded by the Commission in the minutes of the meeting concerned or by the Minister by letter addressed to the Commission.

(7) Where a disclosure is made to the Commission or the Minister pursuant to *subsection (1)*, particulars of the disclosure shall be recorded in the minutes of any meeting concerned or by the Minister by letter addressed to the Commission.

(8) Where a person referred to in this section, other than a commissioner, fails to make a disclosure in accordance with this section, the Commission shall decide the appropriate action (including removal from office or termination of contract) to be taken.

(9) Where a commissioner fails to make a disclosure in accordance with this section, the Minister shall decide the appropriate action (including removal from office) to be taken.

Annotations

Amendments:

- F21** Substituted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 97 and sch. 1 part 1 item 39, S.I. No. 648 of 2010.

Disclosure of confidential information.

21.—(1) Save as otherwise provided by law, a person shall not disclose confidential information obtained by him or her while performing duties as a commissioner, member of staff or an adviser or consultant to the Commission, unless he or she is duly authorised by the Commission to do so.

(2) In this section, “duly authorised” means authorised by the Commission or by some person authorised in that behalf by the Commission for the purposes of this section.

(3) A person who contravenes *subsection (1)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 3 months, or to both.

(4) (a) In this section, “confidential information” means that which is expressed by the Commission to be confidential either as regards particular information or as regards information of a particular class or description.

(b) In expressing information to be confidential, the Commission shall have regard to the requirement to protect information of a confidential commercial nature.

(5) Nothing in *subsection (1)* shall prevent the disclosure of information in a report made by or on behalf of the Commission to the Minister.

(6) The Third Schedule to the *Freedom of Information Act 1997* is amended by the insertion in Part I at the end thereof:

(a) in column (2) of “*Railway Safety Act 2005*”, and

(b) in column (3) of “*Section 21(1)*”.

Annotations

Modifications (not altering text):

- C16** Person holding record under section excluded from requirement to refuse an FOI request (14.10.2014) by *Freedom of Information Act 2014* (30/2014), s. 41(1)(a) and sch. 3 part 1, commenced on enactment. This section is listed in sch. 3 part 1.

Enactments relating to non-disclosure of records.

41.—(1) A head shall refuse to grant an FOI request if—

- (a) the disclosure of the record concerned is prohibited by law of the European Union or any enactment (other than a provision specified in column (3) of *Part 1* or *2* of *Schedule 3* of an enactment specified in that Schedule), or

...

SCHEDULE 3

ENACTMENTS EXCLUDED FROM APPLICATION OF *Section 41*

PART I

STATUTES

...		
No. 31 of 2005	Railway Safety Act 2005	Section 21(1).
...	...	...

Editorial Notes:

E8

A fine of €3,000 translates into a class B fine, not greater than €4,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 5(2) and table ref. no. 1, S.I. No. 662 of 2010.

Superannuation
for members of
Commission.

22.—(1) The Minister shall, with the consent of the Minister for Finance, make a scheme or schemes for the granting of superannuation benefits to or in respect of a commissioner ceasing to hold office.

(2) Every scheme made under this section shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme and different times and conditions may be fixed in respect of different classes of persons.

(3) The Minister may, with the consent of the Minister for Finance, make a scheme amending or revoking a scheme under this section, including a scheme under this subsection.

(4) If any dispute arises as to the claim of a commissioner to, or the amount of, any pension, gratuity or other allowance payable in pursuance of a scheme under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance for determination by him or her.

(5) A scheme under this section shall be carried out by the Minister in accordance with its terms.

(6) No pension, gratuity or other allowance shall be granted by the Minister to or in respect of any commissioner ceasing to hold office otherwise than in accordance with a scheme under this section or as otherwise may be approved of by the Minister with the consent of the Minister for Finance.

(7) A scheme under this section shall be laid before each House of the Oireachtas by the Minister as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Superannuation
for staff of
Commission.

23.—(1) The Commission shall prepare and submit to the Minister a scheme or schemes for the granting of superannuation benefits to or in respect of such members of the staff of the Commission, including the deputy commissioner, as it may think fit.

(2) Every scheme made under this section shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme and different times and conditions may be fixed in respect of different classes of persons.

(3) Every scheme made under *subsection (1)* may, with the consent of the Minister for Finance, be amended or revoked by a subsequent scheme prepared, submitted and approved under *subsection (1)*.

(4) A scheme made under *subsection (1)* submitted by the Commission to the Minister shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the Commission in accordance with its terms.

(5) No superannuation benefits shall be granted by the Commission nor shall any other arrangements be entered into by the Commission for the provision of such a benefit to or in respect of a member of the staff of the Commission otherwise than in accordance with a scheme under *subsection (1)* or otherwise as may be approved of by the Minister with the consent of the Minister for Finance.

(6) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit payable in pursuance of a scheme or schemes under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance for determination by him or her.

(7) A scheme under this section shall be laid before each House of the Oireachtas by the Commission as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

(8) Superannuation benefits granted under schemes under this section to persons who, immediately before the establishment day, were officers of the Minister and the terms and conditions relating to those benefits shall not be less favourable to those persons than those to which they were entitled immediately before that day.

(9) Where, in the period beginning on the establishment day and ending immediately before the commencement of a scheme under this section, a superannuation benefit falls due for payment to or in respect of a person who was transferred to the staff of the Commission under *section 16*, the benefit shall be calculated by the Commission in accordance with such scheme, or such enactments in relation to superannuation, as applied to the person immediately before the establishment day and, for that purpose, his or her pensionable service with the Commission shall be aggregated with his or her previous pensionable service and shall be paid by the Commission.

Annotations

Editorial Notes:

- E9** Power pursuant to section exercised (14.08.2024) by *Commission for Railway Regulation (Employees) Superannuation Scheme 2024* (S.I. No. 407 of 2024).

Resources made
available by
Minister.

24.—(1) The Minister may make available to the Commission, on a request being made by the Commission, such staff, premises, equipment, services and other resources as the Minister may determine from time to time in consultation with the Minister for Finance.

(2) The Commission shall, on request from the Minister, pay to the Minister such sum or sums as the Minister may specify to be the expenses incurred by the Minister in making available to the Commission such staff, premises, equipment, services and other resources under *subsection (1)*.

(3) Where the Minister makes available to the Commission under *subsection (1)* any officer of the Minister, other than an officer referred to in *section 14(3)* or *section 16(1)*, that officer shall remain an officer of the Minister and shall not be considered to be a member of the staff of the Commission save for the purpose of obligations under *sections 20* and *21*.

(4) An officer of the Minister, other than an officer referred to in *section 14(3)* or *section 16(1)*, shall not be made available to the Commission under *subsection (1)* for any period exceeding 2 years.

Grants to
Commission.

25.—In each financial year there may be paid to the Commission out of moneys provided by the Oireachtas a grant of such amount as the Minister, with the consent of the Minister for Finance and after consultation with the Commission in relation to its likely work programme and expenditure for a financial year, may sanction towards the expenses of the Commission in the performance of its functions.

Levy.

26.—(1) Subject to *subsection (2)*, for the purpose of meeting expenses properly incurred by the Commission in the discharge of its functions under this Act, the Commission, with the consent of the Minister and the Minister for Finance, may make regulations imposing a levy (“levy”) to be paid each year by such classes of F22[railway organisation]s as may be specified by the Commission in the regulations.

(2) The Commission shall not impose levy before 31 December 2007.

(3) Regulations made under *subsection (1)* may provide for the following—

- (a) rates of levy payable,
- (b) the keeping of records and the making of returns by persons liable to pay levy,
- (c) the collection and recovery of levy,
- (d) exemption from levy, and
- (e) such other matters as are necessary or incidental to the procurement of the payment of levy.

(4) Levy shall be payable to the Commission at such time and at such rates as may be prescribed in regulations made by the Commission under *subsection (1)* and different rates may be prescribed in respect of different classes of F22[railway organisation]s liable to pay levy, and such regulations may provide for an exemption from payment of levy for F22[railway organisation]s whose operating revenue is below a threshold prescribed in the regulations.

(5) Any increase in levy may only take effect in the year after the year in which the increase is made in regulations.

(6) The Minister may, with the consent of the Minister for Finance, direct the Commission to pay into the Central Fund or the growing produce thereof, such sum as he or she may specify, being a sum that represents the amount by which the gross income received by the Commission in each financial year exceeds the gross expenditure incurred in the administration of its office in that year.

(7) The Commission may recover, as a simple contract debt in any court of competent jurisdiction, from any person by whom it is payable any amount due and owing to it under this section.

Annotations**Amendments:**

- F22** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Editorial Notes:

- E10** Power pursuant to section exercised (23.05.2024) by *Railway Safety Act 2005 (Section 26) Levy Order 2024* (S.I. No. 237 of 2024).
- E11** Power pursuant to section exercised (29.05.2023) by *Railway Safety Act 2005 (Section 26) Levy Order 2023* (S.I. No. 267 of 2023).
- E12** Power pursuant to section exercised (21.04.2022) by *Railway Safety Act 2005 (Section 26) Levy Order 2022* (S.I. No. 194 of 2022).
- E13** Power pursuant to section exercised (19.05.2021) by *Railway Safety Act 2005 (Section 26) Levy Order 2021* (S.I. No. 246 of 2021).
- E14** Power pursuant to section exercised (23.04.2020) by *Railway Safety Act 2005 (Section 26) Levy Order 2019* (S.I. No. 143 of 2020).
- E15** Power pursuant to section exercised (7.05.2019) by *Railway Safety Act 2005 (Section 26) Levy Order 2019* (S.I. No. 191 of 2019).
- E16** Power pursuant to section exercised (10.04.2018) by *Railway Safety Act 2005 (Section 26) Levy Order 2018* (S.I. No. 114 of 2018).
- E17** Power pursuant to section exercised (21.03.2017) by *Railway Safety Act 2005 (Section 26) Levy Order 2017* (S.I. No. 87 of 2017).
- E18** Power pursuant to section exercised (2.03.2016) by *Railway Safety Act 2005 (Section 26) Levy Order 2016* (S.I. No. 122 of 2016).
- E19** Power pursuant to section exercised (13.04.2015) by *Notification and Control of Animal Diseases Regulations 2014 (Amendment) Regulations 2015* (S.I. No. 124 of 2014).
- E20** Power pursuant to section exercised (6.02.2014) by *Railway Safety Act 2005 (Section 26) Levy Order 2014* (S.I. No. 73 of 2014).
- E21** Power pursuant to section exercised (25.02.2013) by *Railway Safety Act 2005 (Section 26) Levy Order 2013* (S.I. No. 68 of 2013).
- E22** Power pursuant to section exercised (29.05.2012) by *Railway Safety Act 2005 (Section 26) Levy Order 2012* (S.I. No. 172 of 2012).
- E23** Power pursuant to section exercised (21.03.2011) by *Railway Safety Act 2005 (Section 26) Levy Order 2011* (S.I. No. 120 of 2011).
- E24** Power pursuant to section exercised (1.01.2010) by *Railway Safety Act 2005 (Section 26) Levy Order 2010* (S.I. No. 10 of 2010), in effect as per art. 1(2).
- E25** Power pursuant to section exercised (1.01.2009) by *Railway Safety Act 2005 (Section 26) Levy Order 2008* (S.I. No. 568 of 2008), in effect as per art. 1(2).

Borrowings.

27.—The Commission may, for the purpose of the performance of its functions, borrow money (whether on the security of its assets or otherwise), including money in a currency other than the currency of the State, but shall not do so without the consent of the Minister and the Minister for Finance.

Annotations**Modifications (not altering text):**

- C17** Functions transferred and terms “Minister for Finance” and “Department of Finance” construed (6.07.2011) by *Ministers and Secretaries (Amendment) Act 2011* (10/2011), ss. 9(2), 20(1) and sch. 2 part 1, commenced as per s. 1(2) and S.I. No. 401 of 2011.

Transfer of certain other functions to Minister.

9.— (1) ...

(2) The functions conferred on the Minister for Finance by or under any of the provisions specified in *Part 1* of *Schedule 2* are transferred to the Minister.

...

Performance of certain functions transferred to Minister by section 9.

20.— (1) The Minister shall not perform a function transferred by *subsection (2)* of *section 9* without the consent of the Minister for Finance.

...

SCHEDULE 2

FUNCTIONS TRANSFERRED TO MINISTER

Sections 9 and 20

PART 1

FUNCTIONS PERFORMABLE WITH CONSENT OF MINISTER FOR FINANCE

STATUTES

Number and Year (1)	Short Title (2)	Provision (3)
...	...	...
No. 31 of 2005	Railway Safety Act 2005	Section 27
...	...	...

Accounts and annual report of Commission.

28.—(1) The Commission shall keep in such form and in respect of such accounting periods as may be approved of by the Minister, with the consent of the Minister for Finance, all proper and usual accounts of moneys received or expended by it, including an income and expenditure account and a balance sheet.

(2) Accounts kept in pursuance of this section shall be submitted, not later than three months after the end of the financial year to which they relate, by the Commission to the Comptroller and Auditor General for audit and, immediately after the receipt of the Comptroller and Auditor General's report on the accounts, a copy of the income and expenditure account, the balance sheet and of such other (if any) accounts kept pursuant to this section as the Minister, after consultation with the Minister for Finance, may direct and a copy of the Comptroller and Auditor General's report on the accounts shall be presented to the Minister who shall cause copies thereof to be laid before each House of the Oireachtas.

(3) As soon as practicable, but not later than 3 months after the end of each financial year, the Commission shall, in writing, report to the Minister in relation to the performance of its functions in that year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas within 3 months of its receipt by him or her.

(4) The Minister may give directions in writing to the Commission in regard to the format and content of a report under *subsection (3)*, but such directions shall not

require the Commission to include in such report details which could, in the opinion of the Commission, be prejudicial to the performance of its functions.

(5) The Commission shall give to the Minister such information relating to the performance of its functions as the Minister may request provided that such information would not, in the opinion of the Commission, be prejudicial to the performance of its functions.

(6) The financial year of the Commission shall be the period of 12 months ending on 31 December in any year and, for the purposes of this section and *section 25*, the period commencing on the establishment day and ending on the following 31 December shall be deemed to be a financial year.

Report to
European Railway
Agency

F23[28A.— F24[...]]

Annotations

Amendments:

- F23** Inserted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008).
- F24** Repealed (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 21(b).

Editorial Notes:

- E26** The section heading is taken from the amending regulation in the absence of one included in the amendment.

Statement of
strategy.

29.—(1) The Commission shall adopt and submit to the Minister a statement of strategy within 6 months of the establishment day and at least every 3 years from the submission date of the first statement.

(2) The statement of strategy shall—

- (a) comprise the key objectives, outputs and related strategies, including use of resources, of the Commission,
- (b) be prepared in a form and manner in accordance with any directions issued from time to time by the Minister, and
- (c) have regard to the need to ensure the most beneficial, effective and efficient use of the resources of the Commission.

(3) The Commission shall publish a statement of strategy adopted by it and shall lay a copy before each House of the Oireachtas.

Publication of
reports of
Commission.

30.—Subject to *sections 28* and *60*, the Commission may publish any reports on matters related to its functions.

Accountability of
Commission to
Committees of
Oireachtas.

31.—(1) The commissioner, or where there is more than one commissioner, the chairperson of the Commission shall, whenever required by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, attend before and give evidence to that Committee on—

- (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General which the Commission is required by or under statute to prepare,
- (b) the economy and efficiency of the Commission in the use of its resources,
- (c) the systems, procedures and practices employed by the Commission for the purpose of evaluating the effectiveness of its operations, and
- (d) any matter affecting the Commission referred to in a special report of the Comptroller and Auditor General under section 11(2) of *the Comptroller and Auditor General (Amendment) Act 1993*, or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann.

(2) From time to time, and whenever so requested, the Commission shall account for the performance of its functions to a Committee of one or both Houses of the Oireachtas and shall have regard to any recommendations of such Committee relevant to its functions.

Premises of Commission.

32.—The Commission may, for the purposes of providing premises necessary for the performance of its functions, purchase, lease, equip and maintain offices and premises with the consent of the Minister and the Minister for Finance.

Seal of Commission.

33.—(1) The Commission shall, as soon as may be after its establishment, provide itself with a seal.

(2) The seal shall be authenticated by the signature of—

- (a) a commissioner, or
- (b) a member of the staff of the Commission, authorised by the Commission to act in that behalf.

(3) Judicial notice shall be taken of the seal of the Commission and every document purporting to be an instrument made by and to be sealed with the seal of the Commission (purporting to be authenticated in accordance with this section) shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.

Commission to keep itself informed on certain matters.

34.—(1) The Commission shall keep itself informed of the policies, objectives, resolutions and guidelines of any public authority the functions of which have, or may have, a bearing on the matters with which the Commission is concerned.

(2) In this section, “public authority” means the Minister, the Commission of the European Communities and any other public authority inside or outside the State which, in the opinion of the Commission, has functions that have, or may have, a bearing on matters with which the Commission is concerned.

Provision of services.

35.—The Commission may provide services (including services of staff) to the Minister on such terms and conditions (including payment for such services) as may be agreed and the Minister may avail of such services.

PART 3

GENERAL DUTIES OF RAILWAY UNDERTAKINGS, PERSONS WORKING ON RAILWAYS AND OTHER PERSONS

Annotations**Editorial Notes:**

- E27** The railway undertakings referred to in the title appear to be a reference to railway organisations in accordance with *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d), which provided for the substitution of “railway organisation” for “railway undertaking” in numerous sections including sections in this Part.

General duties of
F25[railway
organisation]s.

36.—It shall be the general duty of a F25[railway organisation] to ensure, in so far as is reasonably practicable, the safety of persons in the operation of its railway.

Annotations**Amendments:**

- F25** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

General duties of
persons working
on railways and
other persons.

37.—(1) It shall be the general duty of a person working in the course of the operation of a F26[railway organisation], and of any person being on a railway or railway premises or railway land or on a train, to conduct himself or herself in such a way as to ensure in so far as is reasonably practicable that no person (including himself or herself) is exposed to danger as a consequence of any act or omission of his or hers.

(2) It shall be the general duty of a person working in the course of the operation of a F26[railway organisation], while on duty, not to be under the influence of an intoxicant to such an extent as to expose a person (including himself or herself) to danger or risk of danger as a consequence of being under such influence.

(3) It shall be the general duty of every person, in carrying out any activity on or near a railway or railway premises or railway land, to ensure in so far as is reasonably practicable that no person who is involved in the operation of a railway or who is being carried on a railway is exposed to danger as a consequence of any act or omission on the part of such person.

Annotations**Amendments:**

- F26** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

PART 4

SAFETY MANAGEMENT SYSTEMS AND SAFETY CASE

Annotations**Modifications (not altering text):**

- C18** Application of Part restricted (31.10.2020) by *European Union (Railway Safety) Regulations 2020* (S.I. No. 476 of 2020), reg. 4, in effect as per reg. 1(2).

Non-application of Part 4 of Act of 2005

4. Part 4 of the Act of 2005 does not apply in relation to the aspects of safety management, safety certification, safety authorisation or entity in charge of maintenance provisions in respect of the railway system in the State to which these Regulations apply.

C19 Application of Part restricted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S. I. No. 444 of 2013), reg. 19.

Non-application of Part 4 of Act of 2005

19. Part 4 of the Act of 2005 does not apply in relation to the aspects of safety management, safety certification, safety authorisation or entity in charge of maintenance provisions in respect of the railway system in the State to which these Regulations apply.

...

Editorial Notes:

E28 The safety case referred to in the Part title appears to be a reference to a safety management document in accordance with *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(c), which provided for the substitution of “safety management document” for “safety case” in numerous sections including this one.

Commencement
(Part 4).

38.—This Part shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes and different provisions.

Annotations

Editorial Notes:

E29 Power pursuant to section exercised (1.05.2006 and 1.09.2006) by *Railway Safety Act 2005 (Section 5 and Parts 4, 9 and 10) (Commencement) Order 2006* (S.I. No. 215 of 2006).

3. The day appointed as the day on which section 5, Part 4 (other than section 43 and Parts 9 and 10 of the Act come into operation is 1 May 2006.

4. In Part 4 of the Act the day appointed as the day on which section 43 comes into operation is 1 September 2006.

F27[[Definitions and Scope \(Part 4\)](#)].

38A.—F28[...]

Annotations

Amendments:

F27 Inserted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 3(3).

F28 Repealed (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 21(c).

Editorial Notes:

E30 Previous affecting provision: subs. (1) amended (17.02.2011) by *European Communities (Railway Safety) Regulations 2011* (S.I. No. 70 of 2011), reg. 2(b); repealed as per F-note above.

Safety management systems and F29[safety management document].

39.—(1) For the purpose of complying with its duty under *section 36*, a F30[railway organisation] shall implement a safety management system and shall prepare a document (“F29[safety management document]”) describing the components of such safety management system.

(2) A F29[safety management document] shall achieve the following two objectives—

F31[(a) it shall demonstrate that the F32[railway organisation] has the ability to properly assess and effectively control risk to the safety of persons and the supply of material and contracting of services in compliance with its general duty under *section 36*, and]

(b) it shall provide a working document by which the F30[railway organisation] and the Commission can ensure that the safety systems described in the F29[safety management document] are being properly implemented and continue to be maintained.

(3) To achieve the objectives referred to in *subsection (2)*, a F29[safety management document] shall contain at least the following components—

(a) a general description of the operations, or proposed operations, of the F30[railway organisation],

(b) a statement of the safety objectives and safety policy of the F30[railway organisation],

(c) an identification of the hazards arising from the operations of the F30[railway organisation], an assessment of the risks and details of the measures in place or proposed to mitigate such risks,

(d) the management and organisational arrangements necessary for the implementation and management of railway safety, and

(e) arrangements for monitoring, audit, and consequent review and revision of the F29[safety management document].

(4) The Commission may prepare and, after consultation with the Council, F30[railway organisation]s and such other persons as in the opinion of the Commission may be relevant, publish guidelines, from time to time, on the appropriate contents of a F29[safety management document] and on appropriate technical principles and specifications, and a F30[railway organisation] shall, for the purposes of complying with its duty under *section 36*, in preparing a F29[safety management document] or a revision to a F29[safety management document], and for the purposes of complying with *sections 42* and *43*, have regard to such guidelines.

(5) A F29[safety management document] shall be submitted to the Commission in accordance with *section 45* for acceptance by the Commission in accordance with *section 46*.

(6) A F30[railway organisation] shall consult with its staff and staff representatives in the preparation of a F29[safety management document].

(7) A F29[safety management document] shall contain the title and office address of one person in a senior management position within the F30[railway organisation] who is responsible for ensuring, and has sufficient authority to ensure, that the undertaking implements the provisions of its F29[safety management document].

Annotations

Amendments:

F29 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(c).

- F30** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).
- F31** Substituted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 7(1).
- F32** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).
- Editorial Notes:**
- E31** The undertaking referred to in subs. (7) appears to be a reference to a railway organisation in accordance with *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d), which provided for the substitution of “railway organisation” for “railway undertaking” in numerous sections including this one.

F33[Targets for safety management systems.]

39A.—F34[...]

Annotations

Amendments:

- F33** Inserted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 8.
- F34** Repealed (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 21(d).

F35[Reports to Commission.]

39B.—F36[...]

Annotations

Amendments:

- F35** Inserted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 8.
- F36** Repealed (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 21(d).

Co-operation between F37[railway organisation]s.

40.—(1) Where the railway infrastructure of a F37[railway organisation] is used by another F37[railway organisation] to operate trains or where the activities of one F37[railway organisation] may affect the safe operation of another F37[railway organisation], the F37[railway organisation]s concerned shall agree systems and procedures to ensure compliance with the duty imposed on each of them by *section 36*.

(2) F37[railway organisation]s shall co-operate with each other and provide to each other, without undue delay, all information reasonably required by the other party to enable the agreement in *subsection (1)* to be made.

(3) The Commission may give a direction to a F37[railway organisation] requiring it to make an agreement under *subsection (1)* or to co-operate with another

F37[railway organisation] under *subsection (2)* and the F37[railway organisation] shall comply with such direction.

(4) A F37[railway organisation] may only refuse to give its agreement under *subsection (1)* where to give such agreement, in its reasonable opinion, would be failing in its duty under *section 36*.

(5) An agreement under *subsection (1)* shall form a separate part of the F38[safety management document] of each relevant F37[railway organisation].

(6) An agreement under this section shall include provisions for—

(a) monitoring, reviewing and updating of the agreement, and

(b) procedures for dealing with alleged non-compliance by any of the parties involved in the agreement.

(7) A F37[railway organisation] shall not operate trains on the railway infrastructure of another F37[railway organisation], and an operator of railway infrastructure shall not give permission for such trains to operate, unless all parties have an agreement in accordance with *subsection (1)* and the F38[safety management document] of each relevant F37[railway organisation] has been accepted by the Commission in accordance with *section 46*.

F39[(8) *Subsection (7) does not apply to a railway organisation that operates a railway service immediately before the commencement of this section in respect of the period specified in sections 45(1) and 46(8).*]

(9) Where a F37[railway organisation] is contravening *subsection (7)*, the Commission may give a direction to it to cease operating its trains on the railway infrastructure of the other F37[railway organisation].

(10) A F37[railway organisation] shall comply with a direction of the Commission given to it under this section.

(11) Where the Commission proposes to give a direction under this section, it shall notify the F37[railway organisation] concerned of the proposal and the F37[railway organisation] may, within 21 days of the notification, make representations to the Commission, which shall consider them.

