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**AN BILLE UM SHÁBHÁILTEACHT IARNRÓID, 2001**  
**RAILWAY SAFETY BILL, 2001**

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*Mar a tionscnaíodh*  
*As initiated*

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[No. 67 of 2001]

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Freedom of Information Act, 1997	1997, No. 13
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Railway Clauses Act, 1863	26 & 27 Vict., c. 92
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Railway Employment (Prevention of Accidents) Act, 1900	63 & 64 Vict., c. 27
Railway Regulation Act, 1842	5 & 6 Vict., c. 55
Railway Returns (Continuous Brakes) Act, 1878	41 Vict., c. 20
Railway Returns (Prevention of Accidents) Act, 1900	63 & 64 Vict., c. 27
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Regulation of Railways Act, 1871	1871, c. 78
Regulation of Railways Act, 1868	31 & 32 Vict., c. 119
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Terms of Employment (Information) Act, 1994	1994, No. 5
Transport Act, 1958	1958, No. 19
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Transport (Miscellaneous Provisions) Act, 1971	1971, No. 14
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Worker Protection (Regular Part-Time Employees) Act, 1991	1991, No. 5



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AN BILLE UM SHÁBHÁILTEACHT IARNRÓID, 2001  
RAILWAY SAFETY BILL, 2001

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# BILL

*entitled*

5 AN ACT TO MAKE PROVISION FOR THE ESTABLISHMENT  
OF A BODY TO BE KNOWN AS THE RAILWAY SAFETY  
COMMISSION OR, IN THE IRISH LANGUAGE, AN  
COIMISIÚN SÁBHÁILTEACHTA IARNRÓID, TO  
10 DEFINE ITS FUNCTIONS, TO PROVIDE FOR THE  
ESTABLISHMENT OF A BODY TO BE KNOWN AS THE  
RAILWAY SAFETY ADVISORY COUNCIL OR, IN THE  
IRISH LANGUAGE, AN CHOMHAIRLE SÁBHÁILTE-  
ACHTA IARNRÓID, TO DEFINE ITS FUNCTIONS, TO  
15 PROVIDE FOR THE GENERAL DUTIES OF RAILWAY  
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20 THAT WORK THROUGH ALCOHOL OR DRUGS, TO  
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THE REGULATION OF RAILWAYS ACTS, 1840 TO 1893,  
25 AND OTHER ENACTMENTS RELATING TO RAIL-  
WAYS, AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

## PART 1

### PRELIMINARY

1.—This Act may be cited as the Railway Safety Act, 2001. Short title.

30 2.—(1) In this Act, except where the context otherwise requires— Interpretation.

“Commission” means the Railway Safety Commission established  
under *section 8*;

“Council” means the Railway Safety Advisory Council established  
under *section 79*;

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

“functions” includes powers and duties and references to the performance of functions include, as respects powers and duties, references to the exercise of the powers and the carrying out of the duties; 5

“heritage railway” means a railway undertaking which only operates train services or railway infrastructure of historical interest;

“inspector” means a person appointed under *section 70* to be an inspector;

“investigation report” means a report published by the Commission 10 of an investigation undertaken by it;

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

“Minister” means Minister for Public Enterprise;

“operation” in relation to a railway undertaking, includes the operation of railway services or the operation of railway infrastructure, 15 or both, and any other ancillary activities;

“public road” means a road over which a public right of way exists and the responsibility for the maintenance of which lies on a road authority; 20

“qualified person” and “suitably qualified person” shall be construed in accordance with *section 50(18)*;

“railway” means—

(a) a railway which has a gauge of not less than 350 mm and which is used for the carrying of fare-paying passengers, 25 or fee-paying members, or the conveyance of merchandise for monetary gain,

(b) any part of such other railway that has a physical interface with a railway mentioned in *paragraph (a)*, or a physical interface with a public road, or 30

(c) any other railway which may be specified by the Commission under *section 4*;

“railway incident” has the meaning assigned to it by *section 52*;

“railway infrastructure” means the fixed assets used for the operation of a railway including, but not limited to, rail track, railway 35 stations, permanent way and plant used for signalling or exclusively for supplying electricity for operational purposes to the railway;

“railway property” has the meaning assigned to it by *section 70(11)*;

“railway undertaking” means—

(a) Iarnród Éireann — Irish Rail, 40

(b) a heritage railway, or

(c) any other person who operates a railway;



- “record” means any memorandum, book, plan, map, drawing, diagram, pictorial or graphic work or other document, any photograph, film or recording (whether of sound or images or both), any form in which data (within the meaning of the Data Protection Act, 1988) are held, any other 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 the foregoing;
- “reportable railway incident” means a railway incident that is required to be reported by a railway undertaking in accordance with *section 53*;
- “road authority” has the meaning assigned to it by the Roads Act, 1993, and includes the National Roads Authority;
- “rolling stock”, in relation to a railway, means any train or any other vehicle with flanged wheels which is designed to operate on a railway;
- “safety case” shall be construed in accordance with *section 41*;
- “train” means a vehicle with flanged wheels designed to operate on a railway for whatever purpose, and includes carriages and rolling stock.
- (2) In this Act—
- (a) a reference to a section, Part or Schedule is a reference to a section or Part of or Schedule to this Act unless it is indicated that a reference to some other enactment is intended,
- (b) a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended, and
- (c) a reference to an enactment shall be construed as a reference to that enactment as amended, adapted or extended by any subsequent enactment including this Act.
- 3.**—Every order other than an order under section 5, 7, 40, 78 or 81 or regulation (other than a regulation under *section 82(4)*) made by the Minister or Commission under this Act shall, as soon as may be after it is made, be laid before each of the Houses of the Oireachtas and if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.
- 4.**—(1) This Act applies to all railway undertakings.
- (2) This Act does not apply to the operation of railway infrastructure solely for industrial use, except insofar as it has an interface with a public road or with a railway undertaking.

Laying of orders and regulations.

Application.

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

Repeals.

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

(2) This section comes into operation on such day or days as the Minister may by order or orders appoint and different days may be so appointed for the application of this section to different enactments specified in *Schedule 1* and to different provisions specified in that Schedule of those enactments. 10

Expenses.

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

## PART 2

15

### RAILWAY SAFETY COMMISSION

Establishment day.

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

Establishment of  
Railway Safety  
Commission.

**8.—**(1) There shall stand established, on the establishment day, a body to be known as the Railway Safety Commission or, in the Irish language, An Coimisiún Sábháilteachta Iarnróid, in this Act referred to as the “Commission”, to perform the functions assigned to it under this Act. 20

(2) The Commission shall be a body corporate with perpetual succession and shall have a seal and power to sue and be sued in its corporate name and to acquire, hold and dispose of land or an interest in land, and to acquire, hold and dispose of any other property. 25

(3) The Commission shall have all such powers as are necessary for or incidental to the performance of its functions under this Act. 30

Independence of  
Commission.

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

Functions of  
Commission.

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

(a) to foster and encourage railway safety,

(b) to regulate and enforce railway safety, and 35

(c) to investigate and report on railway incidents.

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

(3) The Commission, subject to the approval of the Minister given with the consent of the Minister for Finance, may— 40

- (a) enter into agreements or make arrangements with any Minister of the Government, or any other person for that Minister or person to perform on behalf of the Commission (with or without payment) any of its functions;
- 5 (b) enter into agreements or make arrangements with any Minister of the Government or the National Authority for Occupational Safety and Health for the Commission to perform on behalf of that Minister or that authority (with or without payment) such functions as may appropriately
- 10 be performed by it in connection with its functions under this Act; and
- (c) for the purposes of the Safety, Health and Welfare at Work Act, 1989, be prescribed to be an enforcing agency under that Act.
- 15 (4) The Commission shall provide advice to the Minister as may be requested by the Minister from time to time in relation to railway safety.
- (5) For the purposes of its functions, the Commission shall encourage and foster activities and measures which are directed
- 20 towards the promotion of railway safety, including such arrangements as it considers appropriate to undertake, to promote, to sponsor, to evaluate and to publish the results of research, surveys and studies relating to railway safety.
- 25 **11.—**(1) The Minister may, by order, made with the consent of the Minister for Finance, confer on the Commission such additional functions in relation to railway safety as, from time to time, he or she considers appropriate. Conferral of additional functions.
- (2) The Minister or any other Minister of the Government with the consent of the Minister may, with the consent of the Minister for Finance, by order provide that any function relating to railway safety conferred on him or her under any enactment (including this Act), shall, where the relevant Minister is satisfied that the function could be more conveniently performed by the Commission, in lieu of being performed by him or her, be performed by the Commission with
- 30 effect from a date specified in the order.
- (3) Whenever an order under *subsection (2)* is in force in relation to a particular function, a reference in any enactment concerned to the Minister or the Minister of the Government concerned, as the case may be, shall be construed as including a reference to the Commission and the function to which the order relates shall be the function of the Commission.
- 40 (4) An order under *subsection (1)* or (2) may contain such incidental, supplementary, consequential and transitional provisions as appear to the Minister or the relevant Minister of the Government, as the case may be, to be necessary for the purpose or in consequence of, or to give full effect to, the order.
- 45 (5) The Minister or another Minister of the Government who has made an order under *subsection (2)* may—
- (a) where the order is made by the Minister, with the consent
- 50 of the Minister for Finance, or

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

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

Transfer of  
functions.

**12.—**(1) The administration and business in connection with the exercise, performance or execution of any of the functions transferred by *subsection (2)* are transferred, on the establishment day, to the Commission. 5

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

(a) the provisions of the enactments mentioned in *Part 1* of *Schedule 2*, and 10

(b) the regulations mentioned in *Part 2* of *Schedule 2*,

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

(3) References to the Minister contained in any Act or instrument relating to any functions transferred by *subsection (2)* shall, on the establishment day, be construed as references to the Commission. 15

(4) Anything commenced before the establishment day by or under the authority of the Minister may, in so far as it relates to functions transferred by this section, be carried on or completed on or after such day by the Commission. 20

(5) Where, immediately before the establishment day, any legal proceedings are pending to which the Minister is the plaintiff or the prosecutor and the proceedings have reference to functions transferred by this section to the Commission, the name of the Commission shall, in so far as the proceedings relate to any functions transferred by this section, be substituted in those proceedings for that of the Minister or added in those proceedings as may be appropriate and those proceedings shall not abate by reason of such substitution. 25

(6) Where, immediately before the establishment day, any legal proceedings are pending to which the Minister is a defendant and the proceedings have reference to any functions transferred to the Commission by this section, the Commission shall not be substituted for the Minister in those proceedings notwithstanding the transfer of functions under this Act. 30 35

(7) Every document (including any certificate or licence) granted or made in the exercise of a function transferred by this section shall, if and in so far as it was operative immediately before the establishment day, have effect on and after that day as if it had been granted or made by the Commission. 40

Policy directions by  
Minister to  
Commission.

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

(2) The Commission shall comply with any direction given under *subsection (1)*. 45

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

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

(5) The Minister may give policy or other guidelines to the Commission in relation to any of the functions assigned to it by or under any enactment (including this Act) and the Commission shall have regard to the guidelines when performing such functions.

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

15 **14.—**(1) The Commission shall consist of at least one but not more than 3 members, each of whom shall, subject to *subsection (3)*, be appointed by the Minister on such terms and conditions, including remuneration, as the Minister may fix, with the consent of the Minister for Finance, to hold office in a full-time capacity for a period of not less than 3 years and not more than 7 years. Members of Commission.

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

(3) The person who holds the position, immediately before the establishment day, of Chief Railway Inspecting Officer of the Minister shall become and be a commissioner on the establishment day.

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

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

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

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

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

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

(10) A commissioner may—

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

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

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

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

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

(14) Notwithstanding *subsection (13)*, a person who was a commissioner shall not be precluded from holding office or engagement in any employment in the Civil Service or any statutory regulatory body or from acting as a consultant to the Commission, the Minister or any other Minister of the Government on the basis that the period referred to in that subsection has not expired.

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

Staff of  
Commission.

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

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

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

Transfer of staff  
from Minister to  
Commission.

**16.—**(1) The Minister shall designate such and so many of his or her officers who are—

(a) Railway Inspecting Officers, or

(b) recruited specifically for transfer to the Commission on the establishment day,

to be transferred to the Commission.

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

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

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

- (a) the Redundancy Payments Acts, 1967 to 1991,
- 20 (b) the Minimum Notice and Terms of Employment Acts, 1973 to 1991,
- (c) the Unfair Dismissals Acts, 1977 to 1993,
- (d) the Terms of Employment (Information) Act, 1994,
- (e) the Organisation of Working Time Act, 1997, and
- 25 (f) the Worker Protection (Regular Part-Time Employees) Act, 1991.

