

**HEALTH AND SAFETY COMMISSION CONSULTATIVE PAPER**  
**PROPOSED AMENDMENTS TO THE RAILWAYS (SAFETY CASE)**  
**REGULATIONS 2000**

**Introduction**

1 The Health and Safety Commission invites views and comments on proposed amendments to the Railways (Safety Case) Regulations 2000 (RSC 2000).

2 These proposals arise from the Ladbroke Grove Rail Inquiry Part 2 Report, published in September 2001, in which Lord Cullen recommended the creation of a new, independent rail industry safety body (RISB). In response to this recommendation, the Rail Regulator has published initial proposals<sup>1</sup> for establishing RISB, as a stand-alone industry body replacing Railway Safety. The proposals involve amending existing licence conditions so as to require the establishment of RISB as a new industry body outside Railtrack Group PLC.

3 The Report also recommended certain amendments to RSC 2000 to reflect the creation of RISB. Specifically, Lord Cullen recommended removing or amending existing duties on Railtrack (and other infrastructure controllers) to procure safety case assessments and annual audits from an independent “assessment body”, in practice Railway Safety. The Commission now proposes to implement these recommendations.

4 The proposals are in the form of the draft Regulations at **Appendix 1**. To show how RSC 2000 would change under the proposals, **Appendix 2** reproduces the Regulations (without the Schedules) showing the proposed amendments in edit mode. The amendments would ideally take effect when RISB is established - in September or October this year, according to the Rail Regulator’s current timetable.

**Background**

5 Following the Ladbroke Grove disaster on 5 October 1999, a report by the then Department of the Environment, Transport and the Regions led in 2000 to the creation of Railway Safety, a subsidiary company of Railtrack Group PLC. This ensured that system-wide functions previously undertaken by Railtrack’s Safety and Standards Directorate, such as the management of Railway Group Standards, fell to a body that was legally separate from the infrastructure controller, Railtrack PLC. At the same time, RSC 2000 were introduced. These replaced the Railways (Safety Case) Regulations 1994 and provided additional functions for Railway Safety relating to safety case assessments and annual audits, as recommended by the Department’s report. Subsequently, RSC 2000 were amended by the Railways Safety (Miscellaneous Provisions) Regulations 2001 which added to Schedule 1 a specific provision on escape from trains in an emergency.

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<sup>1</sup> *Establishment of a rail industry safety body. A consultation document.* Published by the Office of the Rail Regulator and available on its website <http://www.rail-reg.gov.uk>

6 The present arrangement where Railway Safety is part of the Railtrack Group, though independent of Railtrack PLC, is seen by many as not entirely satisfactory. Chapter 8 of Lord Cullen's Part 2 Report states (paragraph 8.32 onwards):

"In my view the time has come for more radical alterations than those proposed by the [DETR] report. To a significant degree its recommendations have proved to be an unsatisfactory half-way house. It is, of course, fully understandable that in the circumstances it was thought appropriate to advance only a certain distance, pending the outcome of the present Inquiry...The integrity of those who administer Railway Safety (or their predecessor) is not in question. However, it is plain that the relationship between Railtrack and Railway Safety also shows an attempt to achieve two incompatible objectives...Railway Safety cannot be regarded as fully independent of Railtrack Group PLC and their subsidiaries. In my view the safety regulator should be wholly in charge of the assessment of the safety case."

7 The Report goes on to make the following recommendations which are directly relevant to the creation of RISB:

*Recommendation 31: Railway Safety should cease to discharge the function of assessment for the purposes of the Safety Case Regulations. It should be for the safety regulator to decide to what extent, if at all, it should commission assessment from an independent body.*

*Recommendation 32: A provision should be made in the Safety Case Regulations imposing a duty on Railtrack to carry out, or procure the carrying out by a suitably qualified body of, audits for the purposes presently set out in Regulation 9 of the 2000 Regulations.*

The Report envisages a different relationship between Railtrack and RISB, compared with Railtrack's existing relationship with Railway Safety. Any assessment or audit functions undertaken by RISB at Railtrack's request would be in the nature of service functions, undertaken voluntarily, rather than statutory functions. It is clear from the Report that the proposal in recommendation 32 is intended to replace the existing more restrictive duty to procure audits from Railway Safety.

### **The Commission's proposals**

8 The Commission accepts the need for a fully independent RISB, and the need to amend RSC 2000. The proposals are intended to broadly implement recommendations 31 and 32, by making the minimum changes to RSC 2000 necessary to reflect the replacement of Railway Safety with an RISB of the kind envisaged in Lord Cullen's report. The Commission is making essentially two proposals:

- (1) To remove the existing duty on the infrastructure controller to procure safety case assessments and recommendations from an "assessment body" (in practice Railway Safety). This duty covers safety cases and revisions prepared by the infrastructure controller or by train operators using that infrastructure. Removing it will materially simplify the Regulations and the

safety case assessment procedures. Safety cases will still be submitted to HSE for acceptance and, in the case of train operators, the infrastructure controller will continue to provide its assessment and recommendation. (It would also remain open to HMRI to seek train operators' views on a proposed change to the infrastructure controller's safety case.) The amendments are made by regulations 5, 6 and 7 of the draft regulations at Appendix 1.