(12) Where the Commission decides to give a direction under this section, the F37[railway organisation] concerned may, within 21 days of notification of the decision, appeal to the High Court and the direction shall not take effect until the time allowed for such appeal has elapsed and, in the event of an appeal, until the appeal is determined or withdrawn.

(13) On hearing an appeal under *subsection (12)*, the Court may either confirm or vary the decision of the Commission or allow the appeal.

(14) A decision of the High Court on an appeal under *subsection (12)* shall be final, save that, by leave of the Court, an appeal from the decision shall be to the Supreme Court on a specified point of law.

(15) A F37[railway organisation] which, without reasonable excuse, fails to comply with a direction of the Commission under this section is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding €3,000, or

(b) on conviction on indictment, to a fine not exceeding €500,000.

Annotations**Amendments:**

- F37** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).
- F38** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(c).
- F39** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(e).

Editorial Notes:

- E32** A fine of €3,000 translates into a class B fine, not greater than €4,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 5(2) and table ref. no. 1, S.I. No. 662 of 2010.
- E33** Previous affecting provision: subs. (8) substituted (17.02.2011) by *European Communities (Railway Safety) Regulations 2011* (S.I. No. 70 of 2011), reg. 2(c); substituted as per F-note above.
- E34** Previous affecting provision: subs. (8) amended (6.03.2008) by *European Communities (Railway Safety) Regulations 2011* (S.I. No. 61 of 2008), reg. 9(3); substituted as per F-note above.

International
Services.

41.—(1) A F40[railway organisation] first established in another Member State (“foreign railway”) which operates or proposes to operate an international service using only the infrastructure of another F40[railway organisation] first established in the State, is deemed to have met the requirements of *section 39* where—

- (a) it has implemented a safety management system in compliance with the national requirements of the other Member State,
- (b) it holds a valid F41[safety management certificate] issued by the relevant competent authority in that other Member State, where it is required by that other Member State to do so, and
- (c) it has an agreement under *section 40(1)* with the F40[railway organisation] first established in the State.

(2) A copy of a F41[safety management certificate] or other evidence of compliance, as the case may be, issued or given to a foreign railway by the relevant competent authority of another Member State and a copy of any agreement under *section 40(1)* between the foreign railway and a railway established in the State, together with any such other information as may be required by the Commission for the purposes of *section 46(2)*, is deemed to be a F42[safety management document] for the purposes of this Part.

(3) A F41[safety management certificate] issued to a foreign railway shall specify that the F41[safety management certificate] is in respect of that element of the international service within the State only.

(4) A reference to an amendment to, a revision of, audit of, or compliance with a F42[safety management document] in this Act shall, in respect of a foreign railway, be construed as an amendment to, revision of, audit of, or compliance with the agreement under *section 40(1)* and of such other information provided by the F40[railway organisation] under *subsection (2)*.

(5) A foreign railway which is applying for a F41[safety management certificate] in respect of that element of an international service within the State, shall provide to the Commission a copy of the F42[safety management document] accepted by the competent authority of the other Member State or where no F42[safety management

[document](#)] was or is required by the other Member State, such documentary evidence of its safety management system as the Commission may direct.

(6) In this section “Member State” means a Member State of the European Communities.

Annotations

Amendments:

- F40** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).
- F41** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(f).
- F42** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(c).

Safety
assessment of
new works.

42.—(1) A F43[\[railway organisation\]](#) shall not commence construction, installation or assembly of new works unless—

(a) it has submitted a safety assessment (referred to in this section as a “new works assessment”) to the Commission in such form and containing such information—

(i) as it considers appropriate to show to the satisfaction of the Commission the safety of the new works, or

(ii) as the Commission may set out in guidelines published in accordance with [section 39\(4\)](#),

and

(b) the Commission has issued a communication under *subsection (4)*.

(2) Where the Commission considers that the information provided in a new works assessment, or in a revised new works assessment under *subsection (3)*, is not adequate, or the Commission is not satisfied—

(a) that the proposed method of construction, installation or assembly is adequate to ensure, in so far as reasonably practicable, the safety of persons during that construction, installation or assembly, or

(b) as to the expected operational safety of the new works,

the Commission shall serve a written notice to that effect on the F43[\[railway organisation\]](#) and that notice shall set out the reasons for the Commission's decision to serve the notice.

(3) A F43[\[railway organisation\]](#) in receipt of a notice under *subsection (2)* may submit a revised new works assessment which addresses the matters raised in such notice.

(4) Where, on the basis of the information contained in a new works assessment or in a revised new works assessment under *subsection (3)*, the Commission is satisfied—

(a) that the proposed method of construction, installation or assembly is adequate to ensure, in so far as reasonably practicable, the safety of persons during that construction, installation or assembly, and

(b) as to the expected operational safety of the new works,

the Commission shall communicate in writing its acceptance of a new works assessment to the F43[railway organisation] concerned.

(5) A F43[railway organisation] shall obtain the consent of the Commission before bringing into operation the completed new works.

(6) A F43[railway organisation] shall, within 21 days of receipt of a communication under *subsection (4)*, amend its F44[safety management document] to reflect the implications of the new works assessment.

(7) The Commission may at its discretion give a general or specific exemption from the requirements of this section where, in the opinion of the Commission, the new works are similar to works of a F43[railway organisation] which are already in operation and where the F44[safety management document] of the F43[railway organisation] would not require revision when the new works are being brought into operation.

(8) A F43[railway organisation] shall not commence commissioning of a new railway line or an addition to an existing railway line until—

(a) it has provided such information to the Commission, as may be specified by the Commission in any individual case, that, for the purposes of commissioning, demonstrates to the satisfaction of the Commission—

(i) the safety and suitability of the railway line, and

(ii) the adequacy of the systems and procedures to ensure safety of persons,

(b) the Commission has given its consent to such commissioning.

(9) The Commission may, where it considers it appropriate to do so, direct a F43[railway organisation] to engage a suitably qualified person to independently assess a new works assessment or a revised new works assessment and the report of such person shall be submitted to the Commission at the same time as the submission under *subsection (1)* or *subsection (3)*.

(10) Where a F43[railway organisation] has altered its new works assessment on the basis of the report of a person engaged in accordance with *subsection (9)*, a statement of the actions taken by the F43[railway organisation] in response to the report, together with the report of the person and the new works assessment as amended, shall be submitted to the Commission.

(11) It shall be the duty of the Commission to ensure that it carries out its functions under this section as expeditiously as may be, and for that purpose, to take all such steps as are open to it to ensure that, in so far as is practicable, there are no avoidable delays at any stage in its performance of its functions under this section.

(12) Without prejudice to the generality of *subsection (11)*, and subject to *subsection (9)*, it shall be the objective of the Commission to ensure that it issues a notice under *subsection (2)* or a communication under *subsection (4)* within—

(a) 28 days, beginning on the date of receipt by the Commission of a new works assessment or a revised new works assessment or receipt of all information or clarifications requested under *subsection (13)*, or

(b) such other period as the Minister may specify by order, after consultation with the Commission and F43[railway organisation]s.

(13) The Commission may, for the purpose of carrying out its functions under this section, request any additional information or clarifications from a F43[railway organisation] and the undertaking shall comply with such a request.

(14) A F43[railway organisation] which does not comply with this section is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding €3,000, or

(b) on conviction on indictment, to a fine not exceeding €500,000.

(15) In this section, “new works” means new or material changes to railway infrastructure of operational significance, including, for the avoidance of doubt, railway lines or additions to existing railway lines, bridges and structures, stations or other buildings required to operate or maintain railways, level crossings and signalling systems or such other works as may, by order, be specified by the Minister, after consultation with the Commission and F43[railway organisation]s.

(16) Where a F43[railway organisation] proposes to replace the gates at a specific level crossing with barriers, lights or other automatic devices or appliances, and

(a) it has submitted a new works assessment in respect of those works which has been accepted by the Commission under *subsection (4)*, or

(b) where the Commission has given a generic or specific exemption under *subsection (7)* in respect of such works,

any obligations to make or maintain gates at that crossing do not apply.

(17) Subject to *subsection (18)*, *section 23 of the Transport (Miscellaneous Provisions) Act 1971* applies to works under *subsection (16)* as if those works had been required by an order under section 22 of that Act.

(18) *Subsection (17)* does not apply to a level crossing to which section 47 of the Railway Clauses Consolidation Act 1845 or section 6 of the Railway Clauses Act 1863 applies.

Annotations

Amendments:

F43 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

F44 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(c).

Editorial Notes:

E35 A fine of €3,000 translates into a class B fine, not greater than €4,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 5(2) and table ref. no. 1, S.I. No. 662 of 2010.

E36 The undertaking referred to in subs. (13) appears to be a reference to a railway organisation in accordance with *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d), which provided for the substitution of “railway organisation” for “railway undertaking” in numerous sections including this one.

Safety
assessment of
new rolling stock.

43.—(1) A F45[railway organisation] shall not bring into operation new rolling stock unless—

(a) it has submitted a safety assessment (referred to in this section as a “new rolling stock assessment”) to the Commission containing such information—

(i) as it considers appropriate to demonstrate to the satisfaction of the Commission the safety of the new rolling stock, or

(ii) as the Commission may set out in guidelines published in accordance with *section 39(4)*,

and

(b) the Commission has issued a communication under *subsection (4)*.

(2) Where the Commission considers that the information provided in the new rolling stock assessment is not adequate or that the bringing into operation of the new rolling stock does not provide reasonable assurance of safety, the Commission shall serve a written notice to that effect on the F45[railway organisation] and that notice shall set out the reasons for the Commission's decision to serve the notice.

(3) A F45[railway organisation] in receipt of a notice under *subsection (2)* may submit a revised new rolling stock assessment which addresses the matters raised in such notice.

(4) Where the Commission is satisfied as to the safety of the new rolling stock on the basis of the information contained in a new rolling stock assessment or a revised new rolling stock assessment under *subsection (3)*, the Commission shall communicate in writing its acceptance of the new rolling stock assessment to the F45[railway organisation].

(5) A F45[railway organisation] shall, within 21 days of receipt of a communication under *subsection (4)*, amend the F45[safety management document] to reflect the implications of the new rolling stock assessment.

(6) The Commission may at its discretion give a general or specific exemption from the requirements of this section where, in the opinion of the Commission, the new rolling stock is similar in nature to rolling stock of the F45[railway organisation] which is already in operation and where the F45[safety management document] of the F45[railway organisation] would not require revision when the new rolling stock is being brought into operation.

(7) A F45[railway organisation] shall not commence commissioning of new rolling stock until—

(a) it has provided such information to the Commission, as may be specified by the Commission in any individual case, that, for the purposes of commissioning, demonstrates to the satisfaction of the Commission—

(i) the safety and suitability for purpose of the rolling stock, and

(ii) the adequacy of the systems and procedures to ensure safety of persons,

and

(b) the Commission has given its consent to such commissioning.

(8) The Commission may, where it considers it appropriate to do so, direct a F45[railway organisation] to engage a suitably qualified person to independently assess a new rolling stock assessment or a revised rolling stock assessment and the report of such person shall be submitted to the Commission at the same time as the submission under *subsection (1)* or *subsection (3)*.

(9) Where a F45[railway organisation] has altered its new rolling stock assessment on the basis of the report of a person engaged in accordance with *subsection (8)*, a statement of the actions taken by the F45[railway organisation] in response to the report, together with the report of the person and the new rolling stock assessment as amended, shall be submitted to the Commission.

(10) It shall be the duty of the Commission to ensure that it carries out its functions under this section as expeditiously as may be, and for that purpose, to take all such steps as are open to it to ensure that, in so far as is practicable, there are no avoidable delays at any stage in its performance of its functions under this section.

(11) Without prejudice to the generality of *subsection (10)*, and subject to *subsection (8)*, it shall be the objective of the Commission to ensure that it issues a notice under *subsection (2)* or a communication under *subsection (4)* within—

(a) 28 days, beginning on the date of receipt by the Commission of a new rolling stock assessment or a revised new rolling stock assessment or receipt of all information or clarifications requested under *subsection (12)*, or

(b) such other period as the Minister may specify by order, after consultation with the Commission and F45[railway organisation].

(12) The Commission may, for the purpose of carrying out its functions under this section, request any additional information or clarifications from a F45[railway organisation] and the undertaking shall comply with such a request.

(13) A F45[railway organisation] which does not comply with this section is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding €3,000, or

(b) on conviction on indictment, to a fine not exceeding €500,000.

(14) In this section, “new rolling stock” includes material alterations to existing rolling stock of a F45[railway organisation] and rolling stock which may have been in prior use but was not previously operated on the railway infrastructure of the relevant F45[railway organisation].

(15) F46[...]

Annotations

Amendments:

- F45** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(c), (d).
- F46** Repealed (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 21(e).

Editorial Notes:

- E37** The undertaking referred to in subs. (12) appears to be a reference to a railway organisation in accordance with *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d), which provided for the substitution of “railway organisation” for “railway undertaking” in numerous sections including this one.
- E38** A fine of €3,000 translates into a class B fine, not greater than €4,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 5(2) and table ref. no. 1, S.I. No. 662 of 2010.
- E39** Previous affecting provision: subs. (15) inserted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 11(1); repealed as per F-note above.

F47[Placing in service rolling stock authorised in another Member State.

43A.—F48[...]

Annotations

Amendments:

- F47** Inserted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 11(2).

F48 Repealed (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 21(f).

F49[Maintenance of vehicles. **43B.**—F50[...]]

Annotations

Amendments:

- F49** Inserted (17.02.2011) by *European Communities (Railway Safety) Regulations 2011* (S.I. No. 70 of 2011), reg. 2(d).
- F50** Repealed (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 21(g).

F51[Certain certificates to be valid in State **43C.**—F52[...]]

Annotations

Amendments:

- F51** Inserted (4.08.2011) by *European Communities (Interoperability of the Rail System) Regulations 2011* (S.I. No. 419 of 2011), reg. 36.
- F52** Repealed (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 21(h).

Transfer of ownership.

44.—(1) Where ownership of a F53[railway organisation] or a right to operate a railway is proposed to be transferred from one F53[railway organisation] to another F53[railway organisation], the latter undertaking shall immediately notify the Commission in writing of the proposed transfer and provide details of the proposed ownership and organisational structure to the Commission together with a statement specifying the principal changes which it intends to make to the F54[safety management document] of the first-mentioned undertaking.

(2) A F53[railway organisation] to which ownership of another F53[railway organisation] or rights to operate a railway has transferred shall, within a period of 3 months of such transfer or such other period exceeding 3 months as may be specified by the Commission in any particular case, submit a new F54[safety management document] in accordance with *section 39*.

(3) In the period between the date of such transfer referred to in *subsection (2)* and the acceptance of the new F54[safety management document] by the Commission, the F53[railway organisation] to which ownership or rights has transferred shall, in respect of the assets or rights transferred and where it continues to operate the railway services or infrastructure transferred, ensure compliance with the statement under *subsection (1)* and with the F54[safety management document] of the first-mentioned F53[railway organisation] in so far as it has not been changed:

Provided that—

- (a) the F53[railway organisation] to which the ownership or rights has transferred complies with its general duty under *section 36*,

(b) the Commission has in the circumstances given its approval to the continued operation of the railway services or infrastructure, and

(c) the F53[railway organisation] complies with any directions given in writing by the Commission.

(4) A F53[railway organisation] from which ownership or rights are transferring shall provide its F54[safety management document] and all other relevant information to the new F53[railway organisation] to enable the new F53[railway organisation] to comply with this section.

(5) Where a F53[railway organisation] fails to comply with this section, the Commission may give a direction to it to comply with this section.

(6) Where the Commission proposes to give a direction under this section, it shall notify the F53[railway organisation] concerned of the proposal and the F53[railway organisation] may, within 21 days of the notification, make representations to the Commission, which shall consider them.

(7) Where the Commission decides to give a direction under this section, the F53[railway organisation] concerned may, within 21 days of notification of the decision, appeal to the High Court and the direction shall not take effect until the time allowed for such appeal has elapsed and, in the event of an appeal, until the appeal is determined or withdrawn.

(8) On hearing an appeal under *subsection (7)*, the court may either confirm or vary the decision of the Commission or allow the appeal.

(9) A decision of the High Court on an appeal under *subsection (7)* shall be final, save that, by leave of the court, an appeal from the decision shall be to the Supreme Court on a specified point of law.

(10) A F53[railway organisation] which fails to comply with a direction under *subsection (5)* is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding €3,000, or

(b) on conviction on indictment, to a fine not exceeding €500,000.

Annotations

Amendments:

F53 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

F54 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(c).

Editorial Notes:

E40 A fine of €3,000 translates into a class B fine, not greater than €4,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 5(2) and table ref. no. 1, S.I. No. 662 of 2010.

Submission and assessment of F55[safety management document].

45.—(1) A F55[safety management document] prepared by a F56[railway organisation] which operates a railway immediately before the commencement of this section shall be submitted to the Commission by the F56[railway organisation] not later than 6 months after the commencement of this section.

(2) A F56[railway organisation] shall, before it submits a F55[safety management document] to the Commission, engage a suitably qualified person to independently assess the safety management system described in such F55[safety management

document] and the report of such person shall be submitted to the Commission at the same time as the F55[safety management document]

(3) Where a F56[railway organisation] has altered its safety management system on the basis of the report of a person engaged in accordance with *subsection (2)*, the F55[safety management document] shall be amended as appropriate and a statement of the actions taken by the F56[railway organisation] in response to the report, together with the report of the assessment and the F55[safety management document] as amended, shall be submitted to the Commission.

F57[(4) A railway organisation shall not operate railway infrastructure or railway services unless it has received notification from the Commission of its acceptance of the relevant safety management document and been issued with a safety management certificate.]

F58[(4A) F59[...]]

F60[(5) *Subsection (4)* does not apply in respect of the periods specified in *subsection (1)* and *sections 44(2)* and *46(8)*.]

(6) A F56[railway organisation] which does not comply with this section is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding €3,000, or

(b) on conviction on indictment, to a fine not exceeding €500,000.

Annotations

Amendments:

- F55** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(c).
- F56** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).
- F57** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(g)(i).
- F58** Inserted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 9(1); deleted as per F-note above.
- F59** Deleted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(g)(i).
- F60** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(g)(ii).

Editorial Notes:

- E41** The amendment provided (25.11.2013) in *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(g) cannot be made because the words to be substituted (safety certificate) do not exist in the section.
- E42** A fine of €3,000 translates into a class B fine, not greater than €4,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 5(2) and table ref. no. 1, S.I. No. 662 of 2010.
- E43** Previous affecting provision: subs. (5) substituted (17.02.2011) by *European Communities (Railway Safety) Regulations 2011* (S.I. No. 70 of 2011), reg. 2(e); substituted as per F-note above.
- E44** Previous affecting provision: subss. (4) amended, (4A) inserted and (5) amended (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 9(1), (3); substituted and deleted as per F-notes above.

F61[Acceptance
of safety
management
document by
Commission

46.— (1)(a) The Commission shall notify a railway organisation of its acceptance of a safety management document by issuing a certificate (“safety management certificate”) to that railway organisation.

(b) A safety management certificate may be subject to such conditions as may be deemed appropriate by the Commission.

(c) The form of safety management certificates shall be determined by the Commission.

(2) The Commission shall only accept a safety management document, or a revised safety management document under *section 48*, and issue a safety management certificate under *subsection (1)* where the information contained in the safety management document or in the revised safety management document is sufficient to satisfy the Commission that the railway organisation is capable, subject to any conditions set down for the safety management certificate, of carrying out its operations in compliance with the duty imposed on it under *section 36*.

(3) Where the Commission is not satisfied in accordance with *subsection (2)* with a safety management document or a revised safety management document, the Commission shall, by notice in writing, require the railway organisation concerned to—

(a) reconsider the information contained in the safety management document or revised safety management document and, if appropriate, re-examine and amend the safety management system described therein, and

(b) have any changes made by it to the safety management document or revised safety management document examined by a person engaged in accordance with *section 45(2)* and have a report of the examination prepared by such person.

(4) A railway organisation in receipt of a notice under *subsection (3)* or in receipt of a safety management certificate that is subject to conditions in accordance with *subsection (1)(b)* may re-submit the safety management document or revised safety management document where, in the opinion of the railway organisation—

(a) in the case of the notice, the issues raised by the Commission in the notice have been addressed, or

(b) in the case of the safety management certificate that is subject to conditions, the safety management document or revised safety management document has been amended to the extent that the conditions are no longer warranted.

(5) The Commission, in deciding whether or not to issue a safety management certificate, for the purposes of satisfying itself under *subsection (2)*, may request any additional information or clarifications from a railway organisation and the organisation shall comply with such a request.

(6) The re-submission of a safety management document in accordance with *subsection (4)* shall be accompanied by a report prepared under *subsection (3)(b)*.

(7) In considering a safety management document or a revised safety management document submitted by a railway organisation, the Commission shall, in relation to the adequacy of the safety management system documented therein, have regard to the size and nature of the railway organisation and, in particular—

(a) the nature, extent and complexity of its railway infrastructure and operations,

(b) its interaction, if any, with railway infrastructure or trains of other railway organisations or with public roads, and

(c) the likely consequences for persons of any accident or incident on its railway.

(8) The Commission shall issue a safety management certificate under *subsection (1)* or a notice under *subsection (3)* as soon as practicable after it has completed its assessment but no later than 4 months after the date of receipt of the safety management document or revised safety management document or receipt of all information or clarifications requested under *subsection (5)*.

(9) The acceptance of a safety management document or a revised safety management document by the Commission and the issuing of a safety management certificate shall not be interpreted as relieving a railway organisation of its duty under *section 36*.

(10) The Commission shall—

- (a) refuse to issue a safety management certificate where it is not satisfied in accordance with *subsection (2)*,
- (b) revoke a safety management certificate issued under *subsection (1)* if the railway organisation which is the holder of the certificate fails to comply with its safety management document and the Commission considers that the railway organisation cannot comply with its duty under *section 36*, or
- (c) revoke a safety management certificate if the railway organisation has not used it as intended in the year following its issue.

(11) Where the Commission proposes to refuse or revoke a safety management certificate in accordance with *subsection (10)*, it shall notify the railway organisation concerned of the proposal and the railway organisation may, within 21 days of the date of the service of notification, make representations to the Commission, which shall consider them.

(12) Where the Commission decides to refuse a safety management certificate, or revoke the safety management certificate issued by it, the Commission shall inform the railway organisation concerned of its decision and the railway organisation may, not later than 14 days of the date of the service of the notice giving the decision appeal the decision to the High Court. The refusal or revocation does not take effect until the time allowed for an appeal has elapsed, and, in the case of an appeal, until either the appeal is withdrawn or the decision to refuse the safety management certificate or to revoke the safety management certificate is confirmed (with or without modification).

(13) The High Court may either allow the appeal or confirm the decision (with or without modification).

(14) The decision of the High Court on an appeal under *subsection (12)* is final, except by leave of the Court an appeal on a specified point of law lies to the Supreme Court.

(15)(a) A safety management certificate remains in force until—

- (i) it is revoked by the Commission under *subsection (10)(b)*,
 - (ii) it is replaced by a new certificate, or
 - (iii) it becomes invalid.
- (b) A safety management certificate is valid for a period not exceeding 5 years from the date of its issue. It may be renewed upon application by the railway organisation concerned as if for a new certificate.
- (c) The Commission may require that a safety management certificate be updated, in whole or in part, whenever the type or extent of the operation of the railway organisation is substantially altered, or following legislative regulatory change.

(d) The holder of a safety management certificate shall without delay inform the Commission of all major changes in the conditions of the safety management certificate, and shall notify the Commission whenever new categories of staff or new types of rolling stock are introduced.

(16) Railway organisations shall be responsible for the level of training and qualifications of their staff carrying out safety-related work as set out in the safety management system.]

Annotations

Amendments:

F61 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(h).

Modifications (not altering text):

C20 References construed and section applied with modifications (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), regs. 5(15) and 6(11).

Safety certificates

5. ...

(15) In respect of a railway system in the State to which these Regulations apply—

- (a) any application for safety certification made under section 46 (inserted by Regulation 9(2) of the Regulations of 2008) of the Act of 2005 shall be dealt with as though the application was made under this Regulation,
- (b) any reference to a safety certificate that was issued by the safety authority under section 46 of the Act of 2005 and any reference in any enactment to such a certificate or to a requirement to the effect that the necessary safety requirements of the Act of 2005 be met is deemed to be a reference to a safety certificate issued under this Regulation, and
- (c) any safety certificate that was issued under section 46 of the Act of 2005 may be renewed, amended or revoked by the safety authority as if it had been granted under this Regulation.

Safety authorisation

6. ...

(11) In respect of the railway system in the State to which these Regulations apply—

- (a) any application for safety authorisation made under section 46 of the Act of 2005 shall be dealt with as though the application was made under this Regulation,
- (b) any reference to safety authorisation that was issued by the safety authority under section 46 of the Act of 2005 and any reference in any enactment to such authorisation or to a requirement to the effect that the necessary safety requirements of the Act of 2005 be met is deemed to be a reference to a safety authorisation issued under this Regulation, and
- (c) any safety authorisation that was issued under section 46 of the Act of 2005 may be renewed, amended or revoked by the safety authority as if it had been granted under this Regulation.

...

Editorial Notes:

E45 Section amended (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(c) and (d); substituted as per F-note above.

