



STATUTORY INSTRUMENTS.

S.I. No. 399 of 2010



EUROPEAN COMMUNITIES (TRAIN DRIVERS CERTIFICATION)
REGULATIONS 2010

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EUROPEAN COMMUNITIES (TRAIN DRIVERS CERTIFICATION)
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I, NOEL DEMPSEY, Minister for Transport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Council Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007¹, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Communities (Train Drivers Certification) Regulations 2010.

Interpretation

2. (1) In these Regulations—

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

“Agency” means European Railway Agency established by Regulation (EC) No. 881/2004 of the European Parliament and of the Council of 29 April 2004²;

“certificate” means the complementary certificate indicating the infrastructure on which the holder is authorised to drive and the rolling stock which the holder is authorised to drive;

“Commission” means Railway Safety Commission;

“competent authority” means the Commission or a person delegated by it under Regulation 4(6);

“Decision of 2009” means the Commission Decision of 29 October 2009³ on the adoption of the basic parameters for registers of train driving licences and complementary certificates provided for under Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007¹;

“Directive” means Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007¹ on the certification of train drivers operating locomotives and trains on the railway system in the Community;

“infrastructure manager” means any body or undertaking, including Iarnród Éireann-Irish Rail, that is responsible in particular for establishing and maintaining railway infrastructure, or part of it (within the meaning of section 2(1)

¹OJ No. L315, 3.12.2007, p.51

²OJ No. L220, 21.6.2004, p.3

³OJ No. L285, 31.10.2009, p.42

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 20th August, 2010.*

of the Act of 2005) which may also include the management of infrastructure control and safety systems;

“inspector” means an inspector appointed by the Commission under section 73 of the Act of 2005;

“issuing body” means the body issuing a licence or certificate;

“licence” means a licence demonstrating the criteria set out in Regulation 5(1)(a) and issued under Regulation 6(1);

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

“railway system” means the system composed of the railway infrastructures, plus the rolling stock of all categories and origin travelling on that infrastructure;

“Regulations of 2002” means European Communities (Interoperability of the Trans-European High-Speed Rail System) Regulations 2002 (S.I. No. 118 of 2002);

“Regulation of 2004” means Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004²;

“Regulations of 2004” means European Communities (Interoperability of the Trans-European conventional rail system) Regulations 2004 (S.I. No. 61 of 2004);

“Regulations of 2008” means the European Communities (Railway Safety) Regulations 2008 (S.I. No. 61 of 2008);

“Regulation of 2009” means the Commission Regulation (EU) 36/2010 of 3 December 2009⁴ on Community models for train driving licences, complementary certificates, certified copies of complementary certificates and application forms for train driving licences, under the Directive;

“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 authorisation” means the authorisation issued to an infrastructure manager by the Commission under section 46(1)(a)(ii) (inserted by Regulation 9(2) of the Regulations of 2008) of the Act of 2005;

“safety certificate” means the certificate issued to a railway undertaking by the Commission under section 46(1)(a)(i) (inserted by Regulation 9(2) of the Regulations of 2008) of the Act of 2005;

⁴OJ No. L13, 19.1.2010, p.1

“technical specifications for interoperability” or “TSIs” means the specifications by which each subsystem or part of a subsystem is covered in order to meet the essential requirements and to ensure the interoperability of the trans-European high-speed and conventional rail systems (within the meaning of the Regulations of 2002 and the Regulations of 2004);

“train driver” means a person capable and authorised to drive trains, including locomotives, shunting locomotives, work trains, maintenance railway vehicles or trains for the carriage of passengers or goods by rail in an autonomous, responsible and safe manner;

“training centre” means an entity recognised by the competent authority to give training courses.

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

Scope

3. (1) These Regulations apply to train drivers operating locomotives and trains on the Iarnród Éireann-Irish Rail Network.