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

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

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

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

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

19.—(1) The Commission shall, as soon as practicable after the establishment day and following consultation with the Minister, draw Codes of conduct.



up a code of conduct in respect of controls on the interests and ethical behaviour to apply to each commissioner and member of the staff of the Commission.

(2) The Commission shall publish any code of conduct drawn up under *subsection (1)*.

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

**20.—(1)** Where a commissioner—

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

he or she shall thereupon cease to be a commissioner.

15

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

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

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

25

30

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

35

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

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

40

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

45



21.—(1) On his or her appointment, each commissioner shall make a declaration in writing of his or her interests to the Minister in such form as the Minister, following consultation with the Minister for Finance, may specify, and the person who becomes a commissioner in accordance with *section 14(3)* shall make such declaration to the Minister not later than 15 days after the establishment day.

Declaration of  
interest.

(2) On his or her appointment, each consultant, adviser and each member of the staff of the Commission at a grade or level specified by the Commission, following consultation with the Minister, shall declare his or her interests in writing to the Commission and the Commission shall, on request, provide details of all such declarations to the Minister.

(3) A person to whom *subsection (1)* or (2) applies shall, throughout the tenure of his or her appointment, amend and update his or her declaration of interests in respect of any changes in the interests held by the person.

(4) Where a person to whom *subsection (1)* applies fails to make a declaration in accordance with that subsection or makes an incomplete or inaccurate declaration, the Minister shall decide the appropriate action (including removal from office) to be taken.

(5) Where a person to whom *subsection (2)* applies fails to make a declaration in accordance with that subsection or makes an incomplete or inaccurate declaration, the Commission shall decide the appropriate action (including removal from office or termination of contract) to be taken.

(6) In this section and in *section 22*—

“employment” includes—

- (a) full-time employment,
- (b) part-time paid employment, where such employment is ongoing in the year of appointment or which arises in subsequent years,
- (c) temporary paid employment, being for a period of 16 weeks or more in the year of appointment or in subsequent years, or
- (d) being retained under contract, directly or indirectly, in any capacity as an adviser, or consultant, or for the provision of services;

“interest” includes—

- (a) employment by or on behalf of a railway undertaking,
- (b) employment by or on behalf of an undertaking involved in the manufacture, maintenance or supply of railway equipment, plant, materials or any other thing for the purpose of the maintenance, renewal, development, operation or use of a railway,
- (c) shares in, bonds or debentures of, or other like investments in an undertaking mentioned in *paragraph (a)* or *(b)*, where the aggregate of such holdings exceeds €13,000,

- (d) a directorship or shadow directorship (within the meaning of the Companies Acts, 1963 to 2001), in an undertaking mentioned in *paragraph (a)* or *(b)*, held currently or during the previous two years, or
- (e) gifts of travel, holidays, transport, money (in excess of €650) or other benefits, including benefits from any beneficial interest in or connected with an undertaking mentioned in *paragraph (a)* or *(b)*, during the previous two years which were received by a person to whom this section applies or by his or her spouse or partner.

Disclosure of interests.

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

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

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

- (a) he or she or any connected relative, or any nominee of his or her or any connected relative, is a member of an undertaking or any other body which has a beneficial interest in, or material to, a matter referred to in that subsection,
- (b) he or she or any connected relative is in partnership with or is in the employment of a person who has a beneficial interest in, or material to, such a matter,
- (c) he or she or any connected relative is a party to any arrangement or agreement (whether or not enforceable) concerning land to which such a matter relates, or
- (d) any connected relative has a beneficial interest in, or material to, such a matter.

(3) In *subsection (2)*, “connected relative” means, in relation to a person to whom that subsection applies, the person’s spouse or partner, parent, brother, sister, child or a child of a spouse or partner.

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

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

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

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

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

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

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

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

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

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

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

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

(6) The Third Schedule to the Freedom of Information Act, 1997, is amended by the insertion in Part I at the end thereof: 5

(a) in column (2) of “*Railway Safety Act, 2001*”, and

(b) in column (3) of “*Section 23(1)*”.

Superannuation for  
members of  
Commission.

**24.—**(1) The Minister shall, with the consent of the Minister for Finance, make a scheme or schemes for the granting of superannuation benefits to or in respect of a commissioner ceasing to hold office. 10

(2) Every scheme made under this section shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme and different times and conditions may be fixed in respect of different classes of persons. 15

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

(4) If any dispute arises as to the claim of a commissioner to, or the amount of, any pension, gratuity or other allowance payable in pursuance of a scheme under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance for determination by him or her. 20

(5) A scheme under this section shall be carried out by the Minister in accordance with its terms. 25

(6) No pension, gratuity or other allowance shall be granted by the Minister to or in respect of any commissioner ceasing to hold office otherwise than in accordance with a scheme under this section or as otherwise may be approved of by the Minister with the consent of the Minister for Finance. 30

(7) A scheme under this section shall be laid before each House of the Oireachtas by the Minister as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 35

Superannuation for  
staff of the  
Commission.

**25.—**(1) The Commission shall prepare and submit to the Minister a scheme or schemes for the granting of superannuation benefits to or in respect of such members of the staff of the Commission, including the deputy commissioner, as it may think fit. 40

(2) Every scheme made under this section shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme and different times and conditions may be fixed in respect of different classes of persons. 45

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

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

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

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

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

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

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

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

Resources made available by Minister.

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

(3) Where the Minister makes available to the Commission under *subsection (1)* any officer of the Minister, other than an officer

referred to in *section 14(3)* or *section 16(1)*, that officer shall remain an officer of the Minister and shall not be considered to be a member of the staff of the Commission save for the purpose of obligations under *sections 21, 22 and 23*.

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

Grants to  
Commission.

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

Levy.

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

(2) The Commission shall not impose levy before 31 December 2004.

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

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

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

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

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

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

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

10    **30.**—(1) The Commission shall keep in such form and in respect of such accounting periods as may be approved of by the Minister, with the consent of the Minister for Finance, all proper and usual accounts of moneys received or expended by it, including an income and expenditure account and a balance sheet. Accounts and annual report of Commission.

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

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

30    (4) The Commission shall give to the Minister such information relating to the performance of its functions as the Minister may request.

35    (5) The financial year of the Commission shall be the period of 12 months ending on 31 December in any year and, for the purposes of this section and *section 27*, the period commencing on the establishment day and ending on the following 31 December shall be deemed to be a financial year.

40    **31.**—(1) The Commission shall adopt and submit to the Minister a statement of strategy within 6 months of the establishment day and at least every 3 years from the submission date of the first statement. Statement of strategy.

(2) The statement of strategy shall—

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



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

Publication of reports of Commission.

**32.**—Subject to *sections 30* and *57*, the Commission may publish any reports on matters related to its functions.

Accountability of Commission to Committees of Oireachtas.

**33.**—(1) The commissioner, or where there is more than one commissioner, the chairperson of the Commission shall, whenever required by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on— 5 10

(a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General which the Commission is required by or under statute to prepare, 15

(b) the economy and efficiency of the Commission in the use of its resources,

(c) the systems, procedures and practices employed by the Commission for the purpose of evaluating the effectiveness of its operations, and 20

(d) any matter affecting the Commission referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act, 1993, or in any other report of the Comptroller and Auditor General (in so far as it relates 25 to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann.

(2) In the performance of his or her duties under *subsection (1)*, a commissioner shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government 30 or on the merits of the objectives of such a policy.

(3) From time to time, and whenever so requested, the Commission shall account for the performance of its functions to a Committee of one or both Houses of the Oireachtas and shall have regard to any recommendations of such Committee relevant to its functions. 35

Premises of Commission.

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

Seal of Commission.

**35.**—(1) The Commission shall, as soon as may be after its establishment, provide itself with a seal. 40

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

(a) a commissioner, or

(b) a member of the staff of the Commission, authorised by the Commission to act in that behalf. 45



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

10 **36.—**(1) The Commission shall keep itself informed of the policies, objectives, resolutions and guidelines of any public authority the functions of which have, or may have, a bearing on the matters with which the Commission is concerned. Commission to keep itself informed on certain matters.

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

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

## 20 **PART 3**

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

25 **38.—**It shall be the general duty of a railway undertaking to ensure, in so far as is reasonably practicable, the safety of persons in the operation of its railway. General duties of railway undertakings.

30 **39.—**(1) It shall be the general duty of a person working in the course of the operation of a railway undertaking, and of any person being on or near a railway or railway premises or railway land or on a train, to conduct himself or herself in such a way as to ensure in so far as is reasonably practicable that no person (including himself or herself) is exposed to danger as a consequence of any act or omission of his or hers. General duties of persons working on railways and other persons.

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

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

## **PART 4**

### 45 **SAFETY MANAGEMENT SYSTEMS AND SAFETY CASE**

**40.—**This Part shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with Commencement (Part 4).

reference to any particular purpose or provision and different days may be so appointed for different purposes and different provisions.

Safety management systems and safety case.

41.—(1) For the purpose of complying with its duty under *section* 38, a railway undertaking shall implement a safety management system and shall prepare a document (“safety case”) describing the components of such safety management system. 5

(2) A safety case shall achieve the following two objectives—

(a) it shall demonstrate that the railway undertaking has the ability to properly assess and effectively control risks to the safety of persons, in compliance with its general duty under *section* 38, and 10

(b) it shall provide a working document by which the railway undertaking and the Commission can ensure that the safety systems described in the safety case are being properly implemented and continue to be maintained. 15

(3) To achieve the objectives referred to in *subsection* (2), a safety case shall contain at least the following components—

(a) a general description of the operations, or proposed operations, of the railway undertaking,

(b) a statement of the safety objectives and safety policy of the railway undertaking, 20

(c) an identification of the hazards arising from the operations of the railway undertaking, an assessment of the risks and details of the measures in place or proposed to mitigate such risks, 25

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

(e) arrangements for monitoring, audit, and consequent review and revision of the safety case. 30

(4) The Commission may prepare and publish guidelines, from time to time, on the appropriate contents of a safety case and on appropriate technical principles and specifications, and a railway undertaking shall, in preparing a safety case or a revision to a safety case, have regard to such guidelines. 35

(5) A safety case shall be submitted to the Commission in accordance with *section* 46 for acceptance by the Commission in accordance with *section* 47.

(6) A railway undertaking shall consult with its staff and staff representatives in the preparation of a safety case. 40

(7) A safety case shall contain the name and address of a person in a senior management position within the railway undertaking who is responsible for ensuring that the undertaking implements the provisions of its safety case.

42.—(1) Where the railway infrastructure of a railway undertaking is used by another railway undertaking to operate trains or where the activities of one railway undertaking may affect the safe operation of another railway undertaking, the railway undertakings concerned shall agree systems and procedures to ensure compliance with the duty imposed on each of them by *section 38*.

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

(3) The Commission may give a direction to a railway undertaking requiring it to make an agreement under *subsection (1)* or to co-operate with another railway undertaking under *subsection (2)* and the railway undertaking shall comply with such direction.

(4) A railway undertaking may only refuse to give its agreement under *subsection (1)* where to give such agreement, in its reasonable opinion, would be failing in its duty under *section 38*.

(5) An agreement under *subsection (1)* shall form a separate part of the safety case of each relevant railway undertaking.

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

- (a) monitoring, reviewing and updating of the agreement, and
- (b) procedures for dealing with alleged non-compliance by any of the parties involved in the agreement.

(7) A railway undertaking shall not operate trains on the railway infrastructure of another railway undertaking, and an operator of railway infrastructure shall not give permission for such trains to operate, unless all parties have an agreement in accordance with *subsection (1)* and the safety case of each relevant railway undertaking has been accepted by the Commission in accordance with *section 47*.

(8) *Subsection (7)* does not apply to a railway undertaking which operates a railway service immediately before the commencement of this section in respect of the period specified in *sections 46(1)* and *47(8)*.

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

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

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

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

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

(14) A decision of the High Court on an appeal under *subsection (12)* shall be final, save that, by leave of the court, an appeal from the decision shall be to the Supreme Court on a specified point of law. 5

(15) A railway undertaking which, without reasonable excuse, fails to comply with a direction of the Commission under this section is guilty of an offence and is liable— 10

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

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

Safety assessment  
of new works.