E46 Previous affecting provision: subss. (3) and (4) amended (17.02.2011) by *European Communities (Railway Safety) Regulations 2011* (S.I. No. 70 of 2011), reg. 2(f); substituted as per F-note above.

- E47** Previous affecting provision: section substituted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 9(2); substituted as per F-note above.

Access to training facilities F62[46A.—F63[...]]

Annotations

Amendments:

- F62** Inserted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 10, subject to transitional provision in para. (14).
- F63** Repealed (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 21(i).

Editorial Notes:

- E48** The section heading is taken from the amending provision in the absence of one included in the amendment.

Compliance with F64[safety management document].

47.—(1) A F65[railway organisation] shall implement the safety management system described in its F64[safety management document] as accepted by the Commission under *section 46*.

(2) A F65[railway organisation] which does not comply with this section is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding €3,000, or

(b) on conviction on indictment, to a fine not exceeding €500,000.

Annotations

Amendments:

- F64** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(c).
- F65** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Editorial Notes:

- E49** A fine of €3,000 translates into a class B fine, not greater than €4,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 5(2) and table ref. no. 1, S.I. No. 662 of 2010.

Revision of F66[safety management document].

48.—(1) A F67[railway organisation] shall revise its F66[safety management document] (“revised F66[safety management document]”) in circumstances where—

(a) the F67[railway organisation] considers it appropriate to do so,

(b) new works or new rolling stock are accepted by the Commission in accordance with *section 42(6)* or *43(5)*, or

(c) the Commission issues a notice in writing to the F67[railway organisation] requiring it to do so.

(2) Where a revised F66[safety management document] is proposed under *paragraph (a) or (c) of subsection (1)* and where the revision will materially alter the F66[safety management document] previously accepted by the Commission, the relevant F67[railway organisation] shall submit the proposed revision to the Commission, together with a report prepared by a person engaged in accordance with *section 45(2)* and the revision shall not be made unless it has been accepted by the Commission in accordance with *section 46*.

(3) Notwithstanding *subsection (2)*, a F67[railway organisation] may revise its F66[safety management document] without the prior acceptance of the Commission in circumstances where not to do so may result in the F67[railway organisation] being in contravention of its duty under *section 36*.

(4) Where a F67[railway organisation] revises its F66[safety management document] in accordance with *subsection (3)*, it shall immediately notify the Commission of such revision, stating the circumstances that give rise to the revision and the reasons why prior submission to the Commission could not be made and, as soon as practicable thereafter, submit the revised F66[safety management document] to the Commission, together with a report prepared by a person engaged in accordance with *section 45(2)*.

(5) A F67[railway organisation] which does not comply with a requirement of this section is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding €3,000, or

(b) on conviction on indictment, to a fine not exceeding €500,000.

Annotations

Amendments:

F66 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(c).

F67 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Editorial Notes:

E50 A fine of €3,000 translates into a class B fine, not greater than €4,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 5(2) and table ref. no. 1, S.I. No. 662 of 2010.

Appointment of independent persons for assessments and audits.

49.—(1) The Commission shall, as soon as practicable after the establishment day, prepare and publish guidelines on the nature of the independence deemed appropriate by the Commission for the purposes of this section and shall on request, in so far as is reasonably practicable, provide guidance in individual cases to persons in relation to the appropriateness of their expertise and independence.

(2) The Commission shall establish and maintain a register (in this section referred to as a “register”) of persons who in the opinion of the Commission are qualified persons and the Commission shall make the register available to all F68[railway organisation]s.

(3) A person who is of the opinion that he or she is a qualified person for the purpose of *subsection (2)* may apply to the Commission to be placed on the register and an application under this section shall contain such information as may be specified by the Commission from time to time.

(4) The Commission shall review the register from time to time to confirm if the persons named therein remain qualified persons for the purposes of this section and

such persons shall provide, on request from the Commission in writing, all relevant information required by the Commission for the purposes of the review.

(5) Where the Commission is of the reasonable opinion that a person who has made an application under *subsection (3)* or who has provided information under *subsection (4)* is not, on the basis of such application or information, a qualified person for the purposes of this section, the Commission shall notify the person in writing of its opinion and the reasons for such opinion.

(6) A person who fails to provide information on receipt of a request from the Commission under *subsection (4)* may be removed by the Commission from the register and, where the Commission proposes to do so, it shall issue a notification under *subsection (5)*.

(7) A person who receives a notification under *subsection (5)* may, within a period of 21 days from the date of the notification, make representations to the Commission on the notification.

(8) Where representations are submitted to the Commission in accordance with *subsection (7)*, the Commission shall consider the representations and—

- (a) if it is satisfied that the person is a qualified person, shall include or, as the case may be, retain the name of the person on the register, or
- (b) if it is not satisfied that the person is a qualified person, shall refuse to include or, as the case may be, refuse to retain the name of the person on the register,

and the person shall be notified in writing of the decision of the Commission within 14 days of the receipt of the submission.

F69[(9) Where a railway organisation proposes to appoint a suitably qualified person for the purposes of *section 42(9), 43(8), 45(2), 46(3)(b), 50(1) or 50(6)*, the railway organisation shall notify the Commission in writing of the proposal not later than 21 days in advance of the proposed appointment date.]

(10) A notification under *subsection (9)* shall include—

- (a) the name of the person proposed for conducting the assessment or audit, and details of his or her employer,
- (b) where a person is not listed in the register, details of the expertise of the person concerned,
- (c) any current or previous relationships between the F68[railway organisation] and the said person, or between the F68[railway organisation] and the employers of such person, and
- (d) a statement from the F68[railway organisation] that, in the opinion of the F68[railway organisation], the person—
 - (i) is independent of the F68[railway organisation] having regard to the guidelines published by the Commission under *subsection (1)*, and
 - (ii) has appropriate expertise for the purposes of carrying out an appropriate assessment or audit.

(11) Where, on receipt of a notification under *subsection (9)*, the Commission is not satisfied as to the expertise or independence of the proposed person, the Commission shall communicate this, and the grounds for same, in writing to the F68[railway organisation] within 14 days of receipt of the said notification.

(12) On receipt of a communication under *subsection (11)*, a F68[railway organisation] may, within a period of 21 days from the date of the communication, submit observations to the Commission on the communication.

(13) Where observations are submitted to the Commission in accordance with *subsection (12)*, the Commission shall consider the submission and, having regard to the observations contained therein, shall within 14 days of the receipt of the submission communicate in writing to the F68[railway organisation] that—

(a) it is satisfied as to the expertise and independence of the person or persons being proposed by the F68[railway organisation], or

(b) it is not satisfied as to the expertise and independence of the person or persons being proposed by the F68[railway organisation].

(14) A person in respect of whom a communication is issued by the Commission under *subsection (13)(b)* shall not be considered to be a suitably qualified person for the purposes of this Act.

(15) A F68[railway organisation] which appoints a suitably qualified person under this section shall bear responsibility in all aspects for the appointment and the remuneration of such a person.

(16) Notwithstanding *subsection (15)* insofar as it relates to remuneration, in the case of a heritage railway the Commission may, with the consent of the Minister and the Minister for Finance and if it deems it appropriate to do so, agree to be responsible for the remuneration of the suitably qualified person and, where it gives its agreement to do so, may charge a fee to the heritage railway to offset in part the level of such remuneration and the level of the fee shall be decided by the Commission.

(17) Where the Commission proposes to be responsible for the remuneration of the suitably qualified person, it shall, before giving its final agreement to do so, be of the opinion that the scale of the remuneration required is appropriate and a heritage railway shall provide all necessary information to the Commission to enable it to reach an opinion.

(18) In this section—

“qualified person” means an individual who, in the opinion of the Commission, has appropriate expertise of railway operations or of a particular class or aspect of railway operations or other expertise relevant to safety management systems or aspects thereof; and

“suitably qualified person” means a qualified person who, having regard to guidelines published by the Commission, is sufficiently independent of F68[railway organisation]s or of a particular class of F68[railway organisation] or of a particular F68[railway organisation].

Annotations

Amendments:

F68 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

F69 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(i).

Editorial Notes:

E51 Previous affecting provision: subs. (9) substituted (17.02.2011) by *European Communities (Railway Safety) Regulations 2011* (S.I. No. 70 of 2011), reg. 2(g); substituted as per F-note above.

E52 Previous affecting provision: subs. (9) amended (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 9(4); substituted as per F-note above.

Safety audits.

50.—(1) A F70[railway organisation] shall ensure that its safety management system, as described in its F71[safety management document], is independently audited by a suitably qualified person not later than the fourth anniversary of its acceptance by the Commission and not later than each subsequent period of 4 years thereafter or such other lesser period as may be specified from time to time by the Commission, having regard in particular to F70[railway organisation]s who are parties to an agreement under *section 40*.

(2) The objectives of an audit under *subsection (1)* shall, at minimum, be—

- (a) to confirm the adequacy and scope of the safety management system,
- (b) to confirm that the F71[safety management document] accurately reflects the safety management system,
- (c) to confirm compliance by a F70[railway organisation] with its F71[safety management document], and
- (d) to make recommendations, if any, for such improvements to the safety management system as the suitably qualified person deems appropriate in light of national or international experience and technological development.

(3) The report of a suitably qualified person appointed under *subsection (1)* shall be submitted by the F70[railway organisation] to the Commission within such period as may be specified by the Commission.

(4) The Commission may, where it considers it appropriate to do so upon application by a F70[railway organisation], being—

- (a) a heritage railway, or
- (b) a F70[railway organisation], other than a F70[railway organisation] used for the purposes of fare-paying passengers or for fee-paying members or the conveyance of merchandise for monetary gain,

grant an exemption or derogation from the requirements of *subsection (1)* to such F70[railway organisation] on such terms and conditions as it deems appropriate.

(5) In considering an application made by a F70[railway organisation] under *subsection (4)*, the Commission shall have regard to—

- (a) the nature, extent and complexity of its railway infrastructure and operations,
- (b) its interaction, if any, with railway infrastructure or trains of other F70[railway organisation]s or with public roads,
- (c) the likely consequences for persons of any incident on its railway, and
- (d) the time elapsed since any previous safety audit was undertaken and the findings of such audit.

(6) Where the Commission considers that a potential danger may exist in any particular situation, it may undertake, or direct by notice in writing the relevant F70[railway organisation] to engage a suitably qualified person to undertake, an independent safety audit of the particular matter that gives rise to potential danger.

(7) The Commission may at any time undertake, or appoint a suitably qualified person to undertake on its behalf, an audit of all or any part of the safety management system and F71[safety management document] of a F70[railway organisation].

(8) A person appointed by the Commission under *subsection (7)* shall, for the duration for which he or she stands engaged, have the same powers as an inspector in respect of the F70[railway organisation] concerned.

(9) A F70[railway organisation] shall maintain sufficient records relating to all aspects of its safety management system for the purposes of demonstrating that it is conducting its activities in compliance with its safety management system.

(10) The Commission may make regulations specifying the minimum requirements for the auditing of F71[safety management document]s and a suitably qualified person referred to in *section 49* shall comply with such regulations.

(11) A F70[railway organisation] which fails to comply with this section is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding €3,000, or

(b) on conviction on indictment, to a fine not exceeding €60,000.

Annotations

Amendments:

F70 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

F71 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(c).

Editorial Notes:

E53 A fine of €3,000 translates into a class B fine, not greater than €4,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 5(2) and table ref. no. 1, S.I. No. 662 of 2010.

Safety rules

F72[50A.— F73[...]]

Annotations

Amendments:

F72 Inserted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 6.

F73 Repealed (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 21(j).

Editorial Notes:

E54 The section heading is taken from the amending provision in the absence of one included in the amendment.

F74[Qualification 50B.—F75[...]]

Annotations

Amendments:

F74 Inserted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 7(2).

F75 Repealed (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 21(k).

Editorial Notes:

E55 Previous affecting provision: section amended (17.02.2011) by *European Communities (Railway Safety) Regulations 2011* (S.I. No. 70 of 2011), reg. 2(h); substituted as per F-note above.

PART 5

REPORTING AND INVESTIGATION OF RAILWAY INCIDENTS

“railway incident”.

51.—F76[...]

Annotations

Amendments:

F76 Repealed (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 22, in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Editorial Notes:

E56 Previous affecting provision: section substituted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 3(4); repealed as per F-note above.

E57 Previous affecting provision: section repealed (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 12(1); again repealed as per F-note above.

E58 Previously affecting provision: power pursuant to subs. (d) exercised (23.11.2006) by *Railway Safety Act 2005 (Railway Incidents Regulations 2006* (S.I. No. 585 of 2006); section repealed as per F-note above.

Reportable railway incidents.

52.—F77[...]

Annotations

Amendments:

F77 Repealed (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 22, in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Editorial Notes:

E59 Previous affecting provision: section amended (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d); repealed as per F-note above.

E60 Previous affecting provision: subss. (1) and (2) amended (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 12(2); section repealed as per F-note above.

Investigations by
F78[railway
organisation]s.

53.—(1) It shall be a duty of a F78[railway organisation] to carry out an investigation into a reportable F79[accident] F80[or incident] in order to establish the cause of such incident and to assess what, if any, action can be taken by the F78[railway organisation] to avoid F79[accident]s in the future or otherwise for the improvement of railway safety.

(2) For the purposes of carrying out an investigation under *subsection (1)*, a F78[railway organisation] may interview any member of its staff or any other person engaged by it who, in the reasonable view of the undertaking, may be able to assist the undertaking in its investigations.

(3) A person who is being interviewed under *subsection (2)* may, if he or she requests, be accompanied—

- (a) where the person is a member of the staff of the F78[railway organisation], by one other member of the staff,
- (b) where the person is a member of the staff of another person engaged by the undertaking, by one other member of that staff,
- (c) by one person from an organisation which represents, as the case may be, the staff of the undertaking or the person engaged by the undertaking, or
- (d) at his or her own expense, by a legal or other adviser.

(4) A member of staff of a F78[railway organisation] or any other person engaged by a F78[railway organisation] shall, where requested by the F78[railway organisation] to do so, provide all reasonable assistance and in particular any relevant information that may be known to him or her, to enable the F78[railway organisation] to establish the cause or causes of the F79[accident] F80[or incident].

(5) If a member of staff of, or other person engaged by, a F78[railway organisation] objects to a question asked of him or her in accordance with *subsection (4)* on the grounds that the answer might tend to incriminate the person or make the person liable to a penalty and the person is informed of his or her obligation to answer the question, the person shall not refuse to answer the question but the answer given on that occasion shall not be admissible as evidence in criminal or other proceedings against the person other than proceedings against him or her in respect of the falsity of the answer or the failure to answer the question.

(6) A F78[railway organisation] shall in an expeditious manner carry out an investigation under *subsection (1)* and shall, as soon as practicable but in any event not later than 6 months after the date of the incident, prepare a report on its findings.

(7) Where the F78[railway organisation] is of the opinion that the report cannot be completed within the period specified in *subsection (6)*, the F78[railway organisation] shall notify the Commission together with its reasons for reaching such opinion and shall provide an indication of the revised period for the completion of the report.

(8) The Commission may, where it deems it appropriate to do so, by notice in writing to a F78[railway organisation], request an interim report on an investigation under *subsection (1)* and a F78[railway organisation] shall provide such interim report within such period as may be specified in the notice.

(9) A report prepared under this section shall be in such form and contain such particulars as may, from time to time, be specified by the Commission but shall, in the case of a report under *subsection (6)*, at minimum include full particulars of the incident, the cause or causes of same in so far as can be established and, where appropriate, recommendations to be adopted by the F78[railway organisation] to prevent the occurrence of incidents or otherwise for the improvement of railway safety.

(10) A report prepared under *subsection (6)*, together with any relevant records gathered in the course of the investigation, shall be retained by a F78[railway

[organisation](#)] for a period of at least 5 years from the date of completion of the report and the report shall, unless otherwise notified in writing by the Commission in any particular case or any particular types of investigations, be provided to the Commission within 14 days of its completion.

(11) Where a F79[[accident](#)] F80[[or incident](#)] is investigated under this section and the incident involves more than one F78[[railway organisation](#)], each relevant undertaking shall co-operate in the provision of information and in the conduct of the respective investigations.

(12) Where, during the course of an investigation under this section or after the completion of such investigation, the F78[[railway organisation](#)] responsible for the investigation considers that the cause or likely cause of the incident may have—

(a) implications for railway safety in general, or

(b) in a particular case may have implications for the safe operation of another F78[[railway organisation](#)],

the F78[[railway organisation](#)] shall, at the earliest possible time, notify the Commission and, where appropriate, such other relevant F78[[railway organisation](#)] of such cause or likely cause of the incident and any recommendations which may be adopted arising from the investigation.

(13) Where the Commission receives a notification under *subsection (12)*, it may take such action in relation to the dissemination of the information contained in the notification as it considers appropriate in the interests of railway safety.

(14) Where the Commission considers it appropriate to do so, it may designate an inspector or other suitably qualified person to observe the carrying out of an investigation under this section and the F78[[railway organisation](#)] shall facilitate such observation.

(15) The function of an inspector or other person designated under *subsection (14)* shall be to assess the adequacy of the investigation and to ensure that the procedures adopted are in compliance with the F81[[safety management document](#)] of the F78[[railway organisation](#)].

(16) Where an inspector or other person designated under *subsection (14)* considers an investigation under this section not to be adequate, or not to be in compliance with the procedures adopted in the F81[[safety management document](#)] of a F78[[railway organisation](#)], he or she shall, either during the investigation or after the completion of the investigation, notify the F78[[railway organisation](#)] in writing of his or her considerations and the F78[[railway organisation](#)] shall take all necessary actions to address the considerations.

(17) A F78[[railway organisation](#)] which fails to comply with a requirement of this section is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding €3,000, or

(b) on conviction on indictment, to a fine not exceeding €60,000.

(18) A member of staff of, or other person engaged by, a F78[[railway organisation](#)] who fails to comply with a requirement of *subsection (4)* or *(5)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000.

Annotations

Amendments:

F78 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

- F79** Substituted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 12(3).
- F80** Inserted (12.06.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 21(1)(c).
- F81** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(c).

Editorial Notes:

- E61** A fine of €3,000 translates into a class B fine, not greater than €4,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 5(2) and table ref. no. 1, S.I. No. 662 of 2010.

Reporting of risks, etc. by staff of F82[railway organisation]s and contractors.

54.—(1) Where a member of staff of a F82[railway organisation] or a person working under a contract of services with a F82[railway organisation] becomes aware of—

- (a) information relevant to the investigation of F83[an accident or incident], or
- (b) a risk arising from the operations of the undertaking which in his or her opinion is not adequately controlled or mitigated by the undertaking,

he or she shall inform the F82[railway organisation] of the information or as the case may be the risk and of his or her opinion.

(2) Where, having informed a F82[railway organisation] under *subsection (1)*, the member of staff or other person is of the opinion that the action, if any, taken by the undertaking is inadequate to comply with the general duty on the undertaking under *section 36* or to comply with any requirement on the undertaking under this Act, he or she may inform the Commission in writing of that opinion.

(3) Where a member of staff of a F82[railway organisation] or other person working under a contract of services with a F82[railway organisation] informs the Commission of his or her opinion in accordance with *subsection (2)*, he or she shall not be disciplined, be held to be in breach of contract or in any other way disadvantaged for the fact that he or she has informed the Commission.

Annotations**Amendments:**

- F82** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).
- F83** Substituted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 12(4).

Railway
Incident
Investigation
Unit.

55.—F84[...]

Annotations**Amendments:**

- F84** Repealed (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 22, in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Editorial Notes:

- E62** Previous affecting provision: section amended (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d); repealed as per F-note above.
- E63** Previous affecting provision: section amended (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 13; repealed as per F-note above.
- E64** Previous affecting provision: power pursuant to subs. (3) exercised (23.11.2006) by *Railway Safety Act 2005 (Railway Incidents Regulations 2006* (S.I. No. 585 of 2006); section revoked as per F-note above.

Chief Investigator
and staff of the
Investigation
Unit.

56.—F85[...]

Annotations**Amendments:**

- F85** Repealed (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 22, in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Independence of
Investigation
Unit.

57.—F86[...]

Annotations**Amendments:**

- F86** Repealed (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 22, in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Editorial Notes:

- E65** Previous affecting provision: section amended (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d); repealed as per F-note above.
- E66** Previous affecting provision: subs. (1A) inserted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 14(1); repealed as per F-note above.

Investigations by
Investigation
Unit.

58.—F87[...]

Annotations**Amendments:**

- F87** Repealed (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 22, in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Editorial Notes:

- E67** Previous affecting provision: section amended (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d); repealed as per F-note above.
- E68** Previous affecting provision: subss. (2A), (14A) and (18) inserted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), regs. 14(2), (3) and 16; section repealed as per F-note above.

Re-opening of investigation by Investigation Unit.

59.—F88[...]**Annotations****Amendments:**

- F88** Repealed (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 22, in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Publication of report of investigations.

60.—F89[...]**Annotations****Amendments:**

- F89** Repealed (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 22, in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Editorial Notes:

- E69** Previous affecting provision: subss. (1) and (2A) amended (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 15(1), (2); section repealed as per F-note above.

Contents of report.

61.—F90[...]

Annotations**Amendments:**

- F90** Repealed (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 22, in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Editorial Notes:

- E70** Previous affecting provision: subs. (1A) inserted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 15(3); section repealed as per F-note above.

F91[Annual
safety report

61A.—F92[...]

Annotations**Amendments:**

- F91** Inserted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 15(4).
- F92** Repealed (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 22, in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Editorial Notes:

- E71** Previous affecting provision: section amended (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d); repealed as per F-note above.

Preparation of
draft report and
observations of
affected persons.

62.—F93[...]

Annotations**Amendments:**

- F93** Repealed (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 22, in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Recommendations
of Investigation
Unit.

63.—F94[...]

Annotations**Amendments:**

- F94** Repealed (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 22, in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Editorial Notes:

- E72** Previous affecting provision: section amended (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d); repealed as per F-note above.

Tribunal of
inquiry.

64.—(1) The Minister may, where he or she considers it necessary, with the consent of the Minister for Finance and after consultation with the Commission and the Investigation Unit, direct that a tribunal of inquiry be held into a railway F95[[accident or](#)] incident.

(2) The following provisions shall have effect in relation to a tribunal—

- (a) the Minister shall appoint a competent person or persons to hold the inquiry and may appoint any person or persons possessing legal, railway or special knowledge, including a commissioner or former commissioner F96[...] an inspector, to act as an assessor to assist the inquiry,
- (b) where the tribunal relates to an international service, the Minister may appoint a person or persons nominated by the relevant competent authority in the other state, to act as an assessor to assist the inquiry,
- (c) the tribunal shall hold the inquiry in such manner and under such conditions as it thinks appropriate,
- (d) the tribunal shall have for the purposes of the inquiry all the powers of a judge of the District Court when hearing a prosecution for an offence under this Act, and all the powers of an inspector under this Act, and in addition, power—
 - (i) by summons signed by the tribunal, to require the attendance of such persons as it thinks fit to call before it and examine for the purposes of the inquiry, and to require answers or returns to the inquiries it thinks fit to make, and
 - (ii) to administer an oath or affirmation and require any person examined to make and sign a declaration of the truth of the statements made by the person in his or her examination.

(3) In *subsection (2)(a)*, “competent person” includes a serving or former member of the judiciary or any other person whom the Minister considers has the necessary experience or expertise but does not include a serving commissioner, Chief Investigator, or member of the staff of the Commission or Investigation Unit, any person who is or was a member of the staff of a F97[[railway organisation](#)] involved in the F95[[accident or](#)] incident, or any person who, in the opinion of the Minister, has an actual or potential conflict of interest.

(4) If a person objects to a question asked of him or her as a witness at a tribunal on the grounds that the answer might tend to incriminate the person or make the person liable to a penalty and the person is informed of his or her obligation to answer the question, the person shall not refuse to answer the question but the answer given on that occasion shall not be admissible as evidence in criminal or other proceedings against the person other than proceedings against him or her in respect of the falsity of the answer or the failure to answer the question.

(5) Persons attending as witnesses before a tribunal shall be allowed such expenses as would be allowed to witnesses attending before a court of record and, in case of a dispute as to the amount to be allowed, the dispute shall be referred by the tribunal to the Taxing Master of the High Court who, on request signed by the tribunal, shall ascertain and certify the proper amount of the expenses.

(6) A tribunal shall make a report to the Minister recording all relevant findings of the tribunal, indicating the cause or causes or probable cause or causes of the railway F95[[accident or](#)] incident and any recommendations which the tribunal considers to be warranted and feasible for the avoidance of incidents or otherwise for the improvement of railway safety and adding any observations which it thinks fit to make.

(7) The Minister shall publish the report of a tribunal under this section.

(8) The Minister shall pay to the person or persons conducting an inquiry under this section such fees and expenses as the Minister may, with the consent of the Minister for Finance, determine.

(9) The Minister shall, subject to the consent of the Minister for Finance, defray the other costs, if any, of an inquiry and report under this section.

(10) A tribunal may, at its discretion, decide whether or not to award costs in connection with an inquiry under this section and where it decides that costs shall be awarded, those costs may be awarded in such amounts and in respect of such matters as the tribunal, in its discretion, thinks fit.

(11) The Minister shall give notice of his or her intention to establish a tribunal of inquiry under this section by a notice published in *Iris Oifigiúil* and at least one daily newspaper published and circulating in the State, setting out the terms of reference of the inquiry.