(2) To amend the existing requirement on the infrastructure controller to procure the carrying out of annual audits by an "assessment body" (again Railway Safety in practice). The Commission proposes making minimal changes to this requirement, so as to require the annual audits to be carried out by a "competent body". The draft regulations require the competent body to be "sufficiently competent, and having the necessary skills and resources, to carry out an audit.", and to be sufficiently independent of both Railtrack and the auditee to ensure that the audit is objective. These amendments are made by draft regulation 8. The proposal in this case is not precisely the same as Lord Cullen's recommendation, which included the option of Railtrack itself undertaking the annual audits of train operators under regulation 9. The Commission believes it best at this stage to retain the principle that the auditing body should be external to the infrastructure controller. The whole question of audit will be examined in a full evaluation of the safety case regime in due course (see paragraph 10).

The draft regulations also contain a number of other minor consequential amendments to delete other references to the assessment body or its functions.

The Commission invites views and comments on these proposals.

### **Alternative options**

9 A number of alternative options for amending regulation 9 are possible. It would, for example, be possible to -

- (a) place the duty for procuring external annual audit on the auditee (for example train operating company), rather than on Railtrack (although the duty would remain on Railtrack in respect of annual audits of Railtrack itself);
- (b) formulate regulation 9 in a way which ensures that the body undertaking the assessment is RISB;
- (c) delete regulation 9 altogether. Schedule 1 to the Regulations will still require every safety case to demonstrate adequate arrangements for audit, but the specific requirement for an annual audit by an external body would disappear.

If strong views were expressed in favour of one of the above options, and against the preferred option (paragraph 8(2)), the Commission might amend the proposals accordingly. Interested parties should therefore consider these options when preparing their response.

## Future evaluation

10 The Commission is not attempting to implement other recommendations in Lord Cullen's Part 2 report concerning RSC 2000 at this stage. The Commission believes that those recommendations should be assessed in the context of a full evaluation of the Regulations, which will examine whether the Regulations are meeting their objectives. Although the current proposals will be the third set of amendments since the original Railways (Safety Case) Regulations 1994 were introduced, the safety case regime has not yet been subjected to fundamental evaluation and there may be important issues which have not yet been addressed. The Commission has, therefore, asked the Health and Safety Executive to make arrangements for such an evaluation. A number of key players, including trade unions and passenger interests as well as employers, are likely to be approached in the coming months to give their views. This process is expected to lead to proposals for further amendments to the Regulations in 2003.

## Conclusion

11 The Commission would welcome your comments on any aspect of these proposals. Please send them by no later than **15 April 2002** to:

Michael Madeley  
Railways Directorate  
5th Floor South  
Health and Safety Executive  
Rose Court  
2 Southwark Bridge  
London SE1 9HS

Tel: 020 7717 6353 e-mail: michael.madeley@hse.gsi.gov.uk

12 The way in which responses will be dealt with is set out in **Appendix 3**. Please note that written responses will be publicly available unless the author specifies otherwise.

Health and Safety Commission

19 February 2002

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STATUTORY INSTRUMENTS

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**2002 No.**

**HEALTH AND SAFETY**

**The Railways (Safety Case) (Amendment) Regulations 2002**

<i>Made-</i>	- - - -	2002
<i>Laid before Parliament</i>		2002
<i>Coming into force</i>		2002

The Secretary of State, in the exercise of the powers conferred on him by sections 15(1) and (2) and 82(3)(a) of, and paragraph 8(1) of Schedule 3 to, the Health and Safety at Work etc. Act 1974<sup>(a)</sup> ("the 1974 Act") and of all other powers enabling him in that behalf and for the purpose of giving effect without modifications to 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 50(3) of that Act, hereby makes the following Regulations:

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(a) 1974 c.37; sections 11(2), 15(1) and 50 were amended by section 116 of, and paragraphs 4, 6 and 16 respectively of Schedule 15 to, the Employment Protection Act 1975 (c.71).

1. These Regulations may be cited as the Railways (Safety Case) (Amendment) Regulations 2002 and shall come into force on 2002.

2. The Railways (Safety Case) Regulations 2000<sup>(a)</sup> shall be amended in accordance with the following provisions of these Regulations.

3. In regulation 2(1), the definition of "assessment body" shall be omitted.

4. In regulation 3, the words "regulation 4(2) and (3), regulation 5(3), (4)(d) and (6)(b) and" shall be omitted.

5. In regulation 4, paragraphs (2) and (3) shall be omitted.

6. In regulation 5 —

(a) paragraphs (3), (4)(d) and 6(b) shall be omitted; and

(b) in paragraph (9), there shall be omitted the words —

(i) "or, where applicable, the assessment body," and

(ii) "and, where applicable, the assessment body".

