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STATUTORY INSTRUMENTS

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**1997 No. 553**

**HEALTH AND SAFETY**

**TRANSPORT**

**The Railway Safety (Miscellaneous Provisions) Regulations 1997**

*Made* - - - - 28th February 1997

*Laid before Parliament* 10th March 1997

*Coming into force* - - 10th May 1997

The Secretary of State, in exercise of the powers conferred on him by sections 15(1), (2), (3)(a) and (6)(a) and (b), 18, 47(2) and 82(3)(a) of, and paragraphs 1(1)(c) and 18(a) of Schedule 3 to, the Health and Safety at Work etc. Act 1974(1) (“the 1974 Act”) and of all other powers enabling him in that behalf, and for the purpose of giving effect without modifications to the proposals submitted to him by the Health and Safety Commission under section 11(2)(d) of the 1974 Act after the carrying out by the said Commission of consultations in accordance with section 53(3) of that Act, hereby makes the following Regulations—

**Citation and commencement**

1. These Regulations may be cited as the Railway Safety (Miscellaneous Provisions) Regulations 1997 and shall come into force on 10th May 1997.

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires—

“1992 Act” means the Transport and Works Act 1992(2);

“1994 Regulations” means the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994(3);

“construction work” has the meaning assigned to it by regulation 2(1) of the Construction (Design and Management) Regulations 1994(4);

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(1) 1974 c. 37; sections 15 and 50 were amended by the Employment Protection Act 1975 (c. 71) Schedule 15, paragraphs 6 and 16 respectively; the general purposes of Part I referred to in section 15(1) were extended by section 117 of the Railways Act 1993 (c. 43).

(2) 1992 c. 42.

(3) S.I. 1994/157.

(4) S.I. 1994/3140.

“factory” means a factory within the meaning of section 175 of the Factories Act 1961<sup>(5)</sup> and premises to which section 123(1) or (2) or 125(1) of that Act applies;

“harbour” and “harbour area” have the meanings assigned to them by regulation 2(1) of the Dangerous Substances in Harbour Areas Regulations 1987<sup>(6)</sup>;

“mine” and “quarry” have the meanings assigned to them by section 180 of the Mines and Quarries Act 1954<sup>(7)</sup>;

“prescribed system of guided transport” means a system using a mode of guided transport prescribed by regulation 3 of the 1994 Regulations;

“railway” has the meaning assigned to it by section 67(1) of the 1992 Act;

“station” means a passenger station or terminal of a transport system but does not include any permanent way or plant used for signalling or exclusively for supplying electricity for operational purposes to the transport system;

“street” has the meaning assigned to it by section 67(1) of the 1992 Act;

“train of vehicles” means two or more vehicles attached to each other;

“tramway” has the meaning assigned to it by section 67(1) of the 1992 Act;

“transport system” means a railway, tramway or prescribed system of guided transport, except that it does not include any part of such a system which—

- (a) employs parallel rails forming a track of a gauge of less than 920 millimetres and is—
  - (i) part of a factory;
  - (ii) within a maintenance or goods depot;
- (b) employs parallel rails forming a track of a gauge of less than 1.432 metres and is above ground at a mine or quarry;
- (c) is below ground at a mine;
- (d) runs along and at the same level as a street or in any other place to which the public has access (including a place to which the public has access only on making a payment);
- (e) is used solely for the purpose of carrying out construction work;

“vehicle” means a vehicle which is being used on a transport system and includes a mobile traction unit.

(2) Any reference in these Regulations to the infrastructure of a transport system is a reference to the fixed assets used for the operation of the transport system including its permanent way and plant used for signalling or exclusively supplying electricity for operational purposes to the transport system, but does not include a station.

(3) Any reference in these Regulations to a person in control of any infrastructure of a transport system is a reference to a person who, in the course of a business or other undertaking carried on by him (whether for profit or not), is in operational control of that infrastructure, except that where such control is for the time being exercised by a person undertaking maintenance, repair or alteration work on the infrastructure, it is a reference to a person who would be in operational control of the infrastructure if such work were not being undertaken.

(4) Any reference in these Regulations to a person operating a vehicle is a reference to the person operating the vehicle for the time being in the course of a business or other undertaking carried on by him (whether for profit or not), but it does not include a self-employed person by reason only that he himself drives or otherwise controls the movement of a vehicle.

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(5) 1961 c. 34.

(6) S.I. 1987/37.

(7) 1954 c. 90.

- (5) Any reference in these Regulations to the maintenance of any equipment is a reference to—
- (a) the maintenance of that equipment in an efficient state, in efficient working order and in good repair; and
  - (b) where appropriate, subjecting that equipment to a suitable system of maintenance.

