



STATUTORY INSTRUMENTS.

S.I. No. 430 of 2020

EUROPEAN UNION (RAILWAY SAFETY) (REPORTING AND
INVESTIGATION OF SERIOUS ACCIDENTS, ACCIDENTS AND
INCIDENTS) REGULATIONS 2020

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Contents

Part 1

Preliminary

1. Citation and commencement
2. Interpretation
3. Scope

Part 2

Investigation of Serious Accidents, Accidents and Incidents

4. Investigation Unit
5. Serious accidents, accidents and incidents
6. Investigators
7. Notification and reporting of accidents and incidents
8. Investigation procedure
9. Investigation report and annual report
10. Investigations by Investigation Unit
11. Powers of investigators
12. Search warrant
13. Provision of records and other information
14. Prohibition on obstruction of investigator
15. Requirement to give name and address to member of Garda Síochána, offence and arrest without warrant

Part 3

Proceedings

16. Prosecution of summary offences
17. Offence by body corporate

18. Immunity from claims

Part 4
Revocation and Saver

19. Revocation

20. Saver

EUROPEAN UNION (RAILWAY SAFETY) (REPORTING AND INVESTIGATION OF SERIOUS ACCIDENTS, ACCIDENTS AND INCIDENTS) REGULATIONS 2020

I, EAMON RYAN, Minister for Transport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) for the purpose of giving effect to Chapter V of Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016¹, as amended by Directive (EU) 2020/700 of the European Parliament and of the Council of 25 May 2020,² and Commission Implementing Regulation (EU) 2020/572 of 24 April 2020³, hereby make the following regulations:

Part 1
Preliminary

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2020.
- (2) These Regulations come into operation on 31 October 2020.

Interpretation

2. (1) In these Regulations -

“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 involving rolling stock in motion, fires and others;

“Act of 2005” means the Railway Safety Act 2005 (No. 31 of 2005);

“Agency” means the European Union Agency for Railways established by Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016⁴;

“causes” means actions, omissions, events or conditions, or a combination thereof, which led to an accident or incident;

¹ OJ No. L 138, 26.5.2016, p. 102.

² OJ No. L 165, 27.5.2020, p. 27.

³ OJ No. L 132, 27.4.2020, p. 10.

⁴ OJ No. L 138, 26.5.2016, p. 1.

“Chief Investigator” means a person nominated, or deemed by these Regulations to have been nominated, under Regulation 4(5);

“conformity assessment body” means a body that has been notified or designated to be responsible for conformity assessment activities, including calibration, testing, certification and inspection; a conformity assessment body is classified as a “notified body” following notification by a Member State; a conformity assessment body is classified as a “designated body” following designation by a Member State;

“Directive” means Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016⁵ as amended by Directive (EU) 2020/700 of the European Parliament and of the Council of 25 May 2020⁶;

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

“incident” means any occurrence, other than an accident or serious accident, affecting the safety of railway operations;

“infrastructure manager” has the meaning assigned to it by Regulation 2(1) of the Regulations of 2015;

“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, where appropriate, the making of safety recommendations;

“Investigation Unit” has the meaning assigned to it by Regulation 4;

“investigator” means a person appointed, or deemed by these Regulations to be appointed, under Regulation 4(5) and includes a qualified person engaged, or deemed by these Regulations to be engaged, under Regulation 6(2)(b) or 6(4);

“investigator-in-charge” means the person responsible for the organisation, conduct and control of an investigation;

“Minister” means the Minister for Transport;

“national safety authority” means the Commission for Railway Regulation;

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

“railway undertaking” has the meaning assigned to it by Regulation 2(1) of the Regulations of 2015;

“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 (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 any of the foregoing;

⁵ OJ No. L 138, 26.5.2016, p. 102.

⁶ OJ No. L 165, 27.5.2020, p. 27.