**43.—**(1) A railway undertaking shall not bring into operation new works unless— 15

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

(i) as it considers appropriate to show to the satisfaction of the Commission the safety of the new works, or 20

(ii) as the Commission may set out in guidelines published in accordance with *section 41(4)*,

and

(b) the Commission has issued a communication under *subsection (4)*. 25

(2) Where the Commission considers that the information provided in the new works assessment is not adequate or that the bringing into operation of the new works does not provide reasonable assurance of safety, the Commission shall serve a written notice to that effect on the railway undertaking and that notice shall set out the reasons for the Commission’s decision to serve the notice. 30

(3) A railway undertaking in receipt of a notice under *subsection (2)* may submit a revised new works assessment which addresses the matters raised in such notice.

(4) Where the Commission is satisfied as to the safety of the new works on the basis of the information contained in a new works assessment or in a revised new works assessment under *subsection (3)*, the Commission shall communicate in writing its acceptance of the new works assessment to the railway undertaking. 35

(5) A railway undertaking shall, within 7 days of receipt of a communication under *subsection (4)*, amend its safety case to reflect the implications of the new works assessment. 40

(6) The Commission may at its discretion give a general or specific exemption from the requirements of this section where, in the opinion of the Commission, the new works are similar to works of a railway undertaking which are already in operation and where the 45

safety case of the railway undertaking would not require revision when the new works are being brought into operation.

(7) A railway undertaking shall not commence commissioning of a new railway line or an addition to an existing railway line until—

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

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

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

and

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

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

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

          (10) The Commission shall issue a notice under *subsection (2)* or a communication under *subsection (4)* as soon as practicable after it has completed its assessment but not later than 3 months after the date of receipt of a new works assessment or a revised new works assessment or receipt of all information or clarifications requested under *subsection (11)*.

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

(12) A railway undertaking which does not comply with this section is guilty of an offence and is liable—

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

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

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

**44.—(1)** A railway undertaking shall not bring into operation new rolling stock unless—

- (a) it has submitted a safety assessment (referred to in this section as a “new rolling stock assessment”) to the Commission containing such information—5
  - (i) as it considers appropriate to demonstrate to the satisfaction of the Commission the safety of the new rolling stock, or
  - (ii) as the Commission may set out in guidelines published in accordance with *section 41(4)*,10and
- (b) the Commission has issued a communication under *subsection (4)*.

(2) Where the Commission considers that the information provided in the new rolling stock assessment is not adequate or that the bringing into operation of the new rolling stock does not provide reasonable assurance of safety, the Commission shall serve a written notice to that effect on the railway undertaking and that notice shall set out the reasons for the Commission’s decision to serve the notice.15

(3) A railway undertaking in receipt of a notice under *subsection (2)* may submit a revised new rolling stock assessment which addresses the matters raised in such notice.20

(4) Where the Commission is satisfied as to the safety of the new rolling stock on the basis of the information contained in a new rolling stock assessment or a revised new rolling stock assessment under *subsection (3)*, the Commission shall communicate in writing its acceptance of the new rolling stock assessment to the railway undertaking.25

(5) A railway undertaking shall, within 7 days of receipt of a communication under *subsection (4)*, amend the safety case to reflect the implications of the new rolling stock assessment.30

(6) The Commission may at its discretion give a general or specific exemption from the requirements of this section where, in the opinion of the Commission, the new rolling stock is similar in nature to rolling stock of the railway undertaking which is already in operation and where the safety case of the railway undertaking would not require revision when the new rolling stock is being brought into operation.35

(7) A railway undertaking shall not commence commissioning of new rolling stock until—40

- (a) it has provided such information to the Commission, as may be specified by the Commission in any individual case, that, for the purposes of commissioning, demonstrates to the satisfaction of the Commission—
  - (i) the safety and suitability for purpose of the rolling stock, and45
  - (ii) the adequacy of the systems and procedures to ensure safety of persons,and

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

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

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

15 (10) The Commission shall issue a notice under subsection (2) or a communication under subsection (4) as soon as practicable after it has completed its assessment but not later than 3 months after the date of receipt of a new rolling stock assessment or a revised new rolling stock assessment or receipt of all information or clarifications requested under subsection (11).

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

25 (12) A railway undertaking which does not comply with this section is guilty of an offence and is liable—

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

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

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

35 **45.—**(1) Where ownership of a railway undertaking or a right to operate a railway is proposed to be transferred from one railway undertaking to another railway undertaking, the latter undertaking shall immediately notify the Commission in writing of the proposed transfer and provide details of the proposed ownership and organisational structure to the Commission together with a statement specifying the principal changes which it intends to make to the safety case of the first-mentioned undertaking. Transfer of ownership.

40 (2) A railway undertaking to which ownership of another railway undertaking or rights to operate a railway has transferred shall, within a period of 3 months of such transfer or such other period exceeding 3 months as may be specified by the Commission in any particular case, submit a new safety case in accordance with section 41.

50 (3) In the period between the date of such transfer referred to in subsection (2) and the acceptance of the new safety case by the Commission, the railway undertaking to which ownership or rights



has transferred shall, in respect of the assets or rights transferred and where it continues to operate the railway services or infrastructure transferred, ensure compliance with the statement under *subsection (1)* and with the safety case of the first-mentioned railway undertaking in so far as it has not been changed: 5

Provided that—

(a) the railway undertaking to which the ownership or rights has transferred complies with its general duty under *section 38*,

(b) the Commission has in the circumstances given its approval 10 to the continued operation of the railway services or infrastructure, and

(c) the railway undertaking complies with any directions given in writing by the Commission.

(4) A railway undertaking from which ownership or rights are transferring shall provide its safety case and all other relevant information to the new railway undertaking to enable the new railway undertaking to comply with this section. 15

(5) Where a railway undertaking fails to comply with this section, the Commission may give a direction to it to comply with this section. 20

(6) Where the Commission proposes to give a direction under this section, it shall notify the railway undertaking concerned of the proposal and the railway undertaking may, within 21 days of the notification, make representations to the Commission, which shall consider them. 25

(7) Where the Commission decides to give a direction under this section, the railway undertaking concerned may, within 21 days of notification of the decision, appeal to the High Court and the direction shall not take effect until the time allowed for such appeal has elapsed and, in the event of an appeal, until the appeal is determined 30 or withdrawn.

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

(9) A decision of the High Court on an appeal under *subsection (7)* shall be final, save that, by leave of the court, an appeal from the decision shall be to the Supreme Court on a specified point of law. 35

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

(a) on summary conviction, to a fine not exceeding €3,000, or 40

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

Submission and  
assessment of safety  
case.

**46.—**(1) A safety case prepared by a railway undertaking which operates a railway immediately before the commencement of this section shall be submitted to the Commission by the railway undertaking not later than 6 months after the commencement of this section. 45



5 (2) A railway undertaking shall, before it submits a safety case to the Commission, engage a suitably qualified person to independently assess the safety management system described in such safety case and the report of such person shall be submitted to the Commission at the same time as the safety case.

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

15 (4) A railway undertaking shall not operate railway infrastructure or railway services unless it has received notification from the Commission of its acceptance of the relevant safety case.

(5) *Subsection (4)* does not apply in respect of the periods specified in *subsection (1)*, *section 45(2)* and *section 47(8)*.

(6) A railway undertaking which, without reasonable excuse, does not comply with this section is guilty of an offence and is liable—

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

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

25 **47.—(1)** (a) The Commission shall notify a railway undertaking of its acceptance of a safety case by issuing a certificate (“safety certificate”) to that undertaking. Acceptance of safety case by Commission.

30 (b) A safety certificate may contain such conditions as may be deemed appropriate by the Commission, including conditions restricting or prohibiting the operation of specified parts of the infrastructure or individual rolling stock or classes of rolling stock or restricting or prohibiting the provision of a specified railway service or services where, in the opinion of the Commission, not to do so would be in breach of the duty of the Commission under *subsection (2)*.

35 (c) The form of safety certificates shall be decided by the Commission.

40 (2) The Commission shall only accept a safety case, or a revised safety case under *section 49*, and issue a safety certificate under *subsection (1)* where the information contained in the safety case or the revised safety case is sufficient to satisfy the Commission that the undertaking is capable, subject to any conditions contained in the safety certificate, of carrying out its operations in compliance with the duty imposed on it under *section 38*.

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

(a) reconsider the information contained in the safety case or revised safety case and, if appropriate, re-examine and

amend the safety management system described therein,  
and

- (b) have any changes made by it to the safety case or revised safety case examined by a person engaged in accordance with *section 46(2)* and to have a report of the examination prepared by such person. 5

(4) A railway undertaking in receipt of a notice under *subsection (3)* or in receipt of a safety certificate containing conditions in accordance with *subsection (1)(b)* may re-submit the safety case or revised safety case where, in the opinion of the railway undertaking— 10

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

- (b) in the case of a safety certificate containing conditions, the safety case or revised safety case has been amended to the extent that the conditions are no longer warranted. 15

(5) The Commission, in deciding whether or not to issue a safety certificate, for the purpose of satisfying itself under *subsection (2)*, may request any additional information or clarifications from a railway undertaking and the undertaking shall comply with such a request. 20

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

(7) In considering a safety case or a revised safety case submitted by a railway undertaking, the Commission shall, in relation to the adequacy of the safety management system documented therein, have regard to the size and nature of the railway undertaking and, in particular— 25

- (a) the nature, extent and complexity of its railway infrastructure and operations, 30

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

- (c) the likely consequences for persons of any incident on its railway. 35

(8) The Commission shall issue a certificate under *subsection (1)* or a notice under *subsection (3)* as soon as practicable after it has completed its assessment but no later than 3 months after the date of receipt of the safety case or revised safety case or receipt of all information or clarifications requested under *subsection (5)*. 40

(9) The acceptance of a safety case or a revised safety case by the Commission and the issuing of a safety certificate shall not be interpreted as relieving a railway undertaking of its duty under *section 38*.

(10) The Commission may— 45

- (a) refuse to issue a safety certificate where the Commission is not satisfied in accordance with *subsection (2)*, or

(b) revoke a safety certificate issued under *subsection (1)* if the railway undertaking which is the holder of the certificate fails to comply with its safety case and the Commission considers that the railway undertaking cannot comply with its duty under *section 38*.

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

(12) Where the Commission decides to refuse a safety certificate, or revoke the safety certificate issued by it, the railway undertaking concerned may, within 21 days of notification of the decision, appeal to the High Court and the refusal or revocation shall not take effect until the time allowed for such appeal has elapsed and, in the event of an appeal, until the appeal is determined or withdrawn.

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

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

(15) A safety certificate shall remain in force until it is revoked by the Commission under *subsection (10)* or replaced by a new certificate.

**48.—(1)** A railway undertaking shall implement the safety management system described in its safety case as accepted by the Commission under *section 47*. Compliance with safety case.

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

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

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

**49.—(1)** A railway undertaking shall revise its safety case (“revised safety case”) in circumstances where— Revision of safety case.

(a) the railway undertaking considers it appropriate to do so,

(b) new works or new rolling stock are accepted by the Commission in accordance with *section 43(5)* and *44(5)*, or

(c) the Commission issues a notice in writing to the railway undertaking requiring it to do so.

(2) Where a revised safety case is proposed under *paragraph (a)* or *(c)* of *subsection (1)* and where the revision will materially alter the safety case previously accepted by the Commission, the relevant railway undertaking shall submit the proposed revision to the Commission, together with a report prepared by a person engaged in accordance with *section 46(2)* and the revision shall not be made unless it has been accepted by the Commission in accordance with *section 47*.

(3) Notwithstanding *subsection (2)*, a railway undertaking may revise its safety case without the prior acceptance of the Commission in circumstances where not to do so may result in the railway undertaking being in contravention of its duty under *section 38*.

(4) Where a railway undertaking revises its safety case in accordance with *subsection (3)*, it shall immediately notify the Commission of such revision, stating the circumstances that give rise to the revision and the reasons why prior submission to the Commission could not be made and, as soon as practicable thereafter, submit the revised safety case to the Commission, together with a report prepared by a person engaged in accordance with *section 46(2)*.

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

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

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

Appointment of independent persons for assessments and audits.

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

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

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

(4) The Commission shall review the register from time to time to confirm if the persons named therein remain qualified persons for the purposes of this section and such persons shall provide, on request from the Commission in writing, all relevant information required by the Commission for the purposes of the review.

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

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

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

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

5 (a) if it is satisfied that the person is a qualified person, shall include or, as the case may be, retain the name of the person on the register, or

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

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

(9) Where a railway undertaking proposes to appoint a suitably qualified person for the purposes of *section 43(8), 44(8), 46(2), 47(3)(b), 51(1) or 51(6)*, the railway undertaking shall notify the  
15 Commission in writing of the proposal at least 21 days in advance of the proposed appointment date.