(12) The Minister may, if he or she considers it necessary for the more effective conduct of inquiries, make regulations governing the holding of inquiries and without prejudice to the generality of this section, such regulations may provide for—

- (a) the location at which an inquiry may be held,
- (b) the manner in which facts may be proved at an inquiry, and
- (c) the persons allowed to appear and the notices to be given to persons affected.

(13) A person who—

- (a) without reasonable excuse, fails to comply with a summons of a tribunal,
- (b) being in attendance as a witness at a tribunal, refuses—
 - (i) to take any oath or make an affirmation,
 - (ii) to sign any declaration as to the truth of any statement made by him or her, or
 - (iii) refuses to answer any question to which the tribunal may require an answer,when required by the tribunal to do so,
- or
- (c) obstructs or hinders a tribunal,

is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 3 months, or to both.

(14) In this section, “tribunal” means a tribunal of inquiry under this section.

Annotations

Amendments:

- F95** Inserted (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 21(1)(e), in effect as per reg. 4(11) and notice in Iris Oifigiúil of 24 June 2014, p. 937.
- F96** Deleted (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 21(1)(d), in effect as per reg. 4(11) and notice in Iris Oifigiúil of 24 June 2014, p. 937.
- F97** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Modifications (not altering text):

- C21** References to “Investigation Unit” and “Chief Investigator” construed (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 20(b) and (c), in effect as per reg. 4(11) and notice in Iris Oifigiúil of 24 June 2014, p. 937.

Application of Act of 2005

20. On and from the appointed day— ...

(b) reference to Investigation Unit in each place it occurs in sections 2, 64, 65, 66, 89 and 126 of the Act of 2005 and any reference in any enactment to the Railway Accident Investigation Unit established under section 55 of the Act of 2005 is to be read as a reference to the Investigation Unit established under Regulation 4,

(c) reference to Chief Investigator in each place it occurs in sections 64(3), 65 and 70 of the Act of 2005 is to be read as a reference to the Chief Investigator appointed under Regulation 4, and

...

Editorial Notes:

- E73** A fine of €3,000 translates into a class B fine, not greater than €4,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 5(2) and table ref. no. 1, S.I. No. 662 of 2010.

F98 [Minister may direct that inquiry be held

65. The Minister may direct that an inquiry be held under *section 64* notwithstanding that the railway accident or incident into which the inquiry is to be held is or was the subject of an investigation by the Investigation Unit.]

Annotations

Amendments:

- F98** Substituted (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 21(1)(f), in effect as per reg. 4(11).

Modifications (not altering text):

- C22** References to “Investigation Unit” and “Chief Investigator” construed (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 20(b) and (c), in effect as per reg. 4(11) and notice in Iris Oifigiúil of 24 June 2014, p. 937.

Application of Act of 2005

20. On and from the appointed day— ...

(b) reference to Investigation Unit in each place it occurs in sections 2, 64, 65, 66, 89 and 126 of the Act of 2005 and any reference in any enactment to the Railway Accident Investigation Unit established under section 55 of the Act of 2005 is to be read as a reference to the Investigation Unit established under Regulation 4,

(c) reference to Chief Investigator in each place it occurs in sections 64(3), 65 and 70 of the Act of 2005 is to be read as a reference to the Chief Investigator appointed under Regulation 4, and

...

Editorial Notes:

E74 Previous affecting provision: subs. (2) deleted (6.03.2008) by *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008), reg. 14(4); section substituted as per F-note above.

Re-opening of inquiry.

66.—(1) The Minister may, after consultation with the Investigation Unit, direct that a completed inquiry be re-opened if satisfied that there is new evidence available which could materially alter the findings of the inquiry and that the purpose of the inquiry would be served by re-opening it.

(2) This Part applies to a re-opened inquiry in the same way as it applies to an inquiry.

Annotations**Modifications (not altering text):**

C23 References to “Investigation Unit” construed (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 20(b), in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Application of Act of 2005

20. On and from the appointed day— ...

(b) reference to Investigation Unit in each place it occurs in sections 2, 64, 65, 66, 89 and 126 of the Act of 2005 and any reference in any enactment to the Railway Accident Investigation Unit established under section 55 of the Act of 2005 is to be read as a reference to the Investigation Unit established under Regulation 4,

...

Inquest in case of railway F99[[accident or](#)] incident.

67.—(1) Where a coroner (within the meaning of [the Coroners Act 1962](#)) holds or is about to hold an inquest on the body of any person whose death may have been caused by a railway F99[[accident or](#)] incident, this section has effect.

(2) The coroner shall notify the Commission of the time and place of the holding of an inquest not less than 72 hours before the time of holding the inquest.

(3) The coroner may in writing request the attendance of an inspector to assist in the holding of an inquest and on receipt of such a request the Commission may appoint an inspector or a person engaged under [section 18](#) to assist in the holding of such inquest.

(4) Where an inspector does not assist a coroner under *subsection (3)* at an inquest relevant to this section and where evidence is given as to any neglect having caused or contributed to the railway F99[[accident or](#)] incident or as to any defect in the operation of a railway appearing to a coroner or jury to require a remedy, the coroner shall send to the Commission notice in writing of the evidence of the neglect or defect.

(5) In addition to a notice specified in *subsection (4)*, every coroner shall furnish to the Commission a written return in relation to an inquest to which this section applies and this return shall be in the format specified by the Commission, after consultation with the Coroners Society of Ireland.

Annotations

Amendments:

F99 Inserted (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 21(1)(e), in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Transitional provision (opening of railways).

68.—Sections 4, 5 and 6 of the Railway Regulation Act 1842, repealed by [section 5](#) of this Act, continue to apply to any railway or portion of railway in respect of which a notice of its intended opening is given under section 4 of that Act but which is not opened immediately before the repeal of those sections.

PART 6

REGULATIONS AND REVIEW OF LEGISLATION

Regulations.

69.—(1) The Commission, with the consent of the Minister and after consultation with the Council, F100[[railway organisation](#)]s, organisations which represent staff of F100[[railway organisation](#)]s and such other persons as in the opinion of the Commission may be relevant, may make regulations in relation to all or any of the following—

- (a) standards and specifications for railway infrastructure and rolling stock,
- (b) additional matters to be included in a safety management system or a F101[[safety management document](#)] for the purposes of [section 39](#),
- (c) requirements or restrictions relating to the management of passengers and other persons on railway property, including in relation to persons standing in trains, the placing of luggage in trains, and emergency evacuation from trains,
- (d) levels of training, competencies and qualifications of staff of F100[[railway organisation](#)]s, including disability awareness training and requirements on F100[[railway organisation](#)]s to facilitate staff holding positions before the entry into operation of such regulations in achieving any required level of training, competency or qualification,
- (e) requirements relating to interfaces between F100[[railway organisation](#)]s,
- (f) requirements relating to interfaces between railway infrastructure or trains and any other vehicle or road,
- (g) requirements relating to the reporting by F100[[railway organisation](#)]s of railway F102[[accidents or](#)] incidents, including the form of reporting and the classification of railway F102[[accidents or](#)] incidents to be reported,

(h) procedures for the acceptance of new works (within the meaning of [section 42\(15\)](#)) and new rolling stock (within the meaning of [section 43\(14\)](#)),

(i) requirements for the maintenance by a F100[[railway organisation](#)] of records, and

(j) standards, specifications and procedures to be used by F100[[railway organisation](#)]s to safely facilitate the special requirements of mobility-impaired persons.

(2) Regulations made by the Commission under *subsection (1)* shall not be for the purpose of giving effect to an act adopted by an institution of the European Communities.

(3) The Minister may make regulations for the purpose of giving effect to an act adopted by an institution of the European Communities in relation to railway safety.

(4) Regulations under *subsection (3)* may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary for the purposes of the regulations (including provisions repealing, amending or applying, with or without modification, other law, exclusive of this Act).

Annotations

Amendments:

F100 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

F101 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(c).

F102 Inserted (12.06.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 21(1)(g).

Editorial Notes:

E75 The railway undertakings referred to in subs. (1) appear to be a reference to railway organisations in accordance with *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d), which provided for the substitution of “railway organisation” for “railway undertaking” in numerous sections including this one.

E76 Power pursuant to subs. (3) exercised (23.11.2006) by *Railway Safety Act 2005 (Railway Incidents Regulations 2006)* (S.I. No. 585 of 2006).

F103[Regulations for protection of railway accident and incident sites

70.— The Minister may, after consultation with the Minister for the Environment, Community and Local Government, the Chief Investigator, the Garda Síochána, the Commission, the Council, railway organisations and such other persons as in the opinion of the Minister may be relevant, make regulations relating to the protection of the sites of railway accidents and incidents in relation to any or all of the following matters—

(a) procedures for the collection, recording and protection of evidence,

(b) the protection of such sites,

(c) the protection against unauthorised interference with such sites,

(d) prohibiting the unauthorised removal of anything from such sites, and

(e) access to evidence collected at such sites.]

Annotations**Amendments:**

- F103** Substituted (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 21(1)(h), in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Modifications (not altering text):

- C24** References to “Chief Investigator” construed (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 20(c), in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Application of Act of 2005

20. On and from the appointed day— ...

(c) reference to Chief Investigator in each place it occurs in sections 64(3), 65 and 70 of the Act of 2005 is to be read as a reference to the Chief Investigator appointed under Regulation 4, and

...

Editorial Notes:

- E77** Previous affecting provision: section amended (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 21(c) and (d); substituted as per F-note above.

Offence.

71.—A person who contravenes or fails to comply with any regulations made under this Part is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000.

Annotations**Editorial Notes:**

- E78** A fine of €3,000 translates into a class B fine, not greater than €4,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 5(2) and table ref. no. 1, S.I. No. 662 of 2010.

Review of
legislation by
Commission.

72.—(1) It shall be the duty of the Commission—

- (a) to keep under review the provisions of this Act,
- (b) to keep under review any other relevant statutory provisions that affect, or may affect, the carrying out of its functions under this Act, and
- (c) to submit from time to time, to the Minister, or such other Minister of the Government having responsibility for the other statutory provisions, such recommendations as it considers appropriate in relation to the said statutory provisions or for the making, modification or revocation of any instruments under those provisions.

(2) Before submitting recommendations to the Minister or such other Minister of the Government, as the case may be, in accordance with *subsection (1)(c)*, the Commission shall consult any Minister of the Government, the Council or other person that appears to the Commission to be appropriate in the circumstances or that the Minister, or other Minister of the Government as the case may be, so directs.

(3) The Commission shall consider any proposals for legislative change concerning railway safety and related matters referred to it by the Minister or any other Minister of the Government responsible for any of the other statutory provisions.

(4) Whenever the Minister, or such other Minister of the Government as the case may be, makes, modifies or revokes any instruments under the statutory provisions referred to in *subsection (1)*, or publishes proposals for legislative change concerning railway safety and related matters, he or she shall, at the same time, cause copies of any recommendation of the Commission under *subsection (1)(c)* or arising from the Commission's consideration of proposals under *subsection (3)*, to be laid before each House of the Oireachtas.

PART 7

ENFORCEMENT

Inspectors.

73.—(1) The Commission may appoint any of its officers, consultants, advisors or other persons as it deems appropriate to be inspectors for the purposes of this Act and such appointment may be revoked by the Commission.

(2) Each commissioner shall, on his or her appointment, be deemed to be an inspector for the purposes of this Act.

(3) A person appointed under *subsection (1)* shall, on his or her appointment, be furnished with a warrant of his or her appointment and when exercising any power conferred on an inspector by this Act shall, if requested by any person thereby affected, show the warrant to that person.

(4) For the purpose of the exercise of functions of the Commission under this Act, an inspector may—

- (a) travel on any train or any part of a train of any F104[railway organisation],
- (b) enter, inspect, examine and search at all times, any place or premises which he or she has reasonable cause to believe is railway property,
- (c) enter into any place, premises or vehicle which he or she has reasonable cause to believe contains records or information relevant to and necessary for the exercise of functions of the Commission under this Act and therein carry out such searches, inspections and examinations as he or she considers reasonable and necessary,
- (d) have a member of the Garda Síochána accompany him or her if the inspector has reasonable cause to apprehend any serious obstruction in the execution of his or her duty,
- (e) take with him or her any other person or any equipment or materials required for any purpose for which the power of entry is being exercised,
- (f) where he or she has reasonable cause to believe that at or in any railway property an offence under this Act has been or is being committed, use reasonable force where necessary in order to enter that property,
- (g) make such examination and inquiry as may be necessary,
- (h) require the production of any record (and, in the case of information in non-legible form, to reproduce it in legible form) which in the opinion of the inspector is necessary for him or her to inspect, examine and copy or require that a copy of it or of any entry therein be provided to him or her,

- (i) inspect and take copies of or extracts from any such records (including, in the case of information in non-legible form, a copy of or extract from such information in permanent legible form),
- (j) remove and retain such records for such period as may be reasonable for further examination,
- (k) require any person whom he or she has reasonable cause to believe to be able to give information relevant for the purposes of this Act, to answer such questions with respect to matters under this Act as he or she thinks fit to ask and to sign a declaration of the truth of the answers given,
- (l) direct that any railway property or part thereof and anything therein shall be left undisturbed for so long as it is reasonably necessary for the purpose of this Act,
- (m) take samples or, as regards any article or substance he or she finds, require the F104[railway organisation] or any member of staff of, or other person engaged by, the F104[railway organisation] or any person who appears to him or her to be in possession of the article or substance, to supply without payment, for test, examination or analysis sufficient samples thereof,
- (n) cause any article or substance found which appears to him or her to be reasonably necessary for the purpose of this Act to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is in the circumstances necessary for the purposes of the process or test) and where an inspector proposes to exercise the power conferred by this paragraph in the case of an article or substance found, he or she shall, if so requested by a person who at the time is present and who may have responsibilities in respect of such article or substance, cause anything which is to be done by virtue of that power to be done in the presence of that person,
- (o) in relation to any article or substance found at or in railway property in accordance with *paragraph (n)*, take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
 - (i) to examine or arrange for the examination of it and do to it anything which he or she has power to do under *paragraph (n)*,
 - (ii) to ensure that it is not tampered with before the examination of it is completed, or
 - (iii) to ensure that it is available for use as evidence in any proceedings,
- (p) take any measurements, photographs or video recordings or make any sound, electrical or other recordings which he or she considers necessary for the purposes of this Act,
- (q) require any person to afford him or her such facilities and assistance within his or her control or responsibilities as are reasonably necessary to enable him or her to exercise any of the powers conferred on him or her under this Act,
- (r) require any person by or on whose behalf data equipment is or has been used or any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material to afford the inspector all reasonable assistance in relation to its use, and
- (s) require any F104[railway organisation] to have any train, railway infrastructure, equipment, system, or procedure examined and tested at the undertaking's expense where, in his or her opinion, this is necessary for the purposes of this Act.

(5) A person who is being interviewed under *subsection (4)(k)* or *section 74* may, if he or she requests—

(a) where the person is a member of the staff of the F104[railway organisation] or a person engaged by the undertaking, be accompanied—

(i) by one other member of the staff of the F104[railway organisation], or of the person engaged by the undertaking,

(ii) by one other person from an organisation which represents, as the case may be, the staff of the undertaking or the person engaged by the undertaking, or

(iii) at his or her own expense, by a legal or other adviser,

or

(b) where the person is not a member of the staff of the F104[railway organisation] or a person engaged by the undertaking, be accompanied, at his or her own expense, by a legal or other adviser.

(6) The sole function of a person permitted to accompany another person in accordance with *subsection (5)* shall be the provision of advice to the person being interviewed.

(7) A person permitted to accompany another person in accordance with *subsection (5)* shall, if directed by the inspector concerned, desist from doing anything which, in the opinion of the inspector, frustrates the orderly and efficient conduct of the interview.

(8) Before exercising the power conferred by *subsection (4)(n)* in the case of any article or substance, an inspector shall, in so far as it is reasonably practicable to do so, consult such persons as appear to him or her to be appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he or she proposes to do under that power.

(9) Where, under the power conferred by *subsection (4)(o)*, an inspector takes possession of any article or substance found at or in any railway property, he or she shall, if it is practicable for him or her to do so, take a sample thereof and give to a responsible person at the place of work a portion of the sample marked in a manner sufficient to identify it.

F105[(10) An inspector, for the purpose of carrying out his or her functions under this Act, shall have unhampered access to the site of a railway accident or incident.]

(11) The Commission shall consult with F104[railway organisation]s in relation to procedural arrangements for entry by inspectors upon railway property.

(12) An inspector shall not, except under a warrant under *subsection (14)* or with the consent of the occupier, enter a domestic dwelling for the purposes of this section.

(13) Where an inspector in the exercise of his or her powers under this section is prevented from entering any premises, place or vehicle, an application may be made under *subsection (14)* authorising such entry.

(14) If a judge of the District Court is satisfied on the sworn information of an inspector that there are reasonable grounds for suspecting that information required by an inspector for the purpose of this Act is held at any premises, place or vehicle, the judge may issue a warrant authorising the inspector, accompanied if the inspector considers it necessary by other inspectors or members of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production of the warrant if so required, to enter, if need be by reasonable force, the premises, place or vehicle and exercise all or any of the powers conferred on an inspector under this Part.

(15) In this section, “railway property” means all land, buildings, railway infrastructure, rolling stock and vehicles under the control of a F104[railway organisation].

Annotations

Amendments:

F104 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

F105 Substituted (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 21(1)(i), in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Editorial Notes:

E79 The undertaking referred to in subss. (4)(s) and (5)(a), (b) appears to be a reference to a railway organisation in accordance with *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d), which provided for the substitution of “railway organisation” for “railway undertaking” in numerous sections including this one.

Provision of records and other information.

74.—(1) Where, in the opinion of an inspector carrying out an inspection under this Part, an inspection of any record may be necessary for the purpose of exercising his or her functions under this Act, the inspector may require a F106[railway organisation] or other relevant person to deliver to a place nominated by the inspector, and within such reasonable period as the inspector specifies, such record to enable the inspector to inspect and copy it and the F106[railway organisation] or other relevant person shall comply with the requirement.

(2) An inspector may require the attendance before him or her of any person in the jurisdiction for the purpose of providing to the inspector any information which may be known to the person and which, in the inspector’s opinion may be necessary for the purposes of exercising a function under this Act and the person shall comply with the requirement.

(3) A person required to attend before an inspector in accordance with *subsection (2)* shall be entitled to the reimbursement by the Commission of any reasonable expenses incurred in connection with his or her attendance.

(4) An inspector may also, for the purpose of exercising his or her functions under this Act—

(a) examine any person required to attend before him or her and may require answers or returns to any inquiry he or she thinks fit to make, and

(b) administer an oath and require any person examined to make and sign a declaration of the truth of the statements made by the person in his or her examination.

(5) An inspector may make such copies or take such extracts from the information gathered under *subsection (4)* as the inspector considers necessary for the purposes of the investigation.

Annotations

Amendments:

F106 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Requirement to give name and address, obstruction, arrest, offence.

75.—(1) A member of the Garda Síochána accompanying an inspector under this Part may require of any person his or her name and address and may, if such person refuses or fails to give his or her name and address or gives a name or address which the member has reasonable grounds for believing to be false or misleading, arrest such person without warrant.

(2) Where a person, when his or her name and address is required of him or her under this section, refuses or fails to give his or her name and address or gives a name or address which is false or misleading, such person is guilty of an offence.

(3) A member of the Garda Síochána accompanying an inspector under this Part may arrest without warrant any person who obstructs or interferes with an inspector exercising a power under this Part or refuses to comply with a request or requirement of an inspector under this Part.

(4) A person who obstructs or interferes with an inspector in exercise of any power conferred on an inspector under this Part, or who fails or refuses to comply with a request or requirement of an inspector under this Part, is guilty of an offence.

(5) A person who wilfully gives to an inspector information which he or she knows to be false or misleading in a material respect, or makes any false or misleading statement reckless as to its truth or otherwise, is guilty of an offence.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 3 months or to both.

(7) In this section, a reference to an inspector includes a reference to a tribunal of inquiry under [section 64](#).

Annotations

Editorial Notes:

E80

A fine of €3,000 translates into a class B fine, not greater than €4,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 5(2) and table ref. no. 1, S.I. No. 662 of 2010.

Improvement plan.

76.—(1) Where an inspector is of the opinion that an activity being or likely to be carried on by or under the control or on behalf of—

(a) a F107[[railway organisation](#)] and the activity involves, or is likely to involve, a risk to the safety of persons, or

(b) any other person on or near a railway and where the activity poses, or is likely to pose, a danger to the safety of persons involved in the operation of the railway or being carried on the railway,

the inspector may give a direction in writing to that F107[[railway organisation](#)] or person requiring the submission to the inspector, within a time specified in the direction of a plan (“improvement plan”) specifying the remedial action proposed to be taken to rectify the matters set down in the direction.

(2) Where an improvement plan is submitted in accordance with *subsection (1)* or re-submitted under *paragraph (b)*, an inspector shall, within 30 days, write to the F107[[railway organisation](#)] or person concerned—

(a) stating that he or she is satisfied with the remedial action proposed to be taken, or

(b) if he or she is not satisfied that the plan is adequate, directing that the plan be revised and re-submitted to him or her within a time specified in the direction.

(3) An inspector may withdraw a direction under this section at any time before a date specified therein or may extend and further extend such date.

Annotations

Amendments:

F107 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Improvement
notice.

77.—(1) Where an inspector is of the opinion that a F108[railway organisation] or other person is contravening or has contravened or is failing to comply or has failed to comply with any of the provisions of this Act or has failed, following a direction under *section 76*, to submit or implement an appropriate improvement plan, the inspector may serve on that F108[railway organisation] or person a notice (“improvement notice”) in writing signed by him or her stating that he or she is of that opinion and the improvement notice shall—

- (a) specify the provision as to which the inspector is of that opinion,
- (b) give particulars of the reasons why the inspector is of that opinion,
- (c) where applicable, state that the F108[railway organisation] or person has failed to submit or implement an improvement plan, and
- (d) direct that F108[railway organisation] or person to remedy the alleged contraventions by a date specified in the notice, which shall not be earlier than the period within which an appeal can be brought under *subsection (4)*.

(2) An improvement notice may include directions as to the measures to be taken to remedy the alleged contraventions set out in the notice.

(3) Where an inspector proposes to serve an improvement notice, he or she shall first notify the F108[railway organisation] or person concerned in writing of his or her intention to serve the improvement notice and the F108[railway organisation] or person in question may, within 21 days, make representations to the inspector, who shall consider them.

(4) Where an inspector decides, having considered any representations made to him or her under *subsection (3)*, to serve an improvement notice, a F108[railway organisation] or person which is aggrieved by such improvement notice may, within the period of 14 days beginning on the day on which the notice is served on it, appeal to the High Court against the notice and in determining the appeal the judge may—

- (a) if he or she is satisfied that in the circumstances of the case it is reasonable to do so, confirm the notice with or without modification, or
- (b) cancel the notice.

(5) In considering an appeal against an improvement notice, the Court shall take into account the general duties of F108[railway organisation]s and others under *sections 36* and *37*.

(6) A F108[railway organisation] or person who appeals against an improvement notice shall at the same time notify the Commission of the appeal and the grounds for appeal and the Commission shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(7) Where an appeal against an improvement notice is taken, the notice shall take effect on the day next following the day on which the notice is confirmed on appeal or the appeal is withdrawn or on the day specified in the notice as that on which it is to come into effect, whichever is the later.

(8) Where no appeal is taken against an improvement notice, the notice shall take effect on the expiration of the period during which such an appeal may be taken or on the day specified in the notice as that on which it is to come into effect, whichever is the later.

(9) An inspector may withdraw an improvement notice at any time before the date specified in it under *subsection (1)(d)* and he or she may extend or further extend that date at any time when an appeal against the notice is not pending.

(10) A person who fails to comply with an improvement notice shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding €3,000, or

(b) on conviction on indictment, to a fine not exceeding €300,000.

Annotations

Amendments:

F108 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Editorial Notes:

E81 A fine of €3,000 translates into a class B fine, not greater than €4,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 5(2) and table ref. no. 1, S.I. No. 662 of 2010.

Prohibition
notice.

78.—(1) Where an inspector is of the opinion that an activity being or likely to be carried on by or under the control or on behalf of—

(a) a F109[railway organisation] and the activity involves, or is likely to involve, an immediate and substantial risk to the safety of persons, or

(b) any other person on or near a railway and where the activity poses, or is likely to pose, an immediate and substantial danger to the safety of persons involved in the operation of the railway or being carried on the railway,

or where a F109[railway organisation] or person fails to comply with a requirement of this Act, the inspector may serve on that F109[railway organisation] or person a notice (“prohibition notice”) signed by him or her.

(2) A prohibition notice shall—

(a) state that the inspector is of that opinion,

(b) specify the matters which in the inspector's opinion give or, as the case may be, are likely to give rise to the said risk,

(c) where, in the opinion of the inspector, the matter involves or, as the case may be, will involve a contravention of any provision of this Act, specify the provision or provisions as to which the inspector is of that opinion, and give particulars of the reasons why he or she is of that opinion, and

(d) direct that the activities to which the notice relates shall be carried on neither by nor under the control of the F109[railway organisation] or other person on which the notice is served nor by nor under the control of any other person unless the matters specified in the notice in pursuance of *paragraphs (b) or (c)* have been remedied.