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

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

“Regulations of 2015” means the European Union (Regulation of Railways) Regulations 2015 (S.I. No. 249 of 2015);

“safety management system” means the organisation, arrangements and procedures established by an infrastructure manager or a railway undertaking to ensure the safe management of its operations;

“serious accident” means any train collision or derailment of a train, resulting in the death of at least one person or serious injuries to 5 or more persons or extensive damage to rolling stock, the infrastructure or the environment, and any other accident with the same consequences, which has an obvious impact on railway safety regulation or the management of safety;

“Union rail system” means the Union rail system as defined in point (1) of Article 2 of Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016.⁷

(2) A word or expression that is used in these Regulations and is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

(3) In these Regulations, save as otherwise indicated, a reference to an Article is a reference to an Article of the Directive.

(4) In these Regulations, a reference to an accident is to be construed as a reference to a serious accident when the investigation of a serious accident is being carried out.

Scope

3. For the purpose of the carrying out of investigations of railway accidents and incidents by the Investigation Unit, these Regulations apply to the railway system in the State, other than rail referred to in Article 2(2) or 2(3) of the Directive.

Part 2

Investigation of Serious Accidents, Accidents and Incidents

Investigation Unit

4. (1) The Railway Accident Investigation Unit established in accordance with Regulation 4 of the Regulations of 2014 (referred to in these Regulations

⁷ OJ No. L 138, 26.5.2016, p. 44.

as the “Investigation Unit”) is continued in existence to carry out the function of investigating accidents and incidents in accordance with these Regulations.

(2) The Investigation Unit shall -

- (a) be independent in its organisation, legal structure and decision making from any railway undertaking, infrastructure manager, charging body, allocation body and conformity assessment body and from any party whose interests could conflict with the tasks entrusted to it,
- (b) be functionally independent from the national safety authority, from the Agency and from any regulator of railways, and
- (c) perform its tasks independently of the organisations referred to in subparagraphs (a) and (b).

(3) The Investigation Unit is the investigating body in the State for the purposes of the Directive and these Regulations.

(4) The Commission for Railway Regulation is the national safety authority in the State for the purposes of the Directive and these Regulations.

(5) The Minister shall appoint such qualified persons to the staff of the Investigation Unit as investigators of railway accidents and incidents as the Minister thinks necessary for the purposes of these Regulations and shall nominate one of them to be the Chief Investigator who will be responsible for directing the work of the Investigation Unit in accordance with these Regulations.

(6) The Minister shall furnish an investigator with a warrant of his or her appointment and, when performing a function of an investigator under these Regulations the investigator shall, if so required by any person affected, produce the warrant or a copy of it to that person.

(7) The Investigation Unit shall be composed of at least one investigator able to perform the function of investigator-in-charge in the event of an accident or incident.

(8) The remuneration of the Chief Investigator and of investigators in the Investigation Unit shall be determined by the Minister, with the consent of the Minister for Public Expenditure and Reform.

(9) The Minister shall ensure that the Investigation Unit is given the means necessary for it to perform its tasks under these Regulations.

Serious Accidents, accidents and incidents

5. (1) The objective of an investigation by the Investigation Unit under these Regulations is to improve, where possible, railway safety and the prevention of accidents.

(2) An investigation by the Investigation Unit shall determine, in so far as possible, the cause or causes of an accident or incident with a view to making, where appropriate, safety recommendations.

(3) An investigation shall in no case be concerned with apportioning blame or liability.

(4) The Investigation Unit shall carry out an investigation after each serious accident.

(5) In addition to a serious accident referred to in paragraph (4), the Investigation Unit may investigate those accidents and incidents which under slightly different conditions might have led to serious accidents, including technical failures of the structural subsystems or of interoperability constituents of the Union rail system.

(6) The Investigation Unit shall decide whether or not an investigation of an accident or incident referred to in paragraph (5) shall be undertaken.

(7) In its decision under paragraph (6) the Investigation Unit shall take into account -

- (a) the seriousness of the accident or incident,
- (b) whether it forms part of a series of accidents or incidents relevant to the system as a whole,
- (c) its impact on railway safety, and
- (d) requests from infrastructure managers, railway undertakings, the national safety authority, or another Member State.

(8) The extent of investigations and the procedure to be followed in carrying out such investigations shall be determined by the Investigation Unit in accordance with Articles 21 and 23 and depending on the lessons it expects to draw from the accident or incident for the improvement of safety.

(9) The Investigation Unit may, before commencing an investigation, make inquiries to determine whether an investigation is warranted.