7. In regulation 7 —

(a) in paragraph (9), there shall be omitted the words —

(i) "or, where applicable, the assessment body", and

(ii) "and, where applicable, the assessment body"; and

(b) paragraph (10) shall be omitted.

8. In regulation 9 —

(a) in paragraph (1) —

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(a) S.I. 2000/2688, amended by S.I. 2001/3291.

- (i) for the words "an assessment body" there shall be substituted the words "a competent body", and
  - (ii) for the words "that body" there shall be substituted the words "that competent body";
- (b) after paragraph (1) there shall be inserted the following paragraph, namely —

"(1A) A competent body —

(a) shall not be the same person as the person whose operations are the subject of an audit undertaken pursuant to paragraph

(1); and

(b) shall be sufficiently independent of —

(i) the person whose operations are the subject of such an audit, and

(ii) the infrastructure controller who commissions such an audit pursuant to paragraph (1),

to ensure that the audit in question is objective.";

- (c) in paragraph (3), after the definition of "audit", there shall be inserted the following definition, namely —

"competent body" means a person who is sufficiently competent, and has the necessary skills and resources, to carry out an audit referred to in paragraph (1);".

**9.** In regulation 11 —

- (a) in paragraph (1)(b), for the words "an assessment body to enable it to make any recommendation pursuant to regulations 4 or 5 and" there shall be substituted the words "a competent body to enable it"; and

- (b) in paragraph (2)(c), for the words "an assessment body required to make a recommendation pursuant to regulations 4 or 5 or" there shall be substituted the words "a competent body required".

Signed by authority of the  
Secretary of State for Transport  
Local Government and the Regions

[Date]

Minister of State  
Department of Transport Local  
Government and the Regions

**RAILWAY (SAFETY CASE) REGULATIONS 2000****Incorporating proposed 20002 amendments**

## PART 1

## INTRODUCTION

**Citation and commencement**

1. These Regulations may be cited as the Railways (Safety Case) Regulations 2000 and shall come into force on 31st December 2000.

**Interpretation**

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

"the 1994 Regulations" means the Railways (Safety Case) Regulations 1994 and any reference to a safety case prepared or accepted under the 1994 Regulations is a reference to a safety case within the meaning of those Regulations;

~~"assessment body" means a body of persons corporate or which is, in relation to an assessment referred to in regulations 4(2)(a) unincorporate (other than the infrastructure controller in question) or 5(3)(a) or an audit referred to in regulation 9(1) —~~

~~(a) competent to carry out the assessment or audit, and~~

~~(b) sufficiently independent of the infrastructure controller to ensure that the assessment or audit is objective;~~

"audit report" means a report made pursuant to regulation 9 or to the arrangements referred to in paragraph 5(d) of Schedule 1;

"building operation" means the construction, structural alteration, repair or maintenance of a building (including repointing, redecoration and external cleaning of the structure), the demolition of a building, and preparation for, and laying the foundation of, an intended building, but does not include any operation which is a work of engineering construction;

"the Executive" means the Health and Safety Executive;

"factory" means a factory within the meaning of section 175 of the Factories Act 1961 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;

"infrastructure controller" means a person who controls railway infrastructure;

"mine" has the meaning assigned to it by section 180 of the Mines and Quarries Act 1954;

"notified" means notified in writing, and related expressions shall be construed accordingly;

"quarry" has the meaning assigned to it by regulation 3 of the Quarries Regulations 1999;

"railway" has the meaning assigned to it by section 67(1) of the Transport and Works Act 1992 except that it does not include any part of a railway -

(a) within a harbour or harbour area, or which is part of a factory, mine or quarry unless, in each case, it is being used or is intended to be used for the carriage of fare paying passengers,

(b) used solely for the purpose of carrying out a building operation or work of engineering construction", or

(c) within a maintenance or goods depot;

"railway infrastructure" means fixed assets used for the operation of a railway including its permanent way and plant used for signalling or exclusively for supplying electricity for operational purposes to the railway, but it does not include a station;

"railway operator" means a person who is an infrastructure controller or operates trains or stations;

"relevant infrastructure controller" means -

(a) in relation to the operation of trains, the person in control of the railway infrastructure in relation to which the trains are to be operated and, where there are different such persons for different parts of that infrastructure, each of them,

(b) in relation to the operation of stations, the person in control of the railway infrastructure serving the station the subject of the safety case and, where there are different persons in control of different parts of the railway infrastructure serving such station, each of them;

"revision" means proposed revision where by virtue of regulation 7(3), 8(1) and 16(2) or (3) the revision has not been made;

"safety case" shall be construed in accordance with paragraph (2);

"station" means a railway passenger station or terminal, but does not include any permanent way or plant used for signalling or exclusively for supplying electricity for operational purposes to the railway;

"train" includes any rolling stock (within the meaning of the Railways Act 1993);

"work of engineering construction" means the construction of any railway line or siding otherwise than on an existing railway, and the construction, structural alteration or repair (including repointing and repainting) or demolition of any tunnel, bridge or viaduct, except where carried on upon a railway.