(2) These Regulations do not apply to train drivers operating exclusively on:

- (a) metros, trams and other light rail systems;
- (b) networks that are functionally separate from the rest of the rail system and are intended only for the operation of local, urban or suburban passenger and freight services;
- (c) privately owned railway infrastructure that exists solely for use by the infrastructure owners for their own freight operations;
- (d) sections of track that are temporarily closed to normal traffic for the purpose of maintaining, renewing or upgrading the railway system;
- (e) train services or railway infrastructure of historical or touristic interest.

Tasks of competent authority

4. (1) The competent authority shall in accordance with these Regulations fulfil the following tasks under these Regulations in a transparent and non-discriminatory manner:

- (a) issuing and updating licences, and providing duplicates;
- (b) ensuring periodic examinations or tests;
- (c) suspending and withdrawing licences, and notifying the issuing body of reasoned requests for the suspension of certificates;
- (d) recognising persons;

- (e) ensuring that a register of persons accredited or recognised is published and updated;
- (f) keeping and updating a register of licences;
- (g) monitoring the drivers' certification process;
- (h) carrying out inspections;
- (i) establishing criteria for examiners.

(2) The competent authority shall respond quickly to requests for information and present any requests for additional information without delay when preparing licences.

(3) Where the competent authority makes a decision under these Regulations it shall state the reason for the decision.

(4) The competent authority shall ensure that an administrative appeals procedure is established allowing employers and drivers to request a review of a decision by the competent authority or relating to any application under this Regulation.

(5) Subject to paragraph (6), the Commission is the competent authority for the purposes of these Regulations and the Directive.

(6) The Commission may delegate or contract the following tasks to a third party, including—

- (a) issuing and updating licences, and providing duplicates, as provided for in Regulations 6(1) and 7(6) respectively,
- (b) ensuring the periodic examinations or tests as provided for in Regulation 9(1), (2), (3) and (4),
- (c) recognising persons,
- (d) ensuring that a register of persons accredited or recognised is published and updated,
- (e) keeping and updating a register of licences, and
- (f) carrying out inspections.

(7) Where the Commission delegates or contracts tasks referred to in paragraph (6) to a railway undertaking, at least one of the following conditions shall be complied with—

- (a) the railway undertaking issues licences only to its own drivers;
- (b) the railway undertaking does not enjoy exclusivity in the territory concerned for any of the delegated or contracted tasks.

(8) Any delegation of tasks to a third party shall be transparent and non-discriminatory and shall not give rise to a conflict of interest.

(9) Where the Commission delegates or contracts tasks as provided for in paragraph (6), the third party shall be required, in performing such tasks, to comply with the obligation imposed on the competent authority by this Regulation.

(10) Where the Commission delegates or contracts tasks, it shall establish a system for checking how those tasks have been carried out.

(11) The Commission shall not delegate to third parties the tasks as follows—

- (a) suspending and withdrawing licences, and notifying the issuing body of reasoned requests for the suspension or withdrawal of certificates, under Regulation 19,
- (b) monitoring the drivers' certification process under Regulation 16, and
- (c) setting or approving the examinations and designating the examiners under Regulation 15(1).

Licensing and certification of drivers

5. (1) All train drivers shall hold the following documents—

- (a) a licence demonstrating that the driver satisfies minimum conditions as regards medical requirements, basic education and general professional skills, and
- (b) one or more certificates indicating the infrastructures on which the holder is authorised to drive and indicating the rolling stock which he or she is authorised to drive.

(2) A licence shall—

- (a) identify the holder and the Commission,
- (b) state the duration of its validity, and
- (c) subject to Article 4(1)(a) of the Directive, comply with the Regulation of 2009.

(3) A licence is the property of its holder.

(4) A licence issued by the competent authority of another Member State is valid in the State.

(5) Notwithstanding paragraph (1), the requirement to hold a certificate for a specific part of infrastructure does not, if a railway undertaking concerned decides, apply in the following exceptional cases—

- (a) when a disturbance of the railway service necessitates the deviation of trains or maintenance of tracks, as specified by the infrastructure manager,
- (b) for exceptional, one-off services which use historical trains,
- (c) for exceptional, one-off freight services, provided that the infrastructure manager agrees,
- (d) for the delivery or demonstration of a new train or locomotive,
- (e) for the purposes of training and examining drivers;

Provided that another train driver who possesses a valid certificate for the infrastructure concerned sits next to the driver during the drive.