(10) The Investigation Unit shall, not later than 7 days after a decision to undertake an investigation is made, inform the Agency of the decision and provide the Agency with the details referred to in Article 25(1).

(11) The Investigation Unit shall, on the commencement of an investigation under these Regulations, notify the railway undertaking and the infrastructure manager concerned, the national safety authority and such other persons as it may deem appropriate, of such commencement.

(12) A railway undertaking and an infrastructure manager shall, as soon as practicable following notification under paragraph (11), provide to the Investigation Unit details of all records held by them, and all information known to them, that may be relevant to the investigation under these Regulations and shall immediately thereafter notify the Investigation Unit of any further relevant records which come into their possession and any further relevant information that becomes known to them.

(13) The investigation shall be undertaken independently of any investigation of an alleged offence regarding the accident or incident and be separate from any other proceedings whose function is to apportion blame or liability.

(14) (a) The investigation of an accident or incident shall be carried out by the Investigation Unit in accordance with Article 23 and the

necessary operational and technical expertise to carry out the investigation may be obtained from inside or outside the Investigation Unit depending on the character of the accident or incident to be investigated.

- (b) The Investigation Unit shall, if appropriate, invite an investigating body from a Member State other than the State to participate in an investigation where one of the following is involved in the accident or incident -
 - (i) a railway undertaking established and licensed in that Member State, or
 - (ii) a vehicle registered or maintained in that Member State.
- (c) An investigating body invited to participate under subparagraph (b) may, when requested by the Investigation Unit, assist in the collection of evidence for and on behalf of the Investigation Unit.
- (d) The Investigation Unit shall provide an investigating body invited to participate under subparagraph (b) with access to the information and evidence necessary to enable that investigating body to participate effectively in the investigation.

(15) Where, during the course of an investigation and in advance of the publication of the final report of its investigation, the Investigation Unit becomes aware of any implications for railway safety which, in its opinion, warrant consideration by a railway undertaking, an infrastructure manager or other person, the Investigation Unit shall immediately advise the national safety authority of the circumstances and may make and issue such interim safety recommendations as it considers to be warranted and feasible for the avoidance of accidents and incidents or otherwise for the improvement of railway safety.

(16) A safety recommendation issued by the Investigation Unit shall be in accordance with Article 26.

(17) The national safety authority shall take the necessary measures to ensure that a safety recommendation issued by the Investigation Unit or a safety recommendation that is addressed to the national safety authority by the investigating body of another Member State is duly taken into consideration, and, where appropriate, acted upon.

(18) Any railway undertaking, infrastructure manager, or other person to which a safety recommendation has been directed by the Investigation Unit, shall report at least quarterly to the national safety authority on the progress of measures that are taken or planned as a consequence of the safety recommendation.

(19) The national safety authority and other authorities or bodies to which a safety recommendation has been addressed by the Investigation Unit, shall report back at least annually to the Investigation Unit on measures that are taken or planned as a consequence of the safety recommendation.

(20) When a safety recommendation has been addressed to the national safety authority by the investigating body of another Member State, the national safety authority shall report back at least annually to the investigating body of the

Member State that issued the safety recommendation on measures that are taken or planned as a consequence of the safety recommendation.

(21) The national safety authority may take enforcement action under Part 7 of the Act of 2005 against a railway undertaking, an infrastructure manager, or other person where an investigation by the Investigation Unit finds that the railway undertaking, infrastructure manager or other person did not carry out its duties in compliance with the Act of 2005 and the Regulations of 2013.

(22) For the purposes of the exercise of its functions under these Regulations, the Investigation Unit may, where it deems it appropriate to do so as part of an investigation into an accident or incident, investigate any decision, action or omission of the national safety authority which the Investigation Unit considers may be relevant to its investigation and the national safety authority shall co-operate with the Investigation Unit.

(23) The Investigation Unit may if necessary, and provided it does not undermine the independence of the Investigation Unit under these Regulations, request the assistance of investigating bodies from other Member States or of the Agency to supply expertise or to carry out technical inspections, analyses or evaluations.