(2) Any reference in these Regulations to a safety case is a reference to a document containing the particulars required by the provisions of these Regulations pursuant to which the safety case is prepared; and a safety case may -

(a) contain the particulars so required by reference to the same particulars contained in another safety case prepared by the same person;

(b) be prepared by a person in respect of more than one operation intended to be undertaken by him.

(3) Any provision of these Regulations requiring particulars to be included in a safety case which are also required to be included by virtue of a more general provision of the Regulations is without prejudice to the generality of the more general provision.

(4) Any reference in these Regulations to an infrastructure controller recommending acceptance of a safety case or revision is a reference to that controller notifying the Executive that he is satisfied that the procedures and arrangements described in it which affect or are likely to affect the performance of his own health and safety duties will, when properly implemented with those described in any other safety case or revision thereof which that controller has prepared or which has been accepted pursuant to these Regulations and which relates to the railway infrastructure under his control, be capable of ensuring compliance by that controller with those duties in relation to the operation to which the first mentioned safety case or revision relates.

(5) Without prejudice to regulation 8, any reference in these Regulations to the Executive accepting a safety case or revision is a reference to the Executive notifying the person who prepared it that it is satisfied with the case for health and safety made out in it.

(6) Any reference in these Regulations to the health and safety duties of an infrastructure controller is a reference to the duties imposed on him by the relevant statutory provisions (other than these Regulations).

(7) Where a railway operator is succeeded by a new railway operator, anything done in pursuance of these Regulations by the former railway operator shall, for the purposes of these Regulations, be treated as having been done by his successor; and for this purpose a person shall be treated as a successor in so far as control of the relevant railway infrastructure or the operation of the trains or stations concerned, as appropriate, has been transferred to him.

(8) Any reference in these Regulations to a person in control of any railway infrastructure 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.

(9) Any reference in these Regulations to a person operating a train or station is a reference to the person operating the train or station 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 train.

(10) Any requirement in these Regulations for a safety case, revision, recommendation, audit report or other document to be sent, submitted or otherwise delivered includes delivery by electronic means.

(11) Unless the context otherwise requires, any reference in these Regulations to -

(a) a numbered regulation or Schedule is a reference to the regulation or Schedule in these Regulations so numbered;

(b) a numbered paragraph is a reference to the paragraph so numbered in the regulation or Schedule in which the reference appears.

### **Application**

3. The duties imposed on an infrastructure controller by ~~regulation 4(2) and (3), regulation 5(3), (4)(d) and (6)(b) and~~ regulation 9 shall apply only where the railway infrastructure under the control of that controller -

(a) is used for the operation of passenger trains by an operator other than the infrastructure controller; or

(b) serves a station operated by an operator other than the infrastructure controller.

## **PART II**

### **SAFETY CASES**

#### **Use of railway infrastructure**

4. - (1) Subject to regulation 16 (transitional provisions) a person in control of any railway infrastructure shall not use it or permit it to be used for the operation of trains or stations unless -

(a) he has prepared a safety case containing the particulars specified in Schedule 1 and, where that infrastructure is to be used for the operation of trains or stations by persons other than the infrastructure controller, Schedule 2;

(b) the Executive has accepted that safety case;

(c) where he is not the person operating those trains or stations, the person undertaking that operation has agreed in writing to comply with any reasonable request he may make as respects any aspect of the operation which affects or is likely to affect the performance of the health and safety duties of the person in control of the railway infrastructure; and

(d) the person operating those trains or stations has complied with regulation 5(1).

~~(2) An infrastructure controller who prepares a safety case shall—~~

~~(a) procure the carrying out of an assessment of that safety case by an assessment body; and~~

~~(b) obtain from that body a report of that assessment which shall include—~~

~~(i) a recommendation as to whether in the view of that body the safety case should or should not be accepted;~~

~~(ii) where acceptance is recommended, a statement that in its view the case for health and safety is satisfactorily made out; and~~

~~(iii) where acceptance is not recommended, the reasons for that recommendation.~~

~~(3) When submitting the safety case prepared pursuant to paragraph (1) to the Executive, the infrastructure controller shall send to the Executive a copy of the report of the assessment body relating to that safety case obtained under paragraph (2).~~

(4) Where a person who prepares a safety case for the purpose of paragraph (1) has submitted a safety case to the Executive for acceptance, the Executive shall notify that person whether the safety case is accepted or not and, where the safety case is not accepted, give reasons for that decision.

### **Safety case for train operations and for station operations**

5. - (1) Subject to regulation 16 (transitional provisions) a person shall not operate a train in relation to any railway infrastructure and a person shall not operate a station unless -

(a) he has prepared a safety case containing the particulars specified in Schedule 1; and

(b) the Executive has accepted that safety case.