(6) Whenever an additional driver is used, as provided for under paragraph (5), the infrastructure manager of the specific infrastructure shall be given prior notice.

(7) An infrastructure manager may not oblige a railway undertaking to make decisions under paragraph (5).

(8) A certificate shall—

(a) authorise driving on one or more of the following categories—

- (i) category A: shunting locomotives, work trains, maintenance railway vehicles and all other locomotives when they are used for shunting,
- (ii) category B: carriage of passengers or of goods,

(b) be the property of the railway undertaking or infrastructure manager which issued it to the holder,

(c) be valid only on those infrastructures and rolling stock identified on it.

(d) subject to Article 4(1)(b) of the Directive comply with the Regulation of 2009.

(9) A driver shall be entitled to obtain a certified copy of his or her own certificate. The form of the certified copy will be set out as required in the Regulation of 2009.

(10) A certificate is valid on the infrastructures and rolling stock identified on it.

(11) A railway undertaking or infrastructure manager who causes or permits a person to drive a train without holding the documents referred to in paragraph (1) commits an offence.

(12) A person who drives or attempts to drive a train without holding the documents referred to in paragraph (1) commits an offence.

(13) A person who contravenes paragraph (11) or (12) commits an offence and is liable on summary conviction to a fine not exceeding €5,000.

(14) A driver of a train shall carry with him or her while driving the train a licence or duplicate of it and the relevant certificate held by him or her.

(15) A person who fails to comply with paragraph (14) commits an offence and is liable on summary conviction to a fine not exceeding €1,000.

Requirements for obtaining licence and certificate

6. (1) The competent authority shall issue a licence to an applicant if it is satisfied the applicant has—

- (a) attained the age of 20 years,
- (b) completed 9 years education (primary and secondary),
- (c) successfully concluded basic training equivalent to level 3 referred to in the Council Decision 85/368/EEC of 16 July 1985⁵,
- (d) passed the required medical examination that covers at least the criteria included in paragraph 1 of Annex II to the Directive, and is conducted by or under the supervision of a medical doctor on the register maintained by the competent authority under Regulation 12,
- (e) passed the required occupational psychological fitness examination that covers at least the criteria set out in paragraph 2(2) of Annex II to the Directive and is conducted by or under the supervision of a psychologist or medical doctor included on the register maintained by the competent authority under Regulation 12, and
- (f) passed the required general professional competence examination that covers at least the general subjects listed in Annex IV to the Directive.

(2) A railway undertaking or infrastructure manager shall issue a certificate to an applicant if it is satisfied the applicant—

- (a) is in possession of the required linguistic skills that meet the language test requirements set out and referred to in paragraph 8 of Annex VI to the Directive,
- (b) has passed the required professional knowledge and competence relating to the rolling stock for which the certificate is sought and covers the subjects set out in Annex V to the Directive,

⁵OJ No. L199, 31.7.1985, p.56

(c) has passed the required professional knowledge and competence relating to the infrastructure for which the certificate is sought and covers the subjects set out in Annex VI to the Directive, and

(d) has been trained by it in relation to its safety management system.

(3) For the purpose of paragraph (2)(c) this examination may include a linguistic component referred to in paragraph (2)(a).

Procedure for obtaining licence

7. (1) The competent authority shall publish its application procedures for obtaining a licence, for the updating of the particulars of such a licence, for the renewal of such a licence and for the issue of a duplicate licence.

(2) The application form for a licence shall take the form as required by the Regulation of 2009.

(3) All applications shall be lodged with the competent authority by the applicant, or a person acting on the applicant's behalf, and shall be made in accordance with the procedures published in accordance with paragraph (1).

(4) The competent authority shall within one month of receiving all the necessary documents determine the application.

(5) Where it is satisfied a licence should be issued or renewed, the competent authority shall issue it in the form of a single original.

(6) The competent authority may issue a duplicate licence.