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

(a) the name of the person proposed for conducting the assessment or audit, and details of his or her employer,

20 (b) where a person is not listed in the register, details of the expertise of the person concerned,

(c) any current or previous relationships between the railway undertaking and the said person, or between the railway undertaking and the employers of such person, and

25 (d) a statement from the railway undertaking that, in the opinion of the railway undertaking, the person—

(i) is independent of the railway undertaking having regard to the guidelines published by the Commission under *subsection (1)*, and

30 (ii) has appropriate expertise for the purposes of carrying out an appropriate assessment or audit.

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

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

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

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

(b) it is not satisfied as to the expertise and independence of the person or persons being proposed by the railway undertaking. 5

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

(15) A railway undertaking which appoints a suitably qualified person under this section shall bear responsibility in all aspects for the appointment and the remuneration of such a person. 10

(16) Notwithstanding *subsection (15)* insofar as it relates to remuneration, in the case of a heritage railway the Commission may, with the consent of the Minister and the Minister for Finance and if it deems it appropriate to do so, agree to be responsible for the remuneration of the suitably qualified person and, where it gives its agreement to do so, may charge a fee to the heritage railway to offset in part the level of such remuneration and the level of the fee shall be decided by the Commission. 15 20

(17) Where the Commission proposes to be responsible for the remuneration of the suitably qualified person, it shall, before giving its final agreement to do so, be of the opinion that the scale of the remuneration required is appropriate and a heritage railway shall provide all necessary information to the Commission to enable it to reach an opinion. 25

(18) In this section—

“qualified person” means an individual who, in the opinion of the Commission, has appropriate expertise of railway operations or of a particular class or aspect of railway operations or other expertise relevant to safety management systems or aspects thereof; and 30

“suitably qualified person” means a qualified person who, having regard to guidelines published by the Commission, is sufficiently independent of railway undertakings or of a particular class of railway undertaking or of a particular railway undertaking. 35

Safety audits.

**51.—**(1) A railway undertaking shall ensure that its safety management system, as described in its safety case, is independently audited by a suitably qualified person not later than the fourth anniversary of its acceptance by the Commission and not later than each subsequent period of 4 years thereafter or such other lesser period as may be specified from time to time by the Commission, having regard in particular to railway undertakings who are parties to an agreement under *section 42*. 40

(2) The objectives of an audit under *subsection (1)* shall, at minimum, be— 45

(a) to confirm the adequacy and scope of the safety management system,

(b) to confirm that the safety case accurately reflects the safety management system,

- (c) to confirm compliance by a railway undertaking with its safety case, and
- (d) to make recommendations, if any, for such improvements to the safety management system as the suitably qualified person deems appropriate in light of national or international experience and technological development.
- (3) The report of a suitably qualified person appointed under *subsection (1)* shall be submitted by the railway undertaking to the Commission within such period as may be specified by the Commission.
- (4) The Commission may, where it considers it appropriate to do so upon application by a railway undertaking, being—
- (a) a heritage railway, or
- (b) a railway undertaking, other than a railway undertaking used for the purposes of fare-paying passengers or for fee-paying members or the conveyance of merchandise for monetary gain,
- grant an exemption or derogation from the requirements of *subsection (1)* to such railway undertaking on such terms and conditions as it deems appropriate.
- (5) In considering an application made by a railway undertaking under *subsection (4)*, the Commission shall have regard to—
- (a) the nature, extent and complexity of its railway infrastructure and operations,
- (b) its interaction, if any, with railway infrastructure or trains of other railway undertakings or with public roads,
- (c) the likely consequences for persons of any incident on its railway, and
- (d) the time elapsed since any previous safety audit was undertaken and the findings of such audit.
- (6) Where the Commission considers that a potential danger may exist in any particular situation, it may undertake, or direct by notice in writing the relevant railway undertaking to engage a suitably qualified person to undertake, an independent safety audit of the particular matter that gives rise to potential danger.
- (7) The Commission may at any time undertake, or appoint a suitably qualified person to undertake on its behalf, an audit of all or any part of the safety management system and safety case of a railway undertaking.
- (8) A person appointed by the Commission under *subsection (7)* shall, for the duration for which he or she stands engaged, have the same powers as an inspector in respect of the railway undertaking concerned.
- (9) A railway undertaking shall maintain sufficient records relating to all aspects of its safety management system for the purposes of demonstrating that it is conducting its activities in compliance with its safety management system.



(10) The Commission may make regulations specifying the minimum requirements for the auditing of safety cases and a suitably qualified person referred to in *section 50* shall comply with such regulations.

(11) A railway undertaking which fails to comply with this section is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000. 5

## PART 5

### REPORTING AND INVESTIGATION OF RAILWAY INCIDENTS

“railway incident”. **52.**—In this Act, “railway incident” means an accident which has taken place in the course of the operation of a railway which causes or results in— 10

- (a) loss of life or personal injury to a person,
- (b) a collision between trains or between a train and some other vehicle or object, 15
- (c) a train or any part of a train accidentally leaving the rails, or
- (d) an accident of a kind not mentioned above but which is of such a kind as to have caused or as to be likely to cause loss of life or personal injury, and which are specified in regulations made by the Commission, 20

where such accident occurred in or about any railway infrastructure or train.

Reportable railway incidents. **53.**—(1) In the event of a railway incident, the railway undertaking concerned or, if the incident involved more than one railway undertaking, the railway undertakings concerned, shall— 25

- (a) in the case of loss of life or injury to a person or in other cases as may be specified from time to time by the Commission, send to the Commission by the quickest practicable means notice of the incident, including brief particulars and details of the location of the incident and of any loss of life or personal injury, and 30
- (b) as soon as practicable send a written report to the Commission, in such form and containing such particulars as may be specified from time to time by the Commission, of the loss of life, injury, condition or incident. 35

(2) Where as a result of an incident at work, a member of staff of, or other person engaged by, a railway undertaking sustains an injury or suffers a condition which is required to be reported by this section to the Commission and as a result of that incident the member of staff or other person dies within 30 days of the incident, the railway undertaking shall, as soon as possible after the death comes to its knowledge, inform the Commission in writing of the death, whether or not the incident had been reported under *subsection (1)*. 40

(3) A railway undertaking which does not comply with this section is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000. 45



54.—(1) It shall be a duty of a railway undertaking to carry out an investigation into a reportable railway incident in order to establish the cause of such incident and to assess what, if any, action can be taken by the railway undertaking to avoid railway incidents in the future or otherwise for the improvement of railway safety.

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

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

(4) If a member of staff of, or other person engaged by, a railway undertaking objects to a question asked of him or her in accordance with *subsection (3)* on the grounds that the answer might tend to incriminate the person or make the person liable to a penalty and the person is informed of his or her obligation to answer the question, the person shall not refuse to answer the question but the answer given on that occasion shall not be admissible as evidence in criminal or other proceedings against the person other than proceedings against him or her in respect of the falsity of the answer or the failure to answer the question.

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

(6) Where the railway undertaking is of the opinion that the report cannot be completed within the period specified in *subsection (5)*, the railway undertaking shall notify the Commission together with its reasons for reaching such opinion and shall provide an indication of the revised period for the completion of the report.

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

(8) A report prepared under this section shall be in such form and contain such particulars as may, from time to time, be specified by the Commission but shall, in the case of a report under *subsection (5)*, at minimum include full particulars of the incident, the cause or causes of same in so far as can be established and, where appropriate, recommendations to be adopted by the railway undertaking to prevent the occurrence of incidents or otherwise for the improvement of railway safety.

(9) A report prepared under *subsection (5)*, together with any relevant records gathered in the course of the investigation, shall be retained by a railway undertaking for a period of at least 5 years from the date of completion of the report and the report shall, unless otherwise notified in writing by the Commission in any particular case or any particular types of investigations, be provided to the Commission within 14 days of its completion.

(10) Where a railway incident is investigated under this section and the incident involves more than one railway undertaking, each relevant undertaking shall co-operate in the provision of information and in the conduct of the respective investigations.

(11) Where, during the course of an investigation under this section or after the completion of such investigation, the railway undertaking responsible for the investigation considers that the cause or likely cause of the incident may have— 5

(a) implications for railway safety in general, or

(b) in a particular case may have implications for the safe operation of another railway undertaking, 10

the railway undertaking shall, at the earliest possible time, notify the Commission and, where appropriate, such other relevant railway undertaking of such cause or likely cause of the incident and any recommendations which may be adopted arising from the investigation. 15

(12) Where the Commission receives a notification under *subsection (11)*, it may take such action in relation to the dissemination of the information contained in the notification as it considers appropriate in the interests of railway safety. 20

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

(14) The function of an inspector or other person designated under *subsection (13)* shall be to assess the adequacy of the investigation and to ensure that the procedures adopted are in compliance with the safety case of the railway undertaking. 25

(15) Where an inspector or other person designated under *subsection (13)* considers an investigation under this section not to be adequate, or not to be in compliance with the procedures adopted in the safety case of a railway undertaking, he or she shall, either during the investigation or after the completion of the investigation, notify the railway undertaking in writing of his or her considerations and the railway undertaking shall take all necessary actions to address the considerations. 30 35

(16) A railway undertaking which fails to comply with a requirement of this section is guilty of an offence and is liable—

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

(b) on conviction on indictment, to a fine not exceeding €60,000. 40

(17) A member of staff of, or other person engaged by, a railway undertaking who fails to comply with a requirement of *subsections (3) or (4)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000. 45

**55.—(1)** The purpose of an investigation by the Commission under this section shall be to improve railway safety by establishing, in so far as possible, the cause or causes of an incident with a view

to making recommendations for the avoidance of incidents in the future, or otherwise for the improvement of railway safety.

(2) It shall not be the purpose of an investigation to attribute blame or liability.

5 (3) Notwithstanding *subsection (2)*, the Commission may take enforcement action under *Part 7* against a railway undertaking where an investigation by the Commission finds that the railway undertaking did not carry out its duties in compliance with this Act.

10 (4) Where the Commission considers that an investigation is warranted, it may investigate a railway incident.

(5) An investigation under this section shall be undertaken by a person appointed by the Commission who is an inspector or a person engaged in accordance with *section 18* who, in the opinion of the Commission, is suitably qualified to undertake an investigation.

15 (6) Where a person other than an inspector is appointed under *subsection (5)* or *subsection (8)*, the Commission shall issue to such person a warrant of his or her appointment and the person shall, if requested by any person affected by the investigation, show the warrant to the person.

20 (7) Where an investigation under *subsection (4)* relates to an international service, the Commission shall, where it considers it appropriate to do so, notify the relevant competent authority in the other state and may request that a competent person be nominated by that relevant competent authority to participate in the investigation.

25 (8) Where a person is nominated in accordance with *subsection (7)*, the Commission may, for the sole purpose and duration of the investigation, appoint the person nominated to be an inspector.

(9) The Commission may pay any reasonable expenses incurred by a person appointed under *subsection (8)* and these expenses shall  
30 form part of the expenses of the Commission.

(10) Any record gathered by a person appointed under *subsection (5)* or *subsection (8)* shall be and remain a record of the Commission and a person appointed under this section shall not publish or publicise, or use for any other purpose, such records except with the prior  
35 consent in writing of the Commission.

(11) A person appointed under *subsection (5)* shall, for the purposes of the investigation and for the period of his or her appointment, have the powers of an inspector.

40 (12) The Commission shall, as soon as practicable, send a copy of a report into a railway incident involving an international service, published in accordance with *section 57*, to the relevant competent authority in the other state.

45 (13) Where in the opinion of the Commission it is in the interest of railway safety to do so immediately, the Commission may bring to the attention of a railway undertaking any implications for railway safety of which the Commission becomes aware during an investigation.

(14) The Commission shall, on the commencement of an investigation under this section, notify the railway undertaking concerned

and such other persons as it may deem appropriate of such commencement.

(15) In this section and *section 94*, “international service” means the operation of a railway service between the State and another state.

5

Re-opening of investigation by Commission.

**56.—**(1) Where the Commission has carried out an investigation under *section 55* 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 Commission may re-open the investigation.

10

(2) This Part applies to an investigation re-opened under this section in the same way as it applies to an investigation under *section 55*.

Publication of report of investigations.

**57.—**(1) The Commission shall publish a report of an investigation (“investigation report”) undertaken by it under *section 55* and shall immediately transmit a copy to the Minister.

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(2) The Commission shall endeavour to publish an investigation report not later than 9 months after the commencement of an investigation to which it relates.

(3) Where it appears to the Commission that it would not be possible or appropriate in the circumstances to publish the report within the period referred to in *subsection (2)*, it shall, within that period, give to the Minister its reasons as to why the report cannot be published within that period and indicate the estimated period within which it expects the investigation report will be published.