(3) A prohibition notice shall take effect—

(a) if the notice so declares, immediately the notice is received by the F109[railway organisation] or person on which it is served, and

(b) in any other case—

(i) if no appeal is taken against the notice, on the expiration of the period during which such an appeal may be taken or on the day specified in the notice as that on which it is to come into effect, whichever is the later, or

(ii) in case such an appeal is taken, on the day next following the day on which the notice is confirmed on appeal or the appeal is withdrawn or on the day specified in the notice as that on which it is to come into effect, whichever is the later.

(4) The bringing of an appeal against a prohibition notice which is to take effect in accordance with *subsection (3)(a)* shall not have the effect of suspending the operation of the notice:

Provided, however, that the appellant may apply to the Court to have the operation of the notice suspended until the appeal is disposed of and, on such application, the Court may, if it thinks proper to do so, direct that the operation of the notice be suspended until the appeal is disposed of.

(5) (a) A F109[railway organisation] or other person who is aggrieved by a prohibition notice may, within the period of 7 days beginning on the day on which the notice is served on it, appeal to the High Court against the notice and in determining the appeal the judge may—

(i) if he or she is satisfied that in the circumstances of the case it is reasonable to do so, confirm the notice with or without modification; or

(ii) cancel the notice.

(b) Where on the hearing of an appeal under this section a prohibition notice is confirmed, notwithstanding *subsection (3)* the judge by whom the appeal is heard may, on the application of the appellant, suspend the operation of the notice for such period as in the circumstances of the case he or she considers appropriate.

(6) In considering an appeal against a prohibition notice, the Court shall take into account the general duties of F109[railway organisation]s and others under *sections 36 and 37*.

(7) A F109[railway organisation] or person who appeals against a prohibition notice or who applies for a direction suspending the application of the notice shall at the same time notify the Commission of the appeal or the application and the grounds for the appeal or the application and the Commission shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal or the application.

(8) An inspector may withdraw a prohibition notice.

(9) (a) Where a prohibition notice has been served and activities are carried on in contravention of the notice, the High Court may, on the application of an inspector, by order prohibit the continuance of the activities.

(b) An application to the High Court for an order under *paragraph (a)* shall be by motion and the Court, when considering the matter, may make such interim or interlocutory order (if any) as it considers appropriate and the order by which an application under *paragraph (a)* is determined may contain such terms and conditions (if any) as to the payment of costs as the Court considers appropriate.

(10) On the application of the F109[railway organisation] or other person concerned, an inspector shall confirm in writing if the circumstances giving rise to a prohibition notice no longer prevail or have been remedied to his or her satisfaction and if he or she so confirms, the notice shall no longer have effect.

(11) The Commission shall, unless in its opinion it is not appropriate in a particular instance to do so, make public details of a prohibition notice, including the name of the person to whom the notice is addressed and the situation giving rise to the notice.

(12) A person who fails to comply with a prohibition notice is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 3 months, or to both, or

(b) on conviction on indictment, to a fine not exceeding €1,000,000 or imprisonment for a term not exceeding 2 years, or to both.

Annotations

Amendments:

F109 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Editorial Notes:

E82 A fine of €3,000 translates into a class B fine, not greater than €4,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 5(2) and table ref. no. 1, S.I. No. 662 of 2010.

Application to High Court by Commission.

79.—(1) Where the Commission considers that the risk to the safety of persons is so serious that the operations of a railway or of particular railway infrastructure or services, or activities carried out by, or omissions of, any other person which may pose a danger to persons operating or using the railway, should be restricted or should be immediately prohibited until specified measures have been taken to reduce the risk to a reasonable level, the Commission may apply, *ex parte*, to the High Court for an order restricting or prohibiting such operation.

(2) The Court may make such interim or interlocutory order as it considers appropriate.

(3) Any such order shall have effect notwithstanding the terms of any permission given under this Act or any other enactment for the operation of the railway or part thereof or, where the order refers to an other person, the carrying out of an activity by such person.

(4) On any application for the revocation or variation of an order made under *subsection (1)*, the Commission shall be entitled to appear, be heard and adduce evidence.

Indemnification for actions in good faith.

80.—(1) Where the Commission is satisfied that a commissioner, an inspector, a member of staff of the Commission or a consultant or adviser or person engaged by the Commission under *section 18*, has discharged his or her duties in the exercise of a function of the Commission under this Act in a *bona fide* manner, it shall indemnify such commissioner, inspector or member of staff of the Commission, or consultant or adviser, or other person engaged by the Commission, against all actions or claims however arising in respect of the discharge by him or her of his or her duties, including for the avoidance of doubt, the preparation and publication of an investigation report.

(2) In *subsection (1)* “report” includes a report referred to in *section 60(1)*, a draft report referred to in *section 62(1)*, an interim report under *section 60(4)* and a draft

interim report, and it also includes written observations on a draft report or draft interim report and comments on any such observations as referred to in [section 62](#).

PART 8

RAILWAY SAFETY ADVISORY COUNCIL

Appointed day. **81.**—The Minister shall by order appoint a day to be the appointed day for the purposes of this Part.

Annotations

Editorial Notes:

E83 Power pursuant to section exercised (11.05.2007) by *Railway Safety Act 2005 (Part 8) (Appointed Day) Order 2007* (S.I. No. 232 of 2007), in effect as per art. 2.

Railway Safety Advisory Council. **82.**—(1) There shall be established, on the appointed day, a body to be known as, in the Irish language, An Chomhairle Sábháilteachta Iarnróid, or in the English language, the Railway Safety Advisory Council, and in this Act referred to as the “Council”, to perform the functions assigned to it under this Part.

(2) The Council shall consist of 14 members.

(3) Members of the Council shall comprise—

- (a) a chairperson who, in the opinion of the Minister, has appropriate experience and expertise, and is sufficiently independent from F110[railway organisation]s and from persons representing the staff of undertakings and from the Commission,
- (b) at least 4 persons representing F110[railway organisation]s, of which one will represent F110[railway organisation] s which in the opinion of the Minister are heritage railways,
- (c) at least 3 persons from organisations which represent staff of F110[railway organisation]s,
- (d) at least one person who in the opinion of the Minister represents the public interest,
- (e) at least one person representing a body established by or under statute involved in the regulation of worker safety or public safety,
- (f) at least one person from an organisation representing the interests of mobility-impaired persons, and
- (g) at least one person with particular expertise relevant to railway safety but not being a person from an organisation in *paragraph (b) or (c)* or from the Commission.

(4) An organisation or person may, at its own initiative or at the request of the Minister, nominate a person to be a member of the Council, and the Minister in making an appointment under *subsection (5)*, shall have regard, in so far as is practicable, to any nominations received by him or her under this subsection.

(5) The Minister shall appoint persons to be members of the Council, including a person to be chairperson of the Council, and an appointment under this section shall be for such period not exceeding 3 years as may be specified by the Minister when

appointing such persons, and shall be on such terms and conditions as may be determined by the Minister, with the consent of the Minister for Finance.

(6) A member of the Council shall be paid, out of monies at the disposal of the Commission, such allowances for expenses as the Minister, with the consent of the Minister for Finance, may determine.

(7) A member of the Council whose term of office expires by the effluxion of time shall be eligible for re-appointment.

(8) The Minister, in appointing members of the Council shall ensure, in as far as is practicable, an equitable balance between men and women in any appointments.

(9) The Commission shall provide all reasonable facilities and services as may be required by the Council for the carrying out of its functions.

(10) The Council may act notwithstanding a vacancy or vacancies in its membership.

(11) The Council may regulate, by standing orders or otherwise, its procedure and business.

(12) The Minister shall fix the date, time and place of the first meeting of the Council and the members of the Council shall decide on the frequency of all further meetings, subject to the Council meeting at least once each year.

(13) A member of the Council may resign from office by letter addressed to the Minister.

(14) The Minister may remove from office a member of the Council in the following circumstances—

(a) where, in the opinion of the Minister, he or she has become incapable through ill-health of effectively performing his or her duties,

(b) for stated misbehaviour,

(c) in the case of a person appointed to represent an organisation, a body or a class of persons under *subsection (3)*, where the person is no longer such a representative, or

(d) where his or her removal appears to the Minister to be necessary or desirable for the effective performance by the Council of its functions.

(15) The Minister may, after consultation with the Council, make regulations on any matter which the Minister considers expedient for the purposes of this section.

(16) A commissioner (or if membership is vacant, the deputy commissioner) may attend and be heard at meetings of the Council but may not vote on any matter being considered by the Council.

Annotations

Amendments:

- F110** Substituted (25.11.2014) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Editorial Notes:

- E84** The undertakings referred to in subs. (3)(a) appear to be references to railway organisations in accordance with *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d), which provided for the substitution of “railway organisation” for “railway undertaking” in numerous sections including this one.

Functions of Council.

83.—(1) It shall be the general function of the Council to consider issues relevant to railway safety and to make recommendations, as appropriate, to the Commission or to the Minister.

(2) Without prejudice to the generality of *subsection (1)*, the Council may make recommendations—

(a) to the Commission in relation to—

- (i) regulations, standards, guidelines and codes of practice that are in force in relation to railway safety,
- (ii) proposals for regulations, standards, guidelines or codes of practice in relation to railway safety submitted by the Commission to the Council for consideration,
- (iii) other matters relating to railway safety other than matters relating to industrial relations, and
- (iv) any other matters related to the functions of the Commission or which the Commission submits to the Council for consideration,

(b) to the Minister in relation to—

- (i) railway safety policy,
- (ii) the adequacy of railway safety legislation which is in force,
- (iii) proposals for legislation or regulations in relation to railway safety submitted by the Minister to the Council for consideration,
- (iv) the assignment of specific functions relating to railway safety to the Commission,
- (v) the nature and mix of expertise, skills and experience that is desirable in a candidate for appointment as a commissioner, and
- (vi) any other matter which, in the opinion of the Council, is relevant to the effective performance by the Council or by the Commission of its functions or which the Minister submits to the Council for consideration.

(3) The Commission or the Minister, as appropriate, shall consider the recommendations of the Council given under this section.

(4) The Council may publish recommendations given under this section.

(5) The Commission may consult the Council on any matter relating to railway safety or to the effective performance by the Commission of its functions.

(6) The Minister may consult the Council on any matter arising in relation to his or her functions with respect to railway safety.

(7) The Council shall be entitled to be informed at its meetings, by the commissioner or deputy member of the Commission who stands appointed to the Council or a person appointed by him or her for the purpose, about the work of the Commission but not in relation to the detail of particular F111[safety management document]s, assessments, audits or investigations where a report has not been published.

Annotations

Amendments:

- F111** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(c).

PART 9

INTOXICANTS AND PERSONS WORKING ON RAILWAY INFRASTRUCTURE

Commencement
(Part 9).

84.—This Part comes into operation on such day or days as the Minister may appoint by order either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Annotations**Editorial Notes:**

E85 Power pursuant to section exercised (1.05.2006 and 1.09.2006) by *Railway Safety Act 2005 (Section 5 and Parts 4, 9 and 10) (Commencement) Order 2006* (S.I. No. 215 of 2006).

3. The day appointed as the day on which section 5, Part 4 (other than section 43 and Parts 9 and 10 of the Act come into operation is 1 May 2006.

4. In Part 4 of the Act the day appointed as the day on which section 43 comes into operation is 1 September 2006.

Interpretation
(Part 9).

85.—In this Part—

“analysis” includes any operation used in determining the presence (if any) of a drug in a specimen of blood or urine, and cognate words shall be construed accordingly;

“analysis body” means a person who, in the opinion of a F112[railway organisation] concerned and the Commission, is competent to carry out an analysis of a sample and is independent of the F112[railway organisation] concerned and of any other F112[railway organisation];

“authorised person” means a person appointed to be an authorised person under *section 95*;

“code of conduct” means the code of conduct drawn up by a F112[railway organisation] under *section 88(1)(a)* or amended under *section 88(10)* and accepted by the Commission under *section 88(5)*;

“drug” includes all drugs whether legally obtained or otherwise;

“F112[railway organisation]” means a F112[railway organisation] to which this Part applies;

“safety critical task” has the meaning assigned to it in *Part 10*;

“safety critical worker” has the meaning assigned to it in *Part 10*;

“sample” means the provision of a specimen of blood or urine in accordance with sampling procedures;

“sampling procedures” means procedures established under *section 88(1) (b)* or amended under *section 88(10)* and accepted by the Commission under *section 88(5)*.

Annotations**Amendments:**

F112 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Application (Part 9).

86.—(1) This Part applies to a F113[railway organisation] (other than a heritage railway) which operates railway infrastructure or operates trains on a railway infrastructure where such infrastructure is used, or intended to be used, wholly or partly for the carriage of members of the public or freight.

(2) This Part does not apply to a F113[railway organisation] which operates railway infrastructure or operates trains on a railway infrastructure, where such infrastructure is used or intended to be used solely for industrial use.

(3) This Part applies to a safety critical worker.

Annotations

Amendments:

F113 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Duties of safety critical workers and F114[railway organisation]s.

87.—(1) It is the duty of a safety critical worker and is deemed to be a term of his or her contract of employment or contract of services (whether made before or after the passing of this Act) with a F114[railway organisation] or with a person who has a contract of services with a F114[railway organisation]—

(a) not to perform a safety critical task while being unfit,

(b) not to make himself or herself available to perform a safety critical task by attending at work while being unfit,

(c) not to do anything that is an offence under *section 97*, and

(d) to comply with the F114[railway organisation]’s code of conduct and sampling procedures.

(2) It is the duty of a F114[railway organisation] to take reasonable steps to ensure that a safety critical worker complies with his or her duties under *subsection (1)*.

(3) In this section, “unfit” has the meaning assigned to it in *section 97*.

Annotations

Amendments:

F114 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Codes of conduct, etc., in relation to intoxicants.

88.—(1) Subject to *subsection (2)*, in order to fulfil its duty under *section 87(2)*, a F115[railway organisation] shall, in consultation with organisations which represent the staff of its undertaking—

(a) draw up a code of conduct for safety critical workers to be observed by each of them while at work in relation to intoxicants,

(b) establish sampling procedures in relation to the provision of samples under *section 89* by safety critical workers while at work or following a railway incident, and

(c) provide counselling and other assistance (in this Part referred to as “support services”) to safety critical workers on the request of such workers or in respect of such persons who fail to comply with *section 87(1)* in order to assist those persons to comply with that subsection in the future.

(2) Without prejudice to the generality of *subsection (1)(a)*, a code of conduct shall include provisions—

(a) providing for the course of action (including dismissal, termination of contract, suspension, demotion, prohibition on working at the undertaking or performing specified safety critical tasks or mandatory attendance at counselling) to be taken where a safety critical worker—

(i) has failed to comply with his or her duties under *section 87(1)*,

(ii) has failed, without reasonable excuse, to provide a sample under *section 89* or comply with sampling procedures under this section, or

(iii) is convicted of an offence under *Chapter 2 of Part 10*,

and

(b) providing for procedures relating to appeals under *section 90*.

(3) Without prejudice to the generality of *subsection (1)(b)*, sampling procedures shall provide for—

(a) matters relating to the circumstances in which sampling may be undertaken under *section 89*,

(b) the caution to be given to a safety critical worker who is required under *section 89* to provide a sample, as to the consequences of failing, without reasonable excuse, to give such sample,

(c) the means of sampling,

(d) the location where a sample may be taken,

(e) analysis of a sample by an analysis body,

(f) privacy in relation to sampling,

(g) procedures for the protection of the integrity of a sample,

(h) division of any specimen of blood and urine into 2 parts and provision of one part to a person being sampled,

(i) a certificate to prove the results of the analysis of a sample and presumption as to the accuracy of the results of the sample so certified, and

(j) grievance procedures in relation to sampling.

(4) A F115[railway organisation] shall, within 6 months of the commencement of this Part or such further period, at the discretion of the Commission, being not more than 12 months from such commencement, submit to the Commission for its acceptance drafts of a code of conduct, sampling procedures and details of support services to be provided.

(5) The Commission shall issue a notification in writing accepting a code of conduct, sampling procedures or details of support services submitted under *subsection (4)* where the Commission is satisfied that—

(a) it is sufficient to enable the F115[railway organisation] to discharge its duty under *section 87(2)*, and

(b) the undertaking has adequately consulted with organisations which represent the staff of its undertaking.

(6) Where the Commission is not satisfied with any draft code of conduct, sampling procedures or details of support services submitted to it under *subsection (4)*, the Commission shall notify in writing the F115[railway organisation] of its dissatisfaction

and the reasons for the dissatisfaction, and the F115[railway organisation], on receipt of a notification under this subsection shall, before re-submitting to the Commission, within such period as may be specified to it by the Commission, the code, sampling procedures or details, take the action necessary to address the reasons stated in the notification and shall consult with organisations which represent the staff of its undertaking in relation to the said matters.

(7) On service of a notification from the Commission under *subsection (6)*, a F115[railway organisation] shall, within 6 months of the date of the notification, ensure that the code of conduct and sampling procedures are adopted and implemented and support services are provided.

(8) A F115[railway organisation] shall take reasonable steps to ensure that the code of conduct, sampling procedures and details of support services provided by it and an abstract of this Part are displayed in a prominent place in the undertaking and brought to the attention of safety critical workers.

(9) A F115[railway organisation] shall give a copy of the code of conduct, sampling procedures or details of support services provided by it to a safety critical worker upon the request of that worker.

(10) A F115[railway organisation] may amend a code of conduct drawn up, sampling procedures or details of support services provided by it, in consultation with organisations which represent the staff of its undertaking, and *subsections (4) to (9)* shall apply to any such amendment or alteration with such modifications as are necessary.

(11) A F115[railway organisation] to which this Part and *section 95* apply, shall, within 3 months of the end of each year, make a report to the Commission on the implementation by it of the measures provided for in this Part and *Part 10*. The report shall contain such particulars as the Commission may direct.

(12) The Commission shall, within 2 months of receipt of a report under *subsection (11)*, publish details of the report, but without giving information of a personal, confidential or prejudicial nature.

(13) The Commission shall, before publishing details of a report in accordance with *subsection (12)*, lay a copy of those details before each House of the Oireachtas.

Annotations

Amendments:

F115 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Editorial Notes:

E86 The undertakings referred to in subss. (1), (2)(a), (5)(b), (6), (8) and (10) appear to be references to railway organisations in accordance with *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d), which provided for the substitution of “railway organisation” for “railway undertaking” in numerous sections including this one.

Sampling for drugs.

89.—(1) An authorised person may require a safety critical worker to provide a sample of blood or urine, in accordance with the sampling procedures of the F116[railway organisation] concerned—

(a) where he or she is of the opinion, or on the request of an inspector who is of the opinion, that a safety critical worker, who is performing a safety critical task or who has made himself or herself available to perform a safety critical

task by attending at work, has a drug in his or her body to such an extent that he or she is in breach of his or her duty under *section 87(1)*,

(b) where a railway F117[*accident or*] incident occurs and he or she is of the opinion, or on the request of an inspector who is of the opinion, that—

(i) the safety critical worker concerned was performing or had performed a safety critical task on the railway infrastructure, or on the train, involved with the F117[*accident or*] incident, or

(ii) the safety critical worker concerned failed to perform a safety critical task expected of him or her, on the railway infrastructure, or on a train, involved with the F117[*accident or*] incident,

or

(c) for the safe operation of the undertaking, at random and in circumstances that are reasonable, where that worker is performing a safety critical task or has made himself or herself available to perform a safety critical task by attending at work.

(2) Only a medical practitioner may take a specimen of blood or be provided with a specimen of urine.

(3) It is the duty of a safety critical worker if a requirement to provide a sample is made of him or her under *subsection (1)*, unless he or she has reasonable excuse, to provide the sample.

(4) While a safety critical worker is at a hospital as a patient, he or she shall not be required to provide a sample unless the medical practitioner in immediate charge of his or her case has been notified by an authorised person of the proposal to make the requirement and—

(a) if the requirement is then made, it shall be for the provision of a sample at the hospital, but

(b) if the medical practitioner objects, on the ground that the requirement would be prejudicial to the proper care and treatment of the patient, the requirement shall not be made.

(5) A sample provided to an authorised person under this section shall be sent by him or her to an analysis body for the purposes of analysing the sample for drugs and the analysis body shall issue a certificate to the authorised person in relation to the results of the analysis.

(6) An analysis body may charge the F116[*railway organisation*] concerned a fee in respect of any analysis made and certificate issued by it under *subsection (5)*.

F118[(7) The results of any analysis under *subsection (5)* in respect of a sample taken under this section shall, at the request of the Investigation Unit, be given to it by the railway organisation for whom it was made for the purposes of an investigation by the Investigation Unit under the Regulations of 2014.]

Annotations

Amendments:

F116 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

F117 Inserted (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 21(1)(j)(i), in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

- F118** Substituted (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 21(1)(j)(ii), in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Modifications (not altering text):

- C25** References construed (14.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 20(b) and (d), in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Application of Act of 2005

20. On and from the appointed day— ...

(b) reference to Investigation Unit in each place it occurs in sections 2, 64, 65, 66, 89 and 126 of the Act of 2005 and any reference in any enactment to the Railway Accident Investigation Unit established under section 55 of the Act of 2005 is to be read as a reference to the Investigation Unit established under Regulation 4,

(c) ...

(d) reference in section 89(7) (as amended by Regulation 20(1)(d) of the Regulations of 2013) of the Act of 2005 to an investigation carried out by the Investigation Unit under section 58 is to be read as a reference to an investigation carried out by the Investigation Unit under the Regulations of 2014.

...

Editorial Notes:

- E87** The undertaking referred to in subs. (1)(c) appears to be a reference to a railway organisation in accordance with *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d), which provided for the substitution of “railway organisation” for “railway undertaking” in numerous sections including this one.

Disciplinary
measures.

90.—(1) Where an authorised person makes a complaint to the management of the F119[railway organisation] which appointed him or her that—

(a) a safety critical worker has been convicted of an offence under *Chapter 2 of Part 10*, or

(b) in his or her opinion, a safety critical worker has—

(i) failed to comply with his or her duty under *section 87(1)*,

(ii) failed without reasonable excuse to comply with his or her duty to provide a sample under *section 89*, or

(iii) contravened *subsection (6)*,

the F119[railway organisation] concerned shall—

(c) in the case of a complaint under *paragraph (a)*, satisfy itself as to the fact of that person's conviction, and if the code of conduct so provides, inquire at an oral disciplinary hearing into the circumstances of that conviction, and

(d) in the case of a complaint under *paragraph (b)*, satisfy itself as to the facts and circumstances of the matter at an oral disciplinary hearing.

(2) Where, in accordance with *subsection (1)(c) or (d)*, a F119[railway organisation] is satisfied that a safety critical worker—

(a) has been convicted of an offence under *Chapter 2 of Part 10*, or

(b) has—

- (i) failed to comply with his or her duty under [section 87\(1\)](#),
- (ii) failed without reasonable excuse, to comply with his or her duty to provide a sample under [section 89](#), or
- (iii) contravened *subsection (6)*,

it shall decide the course of action to be taken (including dismissal, termination of contract, suspension, demotion, prohibition on working at the undertaking or working at safety critical tasks, or mandatory attendance at counselling) in accordance with the code of conduct.

(3) A safety critical worker who is the subject of a disciplinary hearing under this section may represent himself or herself or be-represented by another person at the hearing.

(4) Where a F119[[railway organisation](#)] imposes any sanction against a safety critical worker as a result of a hearing under this section, it shall afford the worker an opportunity, at his or her choice, to appeal to it or to such other person or persons nominated by the undertaking against the sanction.

(5) A person nominated under *subsection (4)* shall be independent of the undertaking and shall not be a member of its staff or connected to it or be a member of the staff of or connected to another F119[[railway organisation](#)].

(6) A safety critical worker shall not take or attempt to take any action with the intention of frustrating disciplinary measures under this section.

Annotations

Amendments:

- F119** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Editorial Notes:

- E88** The undertaking referred to in subss. (2), (4) and (5) appears to be a reference to a railway organisation in accordance with *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d), which provided for the substitution of “railway organisation” for “railway undertaking” in numerous sections including this one.

Proof of
certificate of
analysis.

91.—In any disciplinary hearing under [section 90](#) or in any proceedings, a certificate, issued under [section 89\(5\)](#), purporting to be signed by a person employed or engaged in the analysis of samples provided under [section 89\(1\)](#) at an analysis body, stating the capacity in which the person is so employed or engaged and stating any one or more of the following, namely—

- (a) that the person received the sample sent under [section 89\(5\)](#) to the analysis body,
- (b) that, for such period as is specified in the certificate, the person had in his or her custody the sample so sent,
- (c) that the person gave to such other person as is specified in the certificate the sample so sent,
- (d) that the person carried out the analysis of the sample, and
- (e) the results of the analysis,

shall, unless the contrary is shown be evidence of the matters stated in the certificate.

PART 10

OFFENCES BY PERSONS WORKING ON RAILWAY INFRASTRUCTURE

Chapter 1

Preliminary

Commencement,
(Part 10).

92.—This Part comes into operation on such day or days as the Minister may appoint by order either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Annotations

Editorial Notes:

E89 Power pursuant to section exercised (1.05.2006 and 1.09.2006) by *Railway Safety Act 2005 (Section 5 and Parts 4, 9 and 10) (Commencement) Order 2006* (S.I. No. 215 of 2006).

3. The day appointed as the day on which section 5, Part 4 (other than section 43 and Parts 9 and 10 of the Act come into operation is 1 May 2006.

4. In Part 4 of the Act the day appointed as the day on which section 43 comes into operation is 1 September 2006.

Definitions, (Part 10).