(7) Subject to Regulation 9, a licence is valid for 10 years.

Procedure for obtaining certificate

8. (1) A railway undertaking and an infrastructure manager shall establish—

(a) as part of its safety management system, its own procedures for the issue and updating of certificates, and

(b) a procedure for a person to request a review by it of a decision it has made concerning them relating to the issue, updating, suspension or withdrawal of a certificate.

(2) A railway undertaking or an infrastructure manager shall update, without delay, a certificate issued by it whenever the holder has obtained additional authorisations from it relating to rolling stock or infrastructure.

(3) A person who has requested a review of a decision under paragraph (1) (b) may appeal to the competent authority, in accordance with procedures established under Regulation 4(4), if dissatisfied with the outcome.

(4) When issuing a certificate to a driver, a railway undertaking or infrastructure manager shall take account of all documentation concerning the driver's training, qualifications, experience and professional competence.

Periodic checks to maintain validity of licence or certificate

9. (1) The holder of a licence shall undergo periodic examinations or tests relating to the requirements referred to in Regulation 6(1)(d) and (e).

(2) For the purpose of paragraph (1) periodic examinations with regard to the medical requirements means examinations conducted at the minimum frequency and at other times set out in paragraph 3 of Annex II to the Directive.

(3) As far as general professional knowledge is concerned, Regulation 14(1)(b) applies.

(4) When renewing a licence, the competent authority shall verify in the register provided for in Regulation 13(1) and (2) that the driver has met the requirements referred to in paragraphs (1), (2) and (3).

(5) The holder of a certificate shall undergo periodic examinations relating to the requirements described in Regulation 6(2).

(6) For the purpose of paragraph (5), the frequency of periodic examinations shall be as determined by the railway undertaking or infrastructure manager that issued the certificate in accordance with its safety management system, but shall not be less than the minimum frequencies set out in Annex VII to the Directive.

(7) For each of these checks the issuing body shall confirm by a statement on the certificate and in the register provided for in Regulation 13(5) that the driver has met the requirements referred to in paragraph (5).

(8) Where a periodic check is missed or gives a negative result, the procedure laid down in Regulation 11 shall be applied.

(9) The competent authority shall ensure the periodic examinations or tests procedure under these Regulations.

Cessation of employment

10. (1) A railway undertaking or infrastructure manager shall inform the competent authority when a person ceases to be employed by them as a train driver.

(2) Subject to paragraph (3), when a person ceases to be employed by a railway undertaking or infrastructure manager as a train driver, the certificate issued by them in relation to that person ceases to be valid.

(3) The licence held by the person referred to in paragraph (2) remains valid provided that the conditions in Regulation 9 remain fulfilled.

(4) If a certificate becomes invalid by virtue of paragraph (2), the railway undertaking or infrastructure manager that issued it shall provide the train driver with—

(a) a certified copy of the certificate, and

- (b) a copy of all documents providing evidence of the driver's training, qualifications, experience and professional competence obtained by the driver while they are employed as a train driver by that body.

Monitoring of drivers by railway undertakings and infrastructure managers

11. (1) Railway undertakings and infrastructure managers shall set up a system for monitoring their drivers to ensure and check that the licences and certificates of the drivers they employ or contract are valid.

(2) To provide for the requirement at paragraph (1) railway undertakings and infrastructure managers shall establish a system for monitoring the train drivers employed by them.

(3) If the results of that monitoring call into question a train driver's competence for the job or the continuing validity of their licence or certificate, the railway undertaking or infrastructure manager shall immediately take any necessary action.

(4) A train driver who considers that his or her state of health calls into question his or her fitness to drive trains shall immediately inform the railway undertaking or infrastructure manager by whom he is employed. A driver who fails to do this is liable to appropriate disciplinary action by the railway undertaking including dismissal.

(5) A railway undertaking or infrastructure manager that becomes aware that a train driver employed by them has failed to comply with Regulation 9, has failed an examination required by those Regulations, or has become aware or been informed by a medical doctor that the health of the train driver employed by them has deteriorated to a point where the driver's fitness to drive trains is called into question, shall immediately take any necessary action.