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(4) The Commission may publish an interim report of an investigation.

(5) *Sections 58* and *59* shall apply to an interim report in the same way as they apply to a report under *subsection (1)*.

Contents of report.

**58.—**(1) All relevant findings of an inspector during an investigation under *section 55* shall be included in the investigation report.

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(2) Having regard to *section 55*, if the inspector succeeds in establishing the cause or causes, or probable cause or causes, of a railway incident, the report shall indicate it or them.

(3) In the light of the findings of the inspector and having regard to *section 55*, the report shall outline any recommendations the Commission considers to be warranted and feasible for the avoidance of railway incidents or otherwise for the improvement of railway safety.

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(4) Although it shall not be the purpose of the report to attribute blame or liability, *section 55* shall not prevent the reporting of relevant findings of an inspector in accordance with *subsection (1)*, indicating the cause or causes or probable cause or causes of the incident in accordance with *subsection (2)* or the making of recommendations in accordance with *subsection (3)*, of this section.

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(5) For the avoidance of doubt, copyright in a published report or interim report remains with the Commission but the copyrighted

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material may be freely used for educational or safety-related purposes but not for commercial benefit.

5 **59.—**(1) Before publishing an investigation report or an interim report under *section 57* the Commission shall send a draft of the report or sections of the draft report to any person who, in its opinion, is likely to be adversely affected by the publication of the report or section.

Preparation of draft report and observations of affected persons.

10 (2) Where a person referred to in *subsection (1)* is deceased, a draft of the report or sections of the draft report shall be sent by the Commission to the person who appears to the Commission to best represent the interests of the deceased person.

15 (3) A person to whom the Commission sends a draft in accordance with *subsection (1)* or (2) may, within a period of 28 days commencing on the date on which the draft is sent to the person or such further period, not exceeding 28 days, as the Commission in its absolute discretion thinks fit, submit to the Commission in writing his or her observations on the draft.

20 (4) A person to whom the draft has been sent in accordance with *subsection (1)* or *subsection (2)* may apply to the Commission for an extension, in accordance with *subsection (3)*, of the period in which to submit his or her observations on the draft.

25 (5) Observations submitted to the Commission in accordance with *subsection (3)* may, if the Commission 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.

(6) Where observations are submitted to the Commission in accordance with *subsection (3)*, the Commission may, at its discretion—

30 (a) alter the draft before publication or decide not to do so, or

(b) where a person agrees to publication of observations under *subsection (5)*, include in the published report such comments on the observations as it sees fit.

35 (7) A person to whom a draft has been sent in accordance with *subsection (1)* or (2) shall not disclose to another person the draft or its contents except with the prior consent in writing of the Commission and subject to such conditions, if any, which may be specified by the Commission in such consent.

40 (8) A person who contravenes *subsection (7)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000.

**60.—**(1) A recommendation under *section 58(3)* shall in no case create a presumption of blame or liability for a railway incident.

Recommendations of Commission.

45 (2) A public authority or other organisation or person or a railway undertaking, to whom a recommendation under *section 58(3)* is addressed shall, as soon as practicable after receiving it, furnish the Commission with a statement indicating the action taken or under consideration in response to such recommendations or the reasons why no action will be taken.

(3) In this section, “public authority” means a Minister of the Government, the Council and any other body, including a local authority, in the State which, in the opinion of the Commission, has or may have functions in relation to a recommendation.

Tribunal of inquiry.

**61.—**(1) The Minister may, where he or she considers it necessary, with the consent of the Minister for Finance and after consultation with the Commission, direct that a tribunal of inquiry be held into a railway incident. 5

(2) The following provisions shall have effect in relation to a tribunal— 10

(a) the Minister shall appoint a competent person or persons to hold the inquiry and may appoint any person possessing legal, railway or special knowledge, including a commissioner or former commissioner or an inspector, to act as an assessor to assist the inquiry, 15

(b) the tribunal shall hold the inquiry in such manner and under such conditions as it thinks appropriate,

(c) the tribunal shall have for the purposes of the inquiry all the powers of a judge of the District Court when hearing a prosecution for an offence under this Act, and all the powers of an inspector under this Act, and in addition, power— 20

(i) by summons signed by the tribunal, to require the attendance of such persons as it thinks fit to call before it and examine for the purposes of the inquiry, and to require answers or returns to the inquiries it thinks fit to make, and 25

(ii) to administer an oath and require any person examined to make and sign a declaration of the truth of the statements made by the person in his or her examination. 30

(3) In *subsection (2)(a)*, “competent person” includes a commissioner or former commissioner, a serving or former member of the judiciary or any other person whom the Minister considers has the necessary experience or expertise. 35

(4) If a person objects to a question asked of him or her as a witness at a tribunal on the grounds that the answer might tend to incriminate the person or make the person liable to a penalty and the person is informed of his or her obligation to answer the question, the person shall not refuse to answer the question but the answer given on that occasion shall not be admissible as evidence in criminal or other proceedings against the person other than proceedings against him or her in respect of the falsity of the answer or the failure to answer the question. 40

(5) Persons attending as witnesses before a tribunal shall be allowed such expenses as would be allowed to witnesses attending before a court of record and, in case of a dispute as to the amount to be allowed, the dispute shall be referred by the tribunal to the Taxing Master of the High Court who, on request signed by the tribunal, shall ascertain and certify the proper amount of the expenses. 45 50

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

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

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

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

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

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

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

(a) the location at which an inquiry may be held,

30 (b) the manner in which facts may be proved at an inquiry, and

(c) the persons allowed to appear and the notices to be given to persons affected.

(13) A person who—

35 (a) without reasonable excuse, fails to comply with a summons of a tribunal,

(b) being in attendance as a witness at a tribunal, refuses—

(i) to take any oath or make an affirmation,

(ii) to sign any declaration as to the truth of any statement made by him or her, or

40 (iii) refuses to answer any question to which the tribunal may require an answer,

when required by the tribunal to do so,

or

(c) obstructs or hinders a tribunal,

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



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

Suspension of investigation by Commission where inquiry directed.

**62.—**(1) The Minister may direct that an inquiry be held under *section 61* notwithstanding that the railway incident into which the inquiry is to be held is or was the subject of an investigation by the Commission under *section 55*. 5

(2) Where the Minister directs that an inquiry be held under *section 61*, no investigation by the Commission into the same matter shall be commenced or continue.

Re-opening of inquiry.

**63.—**(1) The Minister may, after consultation with the Commission, direct that a completed inquiry be re-opened if satisfied that there is new evidence available which could materially alter the findings of the inquiry and that the purpose of the inquiry would be served by re-opening it. 10

(2) This Part applies to a re-opened inquiry in the same way as it applies to an inquiry. 15

Inquest in case of railway incident.

**64.—**(1) Where a coroner (within the meaning of the Coroners Act, 1962) holds or is about to hold an inquest on the body of any person whose death may have been caused by a railway incident, this section has effect. 20

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

(3) The coroner may in writing request the attendance of an inspector to assist in the holding of an inquest and on receipt of such a request the Commission may appoint an inspector or a person engaged under *section 18* to assist in the holding of such inquest. 25

(4) Where an inspector does not assist a coroner under *subsection (3)* at an inquest relevant to this section and where evidence is given as to any neglect having caused or contributed to the railway incident or as to any defect in the operation of a railway appearing to a coroner or jury to require a remedy, the coroner shall send to the Commission notice in writing of the evidence of the neglect or defect. 30

(5) In addition to a notice specified in *subsection (4)*, every coroner shall furnish to the Commission a written return in relation to an inquest to which this section applies. 35

Transitional provision (opening of railways).

**65.—**Sections 4, 5 and 6 of the Railway Clauses Act, 1842, repealed by *section 5* of this Act, continue to apply to any railway or portion of railway in respect of which a notice of its intended opening is given under section 4 of that Act but which is not opened immediately before the repeal of those sections. 40

## PART 6

### REGULATIONS AND REVIEW OF LEGISLATION

Regulations by Commission.

**66.—**The Commission, with the consent of the Minister, may make regulations in relation to all or any of the following— 45

- (a) standards and specifications for railway infrastructure and rolling stock,



- (b) additional matters to be included in a safety management system or a safety case for the purposes of *section 41*,
- 5 (c) levels of training, competencies and qualifications of staff of railway undertakings, including disability awareness training,
- (d) requirements relating to interfaces between railway undertakings,
- (e) requirements relating to interfaces between railway infrastructure or trains and any other vehicle or road,
- 10 (f) requirements relating to the reporting by railway undertakings of railway incidents, including the form of reporting and the classification of railway incidents to be reported,
- (g) procedures for the acceptance of new works (within the meaning of *section 43(13)*) and new rolling stock (within the meaning of *section 44(13)*),
- 15 (h) requirements for the maintenance by a railway undertaking of records, and
- (i) standards, specifications and procedures to be used by railway undertakings to safely facilitate the special requirements of mobility-impaired persons.
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**67.**—The Commission may, after consultation with the Minister, the Garda Síochána, the Council, railway undertakings and such other persons as in the opinion of the Commission may be relevant, make regulations relating to the protection of the sites of railway incidents and the regulations may, without prejudice to the generality of the foregoing, include provisions in relation to any or all of the following matters—

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Regulations for protection of railway incident sites.

- (a) procedures for the collection, recording and protection of evidence,
- 30 (b) the protection of such sites,
- (c) the protection against unauthorised interference with such sites, and
- (d) prohibiting the unauthorised removal of anything from such sites.

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

Offence.

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

Review of legislation by Commission.

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

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

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

## PART 7

### ENFORCEMENT

Inspectors.

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

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

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

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

- 5 (h) require the production of any record (and, in the case of information in non-legible form, to reproduce it in legible form) which in the opinion of the inspector is necessary for him or her to inspect, examine and copy or require that a copy of it or of any entry therein be provided to him or her,
- 10 (i) inspect and take copies of or extracts from any such records (including, in the case of information in non-legible form, a copy of or extract from such information in permanent legible form),
- (j) remove and retain such records for such period as may be reasonable for further examination,
- 15 (k) subject to *section 71(6)*, require any person whom he or she has reasonable cause to believe to be able to give information relevant for the purposes of this Act, to answer either alone or in the presence of any other person, as he or she thinks fit, such questions with respect to matters under this Act as he or she thinks fit to ask and to sign a declaration of the truth of the answers given,
- 20 (l) direct that any railway property or part thereof and anything therein shall be left undisturbed for so long as it is reasonably necessary for the purpose of this Act,
- 25 (m) take samples or, as regards any article or substance he or she finds, require the railway undertaking or any member of staff of, or other person engaged by, the railway undertaking 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,
- 30 (n) cause any article or substance found which appears to him or her to be reasonably necessary for the purpose of this Act to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is in the circumstances necessary for the purposes of the process or test) and where an inspector proposes to exercise the power conferred by this paragraph in the case of an article or substance found, he or she shall, if so requested by a person who at the time is present and who may have responsibilities in respect of such article or substance, cause anything which is to be done by virtue of that power to be done in the presence of that person,
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- 45 (o) in relation to any article or substance found at or in railway property in accordance with *paragraph (n)*, take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
- (i) to examine or arrange for the examination of it and do to it anything which he or she has power to do under *paragraph (n)*,
- 50 (ii) to ensure that it is not tampered with before the examination of it is completed, or
- (iii) to ensure that it is available for use as evidence in any proceedings,

- (p) take any measurements, photographs or video recordings or make any sound, electrical or other recordings which he or she considers necessary for the purposes of this Act,
  - (q) require any person to afford him or her such facilities and assistance within his or her control or responsibilities as are reasonably necessary to enable him or her to exercise any of the powers conferred on him or her under this Act, and 5
  - (r) require any person by or on whose behalf data equipment is or has been used or any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material to afford the inspector all reasonable assistance in relation to its use. 10
- (4) Before exercising the power conferred by *subsection (3)(n)* in the case of any article or substance, an inspector shall, in so far as it is reasonably practicable to do so, consult such persons as appear to him or her to be appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he or she proposes to do under that power. 15 20
- (5) Where, under the power conferred by *subsection (3)(o)*, an inspector takes possession of any article or substance found at or in any railway property, he or she shall, if it is practicable for him or her to do so, take a sample thereof and give to a responsible person at the place of work a portion of the sample marked in a manner sufficient to identify it. 25
- (6) An inspector, for the purpose of carrying out his or her functions under this Act, shall have unhampered access to a railway incident site.
- (7) The Commission shall consult with railway undertakings in relation to procedural arrangements for entry by inspectors upon railway property. 30
- (8) An inspector shall not, except under a warrant under *subsection (10)* or with the consent of the occupier, enter a domestic dwelling for the purposes of this section. 35
- (9) Where an inspector in the exercise of his or her powers under this section is prevented from entering any premises, place or vehicle, an application may be made under *subsection (10)* authorising such entry.
- (10) If a judge of the District Court is satisfied on the sworn information of an inspector that there are reasonable grounds for suspecting that information required by an inspector for the purpose of this Act is held at any premises, place or vehicle, the judge may issue a warrant authorising the inspector, accompanied if the inspector considers it necessary by other inspectors or members of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production of the warrant if so required, to enter, if need be by reasonable force, the premises, place or vehicle and exercise all or any of the powers conferred on an inspector under this Part. 40 45 50
- (11) In this section, “railway property” means all land, buildings, railway infrastructure, rolling stock and vehicles under the control of a railway undertaking.