- (24) (a) The Investigation Unit shall conduct an active exchange of views and experience with investigating bodies of other Member States for the purpose of developing common investigation methods, drawing up common principles for follow-up of safety recommendations and adaptation to the development of technical and scientific progress.
- (b) The Investigation Unit shall engage with investigating bodies from other Member States to establish a programme of peer reviews to monitor the effectiveness and independence of investigating bodies in accordance with Article 22(7).

Investigators

6. (1) An investigation of an accident or incident under these Regulations shall be conducted by an investigator able to perform the function of investigator-in-charge of the investigation.

- (2) (a) The Chief Investigator may appoint himself or herself as investigator-in-charge for any particular investigation.
- (b) Where the Chief Investigator does not appoint himself or herself as investigator-in-charge under subparagraph (a) then he or she shall appoint an investigator from the Investigation Unit, or engage any other qualified person, to be the investigator-in-charge for any particular investigation.

(3) The Chief Investigator may, from time to time, engage such consultants or advisers as he or she may consider necessary to assist the Investigation Unit in the discharge of its functions.

(4) The Chief Investigator may engage one or more qualified persons as investigators to assist the investigator-in-charge during an investigation.

(5) The investigator-in-charge shall be independent of any parties involved in the accident or incident, the organisations referred to in Regulation 4(2) and of any party whose interests could conflict with the tasks entrusted to the investigator-in-charge.

- (6) (a) Where a person other than an investigator from the Investigation Unit is engaged as investigator-in-charge under paragraph (2)(b) or where a qualified person is engaged as an investigator under paragraph (4) to assist an investigator-in-charge, he or she shall be issued with a warrant by the Minister of his or her appointment to act as an investigator, and he or she shall have for the purpose of so acting, such functions of an investigator under these Regulations as may be specified at the time of his or her appointment and shall if requested by any person affected by the investigation, show the warrant or a copy of it to the person.
- (b) A qualified person engaged under paragraph (4) shall -
- (i) provide the investigator-in-charge with all relevant information available to him or her, and
 - (ii) respect the confidentiality of the investigation and not disclose information on the progress, evidence and findings of the investigation without the written consent of the Chief Investigator.
- (c) Any fees due to a consultant or adviser engaged under paragraph (3) or any fees payable to a qualified person engaged as an investigator-in-charge under paragraph (2)(b) or as an investigator under paragraph (4) shall form part of the expenses of the Investigation Unit.

Notification and reporting of accidents and incidents

7. (1) When an accident or incident to which these Regulations apply occurs, the railway undertaking or infrastructure manager concerned, or, if the accident or incident involved more than one railway undertaking or infrastructure manager, the railway undertakings or infrastructure managers concerned and, as appropriate, the national safety authority, shall immediately notify the accident or incident by the quickest practicable means, and provide all available information, including brief particulars and details of the location of the accident or incident and, in relation to an accident, of any loss of life or personal injury -

- (a) to the Investigation Unit and as soon as practicable thereafter send a written report to the Investigation Unit, in such form and containing such particulars of the accident or incident as may be specified from time to time by the Investigation Unit, and
- (b) to the national safety authority and as soon as practicable thereafter send a written report to the national safety authority, in such form and containing such particulars of the accident or incident as may be specified from time to time by the national safety authority or as prescribed in regulations, if any, made pursuant to section 69(1)(g) of the Act of 2005.

(2) On receiving a report under paragraph (1)(b), the national safety authority shall, by the quickest practicable means, send a report of the accident or incident to the Minister which shall include brief particulars and details of the location of the accident or incident and, in relation to an accident, details of any loss of life or personal injury.

(3) Where as a result of an accident, a person sustains a personal injury and as a result of that accident the person dies within 30 days of the accident, the railway undertaking or the infrastructure manager concerned shall, as soon as possible after the death comes to its knowledge, inform the Investigation Unit and the national safety authority in writing of the death.

(4) A railway undertaking or infrastructure manager who does not comply with subparagraphs (a) and (b) of paragraph (1) or, where applicable, paragraph (3) commits an offence and shall be liable on summary conviction to a class A fine.

(5) The Investigation Unit shall, as soon as practicable but not later than 2 months after receipt of the notification referred to in paragraph (1), decide whether or not to start an investigation concerning the accident or incident.