93.—(1) In this Part—

“analysis” includes any operation used in determining the concentration of alcohol in a specimen of breath, blood or urine, and any operation used in determining the presence (if any) of a drug or drugs in a specimen of blood or urine, and cognate words shall be construed accordingly;

“Bureau” means Medical Bureau of Road Safety;

“designated” means designated by a member of the Garda Síochána;

“prescribed” means prescribed in regulations made by the Minister;

“safety critical task” means a task specified in *paragraph (i), (ii) or (iii)* when performed in the course of the operation of a F120[railway organisation], and—

(a) in the course of a person’s employment with the undertaking,

(b) under a contract of services with the undertaking,

(c) in the course of a person’s employment with a person who has a contract of services with the undertaking, or

(d) voluntarily or otherwise,

namely—

(i) driving a train, or in any other way controlling or affecting the movement of a train,

(ii) controlling, affecting or managing, the movement of persons on a train, on a platform, across a level crossing, or, the boarding of, or alighting from, a train of persons, or

(iii) working in a maintenance capacity (as defined in *subsection (2)*) or as a supervisor of, or look-out for, persons working in such capacity;

“safety critical worker” means a person who performs a safety critical task.

(2) For the purposes of this Part and *Part 9*, a person works in the course of the operation of a F120[railway organisation] in a maintenance capacity, if his or her work in the operation involves installation, maintenance, repair, alteration or inspection of, railway infrastructure or trains, or involves coupling or uncoupling trains or performing a pre-departure examination of trains.

Annotations

Amendments:

F120 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Editorial Notes:

E90 The undertaking referred to in the definition of “safety critical task” appears to be a reference to a railway organisation in accordance with *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d), which provided for the substitution of “railway organisation” for “railway undertaking” in numerous sections including this one.

Power of Garda Síochána to enter railway property and to stop train.

94.—(1) A member of the Garda Síochána may enter railway property for the purposes of enforcing this Part.

(2) A member of the Garda Síochána may request a F121[railway organisation] to stop a train at a convenient and safe location for the purposes of this Part.

(3) In exercising a power under *subsection (2)*, a member of the Garda Síochána shall take all reasonable steps to avoid disruption to the operations of the F121[railway organisation] concerned.

Annotations

Amendments:

F121 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Application and authorised persons.

95.—(1) This section applies to a F122[railway organisation] (other than a heritage railway) which operates railway infrastructure or operates trains on a railway infrastructure where such infrastructure is used, or intended to be used, wholly or partly for the carriage of members of the public or freight.

(2) This section does not apply to a F122[railway organisation] which operates railway infrastructure or operates trains on a railway infrastructure, where such infrastructure is used, or is intended to be used, solely for industrial use.

(3) A F122[railway organisation] to whom this section applies shall appoint persons whom it, with the consent of the Commission, considers are suitably qualified to be authorised persons for the purpose of performing functions under this Part and *Part 9*, on its behalf.

(4) An authorised person is not entitled to perform a function under this Part or *Part 9* unless he or she has received training and instruction, which, in the opinion of the undertaking concerned, is such as will provide appropriate guidance to him or her in the performance of the function.

(5) An authorised person, shall, on his or her appointment under this section, be furnished by the F122[railway organisation] concerned with a warrant of his or her appointment as an authorised person and when performing any function conferred on an authorised person under this Part or *Part 9*, shall if requested by any person affected, produce such warrant to that person for inspection.

(6) A statement by an employee involved in the management of the F122[railway organisation] concerned that, a warrant of appointment as an authorised person was furnished to a particular person, and such person had received training and instruction which, in the opinion of the undertaking concerned, provided appropriate guidance to such person in the performance by him or her of a function under this Part or *Part 9*, shall, until the contrary is proved, be sufficient evidence in any proceedings of the fact of, the furnishing of such warrant to such person, receipt by him or her of such training and instruction, and the making of the statement by an employee so involved in the undertaking.

(7) A warrant furnished by an undertaking under *subsection (5)* shall be in such form and contain such particulars as may, from time to time, be specified by the Commission.

(8) Subject to the Fire Services Act 1981, an authorised person shall have unhampered access to a railway F123[accident or] incident site for the purposes of this Part and *Part 9*.

(9) Subject to the Fire Services Act 1981, a F122[railway organisation] shall, for the purposes of this Part and *Part 9*, ensure that an authorised person appointed by it has unhampered access to any railway property under its management or control.

(10) An authorised person may be referred to by the undertaking concerned by such title as it decides.

Annotations

Amendments:

F122 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

F123 Inserted (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 21(1)(e) and (k), in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Editorial Notes:

E91 The undertaking referred to in subss. (4), (6), (7) and (10) appears to be a reference to a railway organisation in accordance with *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d), which provided for the substitution of “railway organisation” for “railway undertaking” in numerous sections including this one.

Chapter 2

Intoxicants

Function of the Bureau in relation to analysis under Chapter.

- 96.—**(1) The Bureau shall perform the functions assigned to it by this Chapter.
- (2) In particular, and without prejudice to the generality of *subsection (1)*, the Bureau shall arrange for—
- (a) the receipt and analysis of specimens of blood and urine forwarded to the Bureau under this Part and the issue of reports on such analyses,
 - (b) the determination, in respect of such specimens, of the concentration of alcohol in the blood or urine and of the presence (if any) of a drug or drugs in the blood or urine, and
 - (c) the issue of certificates required under this Chapter to be issued by the Bureau.
- (3) The Director shall exercise general supervision in relation to the performance by the Bureau of the functions assigned to it by or under this Chapter.
- (4) No action or other legal proceedings lie (except in the case of wilful neglect or default) against the Director or any member, officer or employee of the Bureau by reason of, or arising out of, any analysis or determination under this Part.

Offences involving intoxicants by persons working on railway property.

- 97.—**(1) A safety critical worker who performs a safety critical task, or who makes himself or herself available to perform such a task by attending at work, while being unfit, is guilty of an offence.
- (2) A safety critical worker who performs a safety critical task, or who makes himself or herself available to perform such a task by attending at work, while there is present in his or her body a quantity of alcohol such that, within 3 hours after so performing that task or of attending at work, the concentration of alcohol—
- (a) in his or her blood will exceed a concentration of 80 milligrammes of alcohol per 100 millilitres of blood,
 - (b) in his or her urine will exceed a concentration of 107 milligrammes of alcohol per 100 millilitres of urine, or
 - (c) in his or her breath will exceed a concentration of 35 microgrammes of alcohol per 100 millilitres of breath,
- is guilty of an offence.
- (3) The Minister may, by regulations, provide for other amounts, for the time being, to stand in lieu of any of the amounts of alcohol concentration specified in *subsection (2)(a), (b) or (c)*.
- (4) A draft of every regulation proposed to be made under *subsection (3)* shall be laid before each House of the Oireachtas and the regulation shall not be made until a resolution approving of the draft has been passed by each such House.
- (5) In this section and in *section 87*, “unfit” means, in relation to a safety critical worker, being under the influence of an intoxicant to such an extent that his or her ability to perform a safety critical task, without exposing a person (including himself or herself) to danger or risk of danger, is for the time being impaired.

Obligation to provide specimen of breath.

- 98.—**(1) Where an authorised person or a member of the Garda Síochána is of the opinion—
- (a) that a safety critical worker, who is performing a safety critical task or who has made himself or herself available to perform a safety critical task by attending at work,
 - (i) has consumed intoxicating liquor, or

(ii) is committing or has committed an offence under *section 97*,

or

(b) where a railway F124[*accident or*] incident occurs, that—

(i) a safety critical worker was performing or had performed a safety critical task on the railway infrastructure, or on the train, involved with the F124[*accident or*] incident, or

(ii) a safety critical worker failed to perform a safety critical task expected of him or her, on the railway infrastructure, or on a train, involved with the F124[*accident or*] incident,

or at the request of an inspector who is of such opinion, he or she may make a requirement of the safety critical worker under *subsection (3)*).

(2) Without prejudice to *subsection (1)*, a member of the Garda Síochána or an authorised person may, for the safe operation of a F125[*railway organisation*], at random and in circumstances that are reasonable, make a requirement under *subsection (3)* of a safety critical worker who is performing a safety critical task or who has made himself or herself available to perform a safety critical task by attending at work.

(3) A member of the Garda Síochána or an authorised person, may, in the circumstances referred to in *subsection (1)* or (2), require a safety critical worker—

(a) to provide, or to accompany him or her to a place (including a vehicle) at or in the vicinity of the railway infrastructure concerned and there require the worker to provide, by exhaling into an apparatus for indicating the presence of alcohol in the breath, a specimen of his or her breath, or

(b) where the authorised person or member does not have such apparatus with him or her, to remain (for not more than one hour), at an appropriate place on the railway infrastructure concerned or at the scene of the F124[*accident or*] incident, in his or her presence or in the presence of another authorised person or member of the Garda Síochána until such an apparatus becomes available to him or her and the authorised person or member may then require the worker, to provide by exhaling into such an apparatus, a specimen of his or her breath.

(4) Where an authorised person is of the opinion that a safety critical worker, who is performing a safety critical task or who has made himself or herself available to perform a safety critical task by attending at work, has consumed intoxicating liquor, or is committing or has committed an offence under *section 97*, and where a member of the Garda Síochána is not present, the authorised person shall require the safety critical worker concerned to remain (for not more than one hour), as the case may be, at an appropriate place on the railway infrastructure concerned or at the scene of the F124[*accident or*] incident, in his or her presence or in the presence of another authorised person, pending the arrival of a member.

(5) A member of the Garda Síochána or an authorised person making a requirement under *subsection (3)* may indicate the manner in which the safety critical worker is to comply with the requirement.

(6) A safety critical worker who refuses or fails, to comply immediately with a requirement under this section, or to comply immediately with such a requirement in a manner indicated by a member of the Garda Síochána or an authorised person, is guilty of an offence.

(7) In a prosecution for an offence under this Chapter, it shall be presumed, until the contrary is shown, that an apparatus provided by a member of the Garda Síochána or an authorised person for the purpose of enabling a person to provide a specimen

of breath under this section is an apparatus for indicating the presence of alcohol in the breath.

Annotations

Amendments:

- F124** Inserted (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 21(1)(e) and (k), in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.
- F125** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Arrest without warrant.

99.—(1) A member of the Garda Síochána may arrest a safety critical worker without warrant if he or she has reasonable cause to suspect that that worker is committing or has committed an offence under [section 97](#) or [98](#).

(2) For the purpose of arresting a safety critical worker under *subsection (1)*, where a member of the Garda Síochána has reasonable cause to suspect that the worker is committing or has committed an offence under [section 97](#) or [98](#), the member may enter (if need be by force) any place where that worker is or where the member, with reasonable cause, suspects him or her to be.

Obligation to provide specimen following arrest.

100.—(1) Where a safety critical worker is arrested under [section 99](#), a member of the Garda Síochána may, at a Garda Síochána station, at his or her discretion, do either or both of the following:

- (a) require the worker to provide, by exhaling into an apparatus for determining the concentration of alcohol in the breath, 2 specimens of his or her breath and may indicate the manner in which he or she is to comply with the requirement,
- (b) require the worker either—
 - (i) to permit a designated medical practitioner to take from the worker a specimen of his or her blood, or
 - (ii) at the option of the worker, to provide for the designated medical practitioner a specimen of his or her urine.

(2) If the medical practitioner referred to in *subsection (1)(b)* states in writing that he or she is unwilling, on medical grounds, to take from the safety critical worker a specimen of the worker's blood or be provided by the worker with a specimen of the worker's urine, the member may make a requirement of the worker under *subsection (1)(b)* in relation to the specimen other than that to which the first requirement related.

(3) Subject to [section 108](#), a person who refuses or fails to comply immediately with a requirement under *subsection (1)(a)* is guilty of an offence.

(4) Subject to [section 108](#), a person who, following a requirement under *subsection (1)(b)*—

- (a) refuses or fails to comply with the requirement, or
- (b) refuses or fails to comply with a requirement of a designated medical practitioner in relation to the taking under that subsection of a specimen of blood or the provision under that subsection of a specimen of urine,

is guilty of an offence.

(5) In a prosecution for an offence under this Chapter it shall be presumed, until the contrary is shown, that an apparatus provided by a member of the Garda Síochána for the purpose of enabling a person to provide 2 specimens of breath pursuant to this section is an apparatus for determining the concentration of alcohol in the breath.

Obligation to provide blood or urine specimen while in hospital.

101.—(1) Where a railway F126[[accident or](#)] incident occurs in consequence of which a safety critical worker is injured, or claims or appears to have been injured, and is admitted to, or attends at, a hospital and a member of the Garda Síochána is of opinion that, at the time of the F126[[accident or](#)] incident—

(a) the worker was working on the railway infrastructure or on a train involved in the F126[[accident or](#)] incident, and

(b) the worker had consumed an intoxicant,

then the member may, in the hospital, require the worker either—

(i) to permit a designated medical practitioner to take from the worker a specimen of his or her blood, or

(ii) at the option of the worker, to provide for the designated medical practitioner a specimen of his or her urine.

(2) If the medical practitioner referred to in *subsection (1)* states in writing that he or she is unwilling, on medical grounds, to take from the safety critical worker a specimen of the worker's blood under *subsection (1)(i)* or be provided by the worker with the specimen of the worker's urine under *subsection (1)(ii)*, the member may make a requirement of the worker under *subsection (1)* in relation to the specimen other than that to which the first requirement related.

(3) Subject to [section 108](#), a person who, following a requirement under *subsection (1)*—

(a) refuses or fails to comply with the requirement, or

(b) refuses or fails to comply with a requirement of a designated medical practitioner in relation to the taking under that subsection of a specimen of blood or the provision under that subsection of a specimen of urine,

is guilty of an offence.

(4) Notwithstanding *subsection (2)*, it is not an offence for a person to refuse or fail to comply with a requirement under *subsection (1)* where, following his or her admission to, or attendance at, a hospital, the person comes under the care of a medical practitioner and the medical practitioner refuses, on medical grounds, to permit the taking or provision of the specimen concerned.

Annotations

Amendments:

F126 Inserted (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 21(1)(e) and (k), in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Detention of intoxicated persons where a danger to themselves or others.

102.—Where a safety critical worker is at a Garda Síochána station having been arrested under [section 99](#), [section 16 of the Road Traffic Act 1994](#) applies and references in that section to subsection (1) of that section are to be read as including references to this section.

Procedure following provision of breath specimen under *section 100*.

103.—(1) Where, consequent on a requirement under *section 100* of him or her, a safety critical worker provides 2 specimens of his or her breath and the apparatus referred to in that section determines the concentration of alcohol in each specimen, in case the apparatus determines that each specimen has—

- (a) the same concentration of alcohol, either specimen, or
- (b) a different concentration of alcohol, the specimen with the lower concentration of alcohol,

shall be taken into account for the purposes of *section 97(2)* and the other specimen shall be disregarded.

(2) Where the apparatus referred to in *section 100* determines that in respect of the specimen of breath to be taken into account the safety critical worker may have contravened *section 97(2)* he or she shall be supplied immediately by a member of the Garda Síochána with 2 identical statements, automatically produced by the apparatus in the prescribed form and duly completed by the member in the prescribed manner, stating the concentration of alcohol in the said specimen determined by the apparatus.

(3) On receipt of the statements, the safety critical worker shall on being requested so to do by the member—

- (a) immediately acknowledge such receipt by placing his or her signature on each statement, and
- (b) return either of the statements to the member.

(4) A person who refuses or fails to comply with *subsection (3)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,000 or to imprisonment for a term not exceeding 1 month, or to both.

(5) *Section 107(1)* applies to a statement under this section as respects which there has been a failure to comply with *subsection (3)(a)* as it applies to a duly completed statement under this section.

Annotations

Editorial Notes:

- E92** A fine of €1,000 translates into a class D fine, not greater than €1,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 7(2) and table ref. no. 1, S.I. No. 662 of 2010.

Procedure to be followed relating to specimens taken or provided.

104.—(1) Where under this Chapter a designated medical practitioner has taken a specimen of blood from a safety critical worker or has been provided by the worker with a specimen of his or her urine, the medical practitioner shall divide the specimen into 2 parts, place each part in a container which he or she shall immediately seal and complete the form prescribed for the purposes of this section.

(2) Where a specimen of blood or urine of a safety critical worker has been divided into 2 parts pursuant to *subsection (1)*, a member of the Garda Síochána shall offer to the worker one of the sealed containers together with a statement in writing indicating that he or she may retain either of the containers.

(3) As soon as practicable after *subsection (2)* has been complied with, a member of the Garda Síochána shall cause to be forwarded to the Bureau the completed form referred to in *subsection (1)*, together with the relevant sealed container or, where the safety critical worker has declined to retain one of the sealed containers, both relevant sealed containers.

(4) In a prosecution for an offence under *section 97* it shall be presumed, until the contrary is shown, that *subsections (1) to (3)* have been complied with.

Procedure at
Bureau regarding
specimens.

105.—(1) As soon as practicable after it has received a specimen forwarded to it under *section 104*, the Bureau shall analyse the specimen and determine the concentration of alcohol or (as may be appropriate) the presence of a drug or drugs in the specimen.

(2) Where the Bureau receives 2 specimens of blood so forwarded together in relation to the same safety critical worker or 2 specimens of urine so forwarded together in relation to the same worker, it shall be sufficient compliance with *subsection (1)* for the Bureau to make an analysis of and determination in relation to one of the 2 specimens of blood or (as may be appropriate) one of the 2 specimens of urine.

(3) As soon as practicable after compliance with *subsection (1)*, the Bureau shall forward to the Garda Síochána station from which the specimen analysed was forwarded a completed certificate in the prescribed form for the purpose of this section and shall forward a copy of the completed certificate to the safety critical worker who is named on the relevant form under *section 104* as the person from whom the specimen was taken or who provided it.

(4) In a prosecution for an offence under *section 97*, it shall be presumed, until the contrary is shown, that *subsections (1) to (3)* have been complied with.

Frustrating
prosecution.

106.—(1) A safety critical worker shall not take or attempt to take any action (including consumption of alcohol but excluding a refusal or failure to comply with a requirement under *section 100*) with the intention of frustrating a prosecution under *section 97*.

(2) A person who contravenes *subsection (1)* is guilty of an offence.

(3) Where, on the hearing of a charge for an offence under *section 97*, the court is satisfied that any action taken by the defendant (including consumption of alcohol but excluding a refusal or failure to provide a specimen of his or her breath or urine or to permit the taking of a specimen of his or her blood) was taken with the intention of frustrating a prosecution under that section, the court may find him or her guilty of an offence under *subsection (2)*.

Evidence in
proceedings
under this
Chapter.

107.—(1) A duly completed statement purporting to have been supplied under *section 103(2)* is, until the contrary is shown, sufficient evidence in any proceedings under this Chapter, of the facts stated therein, without proof of any signature on it or that the signatory was the proper person to sign it, and shall, until the contrary is shown, be sufficient evidence of compliance by the member of the Garda Síochána concerned with the requirements imposed on him or her by or under this Chapter prior to and in connection with the supply by him or her under *section 103(2)* of such statement.

(2) A duly completed form under *section 104(1)* is, until the contrary is shown, sufficient evidence in any proceedings under this Chapter of the facts stated therein, without proof of any signature on it or that the signatory was the proper person to sign it, and shall, until the contrary is shown, be sufficient evidence of compliance by the designated medical practitioner concerned with the requirements imposed on him or her by or under this Chapter.

(3) A certificate expressed to have been issued under *section 105* is, until the contrary is shown, sufficient evidence in any proceedings under this Part of the facts stated therein, without proof of any signature on it or that the signatory was the proper person to sign it, and shall, until the contrary is shown, be sufficient evidence of compliance by the Bureau with the requirements imposed on it by or under this Chapter.

(4) In a prosecution for an offence under *section 97*, it shall be presumed, until the contrary is shown, that each of the following persons is a designated medical practitioner—

- (a) a person who by virtue of powers conferred on him or her by this Part took from another person a specimen of that other person's blood or was provided by another person with a specimen of that other person's urine,
- (b) a person for whom, following a requirement under *section 100(1)* or *101(1)* to permit the taking by him or her of a specimen of blood, there was a refusal or failure to give such permission or to comply with a requirement of his or her in relation to the taking of such a specimen,
- (c) a person for whom, following a requirement under *section 100(1)* or *101(1)* to provide for him or her a specimen of urine, there was a refusal or failure to provide such a specimen or to comply with a requirement of his or her in relation to the provision of such a specimen.

(5) Where, pursuant to *section 100* or *101* a designated medical practitioner states in writing that he or she is unwilling, on medical grounds, to take from a person a specimen of his or her blood or be provided by him or her with a specimen of his or her urine, the statement signed by the medical practitioner is, in any proceedings under this Part, sufficient evidence, until the contrary is shown, of the facts stated therein, without proof of any signature on it or that the signatory was the proper person to sign it.

Defences.

108.—(1) In a prosecution of a safety critical worker for an offence under *section 100* for refusing or failing to comply with a requirement to provide 2 specimens of his or her breath, it is a defence for the defendant to satisfy the court that there was a special and substantial reason for his or her refusal or failure and that, as soon as practicable after the refusal or failure concerned, he or she complied (or offered, but was not called upon, to comply) with a requirement under the section concerned in relation to the taking of a specimen of blood or the provision of a specimen of urine.

(2) In a prosecution of a safety critical worker for an offence under *section 100* or *101* for refusing or failing to comply with a requirement to permit a designated medical practitioner to take a specimen of blood or for refusing or failing to comply with a requirement of a designated medical practitioner in relation to the taking of a specimen of blood, it is a defence for the defendant to satisfy the court that there was a special and substantial reason for his or her refusal or failure and that, as soon as practicable after the refusal or failure concerned, he or she complied (or offered, but was not called upon, to comply) with a requirement under the section concerned in relation to the provision of a specimen of urine.

(3) Notwithstanding *subsections (1) and (2)*, evidence may be given at the hearing of a charge of an offence under *section 97* that the defendant refused or failed to comply with a requirement to provide 2 specimens of his or her breath, or that the defendant refused or failed to comply with a requirement to permit the taking of a specimen of his or her blood or to comply with a requirement of a designated medical practitioner in relation to the taking of a specimen of blood, as the case may be.

(4) It is not a defence for a person charged with an offence under *section 97* to show that, in relation to the facts alleged to constitute the offence, an analysis or determination under this Chapter, has not been carried out or that he or she has not been requested under *section 98* to provide a specimen of his or her breath.

Penalties.

109.—A person guilty of an offence under this Chapter (other than *section 103(4)*) is liable on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months, or to both.

Annotations**Editorial Notes:**

- E93** A fine of €5,000 translates into a class A fine, not greater than €5,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 4(2) and table ref. no. 1, S.I. No. 662 of 2010.

Chapter 3

Carelessly or dangerously working or working while unfit, on railway

Careless working
on railway.

110.—(1) A safety critical worker shall not perform a safety critical task on railway property or in a public place without taking due care and attention.

(2) A person who contravenes *subsection (1)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €2,500 or to imprisonment for a term not exceeding 3 months, or to both.

Annotations**Editorial Notes:**

- E94** A fine of €2,500 translates into a class C fine, not greater than €2,500, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 6(2) and table ref. no. 1, S.I. No. 662 of 2010.

Dangerous
working on
railway.

111.—(1) A safety critical worker shall not perform a safety critical task in a manner which, having regard to all the circumstances of the case, is dangerous to the safety of persons or poses an unreasonable risk of harm to persons.

(2) A person, being a supervisor, manager, director or secretary of a F127[railway organisation], shall not instruct a safety critical worker to perform a safety critical task in a manner that may cause that worker to contravene *subsection (1)*.

(3) A person who contravenes *subsection (1)* or (2) is guilty of an offence and is liable—

(a) on conviction on indictment to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 5 years, or to both, or

(b) on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months, or to both.

(4) In proceedings for an offence under *subsection (3)*, it shall be a defence for the person against whom such proceedings are brought to prove that the safety critical task—

(a) in respect of a contravention of *subsection (1)*, was performed, or

(b) in respect of a contravention of *subsection (2)*, was instructed to be performed,

in accordance with written rules or procedures of the F127[railway organisation] concerned, where those rules or procedures specify the manner in which that task should be performed.

(5) Where, when a person is tried on indictment or summarily for an offence under this section, the jury, or, in the case of a summary trial the District Court, is of the opinion that he or she was not guilty of an offence under this section but was guilty of an offence under *section 110*, the jury or court may find him or her guilty of an offence under *section 110* and he or she may be sentenced accordingly.

(6) Where a member of the Garda Síochána is of the opinion that a person has committed an offence under this section causing loss of life or serious personal injury to another person, the member may arrest the person without warrant.

Annotations

Amendments:

F127 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Editorial Notes:

E95 A fine of €5,000 translates into a class A fine, not greater than €5,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 4(2) and table ref. no. 1, S.I. No. 662 of 2010.

Medical fitness
for duty.

112.—(1) A F128[railway organisation] may require a safety critical worker to undergo an assessment by a medical practitioner, nominated by the undertaking, of his or her fitness to perform a safety critical task and such person shall co-operate with such medical assessment.

(2) F128[railway organisation]s shall ensure that safety critical workers undergo assessment by a medical practitioner of their fitness to perform safety critical tasks.