(6) The necessary action required in paragraph (3) and (5) may include—

- (a) requiring the driver to undergo the relevant examinations and training referred to in Regulation 6(1) (d) to (f) and (2), or
- (b) suspension or withdrawal of the driver's certificate.

(7) In the case of a withdrawal of a driver's certificate under paragraph (6)(b) the railway undertaking or infrastructure manager shall update the register provided for in Regulation 13(5).

(8) A railway undertaking or infrastructure manager shall inform the Commission and the competent authority (if it is not the Commission) when a train driver employed by them has suffered work incapacity for a period of more than 3 months.

(9) The railway undertaking or infrastructure manager shall ensure that at no time during their service drivers employed by them are under the influence of any substance which is likely to affect their concentration, attention or behaviour.

Register of recognised persons

12. The competent authority shall establish, publish and update, a register of doctors, psychologists, trainers, and examiners, recognised by the competent authority as competent to carry out functions under, or referred to in, Regulations 6, 14 and 15.

Registers of licences and certificates and exchange of information

13. (1) The competent authority shall keep, and regularly update, a register of all licences issued, updated, renewed, amended, expired, suspended, withdrawn or reported lost, stolen or destroyed.

(2) The register shall contain the data required in the Decision of 2009 and shall be accessible by the use of a national number allotted to each train driver.

(3) The competent authority shall supply, upon reasoned request, information on the status of such licences to the competent authorities of the other Member States, the Agency or any employer of drivers.

(4) Where the Commission has delegated its functions in relation to the licensing of train drivers under Regulation 4(6) to a railway undertaking or other third party, that undertaking or party shall provide the competent authority with any information it obtains which is required by the competent authority to keep the register of licences required by this Regulation up to date.

(5) Each railway undertaking and infrastructure manager shall keep, and regularly update, a register, or ensure that a register is kept, of all certificates issued, updated, renewed, amended, expired, suspended, withdrawn or reported lost, stolen or destroyed.

(6) The register shall contain the data required in the Decision of 2009 for every certificate, including data relating to the periodic checks provided for in Regulation 9.

(7) Railway undertakings and infrastructure managers shall, upon request provide to the competent authority any information relating to certificates issued by them or any other function carried out by them under these Regulations.

(8) Railway undertakings and infrastructure managers shall supply information on the content of such certificates to the competent authorities of the other Member States upon their request, when this is required as a consequence of their trans-national activities.

(9) Train drivers shall have access to the data concerning them which is stored in the registers of the competent authority and of railway undertakings and infrastructure managers, and shall be provided with a copy of that data on request.

(10) The competent authority shall cooperate with the Agency in order to ensure the interoperability of the registers under this Regulation.

(11) The competent authority, infrastructure managers and railway undertakings shall ensure that the registers under this Regulation and the modes of operation of such registers comply with the Data Protection Acts 1998 and 2003.

Training

14. (1) A railway undertaking and infrastructure manager that employs train drivers shall ensure that their training—

(a) complies with the requirements of, and takes into account the guidance provided in, Annex III, Annex IV, Annex VI and V to the Directive, respectively, and

(b) meets the requirements for continuous training which—

(i) are established to ensure that staff competencies are maintained, and

(ii) form part of the safety management system of the railway undertaking or infrastructure manager.

(2) The training objectives referred to in Annex IV for licences, and Annexes V and VI for certificates, to the Directive may be supplemented by either—

(a) the relevant technical specifications for interoperability adopted in accordance with the Regulations of 2002 or the Regulations of 2004, or

(b) the criteria proposed by the Agency under Article 17 of the Regulation of 2004.

(3) The competent authority shall ensure that the candidate drivers have fair and non-discriminatory access to the training needed to fulfil the conditions for obtaining the licence and the certificate.

(4) A railway undertaking and infrastructure manager shall ensure that a training course related to—

(a) general professional competence as provided for under Regulation 6(1)(f),

(b) linguistic knowledge as provided for under Regulation 6(2)(a), or

(c) professional knowledge relating to rolling stock as provided for under Regulation 6(2)(b),

is provided by a person included on the register maintained by the competent authority under Regulation 12.