(6) The obligation under paragraph (1) includes the obligation, in circumstances where information is unavailable at the time of the notification or report, to update the notification or report referred to in that paragraph as soon as such information becomes available.

Investigation procedure

8. (1) An investigation shall be carried out in a transparent manner in accordance with Article 23(3).

(2) The Investigation Unit shall conclude its examinations at the accident site in the shortest time possible to enable the infrastructure manager to restore the railway infrastructure and open it to rail transport services as soon as possible.

Investigation report and annual report

9. (1)(a) The Investigation Unit shall prepare, publish and communicate a report of any investigation in accordance with Article 24(1) and (2) and Commission Implementing Regulation (EU) 2020/572 of 24 April 2020⁸.

(b) Subject to subparagraph (c), the Investigation Unit shall publish the final report in the shortest possible time and not later than 12 months after the date of the accident or incident.

(c) Where it appears to the Investigation Unit that it would not be possible in the circumstances to publish the final report of an investigation within the 12 month period referred to in subparagraph (b), it shall release an interim statement at least on

⁸ OJ L 132, 27.4.2020, p. 10.

each anniversary of the accident or incident, detailing the progress of the investigation and any safety issues raised.

- (d) Although it shall not be the purpose of the investigation report to apportion blame or liability, Regulation 5(3) shall not prevent the reporting of relevant findings of an investigator indicating the cause or causes or probable cause or causes of the accident or incident or the making of safety recommendations in accordance with Regulation 5.
- (2) (a) In conducting an investigation, the Investigation Unit shall take account of the reasonable needs of the victims and their relatives and keep them informed of the progress made in the investigation.
- (b) Before publishing an investigation report under paragraph (1), the Investigation Unit shall, as far as is practicable, send a draft of the investigation report to the persons referred to in Article 23(3) and invite them to make observations on the draft report and to provide any relevant technical information in order to improve the quality of the report.
- (c) Where a person to which subparagraph (b) applies is deceased, a draft of the investigation report shall be sent by the Investigation Unit to the person who appears to the Investigation Unit to best represent the interests of the deceased person.
- (d) A person to whom the Investigation Unit sends a draft investigation report under subparagraph (b) or (c) may, within a period of 28 days commencing on the date on which the draft report is sent to the person or such further period, not exceeding 28 days, as the Investigation Unit in its discretion thinks fit, submit to the Investigation Unit in writing his or her observations on the draft report.
- (e) A person to whom the draft investigation report has been sent in accordance with subparagraph (b) or (c) may apply to the Investigation Unit for an extension, not exceeding 28 days, of the period or further period referred to in subparagraph (d), in which to submit his or her observations on the draft report.
- (f) The Investigation Unit shall, so far as reasonably practicable, take account of observations submitted in accordance with subparagraph (d) relating to the draft investigation report and may, at its discretion -
 - (i) alter the draft report before publication or decide not to do so,
 - or
 - (ii) where no request in writing referred to in subparagraph (g) is made by the person who submitted the observations, include in the published report such comments on the observations as it thinks fit.

- (g) Observations submitted to the Investigation Unit in accordance with subparagraph (d) may, if the Investigation Unit considers it appropriate to do so, be included in an appendix to the published report unless the person submitting the observations requests in writing that the observations are not published.
 - (h) A person to whom a draft investigation report has been sent in accordance with subparagraph (b) or (c) shall not disclose or permit to be disclosed to another person (other than by way of confidential disclosure to his or her legal or technical adviser), the draft report or its contents except with the prior consent in writing of the Investigation Unit and subject to such conditions, if any, which may be specified by the Investigation Unit in such consent.
- (3) A person who contravenes paragraph (2)(h) commits an offence and shall be liable on summary conviction to a class A fine.
- (4) The Investigation Unit shall immediately send a copy of every final investigation report to the Agency, the national safety authority, the other relevant parties referred to in Article 23(3), any bodies and parties concerned in a Member State other than the State and the Minister.
- (5) (a) Where the Investigation Unit has carried out an investigation under these Regulations and it is satisfied that there is new evidence available which could be likely to materially alter the findings of the investigation and that the purpose of the investigation would be served by re-opening it, the Investigation Unit may re-open the investigation.
 - (b) These Regulations apply to an investigation re-opened under subparagraph (a) in the same way as they apply to an investigation under these Regulations.
- (6) The Investigation Unit shall publish an annual report by 30 September each year in accordance with Article 24(3) and shall send a copy of the annual report to the Agency, to the Minister and to the national safety authority.
- (7) Copyright in any report published by the Investigation Unit remains with the Investigation Unit but the copyrighted material may be freely used for educational or safety-related purposes but not for commercial benefit.