(3) Where, following an assessment under *subsection (1)*, a medical practitioner is of the opinion that a safety critical worker is unfit to perform a safety critical task, he or she shall notify the F128[railway organisation] concerned, by the quickest practicable means, of that opinion and shall inform the safety critical worker of that opinion and the reasons for that opinion.

(4) If a safety critical worker becomes aware that he or she is suffering from any disease or physical or mental impairment which, should he or she perform a safety critical task, would be likely to cause him or her to expose a person to danger or risk of danger, he or she shall immediately notify the F128[railway organisation] concerned.

(5) Where a F128[railway organisation] receives a notification under *subsection (3)* or *(4)*, it shall not permit the safety critical worker concerned to perform a safety critical task until such time as an assessment under *subsection (1)* confirms that he or she is fit to so perform that task.

(6) The Commission may, with the consent of the Minister, and after consultation with F128[railway organisation]s, organisations which represent staff of F128[railway organisation]s, the Medical Council, the Health and Safety Authority and such other persons as in the opinion of the Commission may be relevant, make regulations in relation to all or any of the following—

(a) the nature of a medical assessment under *subsection (1)* and the matters that shall be assessed, or

(b) the frequency of an assessment under *subsection (2)*.

(7) The Commission may, after consultation with F128[railway organisation]s, organisations which represent staff of F128[railway organisation]s, the Medical Council, the Equality Authority, the Health and Safety Authority and such other persons as in the opinion of the Commission may be relevant, publish guidelines in relation to the types of disease or physical or mental impairment which may require notification by a safety critical worker to a F128[railway organisation] under *subsection (4)*.

(8) On each occasion that a safety critical worker attends his or her medical practitioner, he or she shall inform that medical practitioner of his or her position as a safety critical worker.

Annotations**Amendments:**

- F128** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Modifications (not altering text):

- C26** References to “the Equality Authority” construed (1.11.2014, establishment day) by *Irish Human Rights and Equality Commission Act 2014* (25/2014), s. 44(2), S.I. Nos. 449 and 450 of 2014.

Transfer of functions to Commission

44. ...

(2) References in any enactment or instrument under an enactment to the Human Rights Commission or the Equality Authority, as the case may be (howsoever described) shall be construed as references to the Commission save where other provision is made as respects the construction of the first-mentioned references by any enactment passed before the passing of this Act.

...

- C27** References to “the Medical Council” and “the Medical Registration Council” construed (1.05.2010) by *Medical Practitioners Act 2007* (25/2007), s. 108(3), S.I. No. 150 of 2010.

Construction of references to registered medical practitioner and Medical Council, etc.

108.— ...

(3) Every reference to—

(a) the Medical Council, or

(b) the Medical Registration Council,

contained in any other enactment or any statutory instrument shall be construed as the Council within the meaning of *section 2*.

Editorial Notes:

- E96** The undertaking referred to in subs. (1) appears to be a reference to a railway organisation in accordance with *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d), which provided for the substitution of “railway organisation” for “railway undertaking” in numerous sections including this one.

PART 11**WORKS BY ROAD AUTHORITIES, ETC.**

Works on public roads in the vicinity of railway infrastructure.

113.—(1) A person (other than a road authority or a person acting under contract on behalf of a road authority) shall not commence or carry out any works on a public road in the vicinity of railway infrastructure where such works may, in his or her reasonable opinion having regard to any guidelines published by the Commission under *subsection (4)*, affect the safe operation of that infrastructure without obtaining the prior written consent of the road authority concerned, and subject to any conditions contained in such consent.

(2) Before giving its consent under *subsection (1)*, a road authority shall notify the F129[railway organisation] concerned of the proposed works and shall consider any objections or representations, made to it in writing within 21 days of notification, by the F129[railway organisation] concerning the proposed works.

(3) A road authority shall, before it commences or authorises a person to commence under contract on its behalf, any works on a public road in the vicinity of a railway

infrastructure which may, in its reasonable opinion having regard to any guidelines published by the Commission under *subsection (4)*, affect the safe operation of the infrastructure, notify the F129[railway organisation] concerned of its intention and shall consider any objections or representations, made to it in writing within 21 days of notification, by the undertaking concerning the intended works.

(4) The Commission may, after consultation with the Minister, the Minister for the Environment, Heritage and Local Government and the National Roads Authority, publish guidelines in relation to any works on a public road in the vicinity of railway infrastructure which may affect the safe operation of the railway infrastructure.

(5) Nothing in this section shall prevent a road authority or other person from carrying out works in advance of a requirement under this section where such works are necessary to eliminate or reduce an immediate danger or risk to persons or property.

(6) Where works are carried out in accordance with *subsection (5)*, the road authority or person concerned shall, as soon as practicable after the commencement of such works, comply with the requirements of this section.

(7) A person who carries out any works on a public road in the vicinity of a railway infrastructure shall take all reasonable steps to ensure that the works do not affect the safe operation of the infrastructure.

(8) A person who is for the time being responsible for works completed on a public road in the vicinity of a railway infrastructure shall take all reasonable steps to ensure that the works do not affect the safe operation of that infrastructure.

(9) A person who contravenes this section is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding €3,000, or

(b) on conviction on indictment, to a fine not exceeding €500,000.

(10) In this section, “works” includes, but may not be limited to—

(a) in the case of a public road — road excavation or resurfacing, road widening or narrowing, signage, road markings, traffic signalling and protective barriers in the vicinity of railway infrastructure, a railway level crossing or a road over or under a railway or a road tunnel, and

(b) in the case of a F129[railway organisation]— new works under *section 42(15)*.

Annotations

Amendments:

F129 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Editorial Notes:

E97 A fine of €3,000 translates into a class B fine, not greater than €4,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 5(2) and table ref. no. 1, S.I. No. 662 of 2010.

E98 The undertaking referred to in subs. (3) appears to be a reference to a railway organisation in accordance with *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d), which provided for the substitution of “railway organisation” for “railway undertaking” in numerous sections including this one.

GENERAL ENFORCEMENT AND OFFENCE PROVISIONS RELATING TO RAILWAY SAFETY AND
CONDUCT OF PERSONS ON RAILWAYS

Unlawful use of
railway.

114.—A person who uses or attempts to use a train or other mechanically propelled vehicle on a railway, other than a light railway (within the meaning of [the Transport \(Railway Infrastructure\) Act 2001](#)) without the express consent of the F130[railway organisation] concerned, is guilty of an offence and is liable on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months or to both.

Annotations

Amendments:

F130 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Editorial Notes:

E99 A fine of €5,000 translates into a class A fine, not greater than €5,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 4(2) and table ref. no. 1, S.I. No. 662 of 2010.

Deliberate or
wanton damage
to railway.

115.—A person who deliberately or wantonly causes or attempts to cause damage to any railway property is guilty of an offence.

Obligation to
notify danger
caused to
railway.

116.—(1) A person who causes a hazard or risk to persons by accidentally or negligently causing any structure, vehicle, or other matter or thing to come to lie on railway infrastructure, or to over-hang or protrude into the operational area above or adjacent to railway infrastructure, shall immediately notify the F131[railway organisation] concerned or a member of the Garda Síochána.

(2) A person who, without reasonable excuse, contravenes *subsection (1)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €5,000, or to imprisonment for a term not exceeding 3 months, or to both.

Annotations

Amendments:

F131 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Editorial Notes:

E100 A fine of €5,000 translates into a class A fine, not greater than €5,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 4(2) and table ref. no. 1, S.I. No. 662 of 2010.

Obligation not to
expose person to
danger on
railway.

117.—A person who deliberately or wantonly exposes another to danger on railway property is guilty of an offence.

Unlawful use of system of communication between passengers and train drivers.

118.—Where a F132[railway organisation] provides an emergency cord or other system of emergency communication between the passengers and the driver of a train, any person who uses that cord or system without reasonable and sufficient cause is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 1 month, or to both.

Annotations

Amendments:

F132 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Editorial Notes:

E101 A fine of €3,000 translates into a class B fine, not greater than €4,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 5(2) and table ref. no. 1, S.I. No. 662 of 2010.

Attempting to obstruct, damage or derail a train, etc.

119.—A person who, without lawful authority, deliberately or maliciously—

(a) puts, places, casts or throws upon any railway property or across any railway track any wood, stone, vehicle or other matter or thing,

(b) takes up, removes or displaces any rail, sleeper, or other matter or thing belonging to a F133[railway organisation], or

(c) turns, moves or diverts any points, signals or other plant or machinery belonging to a F133[railway organisation],

to obstruct, damage or derail a train or to injure persons present on, using or working on railway property is guilty of an offence.

Annotations

Amendments:

F133 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Penalty.

120.—A person guilty of an offence under *section 115*, 117 or 119 is liable—

(a) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 3 years or to both,

(b) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 3 months, or to both.

Annotations

Editorial Notes:

E102 A fine of €5,000 translates into a class A fine, not greater than €5,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 4(2) and table ref. no. 1, S.I. No. 662 of 2010.

Power to arrest
by member of
Garda Síochána.

121.—A member of the Garda Síochána may arrest a person without warrant where the member reasonably suspects that the person is committing or has committed an offence under—

- (a) section 59(1) of [the Transport Act 1950](#),
- (b) section 25(1) of [the Transport \(Miscellaneous Provisions\) Act 1971](#), or
- (c) this Part.

PART 13

PROCEDURAL

Prosecution of
summary
offences.

122.—(1) Proceedings for an offence under this Act may be brought and prosecuted summarily by the Commission.

(2) F134[...]

(3) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for any offence under this Act may be instituted at any time within 2 years after the date of the offence.

Annotations

Amendments:

F134 Deleted (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 21(1)(l), in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Offences by
bodies corporate.

123.—Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate or a person who was purporting to act in any such capacity, that person as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Cost of
prosecutions.

124.—Where a person is convicted of an offence under this Act, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order that person to pay to the Commission the costs and expenses, measured by the court, incurred by the Commission in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of employees or persons engaged by the Commission.

Service of
notices, etc.

125.—(1) Where a notice, notification or direction is required under this Act to be given to or served on a person, the notice or direction shall be in writing and shall be addressed to that person and shall be given to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or carries on business;

- (c) by sending it by post in a pre-paid registered letter or by any other form of recorded delivery service, addressed to the person at the address at which the person ordinarily resides or carries on business;
- (d) if an address for the service of notices, notifications or directions has been furnished by the person, by leaving it at, or sending it by pre-paid registered post or by any other form of recorded delivery service addressed to the person to, that address;
- (e) in any case where the Commission considers that the immediate giving of the notice, notification or direction is required, by sending it, by means of a facsimile machine or electronic mail, to a device or facility for the reception of facsimiles or electronic mail located at the address at which the person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the sender's—
 - (i) facsimile machine generates a message confirming successful transmission of the total number of pages of the notice, or
 - (ii) facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail.

(2) For the purposes of this section, a company registered under the Companies Acts 1963 to 2005, shall be deemed to be ordinarily resident at its registered office and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

F135[Disclosure of records.

126. (1) The Investigation Unit, the Commission, a railway organisation or any other person concerned with the conduct of an investigation under *section 53*, an investigation under the Regulations of 2014 or with an inquiry under *section 64* shall not disclose the following records to any other party for purposes other than such investigation or inquiry—

- (a) statements taken by an investigator, inspector, railway organisation or other person in the course of the investigation or inquiry,
- (b) medical or private information regarding persons involved in the accident or incident which is the subject of the investigation or inquiry,
- (c) voice or video recordings or transcripts of such recordings, data recordings or output from such recordings which are not relevant to the investigation or inquiry,
- (d) opinions expressed in the analysis of information, and
- (e) observations submitted to the Investigation Unit in accordance with Regulation 9(2)(c) of the Regulations of 2014 where the person who has submitted the observations so requests.

(2) Notwithstanding *subsection (1)*, the Commission or tribunal may disclose a particular record where it considers, in respect of the particular record, that the probable benefits to the public interest from such disclosure would outweigh any adverse impact of such disclosure on that investigation or inquiry or on any future investigation by the Commission, or railway organisation or an inquiry by a tribunal.

(3) *Subsection (1)* shall not preclude the Investigation Unit, the Commission, a railway organisation or a tribunal from including such records in a report under the Regulations of 2014, under *section 10*, *section 53* or *section 64*, respectively, where the information is pertinent to the analysis of the cause of an accident or incident or the recommendations arising from the investigation of or inquiry into such accident or incident.

(4) Any record, other than a record under *subsection (1)*, held by the Commission or a tribunal in the course of an investigation or inquiry shall not be made available by the Commission or tribunal to any other party except for the purposes of an investigation or inquiry until after the day of publication of a report by the Investigation Unit under Regulation 9(1) of the Regulations of 2014 or the finalisation of a report under *section 53* unless the Commission or tribunal as the case may be deems it appropriate in the public interest to do so.

(5) Information specified in *subsection (1)* shall—

- (a) where held by a railway organisation, be provided to the Commission or a tribunal on receipt of a request from the Commission or tribunal, and
- (b) where held by the Commission or a tribunal in relation to an investigation or inquiry relating to an international service, and where the Commission or the tribunal considers that there is benefit in so doing, be provided on receipt of a request from a relevant competent authority in another state, to such authority.

(6) In this section, “tribunal” means a tribunal of inquiry under *section 64*.]

Annotations

Amendments:

- F135** Substituted (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 21(1)(m), in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Modifications (not altering text):

- C28** References to “Investigation Unit” construed (1.07.2014) by *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014), reg. 20(b), in effect as per reg. 4(11) and notice in *Iris Oifigiúil* of 24 June 2014, p. 937.

Application of Act of 2005

20. On and from the appointed day— ...

- (b) reference to Investigation Unit in each place it occurs in sections 2, 64, 65, 66, 89 and 126 of the Act of 2005 and any reference in any enactment to the Railway Accident Investigation Unit established under section 55 of the Act of 2005 is to be read as a reference to the Investigation Unit established under Regulation 4,

...

Editorial Notes:

- E103** Previous affecting provision: section amended (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d); substituted as per F-note above.

PART 14

PROVISIONS RELATING TO CÓRAS IOMPAIR ÉIREANN

Compulsory acquisition of land.

127.—Section 17 of the Transport Act 1950 is amended by substituting for subsections (1) and (2) the following:

“(1) The Minister may, if and whenever he or she thinks fit, on the application of the Board, by order (‘Acquisition Order’) authorise the Board for the purpose

of the exercise of its powers and duties or of the powers and duties of any of its subsidiary companies to—

- (a) acquire compulsorily such land as may be specified in the order, or
- (b) close, stop up, remove, alter, divert or restrict an existing means of crossing a railway as may be specified in the order.

(2) An Acquisition Order—

- (a) shall provide for the payment of compensation by the Board to the several persons having estates or interests in the land to which the order relates,
 - (b) shall provide that any question of disputed compensation shall be determined, subject to subsection (2A), under and in accordance with the Acquisition of Land (Assessment of Compensation) Act 1919 and, for this purpose, the Board is deemed to be a public authority within the meaning of that Act, and
 - (c) may incorporate all or any of the provisions of the Land Clauses Acts, with such modifications and adaptations as the Minister thinks proper.
- (2A) An official arbitrator appointed under section 1 of the Acquisition of Land (Assessment of Compensation) Act 1919 shall—

- (a) in assessing compensation for the closure, stopping up, removal, alteration or restriction of an existing means of crossing the railway, have regard to any new means of access provided by the Board to affected lands and where appropriate to any existing means of access (where restricted or otherwise) that remains, and
- (b) have jurisdiction to make a nil award.”.

Matters relating
to bye-laws, etc.

128.—The Transport Act 1950 is amended—

(a) F136[...]

(b) in section 22—

(i) by inserting after paragraph (e) of subsection (1) the following:

“(ee) for matters relating to the use and parking of vehicles on land belonging to or occupied by the Board including—

- (i) the regulation of traffic generally, including, parking restrictions, direction of traffic and the maximum speed of traffic on such land,
- (ii) the making of provision for the fixing of an immobilisation device to any vehicle which has been unlawfully parked in any place on such land, and
- (iii) the regulation of small public service vehicles (within the meaning of section 3 of the Road Traffic Act 1961) at railways or the approaches thereto;”,

and

(ii) by substituting for subsection (4) (as amended by section 6 of the Transport Act 1987) the following:

“(4) Where a person contravenes a provision of bye-laws made under this section which is stated in the bye-laws to be a penal provision, he or

she is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,000.

(4A) The liability of an offender to a penalty under subsection (4) of this section does not prejudice the recovery of any fare, tariff or fee payable by him or her to the Board for any damage caused by him or her to property of the Board.

(4B) An offence under subsection (4) of this section may be prosecuted by the Board.”

and

(c) in section 59, by substituting for subsection (1) (as amended by [section 7 of the Transport Act 1987](#)) the following:

“(1) A person who trespasses on any of the railways of or worked by the Board is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,000.”.

Annotations

Amendments:

F136 Deleted (1.08.2008) by *Dublin Transport Authority Act 2008* (15/2008), s. 111(2), S.I. No. 291 of 2008.

Powers of authorised officers.

129.—The following section is inserted after [section 22 of the Transport Act 1950](#):

“22A.—(1) If an authorised officer reasonably suspects that a person—

- (a) is contravening or has contravened or is failing or has failed to comply with a provision of bye-laws made under section 22 of this Act which is stated in the bye-laws to be a penal provision,
- (b) is committing or has committed an offence under section 59(1) of this Act, [section 25 of the Transport \(Miscellaneous Provisions\) Act 1971](#), or [section 118](#) or [132](#) of the *Railway Safety Act 2005*,
- (c) is assaulting or has assaulted or is causing or has caused deliberate harm to another on railway property,
- (d) is causing or has caused wanton or deliberate damage to railway property,
- (e) is obstructing or has obstructed or is impeding or has impeded an authorised officer in the exercise of his or her duties under this section or any provision of bye-laws made under section 22 of this Act which is stated in the bye-laws to be a penal provision,
- (f) on any railway property is intoxicated or is committing or has committed an offence under [section 15 of the Misuse of Drugs Act 1977](#), or
- (g) if requested by an authorised officer to cease such contravention or action or to so comply, fails to comply with the request,

he or she may—

- (i) using such reasonable force as the circumstances require, remove or escort the person from the railway property or any part of it,
- (ii) in circumstances where the officer considers it to be justified, arrest the person without warrant, or

- (iii) require the person to give his or her name and address and, if the person fails or refuses to do so or gives a name that the authorised officer reasonably suspects is false or misleading may arrest that person without warrant,

and, if he or she is not a member of the Garda Síochána, deliver, as soon as practicable, the person, if arrested, into the custody of a member of the Garda Síochána to be dealt with according to law.

(2) A person who fails or refuses to give his or her name or address when required under subsection (1) of this section, or gives a name or address which is false or misleading, is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,000.

(3) The Board may appoint such and so many persons as it considers necessary to be authorised officers for the purposes of this section or any provision of bye-laws made under section 22 of this Act which is stated in the bye-laws to be a penal provision.

(4) An authorised officer, who is not a member of the Garda Síochána, is not entitled to exercise a power under this section unless he or she has received training and instruction, which, in the opinion of the Board is such as will provide guidance to him or her in the exercise of the power.

(5) The Board shall endorse on the warrant it furnishes to an authorised officer under subsection (6) of this section a statement to the effect that the officer has received the training and instruction referred to in subsection (4) of this section.

(6) An authorised officer, who is not a member of the Garda Síochána, shall, on his or her appointment under this section, be furnished by the Board with a warrant of his or her appointment as an authorised officer.

(7) An authorised officer, who is not a member of the Garda Síochána, when exercising a power under this section shall be in uniform provided or authorised by the Board.

(8) The arrest of a person under this section does not prejudice the re-arrest of the person by a member of the Garda Síochána.

(9) An authorised officer, who is not a member of the Garda Síochána, may be referred to by the Board by such title as it decides.

(10) In this section—

“authorised officer” means a person appointed under this section or a member of the Garda Síochána whose attendance is requested by an authorised officer or by the Board;

“railway property” means all land, buildings, railway infrastructure (within the meaning of the *Railway Safety Act 2005*), rolling stock and vehicles within the control of the Board.

(11) In this section a reference to the committal of an offence or an act includes a reference to an attempt to commit the offence or the act.”.

Borrowing by CIE
for capital
purposes.

130.—(1) This section comes into operation on such day or days as the Minister may by order or orders appoint and different days may be so appointed for the coming into operation of different subsections.

(2) *The Transport Act 1964* is amended by substituting for section 5(2) (inserted by *section 3 of the Transport Act 1985*) the following:

“(2) The aggregate at any one time of borrowings under this section which have not been repaid shall not exceed €600,000,000.”.

(3) *The State Guarantees (Transport) Act 1962* is amended by substituting for section 2(2) (inserted by *section 4 of the Transport Act 1985*) the following:

“(2) The Minister shall not so exercise the powers conferred by subsection (1) of this section or by section 4(1) of *the Transport Act 1974*, that the amount, or the aggregate amount, of principal which he or she may at any one time be liable to pay pursuant to a guarantee or guarantees under this section or *section 4 of the Transport Act 1974* (or under both those sections), and for the time being in force, together with the amount of principal (if any) which he or she has previously paid pursuant to any such guarantees and which has not been repaid, exceeds €600,000,000.”.

Annotations

Editorial Notes:

E104 Power pursuant to section exercised (1.07.2006) by *Railway Safety Act 2005 (Section 130) (Commencement) Order 2006* (S.I. No. 347 of 2006).

2. The day appointed as the day on which section 130 of the *Railway Safety Act 2005* (No. 31 of 2005) comes into operation is 1 July 2006.

Failure to shut and fasten gates of level crossing or passage.

131.—*Section 25 of the Transport (Miscellaneous Provisions) Act 1971* is amended by substituting for subsection (1) (as amended by *section 8 of the Transport Act 1987*) the following:

“(1) Where a person fails to shut and fasten the gate of a level crossing or passage to which this section applies, as soon as he or she or any animal or vehicle under his or her care has passed through the level crossing or passage, he or she is guilty of an offence and is liable on summary conviction in respect of every such offence to a fine not exceeding €1,000.”.

PART 15

FARE EVASION AND FIXED PAYMENT NOTICES

Penalty for avoiding payment of fare.

132.—(1) Every passenger of a F137[*railway organisation*] shall, on request by an officer or employee of a F137[*railway organisation*], produce, and if so requested, deliver up to the officer or employee a ticket showing that his or her fare is paid and, if the fare has not been paid, shall upon request—

(a) pay, to the officer or employee—

(i) his or her fare from the place where he or she started the journey by railway, or

(ii) such other fare for non-payment of a fare as fixed by the undertaking, as the officer or employee decides, or

(b) give the officer or employee his or her name and address.

(2) A passenger who fails—

(a) to comply with a request under *subsection (1)* to deliver up a ticket,

(b) to pay the fare required under *subsection (1)(a)*, or

(c) to give his or her name and address, if requested under *subsection (1)(b)*,

is guilty of an offence.

(3) A passenger who—

- (a) travels or attempts to travel on a railway of a F137[railway organisation] without having previously paid his or her fare, and with intent to avoid such payment,
- (b) having paid his or her fare for a certain distance, knowingly and wilfully proceeds by train beyond that distance without previously paying the additional fare for the additional distance, and with intent to avoid such payment, or
- (c) having failed to pay his or her fare, gives in reply to a request by an officer or employee of a F137[railway organisation] a false or misleading name or address,

is guilty of an offence.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding €1,000.

(5) The liability of an offender to a penalty under this section does not prejudice the recovery of any fare payable by him or her.

Annotations

Amendments:

- F137** Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Editorial Notes:

- E105** A fine of €1,000 translates into a class D fine, not greater than €1,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 7(2) and table ref. no. 1, S.I. No. 662 of 2010.
- E106** The undertaking referred to in subs. (1)(a)(ii) appears to be a reference to a railway organisation in accordance with *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d), which provided for the substitution of “railway organisation” for “railway undertaking” in numerous sections including this one.

Fixed payment notice.

133.—(1) Where an authorised officer has reasonable grounds for believing that a person is committing or has committed an offence under section 22(4), 22A(2) or 59(1) of *the Transport Act 1950*, section 25(1) of *the Transport (Miscellaneous Provisions) Act 1971*, or *section 118* or 132, he or she may serve the person with a notice (“fixed payment notice”) in the prescribed form stating that—

- (a) the person is alleged to have committed the offence,
- (b) the person may during the period of 21 days beginning on the date of the notice make to the F138[railway organisation] concerned at the address specified in the notice a payment of €100, or in lieu of that amount such other amount standing specified for the time being in regulations, accompanied by the notice, and
- (c) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.

(2) Where a fixed payment notice is given under *subsection (1)*—

- (a) a person to whom the notice applies may, during the period specified in the notice, make to the F138[railway organisation] concerned at the address specified in the notice the payment specified in the notice accompanied by the notice,
- (b) the F138[railway organisation] concerned may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstances by the person who made it, and
- (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence shall be instituted.

(3) In a prosecution for an offence under this Act the onus of proving that a payment pursuant to a notice under this section has been made shall lie on the defendant.

(4) A F138[railway organisation] may appoint such and so many persons as it considers necessary to be authorised officers for the purpose of *subsection (1)* generally or for specified purposes.

(5) In this section—

“authorised officer” includes in relation to an offence under section 22(4), 22A(2) or 59(1) of *the Transport Act 1950*, section 25(1) of *the Transport (Miscellaneous Provisions) Act 1971* or *section 118* or 132 and in relation to railway property belonging to or under the control of Corás Iompair Éireann, an authorised officer appointed under section 22A (inserted by *section 129*) of *the Transport Act 1950*;

“prescribed” means prescribed by regulations made by the Minister.