(5) Training relating to infrastructure knowledge as provided for under Regulation 6(2)(c), including route knowledge and operating rules and procedures may only be provided by a trainer included on the register maintained by the competent authority in the State under Regulation 12.

(6) Railway undertakings and infrastructure managers may include provisions in contracts with drivers to ensure that investments made by a railway undertaking or an infrastructure manager for the training of a driver do not unduly benefit another railway undertaking or infrastructure manager in the case where that driver voluntarily leaves the former for the latter railway undertaking or infrastructure manager.

Examinations

15. (1) The Commission shall set or approve the examinations and designate the examiners therefore intended for the purpose of checking the requisite qualifications for a licence when laying down the procedure for obtaining a licence provided for under Regulation 7(1).

(2) Each railway undertaking and infrastructure manager shall set or approve the examinations and designate the examiners therefore intended for the purpose of checking the requisite qualifications for a certificate when laying down the procedure for obtaining a certificate under Regulation 8(1).

(3) The examinations referred to in paragraphs (1) and (2) shall be organised in such a way as to avoid any conflict of interest, without prejudice to the possibility that the examiner may belong to the railway undertaking or infrastructure manager issuing a certificate or licence, and shall be carried out by a person included on the register maintained by the competent authority under Regulation 12.

(4) The evaluation of infrastructure knowledge, including route knowledge and operation rules shall be performed by a person on the register maintained by the competent authority in the State under Regulation 12.

(5) Driving ability should be assessed during driving tests on the network.

(6) Simulators may be used for examining the application of operational rules and driver performance in particularly difficult situations.

(7) There shall be theoretical and practical examinations at the end of training courses.

Quality standards

16. (1) Subject to paragraph (2), the Commission shall establish and implement a quality standards system for continuous monitoring under these Regulations of all activities associated with training, the assessment of skills and the updating of licences and certificates.

(2) Paragraph (1) does not apply to activities already covered by the safety management systems put in place by a railway undertaking or infrastructure manager in respect of its railway system in accordance with the Act of 2005 (as amended by the Regulations of 2008).

Independent assessment

17. (1) Subject to paragraph (2), 5 years after the making of these Regulations, and at least every 5 years thereafter, the Commission shall cause to be

carried out, by an appropriately qualified and independent person or body, an assessment of—

- (a) the procedures for the acquisition and assessment of the professional knowledge and competences, and
- (b) the system for the issue of licences and certificates,

under these Regulations.

(2) Paragraph (1) does not apply to activities already covered by the safety management system of a railway undertaking or infrastructure manager.

(3) The Commission shall give due consideration to the results of each assessment and any recommendations given in them and shall take appropriate action to remedy any shortcomings identified.

Controls by competent authority

18. (1) An inspector may require a train driver on board a train to produce for inspection, a licence, a duplicate of it or a certificate held by the driver, to ensure that the train driver is in possession of the documents issued under these Regulations.

(2) Notwithstanding the requirement as provided for in paragraph (1), in the event of negligence at the workplace the inspector may verify if the driver in question complies with the requirements set out in Regulation 6(2)(b), (c) and (d).

(3) An inspector may carry out enquiries regarding compliance with these Regulations by drivers, railway undertakings, infrastructure managers, examiners and training centres pursuing their activities in their area of jurisdiction.

(4) A person who obstructs or fails, without reasonable excuse, to answer any question or to comply with a requirement of an inspector under this Regulation commits an offence and is liable on summary conviction to a fine not exceeding €2,000.

Suspension and withdrawal of licence or certificate

19. (1) Without prejudice to paragraph (9), if the Commission considers that the holder of a licence no longer satisfies one or more of the required conditions for holding the licence the Commission shall—

- (a) suspend or withdraw the licence, and
- (b) inform the holder and his employer of—
 - (i) the suspension or withdrawal,
 - (ii) the reason for it,

(iii) the availability of the review procedure under Regulation 4(4), and

(iv) any procedure to be followed to seek reinstatement of the licence.