(2) A person who prepares a safety case for acceptance pursuant to paragraph (1) shall submit the safety case to the Executive and at the same time, unless he is the relevant infrastructure controller, to the relevant infrastructure controller.

~~(3) An infrastructure controller who receives a safety case shall—~~

~~(a) procure the carrying out of an assessment of that safety case by an assessment body; and~~

~~(b) obtain from that body a report of that assessment which shall include—~~

~~(i) a recommendation as to whether in the view of that body the safety case is satisfactory for the purpose of the matters set out in regulation 2(4) on which the infrastructure controller must be satisfied;~~

~~(ii) where acceptance is recommended, a statement that in its view the procedures and arrangements described in it which affect or are likely to affect the performance of the infrastructure controller's own health and safety duties will, when properly implemented with those described in any other safety case or revision thereof which the infrastructure controller has prepared, or which has been accepted pursuant to these Regulations and which relates to the railway infrastructure under the control of that infrastructure controller, be capable of ensuring compliance by the infrastructure controller with those duties in relation to the operation to which the first mentioned safety case relates; and~~

~~(iii) where acceptance is not recommended, the reasons for that decision.~~

(4) The infrastructure controller shall scrutinise a safety case submitted to him under paragraph (2) and shall send to the Executive -

(a) where the safety case submitted under paragraph (2) has been modified by agreement between the infrastructure controller and the person who has prepared the safety case, a copy of the safety case so modified;

(b) the recommendation of the infrastructure controller as to whether the safety case should or should not be accepted and, if the recommendation is that the safety case should not be accepted, the reasons for that recommendation;

(c) a copy of the record prepared by him pursuant to regulation 14(3); and

~~(d) a copy of the report of the assessment body obtained pursuant to paragraph (3).~~

(5) A recommendation made by an infrastructure controller pursuant to paragraph (4)(b) shall be accompanied by a statement identifying -

(a) the procedures and arrangements described in the safety case which do not affect or which are unlikely to affect the performance of his health and safety duties; and

(b) where any procedures or arrangements described in the safety case affect or are likely to affect the performance of his health and safety duties only to a limited extent, the extent to which they do or are likely to do so.

(6) The infrastructure controller shall send to the person who has submitted the safety case -

(a) a copy of the recommendation and the statement referred to in paragraph (5); and

~~(b) a copy of the report of the assessment body obtained under paragraph (3) relating to that safety case.~~

(7) The Executive shall, having regard to any recommendation made by the infrastructure controller under paragraph (4)(b) -

(a) notify the infrastructure controller and the person who has prepared the safety case whether the safety case has been accepted or not;

(b) where the decision differs from the recommendation of the infrastructure controller provided under paragraph (4)(b) or where the Executive does not accept the safety case, give reasons for that decision; and

(c) where the accepted safety case is different from that submitted to the Executive under paragraph (2) or, where paragraph (4)(a) applies, under that paragraph, notify the infrastructure controller of the changes made.

(8) The Executive may in writing direct the infrastructure controller to comply with the requirements imposed by paragraph (4) within such reasonable time, being a period of not less than 28 days, as may be specified by the Executive and where such direction is made the infrastructure controller shall comply with the direction.

(9) Nothing in paragraph (7) shall prevent the Executive determining, in the absence of a recommendation from the relevant infrastructure controller ~~or, where applicable, the assessment body,~~ whether a safety case should be accepted or not provided the Executive has given reasonable notice to the controller ~~and, where applicable, the assessment body~~ of its decision to do so.

### **Review of safety cases**

**6.** A person who has prepared a safety case which has been accepted pursuant to these Regulations shall make a thorough review of its contents at such intervals as the Executive may in writing direct or, in the absence of such direction, at least every three years.

### **Revision of safety cases**

**7.** - (1) A person who has prepared a safety case which has been accepted pursuant to these Regulations shall revise its contents -

(a) in accordance with regulation 16(2);

(b) whenever it is appropriate; and

(c) whenever required to do so by the Executive pursuant to regulation 8.

(2) Nothing in these Regulations shall require the revision referred to in sub-paragraph (b) of paragraph (1) to be sent to another person except that, where such a revision will render the safety case materially different from the version last accepted pursuant to these Regulations, the revision shall not be made unless the Executive has accepted the revision.

(3) A person who proposes a revision to his safety case which he requires to be accepted by virtue of paragraph (2) shall submit the revision to the Executive and at the same time, unless he is the relevant infrastructure controller, to the relevant infrastructure controller.

(4) The infrastructure controller shall scrutinise the revision submitted to him under paragraph (3) and shall send to the Executive -

(a) where the revision submitted under paragraph (3) has been modified by agreement between that controller and the person who submitted the revision, the revision so modified;

(b) a recommendation as to whether the revision should or should not be accepted and the reasons for that recommendation; and

(c) a copy of the record prepared by him pursuant to regulation 14(3).