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

Provision of records  
and other  
information.

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

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

(4) An inspector may also, for the purposes of an investigation under *section 55*—

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

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

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

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

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

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

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

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

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

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

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 3 months or to both. 10

(7) In this section, a reference to an inspector includes a reference to a tribunal of inquiry under *section 61*.

Improvement plan.

**73.—**(1) Where an inspector is of the opinion that an activity being or likely to be carried on by or under the control or on behalf of— 15

(a) a railway undertaking and the activity involves, or is likely to involve, a risk to the safety of persons, or

(b) any other person on or near a railway and where the activity poses, or is likely to pose, a danger to the safety of persons involved in the operation of the railway or being carried on the railway, 20

the inspector may give a direction in writing to that railway undertaking or person requiring the submission to the inspector, within a time specified in the direction, for his or her approval, of a plan (“improvement plan”) specifying the remedial action proposed to be taken to rectify the matters set down in the direction. 25

(2) Where an improvement plan is submitted in accordance with *subsection (1)* and an inspector is not satisfied that the plan is adequate, he or she may direct that the plan be revised and resubmitted to him or her within a time specified in the direction. 30

(3) An inspector may withdraw a direction under this section at any time before a date specified therein or may extend and further extend such date.

Improvement notice.

**74.—**(1) Where an inspector is of the opinion that a railway undertaking or other person is contravening or has contravened or is failing to comply or has failed to comply with any of the provisions of this Act or has failed, following a direction under *section 73*, to submit or implement an appropriate improvement plan, the inspector may serve on that railway undertaking or person a notice (“improvement notice”) in writing signed by him or her stating that he or she is of that opinion and the improvement notice shall— 35 40

(a) specify the provision as to which the inspector is of that opinion,

(b) give particulars of the reasons why the inspector is of that opinion, 45

(c) where applicable, state that the railway undertaking or person has failed to submit or implement an improvement plan, and

- (d) direct that railway undertaking or person to remedy the alleged contraventions by a date specified in the notice, which shall not be earlier than the period within which an appeal can be brought under *subsection (4)*.
- 5 (2) An improvement notice may include directions as to the measures to be taken to remedy the alleged contraventions set out in the notice.
- 10 (3) Where an inspector proposes to serve an improvement notice, he or she shall first notify the railway undertaking or person concerned in writing of his or her intention to serve the improvement notice and the railway undertaking or person in question may, within 21 days, make representations to the inspector, who shall consider them.
- 15 (4) Where an inspector decides, having considered any representations made to him or her under *subsection (3)*, to serve an improvement notice, a railway undertaking or person which is aggrieved by such improvement notice may, within the period of 14 days beginning on the day on which the notice is served on it, appeal to the High Court against the notice and in determining the appeal the judge
- 20 may—
- (a) if he or she is satisfied that in the circumstances of the case it is reasonable to do so, confirm the notice with or without modification, or
- (b) cancel the notice.
- 25 (5) A railway undertaking or person who appeals against an improvement notice shall at the same time notify the Commission of the appeal and the grounds for appeal and the Commission shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.
- 30 (6) Where an appeal against an improvement notice is taken, the notice shall take effect on the day next following the day on which the notice is confirmed on appeal or the appeal is withdrawn or on the day specified in the notice as that on which it is to come into effect, whichever is the later.
- 35 (7) Where no appeal is taken against an improvement notice, the notice shall take effect on the expiration of the period during which such an appeal may be taken or on the day specified in the notice as that on which it is to come into effect, whichever is the later.
- 40 (8) An inspector may withdraw an improvement notice at any time before the date specified in it under *subsection (1)(d)* and he or she may extend or further extend that date at any time when an appeal against the notice is not pending.
- (9) A person who fails to comply with an improvement notice shall be guilty of an offence and shall be liable—
- 45 (a) on summary conviction, to a fine not exceeding €3,000, or
- (b) on conviction on indictment, to a fine not exceeding €300,000.



**75.—**(1) Where an inspector is of the opinion that an activity being or likely to be carried on by or under the control or on behalf of—

(a) a railway undertaking and the activity involves, or is likely to involve, an immediate and substantial risk to the safety of persons, or 5

(b) any other person on or near a railway and where the activity poses, or is likely to pose, an immediate and substantial danger to the safety of persons involved in the operation of the railway or being carried on the railway, 10

or where a railway undertaking or person fails to comply with a requirement of this Act, the inspector may serve on that railway undertaking or person a notice (“prohibition notice”) signed by him or her.

(2) A prohibition notice shall— 15

(a) state that the inspector is of that opinion,

(b) specify the matters which in the inspector’s opinion give or, as the case may be, are likely to give rise to the said risk,

(c) where, in the opinion of the inspector, the matter involves or, as the case may be, will involve a contravention of any provision of this Act, specify the provision or provisions as to which the inspector is of that opinion, and give particulars of the reasons why he or she is of that opinion, and 20

(d) direct that the activities to which the notice relates shall be carried on neither by nor under the control of the railway undertaking or other person on which the notice is served nor by nor under the control of any other person unless the matters specified in the notice in pursuance of *paragraphs (b) or (c)* have been remedied. 25 30

(3) A prohibition notice shall take effect—

(a) if the notice so declares, immediately the notice is received by the railway undertaking or person on which it is served, and

(b) in any other case— 35

(i) if no appeal is taken against the notice, on the expiration of the period during which such an appeal may be taken or on the day specified in the notice as that on which it is to come into effect, whichever is the later, or 40

(ii) in case such an appeal is taken, on the day next following the day on which the notice is confirmed on appeal or the appeal is withdrawn or on the day specified in the notice as that on which it is to come into effect, whichever is the later. 45

(4) The bringing of an appeal against a prohibition notice which is to take effect in accordance with *subsection (3)(a)* shall not have the effect of suspending the operation of the notice:



5 Provided, however, that the appellant may apply to the Court to have the operation of the notice suspended until the appeal is disposed of and, on such application, the Court may, if it thinks proper to do so, direct that the operation of the notice be suspended until the appeal is disposed of.

10 (5) (a) A railway undertaking or other person who is aggrieved by a prohibition notice may, within the period of 7 days beginning on the day on which the notice is served on it, appeal to the High Court against the notice and in determining the appeal the judge may—

(i) if he or she is satisfied that in the circumstances of the case it is reasonable to do so, confirm the notice with or without modification; or

(ii) cancel the notice.

15 (b) Where on the hearing of an appeal under this section a prohibition notice is confirmed, notwithstanding *subsection (3)* the judge by whom the appeal is heard may, on the application of the appellant, suspend the operation of the notice for such period as in the circumstances of the case he or she considers appropriate.

20 (6) A railway undertaking or person who appeals against a prohibition notice or who applies for a direction suspending the application of the notice shall at the same time notify the Commission of the appeal or the application and the grounds for the appeal or the application and the Commission shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal or the application.

(7) An inspector may withdraw a prohibition notice.

30 (8) (a) Where a prohibition notice has been served and activities are carried on in contravention of the notice, the High Court may, on the application of an inspector, by order prohibit the continuance of the activities.

35 (b) An application to the High Court for an order under *paragraph (a)* shall be by motion and the Court, when considering the matter, may make such interim or interlocutory order (if any) as it considers appropriate and the order by which an application under *paragraph (a)* is determined may contain such terms and conditions (if any) as to the payment of costs as the Court considers appropriate.

40 (c) A person who fails to comply with a prohibition notice is guilty of an offence and is liable—

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

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

50 **76.—**(1) Where the Commission considers that the risk to the safety of persons is so serious that the operations of a railway or of particular railway infrastructure or services, or activities carried out by, or omissions of, any other person which may pose a danger to persons operating or using the railway, should be restricted or should

Application to High Court by Commission.

be immediately prohibited until specified measures have been taken to reduce the risk to a reasonable level, the Commission may apply, *ex parte*, to the High Court for an order restricting or prohibiting such operation.

(2) The Court may make such interim or interlocutory order as it considers appropriate. 5

(3) Any such order shall have effect notwithstanding the terms of any permission given under this Act or any other enactment for the operation of the railway or part thereof or, where the order refers to an other person, the carrying out of an activity by such person. 10

(4) On any application for the revocation or variation of an order made under *subsection (1)*, the Commission shall be entitled to appear, be heard and adduce evidence.

Indemnification for actions in good faith.

**77.—**(1) Where the Commission is satisfied that a commissioner, an inspector, a member of staff of the Commission or a consultant or adviser or person engaged by the Commission under *section 18*, has discharged his or her duties in the exercise of a function of the Commission under this Act in a *bona fide* manner, it shall indemnify such commissioner, inspector or member of staff of the Commission, or consultant or adviser, or other person engaged by the Commission, against all actions or claims however arising in respect of the discharge by him or her of his or her duties, including for the avoidance of doubt, the preparation and publication of an investigation report. 15 20

(2) In *subsection (1)*, “report” includes a report referred to in *section 57(1)*, a draft report referred to in *section 59(1)*, an interim report under *section 57(4)* and a draft interim report, and it also includes written observations on a draft report or draft interim report and comments on any such observations as referred to in *section 59*. 25

## PART 8 30

### RAILWAY SAFETY ADVISORY COUNCIL

Appointed day.

**78.—**The Minister shall by order appoint a day to be the appointed day for the purposes of this Part.

Railway Safety Advisory Council.

**79.—**(1) There shall be established, on the appointed day, a body to be known as the Railway Safety Advisory Council or, in the Irish language, An Chomhairle Sábháilteachta Iarnróid, and in this Act referred to as the “Council”, to perform the functions assigned to it under this Part. 35

(2) The Council shall consist of 14 members.

(3) Members of the Council shall comprise— 40

(a) a chairperson who, in the opinion of the Minister, has appropriate experience and expertise, and is sufficiently independent from railway undertakings and from persons representing the staff of undertakings and from the Commission, 45

(b) at least 4 persons representing railway undertakings, of which one will represent railway undertakings which in the opinion of the Minister are heritage railways,

- (c) at least 3 persons from organisations which represent staff of railway undertakings,
- (d) a commissioner (or if membership is vacant, the deputy member of the Commission),
- 5 (e) at least one person who in the opinion of the Minister represents the public interest,
- (f) at least one person representing a body established by or under statute involved in the regulation of worker safety or public safety,
- 10 (g) at least one person from an organisation representing the interests of mobility-impaired persons, and
- (h) at least one person with particular expertise relevant to railway safety but not being a person from an organisation in *paragraph (b)* or *(c)* or from the Commission.
- 15 (4) An organisation or person may, at its own initiative or at the request of the Minister, nominate a person to be a member of the Council, and the Minister in making an appointment under *subsection (5)*, shall have regard, in so far as is practicable, to any nominations received by him or her under this subsection.
- 20 (5) The Minister shall appoint persons to be members of the Council, including a person to be chairperson of the Council, and an appointment under this section shall be for such period not exceeding 3 years as may be specified by the Minister when appointing such persons, and shall be on such terms and conditions as may
- 25 be determined by the Minister, with the consent of the Minister for Finance.
- (6) A member of the Council shall be paid, out of monies at the disposal of the Commission, such allowances for expenses as the Minister, with the consent of the Minister for Finance, may
- 30 determine.
- (7) A member of the Council whose term of office expires by the effluxion of time shall be eligible for re-appointment.
- (8) The Minister, in appointing members of the Council shall ensure, in as far as is practicable, an equitable balance between men
- 35 and women in any appointments.
- (9) The Commission shall provide all reasonable facilities and services as may be required by the Council for the carrying out of its functions.
- (10) The Council may act notwithstanding a vacancy or vacancies
- 40 in its membership.
- (11) The Council may regulate, by standing orders or otherwise, its procedure and business.
- (12) The Minister shall fix the date, time and place of the first meeting of the Council and the members of the Council shall decide
- 45 on the frequency of all further meetings, subject to the Council meeting at least once each year.
- (13) A member of the Council may resign from office by letter addressed to the Minister.

