Draft Regulations laid before Parliament under section 103(5) of the Railways and Transport Safety Act 2003, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2005 No.

TRANSPORT

RAILWAYS

The Railways (Convention on International Carriage by Rail) Regulations 2005

Made - - - - 2005

Coming into force in accordance with regulation 1

The Secretary of State, in exercise of the powers conferred upon him by section 103 of, and paragraphs 2(a) to (f), (o) and (p), 3(1) and (2)(a) and (b), 4(a) to (d), 7(1) and (2)(a) and (b), 8(1) and (2), and 9(1) and (2)(a) of Schedule 6 to, the Railways and Transport Safety Act 2003(**1**), and a draft of these Regulations having been laid before Parliament and approved by each House of Parliament, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Railways (Convention on International Carriage by Rail) Regulations 2005 and shall come into force on the date, specified in the London, Edinburgh and Belfast Gazettes, on which the Protocol enters into force in respect of the United Kingdom.

Interpretation

2.—(1) In these Regulations—

(a) except where the context otherwise requires a reference to an Article is a reference to the Article so numbered in the Convention and a reference to a paragraph of an Article shall be construed accordingly; and

(b) an expression used in these Regulations and in the Convention has the same meaning as in the Convention.

(2) In these Regulations—

"the 1933 Act" means the Foreign Judgments (Reciprocal Enforcement) Act 1933(**2**);

(**1**) 2003 c. 20.
(**2**) 1933 c. 13.

"the 1976 Act" means the Fatal Accidents Act 1976(**3**);

"the committees" means any of the following—

(a) the Revision Committee as described in Article 17;

(b) the RID Expert Committee as described in Article 18; and

(c) the Committee of Technical Experts as described in Article 20;

"the Convention" means the version of the "Convention concerning International Carriage by Rail (COTIF(**4**)) of 9th May 1980" as set out after Article 7 of the Protocol and forming an integral part of the Protocol and comprising—

(a) the Convention itself;

(b) the Protocol on the Privileges and Immunities of the Intergovernmental Organisation for International Carriage by Rail referred to in paragraph 4 of Article 1; and

(c) Appendices A to G to the Convention, including the Annexes to Appendices C and F;

as modified in accordance with its provisions from time to time by a decision of one of the committees under paragraph 4, 5 or 6 of Article 33, as the case may be, whether such modification occurs before or after the coming into force of these Regulations; and

"the Protocol" means the Protocol signed at Vilnius on 3rd June 1999(**5**) to modify the "Convention concerning International Carriage by Rail (COTIF) of 9th May 1980"(**6**).

Convention to have the force of law

3.—(1) The Convention shall have the force of law in the United Kingdom, and judicial notice shall be taken of it.

(2) For the avoidance of doubt any question arising as to whether the Convention applies in the circumstances of a particular case falls to be determined in accordance with the provisions of paragraph 2 of Article 3.

Publication of information concerning the Convention

4. The Secretary of State shall publish in such manner as he thinks fit information concerning—

(a) any change to the list of parties to the Convention;

(b) any declaration, objection or reservation by a party to the Convention;

(c) the suspension of part of the Convention in relation to a party; and

(d) any modification to the Convention.

Fatal accidents

5.—(1) Where by virtue of the Convention any person has a right of action in respect of the death of a passenger by reason of his being a person whom the passenger was under a legal duty to maintain—

(a) subject to paragraph (2), no action in respect of the passenger's death shall be brought for the benefit of that person under the 1976 Act, but

(**3**) 1976 c. 30.
(**4**) An acronym for "Convention relative aux Transports Internationaux Ferroviaires".
(**5**) Cm 4873.
(**6**) Cm 3812.

(b) nothing in section 2(3) of that Act (not more than one action in respect of the same subject matter of complaint) shall prevent an action being brought under that Act for the benefit of any other person.

(2) Nothing in paragraph (1)(a) affects the right of any person to claim damages for bereavement under section 1A of the 1976 Act(**7**).

(3) Section 4 of the 1976 Act (exclusion of certain benefits in assessment of damages) shall apply in relation to an action brought by any person under the Convention as it applies in relation to an action under that Act.

(4) Where separate proceedings are brought under the Convention and under the 1976 Act in respect of the death of a passenger, a court, in awarding damages under that Act, shall take into account any damages awarded in the proceedings brought under the Convention and shall have jurisdiction to make any part of its award conditional on the result of those proceedings.

(5) In the application of this regulation to Northern Ireland references to the 1976 Act and to sections 1A, 2(3) and 4 of that Act shall be construed as references to the Fatal Accidents (Northern Ireland) Order 1977(**8**) and Articles 3A, 4(3) and 6 of that Order.

(6) The provisions of Schedule 1 to these Regulations shall, as respects Scotland, have effect in lieu of paragraphs (1) to (5).

Power of court to take account of other proceedings

6.—(1) A court before which proceedings are brought to enforce a liability which is limited by any of the provisions of the Convention may at any stage of the proceedings make any such order as appears to the court to be just and equitable in view of those provisions and of any other proceedings which have been, or are likely to be, commenced in the United Kingdom or elsewhere to enforce the liability in whole or in part.

(2) Without prejudice to paragraph (1), a court before which proceedings are brought to enforce a liability which is so limited shall, where the liability is or may be partly enforceable in other proceedings in the United Kingdom or elsewhere, have jurisdiction to award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court, or to make any part of its award conditional on the result of any other proceedings.

Conversion of special drawing rights into sterling

7.—(1) The special drawing rights by reference to which any liability is limited by the Convention shall, in the case of judicial proceedings or an arbitration in the United Kingdom, be converted into their sterling equivalent on the day of the judgment or award or on such day as may be agreed between the parties to the judicial proceedings or arbitration.

(2) For the purposes of this regulation the value on a particular day of a special drawing right shall be treated as equal to such sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right—

(a) for that day; or

(b) if no sum has been fixed for that day, for the last day before that day for which a sum has been so fixed.

(**7**) Section 1A was inserted by the Administration of Justice Act 1982 (c. 53), section 3(1), and amended by article 2 of S.I.2002/644. Also amended by the Civil Partnership Act 2004 (c. 30), section 83(1) and (7)(a) and (b) from a date to be appointed.

(**8**) S.I. 1977/1251 (N.I. 18); Article 3A was inserted, and Article 6 was substituted, by section 68 of, and paragraphs 4 and 7 of Schedule 6 to, the Administration of Justice Act 1982 (c. 53). Article 3A (3) was amended by S.I. 2002/645.