(5) A recommendation made by an infrastructure controller pursuant to paragraph (4) shall be accompanied by a statement identifying -

(a) the procedures and arrangements described in the revision which do not affect or which are unlikely to affect the performance of his health and safety duties; and

(b) where any procedures or arrangements described in the revision affect or are likely to affect the performance of his health and safety duties only to a limited extent, the extent to which they do or are likely to do so.

(6) The infrastructure controller shall send to the person who has submitted a revision to him pursuant to paragraph (3) a copy of the recommendation and statement referred to in paragraph (5).

(7) The Executive shall, having regard to any recommendation made by the infrastructure controller under paragraph (4)(b) -

(a) in relation to a revision of a safety case of a train operator or station operator submitted under paragraph (3) -

(i) notify the relevant infrastructure controller and, where different, the person who has submitted the revision whether the revision has been accepted or not;

(ii) where the decision differs from the recommendation of the infrastructure controller provided under paragraph (5) or where the Executive does not accept the revision, give reasons for that decision;

and

(iii) where the accepted revision is different from that submitted to the Executive under paragraph (3) or, where paragraph (4)(a) applies, under that paragraph, notify the infrastructure controller of the changes made; and

(b) in relation to a revision of a safety case of an infrastructure controller, notify the infrastructure controller whether the revision has been accepted or not and, where it is not accepted, give reasons for that decision.

(8) The Executive may direct an infrastructure controller to comply with the requirements imposed by paragraph (4) within such reasonable time, being a period of not less than 28 days, as may be specified by the Executive, and where such direction is given, the infrastructure controller shall comply with the direction.

(9) Nothing in paragraph (7) shall prevent the Executive determining in the absence of a recommendation from the relevant infrastructure controller ~~or, where applicable, the assessment body~~ whether a revision should be accepted or not provided the Executive has given reasonable notice to the controller ~~and, where applicable, the assessment body~~ of its decision to do so.

~~-(10) Regulation 4(2) and (3) and regulation 5(3), (4)(d) and (6)(b) shall apply in relation to a revision submitted pursuant to paragraph (3) as if any reference in those regulations to a safety case prepared for the purposes of those regulations was a reference to a revision of that safety case prepared pursuant to this regulation.~~

### **Power of Executive in relation to safety cases**

**8.** - (1) Where a safety case has been accepted pursuant to these Regulations, the Executive may in writing direct the person who prepared that safety case to prepare revisions to it in relation to such matters as may be notified to that person by the Executive, and a direction made for the purposes of this regulation shall state the reasons why in the opinion of the Executive a revision is necessary and shall specify a time, not being less than 28 days, within which such revision shall be submitted to the Executive and, where appropriate, to the infrastructure controller.

(2) The procedures for revisions set out in regulation 7 shall apply to a revision submitted pursuant to paragraph (1) as if the revision had been proposed pursuant to paragraph (3) of regulation 7.

### **Audit**

**9.** - (1) The infrastructure controller shall procure ~~an assessment body~~ a competent body to undertake at intervals of not more than 12 months an audit of -

(a) those operations of the infrastructure controller arising from control of railway infrastructure and the operation of trains or stations"; and

(b) those operations of any other person operating trains or stations in relation to railway infrastructure in the control of the infrastructure controller,

and obtain from ~~that body~~ that competent body a report or reports of such audit.

(1A) A competent body-

(a) shall not be the same person as the person whose operations are the subject of an audit undertaken pursuant to paragraph (1); and

(b) shall be sufficiently independent of-

(i) the person whose operations are the subject of such an audit, and

(ii) the infrastructure controller who commissions such an audit pursuant to paragraph (1).

to ensure that the audit in question is objective.;

(2) The infrastructure controller shall as soon as reasonably practicable after its completion send a copy of any report prepared for the purpose of paragraph (1) to -

(a) the person (not being the infrastructure controller) to whose operations the report relates;

(b) any other railway operator who may be affected by matters to which the report relates; and

(c) the Executive.

(3) In this regulation -

(a) "audit" means a systematic assessment of the adequacy of the management system of the railway operator to achieve compliance by him with the relevant statutory provisions in relation to the operations undertaken by him;

(b) 'competent body' means a person who is sufficiently competent, and has the necessary skills and resources, to carry out an audit referred to in paragraph (1);

~~(b)~~ (c) "management system" means the organisation and arrangements established by the railway operator for managing his undertaking.

## PART III

## GENERAL DUTIES

**Duty to conform with safety case**

**10.** - (1) Where a person has had accepted a safety case pursuant to these Regulations, he shall ensure that the procedures and arrangements described in the safety case and any revision thereof are followed.

(2) In criminal proceedings for a contravention of paragraph (1) it shall be a defence for the accused to prove that -

(a) in the particular circumstances of the case it was not in the best interests of the health and safety of persons to follow the procedures or arrangements concerned and there was insufficient time to revise the safety case pursuant to regulation 7; or

(b) the commission of the offence was due to a contravention by another person of regulation 11 and the accused had taken all reasonable precautions and exercised all due diligence to ensure that the procedures or arrangements were followed.