Annotations

Amendments:

F138 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Editorial Notes:

E107 Power pursuant to section exercised (16.11.2006) by *Railway Safety Act 2005 (Fixed Payment Notice) Regulations 2006* (S.I. No. 576 of 2006).

PART 16

LIGHT RAILWAY AND METRO

Amendment of
Transport
(Railway
Infrastructure)
Act 2001.

134.—(1) The following sections are substituted for *section 66 of the Transport (Railway Infrastructure) Act 2001*:

“Bye-laws.

66.—(1) Bye-laws may be made—

(a) by the Agency, in relation to a railway, or

(b) with the consent of the Agency, by a F139[railway organisation] in relation to a railway it operates or under its control,

in relation to any one or more of the following matters—

- (i) the general regulation, subject to any statutory provisions in that behalf, of—
 - (I) the travelling upon or use of a railway, (including a requirement to travel with a valid ticket or pass and the issue of such), or
 - (II) the working of railway transport services by a F139[railway organisation],
- (ii) the prevention of the commission of nuisances in or upon a railway,
- (iii) the prevention of damage to railway infrastructure,
- (iv) the removal from or the prohibition of the use on a railway of any vehicle or thing which is or may become a danger to life, health, the operation or maintenance of a railway or would otherwise interfere with the proper operation of a railway,
- (v) the regulation of parking of vehicles on or adjacent to a railway,
- (vi) the safe custody and return or disposal of any property found on a railway,
- (vii) the repair, improvement, extension and development of a railway,
- (viii) subject to any statutory provisions in that behalf, the regulation of works that would affect the operation or maintenance of a railway or would otherwise interfere with the proper operation of a railway.

(2) Bye-laws under this section may contain such incidental, subsidiary and ancillary provisions as the Agency or the F139[railway organisation] making the bye-laws, considers necessary or expedient for the purposes of the bye-laws.

(3) The Agency, or, as the case may be, a F139[railway organisation] may provide for reasonable charges in respect of matters provided for in bye-laws made by it under this section.

(4) Whenever, after the passing of the *Railway Safety Act 2005*, the Agency or a F139[railway organisation] proposes to make bye-laws under this section, the following provisions have effect—

- (a) the Agency or the undertaking, as the case may be, shall publish notice of the proposal at least once in at least 2 daily newspapers published in and circulating in the State or the area to which the bye-laws relate,
- (b) the notice shall include—
 - (i) a statement of the purposes for which the bye-laws are to be made,
 - (ii) an intimation that a copy of draft bye-laws is open for public inspection at the principal offices in the State of the Agency or the undertaking, as the case may be,
 - (iii) an intimation that any person may submit to the Agency or the undertaking, as the case may be, objections to

the draft bye-laws at any time during the period of 30 days commencing on the date of the first publication of the notice,

- (c) the Agency or the undertaking, as the case may be, shall, during that period of 30 days, keep a copy of the draft bye-laws open for public inspection during ordinary office hours at its principal offices,
- (d) any person who objects to the draft bye-laws may submit his or her objection to the Agency or the undertaking, as the case may be, in writing at any time during that period of 30 days and the Agency or the undertaking, as the case may be, shall consider the objections, and
- (e) on the completion of that period of 30 days, the Agency or the undertaking, as the case may be, shall as it thinks proper, refrain from making the bye-laws or make the bye-laws either without modification or with modification as it thinks proper.

(5) Such details of bye-laws under this section shall be displayed on a railway, where practicable, in conspicuous places in such manner as—

- (a) the Agency, where the bye-laws are made by it, or
- (b) a F139[railway organisation], where the bye-laws are made by it, subject to any general direction of the Agency,

considers best adapted for giving information to the public. The absence of any such display is not a defence to a contravention of or failure to comply with such bye-laws.

(6) Bye-laws under this section shall not be made without the consent of the Minister.

(7) Every bye-law made under this section, after the passing of the *Railway Safety Act 2005*, shall be laid, where they are made by the Agency, by the Agency and where they are made by a F139[railway organisation], by the F139[railway organisation], before each House of the Oireachtas, as soon as may be after it is made and, if a resolution annulling the bye-law is passed by either such House within the next 21 days on which that House has sat after the bye-law is laid before it, the bye-law shall be annulled accordingly, but without prejudice to anything previously done under it.

(8) A person who contravenes or fails to comply with a bye-law under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,000.

(9) The liability of an offender to a fine under subsection (8) does not prejudice the recovery of any fare, tariff or fee payable by him or her to the Agency or a F139[railway organisation] for any damage caused by him or her to property of the Agency or a F139[railway organisation].

Immobilisation,
removal, etc. of
unlawfully
parked vehicles.

66A.—(1) Where an authorised officer finds on or adjacent to a railway a vehicle which he or she believes—

- (a) is parked in contravention of bye-laws made under section 66,

(b) is or may become a danger or a nuisance to persons, or

(c) would otherwise interfere with the proper operation of a railway,

he or she or a person acting under his or her direction may—

(i) fix an immobilisation device to the vehicle while it remains in the place where he or she finds it, or

(ii) move it from the place where he or she finds it (whether or not he or she has fixed an immobilisation device to it) to another place and, if he or she considers it necessary, fix an immobilisation device to it in that other place.

(2) When fixing an immobilisation device to a vehicle, there shall also be affixed to the vehicle a notice in the prescribed form—

(a) indicating that the device has been fixed to the vehicle and warning that an attempt should not be made to drive it or otherwise put it in motion until the device is removed,

(b) specifying the steps to be taken to secure such removal, and

(c) giving such other information (if any) as may be prescribed.

(3) Subject to subsection (4), an immobilisation device that has been fixed to a vehicle under this section may be removed only by an authorised person or a person acting under his or her direction.

(4) (a) An immobilisation device fixed to a vehicle under this section shall be removed or a vehicle moved under this section shall be released, only—

(i) if the person seeking its removal or release shows to the satisfaction of an authorised person that he or she, is the owner of the vehicle or is authorised by its owner to seek such removal or release and pays the prescribed charge,

(ii) for the purpose of the removal of the vehicle under section 97 of the Act of 1961, or

(iii) for the purpose of moving the vehicle under subsection (1).

(b) Where the owner of a vehicle which has been moved or to which an immobilisation device has been fixed under this section shows to the satisfaction of an authorised officer that the vehicle was parked while being used by a person other than the owner and that such use was not authorised by the owner, the authorised officer shall waive the prescribed charge and he or she or a person acting under his or her direction shall remove the immobilisation device from or release the vehicle.

(c) An immobilisation device fixed to a vehicle under this section shall be removed from it or a vehicle moved under this section shall be released, as soon as is reasonably practicable, after the payment of the prescribed charge or after the waiver of such charge, as the case may be.

(5) A notice affixed to a vehicle under this section shall not be removed or interfered with by a person other than the owner of

the vehicle or a person authorised by such owner to use the vehicle and a person who contravenes this subsection is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,000.

(6) Charges may be prescribed for the purposes of this section for the removal of an immobilisation device or the release of a vehicle.

(7) A person who—

- (a) obstructs or impedes an authorised officer, or a person acting under his or her direction, in the performance of his or her duties under this section, or
- (b) without being authorised to do so under this section, removes or attempts to remove from a vehicle an immobilisation device fixed to it under this section,

is guilty of an offence and is liable on summary conviction to a fine not exceeding €2,000.

(8) An immobilisation device shall not be fixed under this section to an ambulance, a fire brigade vehicle or any vehicle used by a member of the Garda Síochána or the Defence Forces, in the performance of his or her duties, in an emergency situation.

(9) In this section—

‘immobilisation device’ means any device or appliance designed or adapted for fixing to a vehicle for the purpose of preventing it from being driven or otherwise put in motion;

‘prescribed’ means prescribed in regulations made by the Agency with the consent of the Minister;

‘vehicle’ has the same meaning as in the Act of 1961.

Powers
authorised
officers.

of 66B.—(1) If an authorised officer reasonably suspects that a person—

- (a) is contravening or has contravened or is failing or has failed to comply with a bye-law made under section 66,
- (b) is committing or has committed on a railway an offence under section 64 or 65,
- (c) is assaulting or has assaulted or is causing or has caused deliberate harm to another on a railway,
- (d) is causing or has caused wanton or deliberate damage to railway infrastructure,
- (e) has contravened *section 118* or *132* of the *Railway Safety Act 2005*,
- (f) is obstructing or has obstructed or is impeding or has impeded an authorised officer in the exercise of his or her duties under this section, section 66A, 66C, or under any bye-law made under section 66,
- (g) on any railway is intoxicated or is committing or has committed an offence under *section 15 of the Misuse of Drugs Act 1977*, or

- (h) if requested by an authorised officer to cease such contravention or action or to so comply, fails to comply with the request,

he or she may—

- (i) using such reasonable force as the circumstances require, remove or escort the person from the railway or any part of it,
- (ii) in circumstances where the authorised officer considers it to be justified, arrest the person without warrant, or
- (iii) require the person to give his or her name and address and, if the person fails or refuses to do so or gives a name that the authorised officer reasonably suspects is false or misleading, arrest that person without warrant,

and, if he or she is not a member of the Garda Síochána, deliver, as soon as practicable, the person, if arrested, into the custody of a member of the Garda Síochána to be dealt with according to law.

(2) A person who fails or refuses to give his or her name or address when required under subsection (1), or gives a name or address which is false or misleading, is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,000.

(3) The Agency, or a F139[railway organisation] with the consent of the Agency, may appoint such and so many persons as it considers necessary to be authorised officers for the purposes of this section, section 66A, 66C or any bye-law made under section 66.

(4) An authorised officer, who is not a member of the Garda Síochána, is not entitled to exercise a power under this section unless he or she has received training and instruction, which, in the opinion of the Agency is such as will provide guidance to him or her in the exercise of the power.

(5) The Agency or a F139[railway organisation], as the case may be, shall endorse on the warrant it furnishes to an authorised officer under subsection (6) a statement to the effect that the officer has received the training and instruction referred to in subsection (4).

(6) An authorised officer, who is not a member of the Garda Síochána, shall, on his or her appointment under this section, be furnished by the Agency or a F139[railway organisation], as the case may be, with a warrant of his or her appointment as an authorised officer.

(7) An authorised officer, who is not a member of the Garda Síochána, when exercising a power under this section shall be in uniform provided or authorised—

- (a) where he or she is appointed by the Agency, by the Agency, or

- (b) where he or she is appointed by a F139[railway organisation], by the F139[railway organisation].

(8) The arrest of a person under this section does not prejudice the re-arrest of the person by a member of the Garda Síochána.

(9) An authorised officer, who is not a member of the Garda Síochána, may be referred to—

(a) where he or she is appointed by the Agency, by the Agency, or

(b) where he or she is appointed by a F139[railway organisation], by the F139[railway organisation],

by such title as it decides.

(10) In this section a reference to the committal of an offence or an act includes a reference to an attempt to commit the offence or the act.

(11) In this section 'authorised officer' means a person appointed under this section or a member of the Garda Síochána whose attendance is requested by an authorised officer or by the Agency or a F139[railway organisation].

Fixed payment
notice.

66C.—(1) Where—

(a) an authorised officer has reasonable grounds for believing that a person is committing or has committed an offence under section 64(1), 66(8) (for a contravention or failure to comply with a bye-law made under that section), 66A(5) or (6), or 66B(2) or *section 118* or 132 of the *Railway Safety Act 2005*, or

(b) a member of the Garda Síochána has reasonable grounds for believing that a person is committing or has committed an offence under section 54(5),

he or she may serve the person with a notice ('fixed payment notice') in the prescribed form stating that—

(i) the person is alleged to have committed the offence,

(ii) the person may during the period of 21 days beginning on the date of the notice make to the Agency or the F139[railway organisation] concerned, as the case may be, at the address specified in the notice a payment of €100, or in lieu of that amount such other amount standing prescribed for the time being, accompanied by the notice, and

(iii) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.

(2) Where a fixed payment notice is given under subsection (1)—

(a) a person to whom the notice applies may, during the period specified in the notice, make to the Agency or the F139[railway organisation] concerned, as the case may be, at the address specified in the notice the payment specified in it and accompanied by the notice,

(b) the Agency or the F139[railway organisation] concerned may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstances by the person who made it, and

(c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence shall be instituted.

(3) In a prosecution for an offence under this Act the onus of proving that a payment pursuant to a notice under this section has been made lies on the defendant.

(4) In this section ‘prescribed’ means prescribed in regulations made by the Minister.”.

(2) Any bye-law made under [section 66 of the Transport \(Railway Infrastructure\) Act 2001](#), which is in force immediately before the passing of this Act, continues in force as if made under section 66, inserted by *subsection (1)*.

Annotations

Amendments:

F139 Substituted (25.11.2013) by *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d).

Editorial Notes:

E108 The undertaking referred to in the substituted s. 66(4)(a), (b)(ii) and (iii), (c), (d) and (e) appears to be a reference to a railway organisation in accordance with *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013), reg. 20(1)(d), which provided for the substitution of “railway organisation” for “railway undertaking” in numerous sections including this one.

Increase of fines. **135.**—Parts 4 and 5 of [the Transport \(Railway Infrastructure\) Act 2001](#) are amended by substituting in—

(a) section 54(6), “€1,600” for “€600 (£472.4)”,

(b) section 56(2), “€5,000” for “€2,500 (£1,968.91)”,

(c) section 59(3), “€1,600” for “€600 (£472.54)”,

(d) section 60(4), €5,000” for “€2,000 (£1,575.13)”,

(e) section 63(3), “€5,000” for “€2,000 (£1,575.13)”,

(f) section 64(1), “€1,600” for “€600 (£472.54)”,

(g) section 65, “€5,000” for “€2,000 (£1,575.13)”, and

(h) section 67(2), “€1,600” for “€600 (£472.54)”.

Amendment of timeframe for submissions on railway order.

136.—[Section 40 of the Transport \(Railway Infrastructure\) Act 2001](#) is amended by substituting for paragraph (iv) of subsection (1)(b) the following:

“(iv) stating that the Minister will consider any submissions in relation to the proposed order or in relation to the likely effects on the environment of the proposed railway works which are submitted in writing to him or her by any person not later than 30 days after the end of the period specified in the notice referred to in subparagraph (ii), and”.

PART 17

ROAD TRAFFIC — BRIDGE STRIKES

Collective citation
and construction
(Part 17)

137.—The Road Traffic Acts 1961 to 2004 and this Part may be cited together as the Road Traffic Acts 1961 to 2005 and shall be construed together as one.

Bridge strikes.

138.—(1) In this section “structure” means any bridge, viaduct, subway, tunnel, underpass, overpass or flyover.

(2) Where the height of a structure in a public place is indicated by means of a traffic sign, specified in regulations made under section 95(2) of the Road Traffic Act 1961, provided in accordance with those regulations on or in the vicinity of the structure, a person shall not drive or attempt to drive a mechanically propelled vehicle under the structure, where the height of the vehicle, including its load, if any, measured from the ground to its highest point is equal to or exceeds the height indicated in the traffic sign, so as to strike the structure.

(3) A person who contravenes *subsection (2)* is guilty of an offence and is liable—

(a) on conviction on indictment, to a fine not exceeding €50,000 or to imprisonment for a term not exceeding 3 years, or to both, or

(b) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months, or to both.

(4) Where a person driving a mechanically propelled vehicle referred to in *subsection (2)* strikes a structure where a traffic sign referred to in that subsection is provided and, whether or not any damage to the structure is apparent, where the person who owns or is in charge of or has use of the structure has provided in a conspicuous place a notice containing a telephone number to contact in the event of such a strike, he or she shall make such contact immediately after the occurrence of the strike. If the person is unable to make such contact immediately, he or she shall immediately notify a member of the Garda Síochána of the occurrence.

(5) A person who, without reasonable excuse, fails to comply with *subsection (4)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,000.

(6) Article 34 of the Road Traffic (Traffic and Parking) Regulations 1997 (*S.I. No. 182 of 1997*) is revoked.

(7) Part 4 of the First Schedule to the Road Traffic Act 2002 is amended by the deletion of the matter at reference number 26.

Annotations

Editorial Notes:

E109 A fine of €5,000 translates into a class A fine, not greater than €5,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 4(2) and table ref. no. 1, S.I. No. 662 of 2010.

A fine of €1,000 translates into a class D fine, not greater than €1,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 7(2) and table ref. no. 1, S.I. No. 662 of 2010.

Section 5.

SCHEDULE 1

ENACTMENTS REPEALED

Session and Chapter or Number and Year (1)	Short Title (2)	Extent of Repeal (3)
5 & 6 Vic. c. 55	Railway Regulation Act 1842	Sections 4, 5, 6 and 11
24 & 25 Vic. c. 97	Malicious Damage Act 1861	Section 35
31 & 32 Vic. c. 119	Regulation of Railways Act 1868	Section 22 and Part V
34 & 35 Vic. c. 78	Regulation of Railways Act 1871	Sections 3, 4, 5, 6, 7 (except in so far as it relates to an inquiry or investigation under section 7 which is not completed before its repeal) and 11
41 Vic. c. 20	Railway Returns (Continuous Brakes) Act 1878	The whole Act
52 & 53 Vic. c. 57	Regulation of Railways Act 1889	Sections 5 and 6
63 & 64 Vic. c. 27	Railway Employment (Prevention of Accidents) Act 1900	Section 13(2)
No. 29 of 1924	Railway Act 1924	Sections 58(2), (3), (4) and (5)
No. 19 of 1958	Transport Act 1958	Section 9
No. 14 of 1971	Transport (Miscellaneous Provisions) Act 1971	Sections 22 and 29
No. 27 of 1987	Transport Act 1987	Sections 10 and 11
No. 55 of 2001	Transport (Railway Infrastructure) Act 2001	Sections 11(1)(b), 51, 55 and 57

Section 12.

SCHEDULE 2

FUNCTIONS TRANSFERRED FROM MINISTER TO COMMISSION

PART 1

Session and Chapter or Number and Year (1)	Short Title (2)	Provisions transferred to Commission (3)
8 Vic. c. 20	Railway Clauses Consolidation Act 1845	Section 47
26 & 27 Vic. c. 92	Railway Clauses Act 1863	Section 6
31 & 32 Vic. c. 119	Regulation of Railways Act 1868	Section 22 (as amended by section 9 of the Transport Act 1987)
52 & 53 Vic. c. 57	Regulation of Railways Act 1889	Sections 1 and 2

63 & 64 Vic. c. 27	Railway Employment (Prevention of Accidents) Act 1900	Sections 1 and 2
No. 24 of 1946	Local Government Act 1946	Section 60
No. 14 of 1993	Roads Act 1993	Section 15A(a)

PART 2

Regulations 15, 16 and 17 of the European Communities (Allocation of Railway Infrastructure Capacity and Charging of Infrastructure Fees) Regulations 1999 (S.I. No. 281 of 1999).



Number 31 of 2005

RAILWAY SAFETY ACT 2005

REVISED

Updated to 14 August 2024

About this Revised Act

This Revised Act presents the text of the Act as it has been amended since it was made, and preserves the format in which it was made.

Related legislation

Road Traffic Acts 1961 to 2024: this Act is one of a group of Acts included in this collective citation, to be read together as one (*Road Traffic Act 2024* (10/2024), s. 1(3)). The Acts in the group are:

- *Road Traffic Act 1961* (24/1961)
- *Road Traffic Act 1968* (25/1968)
- *Road Traffic (Amendment) Act 1973* (15/1973) (repealed)
- *Road Traffic (Amendment) Act 1978* (19/1978) (repealed)
- *Road Traffic (Amendment) Act 1984* (16/1984)
- *Dublin Transport Authority (Dissolution) Act 1987* (34/1987), insofar as it amends the *Road Traffic Acts 1961 to 1984*
- *Road Traffic Act 1994* (7/1994)
- *Road Traffic Act 1995* (7/1995) (repealed)
- *Road Traffic Act 2002* (12/2002)
- *Road Traffic Act 2003* (37/2003) (repealed)
- *Road Traffic Act 2004* (44/2004), other than Part 6
- *Railway Safety Act 2005* (31/2005), Part 17
- *Road Traffic Act 2006* (23/2006)
- *Road Traffic and Transport Act 2006* (28/2006)
- *Roads Act 2007* (34/2007), s. 12
- *Road Traffic Act 2010* (25/2010)
- *Road Traffic Act 2011* (7/2011)
- *Road Traffic (No. 2) Act 2011* (28/2011)
- *Taxi Regulation Act 2013* (37/2013), Part 11
- *Road Traffic Act 2014* (3/2014)
- *Road Traffic (No. 2) Act 2014* (39/2014)
- *Vehicle Clamping Act 2015* (13/2015), Part 5 (citation only)
- *Public Transport Act 2016* (3/2016), s. 8
- *Road Traffic Act 2016* (21/2016)
- *Road Traffic (Amendment) Act 2018* (18/2018)
- *Civil Law (Miscellaneous Provisions) Act 2022* (19/2022), Part 7
- *Road Traffic and Roads Act 2023* (16/2023), other than Parts 3 (s. 4), 6 (ss. 7-10) and ss. 36-47
- *Road Traffic Act 2024* (10/2024)

Annotations

This Act is annotated and includes textual and non-textual amendments and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Data Protection Act 2018* (7/2018)
- *Public Transport Act 2016* (3/2016)
- *Freedom of Information Act 2014* (30/2014)
- *Irish Human Rights and Equality Commission Act 2014* (25/2014)
- *Local Government Reform Act 2014* (1/2014)
- *Ministers and Secretaries (Amendment) Act 2011* (10/2011)
- *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010)
- *Dublin Transport Authority Act 2008* (15/2008)
- *Medical Practitioners Act 2007* (25/2007)

All Acts up to and including *Courts, Civil Law, Criminal Law and Superannuation (Miscellaneous Provisions) Act 2024* (30/2024), enacted 23 July 2024, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Commission for Railway Regulation (Employees) Superannuation Scheme 2024* (S.I. No. 407 of 2024)
- *Railway Safety Act 2005 (Section 26) Levy Order 2024* (S.I. No. 237 of 2024)
- *Railway Safety Act 2005 (Section 26) Levy Order 2023* (S.I. No. 267 of 2023)
- *Railway Safety Act 2005 (Section 26) Levy Order 2022* (S.I. No. 194 of 2022)
- *Railway Safety Act 2005 (Section 4(5)) (Specified Infrastructure, Monorail) Regulations 2021* (S.I. No. 589 of 2021)
- *Railway Safety Act 2005 (Section 26) Levy Order 2021* (S.I. No. 246 of 2021)
- *European Union (Railway Safety) Regulations 2020* (S.I. No. 476 of 2020)
- *Railway Safety Act 2005 (Section 26) Levy Order 2020* (S.I. No. 143 of 2020)
- *Railway Safety Act 2005 (Section 26) Levy Order 2019* (S.I. No. 191 of 2019)
- *Railway Safety Act 2005 (Section 26) Levy Order 2018* (S.I. No. 114 of 2018)
- *Railway Safety Act 2005 (Section 26) Levy Order 2017* (S.I. No. 87 of 2017)
- *Railway Safety Act 2005 (Section 26) Levy Order 2016* (S.I. No. 122 of 2016)
- *Railway Safety Act 2005 (Section 26) Levy Order 2015* (S.I. No. 124 of 2015)
- *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014* (S.I. No. 258 of 2014)
- *Railway Safety Act 2005 (Section 26) Levy Order 2014* (S.I. No. 73 of 2014)
- *European Union (Railway Safety) Regulations 2013* (S.I. No. 444 of 2013)
- *Railway Safety Act 2005 (Section 26) Levy Order 2013* (S.I. No. 68 of 2013)
- *Railway Safety Act 2005 (Section 26) Levy Order 2012* (S.I. No. 172 of 2012)

- *European Communities (Interoperability of the Rail System) Regulations 2011* (S.I. No. 419 of 2011)
- *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011)
- *Railway Safety Act 2005 (Section 26) Levy Order 2011* (S.I. No. 120 of 2011)
- *European Communities (Railway Safety) Regulations 2011* (S.I. No. 70 of 2011)
- *Railway Safety Act 2005 (Section 26) Levy Order 2010* (S.I. No. 10 of 2010)
- *Railway Safety Act 2005 (Section 26) Levy Order 2008* (S.I. No. 568 of 2008)
- *European Communities (Railway Safety) Regulations 2008* (S.I. No. 61 of 2008)
- *Railway Safety Act 2005 (Part 8) (Appointed Day) Order 2007* (S.I. No. 232 of 2007)
- *Railway Safety Act 2005 (Railway Incidents) Regulations 2006* (S.I. No. 585 of 2006)
- *Railway Safety Act 2005 (Fixed Payment Notice) Regulations 2006* (S.I. No. 576 of 2006)
- *Railway Safety Act 2005 (Section 130) (Commencement) Order 2006* (S.I. No. 347 of 2006)
- *Railway Safety Act 2005 (Section 5 and Parts 4, 9 and 10) (Commencement) Order 2006* (S.I. No. 215 of 2006)
- *Railway Safety Act 2005 (Part 2) (Establishment Day) Order 2005* (S.I. No. 841 of 2005)

All statutory instruments up to and including *Commission for Railway Regulation (Employees) Superannuation Scheme 2024* (S.I. No. 407 of 2024), made 14 August 2024, were considered in the preparation of this revision.