Investigations by Investigation Unit

10. (1) For the purposes of the investigation of an accident or an incident under these Regulations, an investigator shall, where appropriate in cooperation with the authorities responsible for any criminal investigation or other inquiry, as soon as possible, be given -

- (a) immediate access to the site of the accident or incident as well as to the rolling stock involved, the related infrastructure and traffic control and signalling installations,
- (b) the right to an immediate listing of, and access to, evidence and controlled removal of wreckage, infrastructure installations or components for examination or analysis purposes,

- (c) unrestricted access to and use of the contents of on-board recorders and equipment for recording of verbal messages and registration of the operation of the signalling and traffic control system,
 - (d) access to the results of examination of the bodies of victims,
 - (e) access to the results of examinations of the train staff and other railway staff involved in the accident or incident,
 - (f) the opportunity to question the railway staff involved and other witnesses and anyone who the investigator-in-charge has reasonable grounds to believe may have information relevant to the investigation, and
 - (g) access to any relevant information or records held by any railway undertaking, infrastructure manager, entities in charge of maintenance and the national safety authority.
- (2) The Investigation Unit shall consult with railway undertakings and infrastructure managers to establish agreed procedures for entry by investigators upon railway property.

Powers of investigators

11. (1) A person appointed as an investigator when exercising any power conferred by these Regulations shall, if requested by any person affected, show the warrant of his or her appointment or a copy of it to that person.
- (2) An investigator shall be independent in carrying out an investigation under these Regulations.
- (3) An investigator may, for the purposes of carrying out an investigation under these Regulations, do any one or more of the following -
- (a) enter the site of the accident or incident to be investigated,
 - (b) bring with him or her any other person authorised by the Chief Investigator or any equipment or materials required,
 - (c) direct that any railway property or part thereof and anything therein and any related scene of accident or incident be left undisturbed or be preserved for so long as reasonably necessary,
 - (d) make such examination and inquiry as may be necessary,
 - (e) enter any place, premises or vehicle which he or she has reasonable cause to believe contains records or information relevant to the investigation,
 - (f) require the production of any record, including the results of any examination or test carried out as part of an investigation into the same accident or incident (and, in the case of information in non-legible form, to reproduce it in legible form) which in the opinion of the investigator it is necessary for him or her to examine and copy or require that a copy of it or of any entry therein be provided to him or her,

- (g) examine 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) which in the opinion of the investigator is necessary,
- (h) direct that such records be retained for such period as may be reasonable for further examination,
- (i) take samples or, as regards any article or substance he or she finds, require the railway undertaking, infrastructure manager or any member of staff of, or other person engaged by, the railway undertaking, infrastructure manager 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,
- (j) in relation to any article or substance found, to take possession of it, preserve 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 subparagraph (k),
 - (ii) to ensure that it is not tampered with before the examination of it is completed,
 - (iii) to ensure that it is kept available for the purposes of the investigation and any other statutory investigation into the same accident or incident, or
 - (iv) to ensure that results of any process or test to which it has been subjected are kept available for the purposes of the investigation and any other statutory investigation into the same accident or incident,
- (k) require that any article be operated or set in motion, or cause any article or substance found to be dismantled or subjected to any process or test which appears to him or her to be reasonably necessary (but not so as to damage or destroy it unless it is, in the circumstances, necessary to do so for the purposes of the process or test) and where an investigator proposes to exercise the power conferred by this subparagraph in the case of an article or substance found, he or she shall, if so requested by a person 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,
- (l) before exercising the power conferred by subparagraphs (j) and (k) in the case of any article or substance, an investigator shall, in so far as it is practicable to do so, consult such persons as appear to him or her to be appropriate for the purpose of ascertaining what risks and dangers, if any, there may be in doing anything which he or she proposes to do under that power,