(14) The Minister may remove from office a member of the Council in the following circumstances—

- (a) where, in the opinion of the Minister, he or she has become incapable through ill-health of effectively performing his or her duties, 5
- (b) for stated misbehaviour,
- (c) in the case of a person appointed to represent an organisation, a body or a class or persons under *subsection (3)*, where the person is no longer such a representative, or
- (d) where his or her removal appears to the Minister to be necessary or desirable for the effective performance by the Council of its functions. 10

(15) The Minister may, after consultation with the Council, make regulations on any matter which the Minister considers expedient for the purposes of this section. 15

Functions of Council.

**80.—**(1) It shall be the general function of the Council to consider issues relevant to railway safety and to make recommendations, as appropriate, to the Commission or to the Minister.

(2) Without prejudice to the generality of *subsection (1)*, the Council may make recommendations— 20

- (a) to the Commission in relation to—
  - (i) regulations, standards, guidelines and codes of practice that are in force in relation to railway safety,
  - (ii) proposals for regulations, standards, guidelines or codes of practice in relation to railway safety submitted by the Commission to the Council for consideration, 25
  - (iii) other matters relating to railway safety other than matters relating to industrial relations, and
  - (iv) any other matters related to the functions of the Commission or which the Commission submits to the Council for consideration. 30
- (b) to the Minister in relation to—
  - (i) railway safety policy,
  - (ii) the adequacy of railway safety legislation which is in force, 35
  - (iii) proposals for legislation or regulations in relation to railway safety submitted by the Minister to the Council for consideration,
  - (iv) the assignment of specific functions relating to railway safety to the Commission, and 40
  - (v) any other matter which, in the opinion of the Council, is relevant to the effective performance by the Council or by the Commission of its functions or which

the Minister submits to the Council for consideration.

(3) The Commission or the Minister, as appropriate, shall consider the recommendations of the Council given under this section.

5 (4) The Council may publish recommendations given under this section.

(5) The Commission may consult the Council on any matter relating to railway safety or to the effective performance by the Commission of its functions.

10 (6) The Minister may consult the Council on any matter arising in relation to his or her functions with respect to railway safety.

(7) The Council shall be entitled to be informed at its meetings, by the commissioner or deputy member of the Commission who stands appointed to the Council or a person appointed by him or her for the purpose, about the work of the Commission but not in relation to the detail of particular safety cases, assessments, audits or investigations where a report has not been published.

## PART 9

### INTOXICANTS

20 **81.**—This Part shall come into operation on such day as the Minister may appoint by order. Commencement  
(Part 9).

**82.**—(1) In this Part—

Interpretation  
(Part 9).

25 “analysis” includes any operation (including the use of any apparatus) used in determining the concentration of alcohol in a specimen of breath, blood or urine, and any operation used in determining the presence (if any) of a drug in a specimen of blood or urine, and cognate words shall be construed accordingly;

30 “analysis body” means a person who, in the opinion of a railway undertaking concerned and the Commission, is competent to carry out an analysis of a sample and is independent of the railway undertaking concerned and of any other railway undertaking;

“authorised person” means a person appointed to be an authorised person under *section 86*;

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

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

“railway undertaking” means a railway undertaking to which this Part applies;

40 “sample” means the provision of a specimen of breath, blood or urine according to procedures established under *section 85(1)(b)*;

“specified level” in relation to alcohol, means, as the case may require—

(a) 35 microgrammes of alcohol in 100 millilitres of breath,

(b) 80 milligrammes of alcohol in 100 millilitres of blood, or

(c) 107 milligrammes of alcohol in 100 millilitres of urine.

(2) For the purposes of this Part, a person does not provide a sample being a specimen of breath for a breath test or for analysis unless the specimen—

5

(a) is sufficient to enable the test or the analysis to be carried out, and

(b) is provided in such a way as to enable the objective of the test or analysis to be satisfactorily achieved.

(3) The Minister may by regulations vary the concentration of alcohol for the time being standing specified in *paragraph (a), (b) or (c)* of the definition of the “specified level” in *subsection (1)*.

10

(4) A draft of every regulation proposed to be made under *subsection (3)* shall be laid before each House of the Oireachtas and the regulation shall not be made until a resolution approving of the draft has been passed by each such House.

15

Application  
(Part 9).

**83.—**(1) This Part applies to a railway undertaking (other than a heritage railway) which operates railway infrastructure or operates trains on a railway infrastructure where such infrastructure is used, or intended to be used, wholly or partly for the carriage of members of the public.

20

(2) This Part applies to a person who is working in the course of the operation of a railway undertaking—

(a) as a driver, guard, conductor or signaller or in any other capacity in which he or she can control or affect the movement of a train, or

25

(b) in a maintenance capacity or as a supervisor of, or look-out for, persons working in such capacity,

in the course of his or her employment with or under a contract of services with the undertaking or in the course of his or her employment with a person who has a contract of services with the undertaking or voluntarily or otherwise.

30

(3) For the purposes of this Part, a person works in the course of the operation of a railway undertaking in a maintenance capacity if his or her work in the operation involves maintenance, repair or alteration of—

35

(a) trains,

(b) the permanent way or other means of guiding or supporting trains,

(c) signals or any other means of controlling the movement of trains, or

40

(d) any means of supplying electricity to trains or to the means of guiding or supporting trains,

or involves coupling or uncoupling trains or checking that they are working properly before they are used on any occasion.

45

**84.**—(1) It shall be the duty of a person to whom this Part applies while at work in the course of the operation of a railway undertaking and shall be deemed to be a term of his or her contract of employment or contract of services (whether made before or after the passing of this Act) with a railway undertaking or with a person who has a contract of services with a railway undertaking —

Duties of persons to whom *Part 9* applies and railway undertakings.

(a) not to be unfit through an intoxicant to carry out his or her work,

(b) not to be under the influence of an intoxicant to such an extent as to expose a person (including himself or herself) to danger or risk of danger as a consequence of being under such influence,

(c) not to have a presence of alcohol above the specified limit in his or her body at a material time, and

(d) to comply with—

(i) the code of conduct drawn up by the undertaking under *section 85(1)(a)*, and

(ii) procedures established by the undertaking under *section 85(1)(b)*,

and accepted by the Commission.

(2) It shall be the duty of a railway undertaking to take reasonable steps to ensure that a person to whom this Part applies, while at work in the course of the operation of the undertaking—

(a) is not unfit through an intoxicant to carry out his or her work,

(b) is not under the influence of an intoxicant to such an extent as to expose a person (including himself or herself) to danger or a risk of danger as a consequence of being under such influence, or

(c) does not have a presence of alcohol above the specified level in his or her body at a material time.

**85.**—(1) Subject to *subsection (2)*, in order to fulfil its duty under *section 84(2)*, a railway undertaking shall, in consultation with persons to whom this Part applies who are members of the staff of the undertaking and representatives of those persons and such other persons, as it considers appropriate—

Codes of conduct, etc., in relation to intoxicants.

(a) draw up a code of conduct for persons to whom this Part applies to be observed by each of them while at work in relation to intoxicants, which, without prejudice to the generality of this paragraph, shall include provisions—

(i) providing for the course of action (including dismissal, termination of contract, suspension, demotion, prohibition on working at the undertaking or working at specified activities or mandatory attendance at counselling) to be taken where a person to whom this Part applies—

(I) has failed to comply with *section 84(1)*,

- (II) had, in accordance with the result of an analysis of a sample under *section 87*, a presence of alcohol above the specified level in his or her body, or
  - (III) has failed, without reasonable excuse, to provide a sample under *section 87* or comply with procedures established and accepted by the Commission under this section, 5
- and
- (ii) providing for procedures relating to appeals under *section 88*, 10
- (b) establish procedures in relation to the provision of samples under *section 87(1)* and (2) by persons to whom this Part applies whilst at work or following a railway incident which, without prejudice to the generality of this paragraph, shall provide for— 15
- (i) matters relating to the circumstances in which sampling may be undertaken under *section 87*,
  - (ii) the caution to be given, to a person who is required under *section 87(1)* to provide a sample, as to the consequences of failing, without reasonable excuse, to give such sample, 20
  - (iii) the means of sampling, being by provision of a breath test or blood or urine specimens, or more than one such means, 25
  - (iv) the person who may take a sample,
  - (v) the location where a sample may be taken,
  - (vi) analysis of a sample by an analysis body,
  - (vii) privacy in relation to sampling,
  - (viii) procedures for the protection of the integrity of a sample, 30
  - (ix) division of any specimen of blood and urine into 2 parts and provision of one part to a person being sampled,
  - (x) a certificate to prove the results of the analysis of a sample and presumption as to the accuracy of the results of the sample so certified, 35
  - (xi) grievance procedures in relation to sampling, and
- (c) provide counselling and other assistance (in this Part referred to as “support services”) to persons to whom this Part applies on the request of such persons or in respect of such persons who fail to comply with *section 84(1)* in order to assist those persons to comply with that subsection in the future. 40
- (2) A railway undertaking shall, within 6 months of the commencement of this Part or such further period, at the discretion of 45



the Commission, being not more than 12 months from such commencement, submit to the Commission for its acceptance a draft of a code drawn up under *subsection (1)(a)*, a statement of procedures established under *subsection (1)(b)* and details of support services to be provided.

(3) The Commission shall issue a notification in writing accepting a code of conduct, statement of procedures or details of support services submitted under *subsection (2)* where the Commission is satisfied that—

(a) it is sufficient to enable the railway undertaking to discharge its duty under *section 84(2)*, and

(b) the undertaking has consulted with persons referred to in *section 85(1)*.

(4) Where the Commission is not satisfied with any code of conduct, statement of procedures or details of support services submitted to it under *subsection (2)*, the Commission shall notify in writing the railway undertaking of its dissatisfaction and the reasons for the dissatisfaction, and the railway undertaking, on receipt of a notification under this subsection shall, before re-submitting to the Commission, within such period as may be specified to it by the Commission, the code, procedures or details, take the action necessary to address the reasons stated in the notification and shall consult with persons referred to in *section 85(1)* in relation to the said matters.

(5) On service of a notification from the Commission under *subsection (3)*, a railway undertaking shall, within 6 months of the date of the notification, ensure that the code of conduct and procedures are adopted and implemented and support services are provided.

(6) A railway undertaking shall take reasonable steps to ensure that the code of conduct drawn up, a statement of the procedures established by it and details of support services provided by it and accepted by the Commission under this section and an abstract of this Part are displayed in a prominent place in the undertaking and brought to the attention of persons to whom this Part applies who are subject to the code of conduct and procedures.

(7) A railway undertaking shall give a copy of the code of conduct drawn up by it, a statement of procedures established by it or details of support services provided by it and accepted by the Commission under this section to a person to whom this Part applies who is subject to the code of conduct and procedures upon the request of the person.

(8) A railway undertaking may amend a code of conduct drawn up, procedures established by it or details of support services provided by it and accepted by the Commission under this section, in consultation with persons to whom this Part applies who are members of the staff of the undertaking and representatives of those persons and such other persons it considers appropriate, and *subsections (2) to (7)* shall apply to any such amendment or alteration with such modifications as are necessary.

**86.—**(1) Where a railway undertaking has complied with *section 85* and in order to fulfil its duty under *section 84(2)*, it shall appoint persons who it considers are suitably qualified to be authorised persons for the purposes of this Part. Authorised persons.

(2) An authorised person shall, on his or her appointment, be furnished with a warrant of his or her appointment and when exercising any power conferred on an authorised person under this section, shall if requested by any person affected, produce such warrant to that person for inspection. 5

(3) An authorised person shall have unhampered access to a railway incident site for the purposes of this Part.

(4) A railway undertaking shall, for the purposes of this Part, ensure that an authorised person appointed by it has unhampered access to any railway property under its management or control. 10

Sampling.

**87.—**(1) An authorised person may—

(a) where he or she has reasonable cause to suspect that a person to whom this Part applies, whilst at work in the course of the operation of the undertaking, has an intoxicant in his or her body to such an extent— 15

(i) as to be unfit to carry out work in the course of that operation, or

(ii) as to expose a person to danger or the risk of danger,

(b) subject to *subsection (5)*, where a railway incident occurs connected with the operation of the undertaking and he or she has reasonable cause to suspect that an act or omission of a person to whom this Part applies while he or she was working in the course of its operation may have caused or contributed to the incident, or 20

(c) for the safe operation of the undertaking, at random and in circumstances that are reasonable whilst persons to whom this Part applies are working in the course of the operation of the undertaking, 25

require that person to provide a sample.