**Co-operation**

**11.** - (1) Every person to whom this regulation applies shall -

(a) co-operate so far as is necessary with a railway operator (in this regulation referred to as "the duty holder") to enable him to comply with the provisions of these Regulations; and

(b) co-operate so far as is necessary with ~~an assessment body to enable it to make any recommendation pursuant to regulations 4 or 5 and a competent body to enable it~~ to carry out any audit referred to in regulation 9.

(2) This regulation applies to -

(a) any railway operator whose operations affect or are affected by operations carried out by the duty holder;

(b) an employer of persons or a self-employed person carrying out work on or in relation to premises or plant owned or controlled by the duty holder; and

(c) ~~an assessment body required to make a recommendation pursuant to regulations 4 or 5 or a competent body required~~ to carry out an audit pursuant to regulation 9.

**Duties of infrastructure controller**

**12.** - (1) Subject to paragraph (2), an infrastructure controller shall take all reasonable steps to ensure that -

(a) any person operating trains in relation to railway infrastructure controlled by that controller; and

(b) any person operating a station served by railway infrastructure controlled by that controller,

carries out those operations so as to conform with the safety case prepared by that person and any revisions to it made under these Regulations.

(2) The duty imposed on an infrastructure controller under paragraph (1) shall extend only to those parts of a safety case which affect or are likely to affect the performance of the health and safety duties of the infrastructure controller.

### **Notification of non-compliance**

**13.** Where, in respect of a person operating trains or stations referred to in regulation 12 -

(a) an infrastructure controller is aware that that person is failing to conform to his safety case in a manner which, in the opinion of the infrastructure controller, is likely to increase the risk of serious personal injury to any person; or

(b) that person fails to comply with a reasonable request of the infrastructure controller as respects any matter referred to in regulation 4(1)(c),

the infrastructure controller shall (whether or not the failure has been rectified) within 7 days notify the Executive of that fact and of the steps he has taken or proposes to take to achieve compliance with the safety case or the request as the case may be.

### **Notifications, consultations and documents**

**14.** - (1) A person who prepares a safety case pursuant to these Regulations shall -

(a) when submitting that safety case for acceptance, notify the Executive of an address in Great Britain for the purposes of this regulation (and the address so notified is referred to in this regulation as "the notified address");

(b) keep the accepted safety case and any revision thereof or a copy thereof at the notified address;

(c) make available for public inspection at the notified address at reasonable times and on reasonable notice a copy of the accepted safety case and any revision made thereto, save that nothing in this sub-paragraph shall require the disclosure of any information relating to a named individual or which is commercially confidential or of any information the disclosure of which is detrimental to national security or to the security of the railway;

(d) keep each audit report relating to his operations or a copy thereof at the notified address;

(e) ensure that a record is made of any action taken in consequence of such an audit report and keep that record or a copy thereof at the notified address;

(f) ensure that a report is made of every review carried out pursuant to regulation 6 and ensure that a copy of it is sent to the Executive and, except where the report relates to the safety case of the relevant infrastructure controller, the relevant infrastructure controller; and

(g) keep such report or a copy thereof at the notified address.

(2) The person to whose operations an audit report prepared pursuant to the arrangements referred to in paragraph 5(d) of Schedule 1 relates shall, as soon as reasonably practicable after its completion, send a copy of that audit report to -

(a) the Executive;

(b) each railway operator affected by matters to which the report relates; and

(c) in the case of a report prepared in relation to the operation of a train or a station, the relevant infrastructure controller.

(3) Where an infrastructure controller scrutinises a safety case submitted to him pursuant to regulation 5 or a revision submitted to him pursuant to regulation 7, he shall make a record of the steps he has taken in that scrutiny and of the results thereof.

(4) Where an infrastructure controller has made a recommendation to the Executive in respect of a safety case or revision, the controller shall keep a copy of that safety case or revision as accepted by the Executive, every report sent to him pursuant to paragraph (1)(f) and the record referred to in paragraph (3) at the notified address.

(5) Each report and record required to be kept by this regulation shall be kept for a period of 5 years after it has been made, and each safety case and revision required to be kept by this regulation shall be kept for so long as it is current.

(6) It shall be sufficient compliance with paragraphs (1) and (4) for the information in the documents to be kept at the notified address on film or by electronic means, provided that the information is capable of being reproduced as a written copy at that address and it is secure from loss or unauthorised interference.

(7) A person who has notified an address pursuant to paragraph (1)(a) may subsequently notify to the person who has accepted the safety case a different address in Great Britain and, where he does so, references in this regulation to the notified address shall be construed as the address in the last notification made under this paragraph.

(8) An employer who prepares a safety case or revision thereto pursuant to these Regulations shall, in relation to its preparation, consult -

(a) safety representatives (within the meaning of regulation 2(1) of the Safety Representatives and Safety Committees Regulations 1977), and

(b) such other employees as he is required to consult by virtue of regulation 3 of the Health and Safety (Consultation with Employees) Regulations 1996.