- (m) take any measurements or photographs or make any tape, electronic or other audio or visual recordings which the investigator considers necessary,
- (n) require any person to afford the investigator such facilities and assistance within that person's control or responsibilities as are necessary to enable the investigator to exercise any of the powers conferred on him or her by these Regulations,
- (o) 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 investigator all reasonable assistance in relation to its use,
- (p) require any railway undertaking or infrastructure manager to have any train, railway infrastructure, equipment, system, or procedure examined and tested at the railway undertaking's, or infrastructure manager's expense where, in his or her opinion, this is necessary,
- (q) require any person whom he or she has reasonable cause to believe to be able to give information relevant for the purposes of the investigation, to answer such questions with respect to relevant matters as he or she thinks fit to ask, and
- (r) have a member of the Garda Síochána accompany him or her if the investigator has reasonable cause to apprehend any serious obstruction in the execution of his or her duty.

(4) Where, under the power conferred by subparagraph (j) of paragraph (3), an investigator 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 the railway undertaking or infrastructure manager a portion of the sample marked in a manner sufficient to identify it.

(5) An answer or statement given to an investigator as part of an investigation under these Regulations may be reproduced in whole or in part in the investigation report, but shall not be admissible as evidence in civil or criminal proceedings.

(6) In this Regulation, "railway property" means all land, buildings, railway infrastructure, rolling stock and vehicles under the control of a railway undertaking or an infrastructure manager.

Search warrant

12. (1) An investigator shall not, except under a warrant under paragraph (3) or with the consent of the occupier, enter a domestic dwelling for the purposes of these Regulations.

(2) Where an investigator in the exercise of his or her powers under these Regulations is prevented from entering any premises, place or vehicle, an application may be made under paragraph (3) authorising such entry.

(3) If a judge of the District Court is satisfied by information on oath of an investigator that there are reasonable grounds for suspecting that information required by an investigator for the purpose of these Regulations is held at any railway, premises, place or vehicle, the judge may issue a warrant authorising the investigator, accompanied if the investigator considers it necessary by other investigators 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 investigator under these Regulations.

Provision of records and other information

13. (1) Where, in the opinion of an investigator carrying out an investigation under these Regulations, the inspection of any record may be necessary for the purpose of exercising his or her functions under these Regulations, the investigator may require a railway undertaking, an infrastructure manager, or the national safety authority to make available within such reasonable period as the investigator specifies, such record to enable the investigator to inspect and copy it and the railway undertaking, infrastructure manager, or the national safety authority shall comply with the requirement.

(2) An investigator may require the attendance before him or her of any person in the State for the purpose of providing to the investigator any information which may be known to the person and which, in the investigator's opinion may be necessary for the purposes of exercising a function under these Regulations and the person shall comply with the requirement.

(3) A person required to attend before an investigator in accordance with paragraph (2) shall be entitled to the reimbursement by the Investigation Unit of any reasonable expenses incurred in connection with his or her attendance.

(4) An investigator may make such copies or take such extracts from the information gathered as the investigator considers necessary for the purposes of the investigation.

Prohibition on obstruction of investigator

14. (1) A person commits an offence where he or she -

- (a) obstructs or impedes an investigator while the investigator is performing a function of an investigator under these Regulations,
- (b) fails to comply with a requirement of an investigator under these Regulations, or
- (c) gives information to an investigator which the person knows to be false or misleading.

(2) A person who commits an offence under paragraph (1) shall be liable on summary conviction to a class A fine.

Requirement to give name and address to member of Garda Síochána, offence and arrest without warrant

15. (1) A member of the Garda Síochána accompanying an investigator may require of any person his or her name and address and, if such person refuses or fails to give his or her name and address or gives a name and address which the member has reasonable grounds for believing to be false or misleading, the person commits an offence.

(2) A person who commits an offence under paragraph (1) shall be liable on summary conviction to a class A fine.

(3) A member of the Garda Síochána accompanying an investigator may arrest without warrant -

- (a) a person who obstructs or impedes an investigator exercising a power under these Regulations or who refuses to comply with a request or requirement of an investigator, or
- (b) a person who is required to give his or her name and address under paragraph (1) and refuses or fails to give his or her name and address to the member or gives a name or address which the member has reasonable grounds for believing to be false or misleading.