(2) Where an inspector, for the purposes of his or her functions under this Act, attends the site of a railway incident and whilst there forms the opinion that the sampling of a person to whom this Part applies who is directly or indirectly involved with the movement of a train involved in the incident is or may be relevant to the investigation, he or she may— 30 35

(a) where an authorised person is attending the site, request the authorised person, or

(b) where an authorised person is not in attendance at the site, request the undertaking concerned to direct an authorised person to, 40

require the person to provide a sample within 3 hours of the incident.

(3) It shall be the duty of a person to whom this Part applies not to have alcohol present in his or her body within 3 hours of—

(a) being required to provide a sample under *subsection (1)(a)* or (c), or 45

(b) the occurrence of a railway incident mentioned in *subsection (1)(b)*.

5 (4) It shall be the duty of a person to whom the Part applies if a requirement to provide a sample is made of him or her under *subsection (1)* or (2), unless he or she has reasonable excuse, to provide the sample.

10 (5) While a person to whom this Part applies is at a hospital as a patient, he or she shall not be required to provide a sample unless the medical practitioner in immediate charge of his or her case has been notified by an authorised person of the proposal to make the requirement and—

(a) if the requirement is then made, it shall be for the provision of a sample at the hospital, but

15 (b) if the medical practitioner objects, on the ground that the requirement would be prejudicial to the proper care and treatment of the patient, the requirement shall not be made.

20 (6) A sample provided to an authorised person under this section shall be sent by him or her to an analysis body for the purposes of analysing the specimen of blood or urine provided as a sample under this section and the analysis body shall issue a certificate to the authorised person in relation to the results of the analysis.

25 (7) An analysis body may charge the railway undertaking concerned a fee in respect of any analysis made and certificate issued by it under *subsection (6)*.

30 (8) The results of any analysis under *subsection (6)* in respect of a sample taken in respect of *subsection (1)(b)* or (2) shall, at the request of the Commission, be given to it by the railway undertaking for whom it was made for the purposes of an investigation by the Commission under *section 55*.

**88.—**(1) Where an authorised person makes a complaint to the management of the railway undertaking which appointed him or her that, in his or her opinion, a person to whom this Part applies— Disciplinary measures.

(a) has failed to comply with *section 84(1)*,

35 (b) had at a material time, according to a certificate under *section 87(b)*, a presence of alcohol above the specified level in his or her body,

40 (c) has failed, without reasonable excuse, to provide a sample under *section 87* or comply with procedures established and accepted by the Commission under *section 85*, or

(d) has contravened *subsection (5)*,

the railway undertaking concerned shall enquire into the matter at an oral disciplinary hearing and where, as a result of the hearing, the undertaking is satisfied that the person—

45 (i) has failed to comply with *section 84(1)*,

(ii) had at a material time a presence of alcohol above the specified level in his or her body,

(iii) failed without reasonable excuse to provide such sample or comply with such procedures, or

(iv) has contravened *subsection (5)*,

as the case may be, it shall decide the course of action to be taken (including dismissal, termination of contract, suspension, demotion, prohibition on working at the undertaking or working at specified activities or mandatory attendance at counselling) in accordance with the code of conduct drawn up by the undertaking under *section 85(1)(a)* and accepted by the Commission under *section 85(3)*. 5

(2) A person to whom this Part applies who is the subject of a disciplinary hearing under this section may represent himself or herself or be represented by another person at the hearing. 10

(3) Where a railway undertaking imposes any sanction against any person as a result of a hearing under this section, it shall afford the person an opportunity, at his or her choice, to appeal to it or to such other person or persons nominated by the undertaking against the sanction. 15

(4) A person nominated under *subsection (3)* shall be independent of the undertaking and shall not be a member of its staff or connected to it or be a member of the staff of or connected to another railway undertaking. 20

(5) A person to whom this Part applies shall not take or attempt to take any action (including consumption of alcohol) with the intention of frustrating disciplinary measures under this section.

## PART 10

25

### WORKS ON PUBLIC ROADS ADJACENT TO RAILWAYS

Works on public roads adjacent to railways.

**89.—**(1) A person (other than a road authority) shall not commence or carry out any works on a public road in the vicinity of railway infrastructure where such works may, in his or her reasonable opinion having regard to any guidelines published by the Commission under *subsection (5)(a)*, affect the safe operation of that infrastructure without obtaining the prior written consent of the road authority concerned, and subject to any conditions contained in such consent. 30

(2) Before giving its consent under *subsection (1)*, a road authority shall notify the railway undertaking concerned of the proposed works and shall consider any objections or representations, made to it in writing within 21 days, by the railway undertaking concerning the proposed works. 35

(3) A road authority shall, before it commences any works on a public road in the vicinity of a railway infrastructure which may, in its reasonable opinion having regard to any guidelines published by the Commission under *subsection (5)(a)*, affect the safe operation of the infrastructure, notify the railway undertaking concerned of its intention and shall consider any objections or representations, made to it in writing, within 21 days of notification, by the undertaking concerning the intended works. 40 45

(4) A railway undertaking shall, before it brings into operation any new works on a railway which may, in its reasonable opinion having regard to any guidelines published by the Commission under *subsection (5)(b)*, affect the safety of users of a public road, notify 50

the road authority concerned of its intention and shall consider any objections or representations, made to it in writing within 21 days of the notification, by the road authority concerning the intended new works.

5 (5) The Commission may publish guidelines in relation to—

(a) any works on a public road in the vicinity of a railway infrastructure which may affect the safe operation of the railway infrastructure, or

10 (b) any new works on a railway which may affect the safety of road users.

(6) Nothing in this section shall prevent a railway undertaking, road authority, or other person from carrying out works in advance of a requirement under this section where not to do so would expose a person to danger or a risk of danger.

15 (7) Where works are carried out in accordance with *subsection (6)*, the railway undertaking, road authority or person concerned shall, as soon as practicable after the commencement of such works, comply with the requirements of this section.

20 (8) A person who carries out any works on a public road in the vicinity of a railway infrastructure shall take all reasonable steps to ensure that the works do not affect the safe operation of the infrastructure.

25 (9) A person who is for the time being responsible for works completed on a public road in the vicinity of a railway infrastructure shall take all reasonable steps to ensure that the works do not affect the safe operation of that infrastructure.

(10) A person who contravenes this section is guilty of an offence and is liable—

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

30 (b) on conviction on indictment, to a fine not exceeding €100,000.

(11) In this section, “works” includes, but may not be limited to—

35 (a) in the case of a public road — road excavation or resurfacing, road widening or narrowing, signage, road markings, traffic signalling and protective barriers in the vicinity of railway infrastructure, a railway level crossing or a road over or under a railway, and

(b) in the case of a railway undertaking — new works under *section 43(13)*.

## 40 PART 11

### PROCEDURAL

**90.**—A summary offence under this Act may be prosecuted by the Commission. Prosecution of summary offences.

45 **91.**—Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or Offences by bodies corporate.

connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate or a person who was purporting to act in any such capacity, that person as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence. 5

Cost of  
prosecutions.

**92.**—Where a person is convicted of an offence under this Act, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order that person to pay to the Commission the costs and expenses, measured by the court, incurred by the Commission in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of employees or persons engaged by the Commission. 10 15

Service of notices,  
etc.

**93.**—(1) Where a notice, notification or direction is required under this Act to be given to or served on a person, the notice or direction shall be in writing and shall be addressed to that person and shall be given to the person in one of the following ways—

(a) by delivering it to the person, 20

(b) by leaving it at the address at which the person ordinarily resides or carries on business,

(c) by sending it by post in a pre-paid registered letter or by any other form of recorded delivery service, addressed to the person at the address at which the person ordinarily resides or carries on business, 25

(d) if an address for the service of notices, notifications or directions has been furnished by the person, by leaving it at, or sending it by pre-paid registered post or by any other form of recorded delivery service addressed to the person to, that address, 30

(e) in any case where the Commission considers that the immediate giving of the notice, notification or direction is required, by sending it, by means of a facsimile machine, to a device or facility for the reception of facsimiles located at the address at which the person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the sender's facsimile machine generates a message confirming successful transmission of the total number of pages of the notice. 35 40

(2) For the purposes of this section, a company registered under the Companies Acts, 1963 to 2001, shall be deemed to be ordinarily resident at its registered office and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business. 45

Disclosure of  
records.

**94.**—(1) The Commission, a railway undertaking or any other person concerned with the conduct of an investigation under *section 54* or *55* or with an inquiry under *section 61* shall not disclose the following records to any other party for purposes other than such investigation or inquiry— 50

- (a) statements taken by an inspector, railway undertaking or other person in the course of the investigation or inquiry,
- (b) medical or private information regarding persons involved in the railway incident which is the subject of the investigation or inquiry,
- (c) voice or video recordings or transcripts of such recordings,
- (d) data recordings or output from such recordings which are not relevant to the investigation or inquiry,
- (e) opinions expressed in the analysis of information, and
- (f) observations submitted in accordance with *section 59(3)* where the person who has submitted the observations so requests.

(2) Notwithstanding *subsection (1)*, the Commission or tribunal may disclose a particular record where it considers, in respect of the particular record, that the probable benefits to the public interest from such disclosure would outweigh any adverse impact of such disclosure on that investigation or inquiry or on any future investigation by the Commission, or railway undertaking or an inquiry by a tribunal.

(3) *Subsection (1)* shall not preclude the Commission, a railway undertaking or a tribunal from including such records in a report under *section 54, 57, 59 or 61* where the information is pertinent to the analysis of the cause of a railway incident or the recommendations arising from the investigation of or inquiry into such incident.

(4) Any record, other than a record under *subsection (1)*, held by the Commission or a tribunal in the course of an investigation or inquiry shall not be made available by the Commission or tribunal to any other party except for the purposes of an investigation or inquiry until after the day of publication of a report under *section 57 or 61* or the finalisation of a report under *section 54* unless the Commission or tribunal as the case may be deems it appropriate in the public interest to do so.

(5) For the avoidance of doubt, information specified in *subsection (1)* shall—

- (a) where held by a railway undertaking, be provided to the Commission or a tribunal on receipt of a request from the Commission or the tribunal, and
- (b) where held by the Commission or a tribunal in relation to an investigation or an inquiry relating to an international service, and where the Commission or the tribunal considers that there is a benefit in so doing, be provided on receipt of a request from a relevant competent authority in another state, to such authority.

(6) In this section, “tribunal” means a tribunal of inquiry under *section 61*.



## SCHEDULE 1

## ENACTMENTS REPEALED

Session and Chapter or Number and Year (1)	Short Title (2)	Extent of Repeal (3)	5
5 & 6 Vict. c. 55	Railway Regulation Act, 1842	Sections 4, 5, 6 and 11	
31 & 32 Vict. c. 119	Regulation of Railways Act, 1868	Part V	
34 & 35 Vict. c. 78	Regulation of Railways Act, 1871	Sections 3, 4, 5, 6, 7 (except in so far as it relates to an inquiry or investigation under section 7 which is not completed before its repeal) and 11	10 15
41 Vict. c. 20	Railway Returns (Continuous Brakes) Act, 1878	The whole Act	
63 & 64 Vict. c. 27	Railway Employment (Prevention of Accidents) Act, 1900	Section 13(2)	20
No. 29 of 1924	Railway Act, 1924	Sections 58(2), (3), (4) and (5)	

## SCHEDULE 2

25

## FUNCTIONS TRANSFERRED FROM MINISTER TO COMMISSION

## PART 1

Session and Chapter or Number and Year (1)	Short Title (2)	Provisions transferred to Commission (3)	30
8 Vict. c. 20	Railways Clauses Consolidation Act, 1845	Section 47	
26 & 27 Vict. c. 92	Railway Clauses Act, 1863	Section 6	35
31 & 32 Vict. c. 119	Regulation of Railways Act, 1868	Section 22 (as amended by section 9 of the Transport Act, 1987)	
52 & 53 Vict. c. 57	Regulation of Railways Act, 1889	Sections 1 and 2	40
63 & 64 Vict. c. 27	Railway Returns (Prevention of Accidents) Act, 1900	Sections 1 and 2	
No. 24 of 1946	Local Government Act, 1946	Section 60	45
No. 19 of 1958	Transport Act, 1958	Section 9	
No. 14 of 1971	Transport (Miscellaneous Provisions) Act, 1971	Sections 22 and 29	



## PART 2

Regulations 15, 16 and 17 of the European Communities (Allocation of Railway Infrastructure Capacity and Charging of Infrastructure Fees) Regulations, 1999 (S.I. No. 281 of 1999).