### **Unauthorised access**

**3.**—(1) So far as is reasonably practicable, a person in control of any infrastructure of a transport system to which this regulation applies shall ensure, where and to the extent necessary for safety, that unauthorised access to that infrastructure is prevented.

(2) In paragraph (1) “access” means access by any person not at work on the transport system or by any animal.

(3) This regulation applies to any transport system except that it does not apply to any part of such a system which—

- (a) is within a harbour, harbour area, maintenance or goods depot; or
- (b) is part of a factory, mine or quarry,

where access to the harbour, harbour area, maintenance or goods depot, factory, mine or quarry is adequately controlled.

(4) Breach of a duty imposed by this regulation shall not confer a right of action in any civil proceedings.

### **Means of communication**

**4.** The operator of a vehicle which is being used for the carriage of fare paying passengers shall ensure that there is provided and maintained on such a vehicle suitable and sufficient means whereby passengers can communicate with a person who is in a position to take appropriate action in the event of an emergency.

### **Measures to prevent collisions and derailments**

**5.**—(1) A person in control of any infrastructure of a transport system shall ensure, so far as is reasonably practicable, that—

- (a) appropriate procedures are in place;
  - (b) where appropriate, equipment which is suitable and sufficient is provided and maintained,
- for the purpose of preventing any of the events referred to in paragraph (2).

(2) The events referred to in paragraph (1) are—

- (a) collisions between vehicles;
- (b) collisions between vehicles and buffer-stops;
- (c) the derailment of vehicles on account of excessive speed or incorrectly set points.

### **Brakes**

**6.** The operator of a vehicle shall ensure that a suitable and sufficient braking system is provided and maintained for that vehicle and, where the vehicle is part of a train of vehicles, for that train of vehicles.

### **Accidents to persons at work from moving vehicles**

7.—(1) A person to whom this regulation applies shall ensure, so far as is reasonably practicable and insofar as they are matters within his control, that—

- (a) appropriate procedures are in place;
- (b) where appropriate, equipment which is suitable and sufficient is provided and maintained, for the purpose of preventing any person at work on a transport system from being struck by, or falling from, a moving vehicle.

(2) This regulation applies to—

- (a) a person in control of any infrastructure of a transport system;
- (b) an operator of a vehicle;
- (c) an employer of a person at work on a transport system;
- (d) a self-employed person as it applies to an employer and a person at work on a transport system as if that self-employed person were both the employer and the person at work.

### **Exemptions**

8.—(1) Subject to paragraph (2) and to any Community obligation of the United Kingdom the Health and Safety Executive may, by a certificate in writing, exempt any person or class of persons from any requirement imposed by these Regulations and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a further certificate in writing at any time.

(2) The Health and Safety Executive shall not grant any such exemption unless, having regard to the circumstances of the case, and in particular to—

- (a) the conditions, if any, which it proposes to attach to the exemption; and
- (b) any other requirements imposed by or under any enactment which apply to the case,

it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it.

(3) Subject to any Community obligation of the United Kingdom, the Secretary of State for Defence may, in the interests of national security, by a certificate in writing exempt any person or class of persons from the requirements of these Regulations and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by the said Secretary of State by a further certificate in writing at any time.

### **Defence**

9.—(1) In any proceedings for an offence for a contravention of any of the provisions of these Regulations it shall be a defence for the person charged to prove—

- (a) that the contravention was due to the act or default of another person not being one of his employees (hereinafter called “the other person”); and
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the contravention.

(2) The person charged shall not, without leave of the court, be entitled to rely on the defence referred to in paragraph (1) above unless, within a period ending seven clear days—

- (a) before the hearing to determine mode of trial, where the proceedings are in England or Wales; or
- (b) before the trial, where the proceedings are in Scotland,

he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession.

(3) Where a contravention of any of the provisions of these Regulations by any person is due to the act or default of some other person, that other person shall be guilty of the offence which would, but for any defence under this regulation available to the first-mentioned person, be constituted by the act or default.

### **Transfer of functions from the Secretary of State to the Health and Safety Executive**

**10.**—(1) Any reference to the Secretary of State in—

- (a) sections 41 (other than sub-section (1)) and 45 of the 1992 Act; and
- (b) the 1994 Regulations,

shall have effect as if it were a reference to the Health and Safety Executive.

(2) Any approval, dispensation, notice or written consent granted or given under the 1994 Regulations or direction given under section 45 of the 1992 Act, by the Secretary of State, prior to the coming into force of these Regulations, shall have effect as if it had been granted or given, as the case may be, by the Health and Safety Executive.