Part 3
Proceedings

Prosecution of summary offences

16. (1)(a) Subject to subparagraph (b), proceedings for an offence under these Regulations may be prosecuted summarily by the Minister.

(b) Proceedings for an offence under Regulation 7(4) may be prosecuted summarily by the national safety authority where the railway undertaking or infrastructure manager concerned does not comply with the obligation under Regulation 7(1)(b) to notify or send a report to the national safety authority, or the obligation under Regulation 7(3) to inform the national safety authority.

(2) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under these Regulations may be instituted at any time within 2 years after the date of the offence.

Offence by body corporate

17. Where an offence under these Regulations is committed by a body corporate and is proved to have been committed with the consent or connivance of, or is attributable to any wilful neglect on the part of, any 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 commits an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Immunity from claims

18. (1) An investigator is immune from claims for damages in respect of any thing done in good faith and in the course of carrying out investigations into accidents and incidents under these Regulations or in assisting the Investigation Unit in the discharge of its functions including the preparation and publication of an investigation report.

(2) In paragraph (1) “report” includes an investigation report and a draft investigation report referred to in Regulation 9, written observations on a draft report referred to in Regulation 9(2)(d), comments on any such observations as referred to in Regulation 9(2)(f)(ii) and any safety recommendations and interim safety recommendations that are referred to in Regulation 5.

Part 4

Revocation and Saver

Revocation

19. Parts 2 and 4 of the Regulations of 2014 are revoked.

Saver

20. On and from the date on which these Regulations come in to operation -

- (a) any investigation of an accident or incident, and the preparation of any report, commenced by the Investigation Unit and not completed at the time Part 2 of the Regulations of 2014 are revoked, shall be completed by the Investigation Unit and these Regulations shall apply as if the investigation or the preparation of the report, had been commenced under these Regulations,
- (b) any investigation reports, annual reports and any other reports prepared or published under the Regulations of 2014 shall be deemed to have been prepared or, as the case may be, published under these Regulations,
- (c) any safety recommendations or interim safety recommendations issued pursuant to the Regulations of 2014 by the Investigation Unit shall be deemed to be safety recommendations and interim safety recommendations issued by the Investigation Unit under these Regulations,
- (d) any investigator appointed under Regulation 4(5) of the Regulations of 2014, or Chief Investigator nominated under that Regulation, before the coming into operation of these Regulations shall be deemed to be appointed or nominated, as the case may be, under Regulation 4(5) of these Regulations, and the

remuneration of an investigator or Chief Investigator determined under Regulation 4(8) of the Regulations of 2014 shall be deemed to be the remuneration determined under Regulation 4(8) of these Regulations,

- (e) any investigator-in-charge appointed under Regulation 6(2) of the Regulations of 2014 or qualified person engaged under Regulation 6(2)(b) or 6(4) of the Regulations of 2014 shall be deemed to be appointed under Regulation 6(2), or engaged under Regulation 6(2)(b) or 6(4) of these Regulations, as the case may be,
- (f) any warrant issued under Regulation 6(6) of the Regulations of 2014 immediately before the coming into operation of these Regulations, shall continue in force as if issued under these Regulations, and
- (g) any search warrant issued under the Regulations of 2014 immediately before the coming into operation of these Regulations, shall continue in force as if issued under these Regulations.



L.S.

GIVEN under my Official Seal,
13 October, 2020.

EAMON RYAN,
Minister for Transport.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

The purpose of these Regulations is to transpose Chapter V of Directive (EU) 2016/798 on railway safety. Chapter V sets down the requirements for the investigation of railway accidents and incidents. Directive (EU) 2016/798 was amended by Directive (EU) 2020/700 (which extended the transposition period to 31 October 2020) and by Commission Implementing Regulation (EU) 2020/572 (which sets out a standard reporting structure for investigation reports).

These Regulations lay down the statutory powers and provisions for the Railway Accident Investigation Unit to investigate railway accidents and incidents involving heavy rail and set out the reporting requirements to be met.

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