(9) Regulation 7(1) of the Safety Representatives and Safety Committees Regulations 1977 shall have effect as if the reference to safety representatives being entitled to inspect and take copies of documents were, in a case where by virtue of paragraph (6) information is kept on film or in electronic form, a reference to them being entitled to be given appropriate facilities to enable them to read it and to take a copy of it.

## PART V

### MISCELLANEOUS

#### Appeals

**15.** - (1) A person who is aggrieved by -

(a) a refusal of the Executive to accept a safety case or a revision of a safety case submitted by him under these Regulations; or

(b) a direction of the Executive to prepare a revision of his safety case pursuant to regulation 8(1),

may appeal to the Secretary of State.

(2) For the purposes of paragraph (1), a failure of the Executive to accept within a reasonable time a safety case or revision submitted to it pursuant to these Regulations shall be treated as a refusal to accept it.

(3) Sub-sections (2) to (6) of section 44 of the 1974 Act shall apply for the purposes of paragraph (1) as they apply to an appeal under section 44(1) of that Act.

(4) The Health and Safety Licensing Appeals (Hearing Procedure) Rules 1974, as respects England and Wales, and the Health and Safety Licensing Appeals (Hearing Procedure) (Scotland) Rules 1974, as respects Scotland, shall apply to an appeal under paragraph (1) as they apply to an appeal under sub-section (1) of the said section 44, but with the modification that references to a licensing authority are to be read as references to the Executive.

#### Transitional provisions

**16.** - (1) A safety case accepted pursuant to the 1994 Regulations and which is current immediately before the coming into force of these Regulations shall, subject to the requirements imposed by paragraph (3), be treated as if it had been accepted pursuant to these Regulations.

(2) In relation to a safety case referred to in paragraph (1) an infrastructure controller shall -

(a) prepare a revision to that safety case for the purposes of including such matters as are required to be included in the safety case by these Regulations and which were not required by the 1994 Regulations; and

(b) submit the revision to the Executive within 6 months of the coming into force of these Regulations.

(3) In relation to a safety case referred to in paragraph (1) a railway operator (other than an infrastructure controller) shall -

(a) prepare a revision to that safety case for the purposes of including such matters as are required to be included in the safety case by these Regulations and which were not required by the 1994 Regulations; and

(b) submit the revision to the relevant infrastructure controller at the same time and to the Executive by the date by which the periodic review would have been required by virtue of regulation 6(3) of the 1994 Regulations, save that -

(i) where the date of that review would fall within the period of 6 months from the coming into force of these Regulations, the revision shall be submitted not later than 6 months after the coming into force of these Regulations; and

(ii) where the date of that review would fall outside the period of 2 years from the coming into force of these Regulations, the revision shall be submitted not later than 2 years after the coming into force of these Regulations.

(4) The provisions of these Regulations shall apply to a revision submitted under paragraphs (2) or (3) as they apply to a revision submitted under regulation 7(3).

(5) Until 31st December 2003, regulation 6 shall apply to a safety case accepted pursuant to the 1994 Regulations and which is still current immediately before the coming into force of these Regulations as if the reference to 3 years were a reference to 3 years from the date of the last review undertaken pursuant to regulation 6(3) of the 1994 Regulations.

(6) Any exemption granted by the Executive under regulation 11 of the 1994 Regulations and which has not been revoked shall, notwithstanding the revocation of the 1994 Regulations, continue in force and shall have effect as if it had been granted pursuant to regulation 17 of these Regulations.

### **Exemptions**

**17.** - (1) Subject to paragraph (2) and to any Community obligation of the United Kingdom the Executive may, by a certificate in writing, exempt any person or class of persons from any requirement or prohibition imposed by these Regulations and any such exemption may be granted subject to conditions and with or without limit of time and may be revoked by a certificate in writing at any time.

(2) The 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.

**Amendment and revocation**

**18.** - (1) The enactments referred to in Schedule 3 shall be amended in accordance with the provisions of that Schedule.

(2) The Railways (Safety Case) Regulations 1994 are hereby revoked.

## Notes on the handling of responses

We will acknowledge your response and consider it carefully. We may contact you if we have a question about your response or if we would like you to expand on it.

To make our consultation process as thorough and as open as possible, we make the comments we receive available to the public at our information centres in Sheffield and London. Copies are available at a small charge to cover our costs. However if you state clearly that you do not want your views to be made public, we will respect your wishes.

If you respond in a personal capacity, rather than as a postholder of an organisation, you should be aware that information you provide may constitute 'personal data' in the terms of the Data Protection Act 1998. For the purposes of this Act, HSE is the 'data controller' and will process the data for health, safety and environmental purposes. HSE may disclose these data to any person or organisation for the purposes for which it was collected, or where the Act allows disclosure. You have the right to ask for a copy of the data and to ask for inaccurate data to be corrected.