### **Amendments to the Health and Safety (Enforcing Authority) Regulations 1989**

**11.** The Health and Safety (Enforcing Authority) Regulations 1989<sup>(8)</sup> shall be amended by—

(a) in regulation 2—

(i) the substitution of the following for the definition of “railway”—

““railway” means a railway or tramway with (in either case) a gauge of 350 millimetres or more or a prescribed system of guided transport;”;

(ii) the addition of the following after the definition of “preparation dangerous for supply”—

““prescribed system of guided transport” means a system using a mode of guided transport prescribed by regulation 3 of the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994;”;

(b) in regulation 3—

(i) the substitution of the following paragraph for paragraph (5)—

“(5) Notwithstanding paragraph (3), the Executive shall be the enforcing authority for the common parts in a railway station or terminal or in a goods yard which is served by a railway.”;

(ii) the deletion of paragraph (6).

### **Repeals and revocations**

**12.**—(1) The enactments specified in column 1 of Part I of the Schedule shall be repealed to the extent specified in the corresponding entries in column 2.

(2) The instruments specified in column 1 of Part II of the Schedule shall be revoked to the extent specified in the corresponding entries in column 2.

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<sup>(8)</sup> S.I. 1989/1903 amended by S.I. 1994/669.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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Signed by authority of the Secretary of State for Transport

25th February 1997

*John Watts*  
Minister of State,  
Department of Transport

Signed by authority of the Secretary of State for the Environment

28th February 1997

*Sir Paul Beresford*  
Parliamentary Under-Secretary of State,  
Department of the Environment

## SCHEDULE

Regulation 12

## REPEALS AND REVOCATIONS

## PART I

Column 1 <i>Enactment</i>	Column 2 <i>Extent of repeal</i>
The Highway (Railway Crossings) Act 1839	In section 1, the words from “and any complaint” to the end. Section 2.
Railway Regulation Act 1842	Section 10.*
Regulation of Railways Act 1868	Section 22.*
Regulation of Railways Act 1871	The whole Act.*
Regulation of Railways Act 1889	Sections 1 and 4.*
Railway Employment (Prevention of Accidents) Act 1900	The whole Act.*
Transport Act 1968	Section 125.
Transport and Works Act 1992	Section 42.

## PART II

Column 1 <i>Instrument</i>	Column 2 <i>Extent of revocation</i>
The Prevention of Accidents Rules 1902	The whole Rules.*
The Locomotives and Wagons (Used in Lines and Sidings) Regulations 1906	Regulations 1 and 2, 5 to 7 and 9 to 19.
The Prevention of Accidents Rules 1907	The whole Rules.*
The Prevention of Accidents Rules 1911	The whole Rules.*
The Coal and Other Mines (Sidings) Regulations 1956	Regulations 2(2) to 5 and 7 to 20.
The Quarries (General) Regulations 1956	Regulations 24 to 26, 27(2) to (5), 28 to 35.

\*to the extent that they relate to Great Britain

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

1. These Regulations make provision with regard to the safe operation of transport systems. They also make other provision. Regulation 2 defines transport systems as meaning, subject to specified exceptions, railways, tramways and prescribed systems of guided transport.

2. Regulation 3 places a duty on infrastructure controllers, so far as is reasonably practicable and where and to the extent necessary for safety, to prevent unauthorised access to the infrastructure of transport systems (subject to specified exceptions).

3. Regulation 4 places a duty on operators of vehicles being used for the carriage of fare paying passengers to provide and maintain means of communication between passengers and a person who in an emergency is in a position to take appropriate action.

4. Regulation 5 provides for infrastructure controllers to ensure so far as is reasonably practicable, that procedures are in place and equipment is provided and maintained for the purpose of preventing collisions and derailments.

5. Regulation 6 places a duty on vehicle operators to provide and maintain suitable and sufficient braking systems for their vehicles.

6. Regulation 7 provides for specified persons to ensure, so far as is reasonably practicable, that procedures are in place and equipment is provided and maintained for the purpose of preventing persons at work on a transport system from being struck by or falling from a moving vehicle.

7. Regulation 8 provides for certificates of exemption to be granted by the Health and Safety Executive. Regulation 9 provides a defence to any offence under these Regulations where the person charged has taken all reasonable precautions and exercised all due diligence.

8. Regulation 10 provides for certain functions of the Secretary of State under the Transport and Works Act 1992 and the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994 (approvals of works, plant and equipment and directions limiting speeds and loads) to be transferred to the Health and Safety Executive.

9. Regulation 11 makes minor amendments to the Health and Safety (Enforcing Authority) Regulations 1989 and regulation 12 the repeals and revocations specified in the Schedule.