Draft Regulations laid before Parliament under section 82(4) of the Health and Safety at Work etc. Act 1974, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2006 No. 000

HEALTH AND SAFETY

The Railway Safety Levy Regulations 2006

Made - - - - 2006

Coming into force in accordance with regulation 1

A draft of this instrument was laid before Parliament in accordance with section 82(4) of the Health and Safety at Work etc. Act 1974(**1**) and approved by a resolution of each House of Parliament.

Accordingly, the Secretary of State for Transport, in exercise of the powers conferred by section 43A(1) and (5) to (8) and section 82(3)(a) of that Act makes the following Regulations.

Citation and commencement

1. These Regulations may be cited as the Railway Safety Levy Regulations 2006 and shall come into force on the second day after the day on which they are made.

Interpretation

2.—(1) In these Regulations—

"the 1974 Act" means the Health and Safety at Work etc. Act 1974;

"the 1985 Act" means the Companies Act 1985(**2**);

"annual accounts" means annual accounts as defined in section 262(1) of the 1985 Act and any like accounts prepared in accordance with section 700(1) of that Act;

"auditor" means an auditor who is eligible for appointment as a company auditor under section 25 of the Companies Act 1989(**3**);

"company" means a company as defined in section 735(1)(a) of the 1985 Act or an oversea company as defined in section 744 of that Act;

"financial year" means a period of twelve months beginning on 1st April;

(**1**) 1974 c.37. Section 43A was inserted by the Railways and Transport Safety Act 2003 (c.20), section 105(1) and was amended by the Railways Act 2005 (c. 14), section 2 and Schedule 3, paragraph 12.
(**2**) 1985 c.6. Section 256 was substituted by section 19 of the Companies Act 1989 (c.40); section 262 was amended by section 22 of the Companies Act 1989 and S.I. 2004/2947; section 700(1) was amended by section 23 and Schedule 10 of the Companies Act 1989.
(**3**) 1989 c. 40.

"railway safety levy" means the levy imposed by regulation 7;

"railway service provider" means a person described in section 43A(9) of the 1974 Act as a person who provides railway services;

"relevant services" means services provided in the course of managing or controlling, or participating in the management or control of, a transport system falling within paragraph 1(3) of Schedule 3 to the Railways Act 2005; and

"relevant turnover" means the turnover of the railway service provider derived from the provision of relevant services in Great Britain during a financial year after deduction of trade discounts, value added tax, and any other taxes directly related to turnover, and where the railway service provider provided railway services for a period of less than 12 months during the financial year, the relevant turnover shall be the amount which bears the same proportion to the relevant turnover during that period of time as 12 months does to the period of time for which relevant services were provided.

(2) In these Regulations—

(a) a reference to "accounting standards" or "international accounting standards" is a reference to that term as defined in section 256(1) and section 262(1) of the 1985 Act respectively; and

(b) turnover derived from the provision of relevant services includes, in particular, amounts derived from—

(i) aid granted to the railway service provider by a public sector operator as defined in section 25 of the Railways Act 1993, if the aid facilitates or promotes the provision of relevant services by the railway service provider;

(ii) fares paid in respect of relevant services for the carriage of passengers; and

(iii) fees paid in respect of relevant services for the carriage of goods.

Determination of matters by the Office of Rail Regulation

3.—(1) The Office of Rail Regulation may, in respect of each financial year, determine—

(a) the total amount of the railway safety levy to be imposed;

(b) the railway service providers by whom the levy is to be paid;

(c) the criteria for assessing the proportion of the levy to be paid by a particular railway service provider (which may, in particular, refer to the size of a railway service provider's income or provide for an amount to be reduced or waived in specified circumstances); and

(d) when the levy is to be paid.

(2) The Office of Rail Regulation may revise the determination of any matter specified in paragraph (1), whether before, during or after the financial year to which the determination relates.

(3) In respect of each financial year, the Office of Rail Regulation may calculate the amount of railway safety levy payable by each railway service provider by whom a levy is to be paid and any such calculation shall be made in accordance with the relevant determinations made under paragraph (1)(a) to (c) and those determinations as they may be revised from time to time.

(4) The Office of Rail Regulation shall as soon as reasonably practicable publish each—

(a) determination made in accordance with paragraph (1); and

(b) revision of a determination made in accordance with paragraph (2);

in any manner which it considers appropriate.

Requests for information

4.—(1) A railway service provider shall provide the Office of Rail Regulation with such information as it reasonably requests for the purpose of determining or revising a determination of any matter specified in regulation 3(1) or calculating the amount of railway safety levy payable by each railway service provider in accordance with regulation 3(3).

(2) Subject to paragraph (4), if the information requested under paragraph (1) constitutes or includes financial information and the relevant turnover of the railway service provider in the relevant financial year is—

(a) less than £10,000,000, the railway service provider shall comply, at its discretion, with either regulation 5(1) or regulation 5(2); and

(b) £10,000,000 or more, the railway service provider shall comply with regulation 5(2).

(3) For the purposes of paragraph (2) the relevant financial year is the financial year preceding the financial year in which the information is requested in accordance with paragraph (1).

(4) A railway service provider shall provide the Office of Rail Regulation with such audited accounts as requested if the railway service provider has elected, in accordance with paragraph (2)(a), to comply with regulation 5(1).

(5) A request for information referred to in paragraph (1) or (4) shall—

(a) be in writing; and

(b) specify the date by which the information must be provided, which shall be a date not less than two months from the date of the request.

Certification of financial information

5.—(1) Where a request has been made under regulation 4(1) and this paragraph applies, any financial information supplied in accordance with that request shall be accompanied by a written statement that is signed by the railway service provider or a person authorised to sign on behalf of the railway service provider.

(2) Where a request has been made under regulation 4(1) and this paragraph applies, any financial information supplied in accordance with that request shall be accompanied by a statement signed by an auditor.

(3) The statement referred to in paragraphs (1) and (2) shall, in the case of a railway service provider that is—

(a) a company, state that the financial information is calculated accurately in accordance with the accounting standards or the international accounting standards, as the case may be, that apply to the preparation of the railway service provider's annual accounts; and

(b) not a company, state that the financial information is calculated accurately in accordance with either the accounting standards or the international accounting standards.

Assumptions

6.—(1) Where a railway service provider—

(a) receives a request for information under regulation 4(1) or 4(4); and

(b) fails to provide the information requested by the date specified in that request;

the Office of Rail Regulation may make such assumptions concerning the information as are reasonable in all the circumstances.

(2) The Office of Rail Regulation shall notify a railway service provider in writing as soon as reasonably practicable—