(2) Without prejudice to paragraph (9), if the Commission considers that the holder of a licence issued by the competent authority of another Member State, no longer satisfies a condition required for the holding of it the Commission shall—

(a) give that authority a reasoned request for a review of the holder's eligibility to hold the licence, or for the licence to be suspended, and

(b) notify the European Commission and the other competent authorities of the request.

(3) Pending any suspension of the licence, or other conclusion on the request referred to in paragraph (2)(a), the competent authority may prohibit the holder from driving a train in the State.

(4) Without prejudice to paragraph (9), if the Commission considers that the holder of a certificate no longer satisfies one or more of the required conditions for holding a certificate the Commission shall give the railway undertaking or infrastructure manager a request for—

(a) a review of the holder's eligibility to hold the certificate, or

(b) for the certificate to be suspended or withdrawn.

(5) Upon receipt of such a request the railway undertaking or infrastructure manager shall consider it and, within 4 weeks, notify the competent authority of its decision whether to suspend or withdraw the certificate or take any other action.

(6) Where the railway undertaking or infrastructure manager concludes that the holder no longer satisfies a condition required for the holding of the certificate, it shall take appropriate measures.

(7) Pending any suspension or withdrawal of the certificate, or other conclusion on the request referred to in paragraph (4), the Commission may prohibit the holder from driving a train in the State.

(8) If the Commission exercises the power in paragraph (7) it shall inform the European Commission and the competent authorities of the other Member States.

(9) If the Commission considers that a train driver is a serious threat to the safety of the railways it shall immediately take any necessary action.

(10) For the purpose of paragraph (9) any necessary action may include—

- (a) requesting the railway undertaking or infrastructure manager to stop any train being driven by the driver,
- (b) suspending or withdrawing the driver's licence, if issued by the competent authority or a body delegated by the competent authority, or
- (c) prohibiting the driver from driving a train in the State.

(11) If the Commission takes any action under this Regulation it shall inform the European Commission and the other competent authorities.

(12) If the Commission considers that a decision of a competent authority in another Member State on a request made to it by the Commission under paragraph (2)(a) does not comply with the relevant criteria it shall refer the matter to the European Commission in pursuance of Article 29(5) of the Directive.

(13) If the Commission has referred a matter to the European Commission under paragraph (12), any prohibition imposed by the competent authority under paragraph (3) may be maintained in force until the matter is concluded.

Surrender of a suspended or withdrawn licence

20. (1) Where a licence has been suspended or withdrawn under Regulation 19(1)(a) or 19(10)(b) the holder of it shall immediately surrender it or any duplicate of it in his or her possession to the competent authority.

(2) Where a certificate has been suspended or withdrawn under Regulation 19(5), the holder of it shall immediately surrender it to the railway undertaking or infrastructure manager who issued it.

(3) A holder of a licence or certificate who fails, without reasonable excuse, to comply with a requirement under this Regulation commits an offence and is liable on summary conviction to a fine not exceeding €2,000.

Forgery, etc.

21. (1) A person who—

- (a) forges, procures, or assists in the forgery of, or knowingly and without authority alters, a licence or a certificate,
- (b) knowingly is in possession of or uses or allows the use of such, or
- (c) knowingly provides another with such to which the other is not entitled,

commits an offence and is liable on summary conviction to a fine not exceeding €5,000.

(2) An inspector may seize and detain any document purporting to be a licence or a certificate which he or she suspects has been forged or altered.

Penalty, prosecution of offences and offences by body corporate

22. (1) An offence under these Regulations may be prosecuted by the Commission.

(2) Where an offence is committed under these Regulations by a body corporate and is proved to have been attributable to the neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate or a person purporting to act in any such capacity, that person, as well as the body corporate, commits an offence and is liable to be proceeded against and punished as if he or she has committed the first mentioned offence.



GIVEN under my Official Seal,
11 August 2010.

NOEL DEMPSEY,
Minister for Transport.

EXPLANATORY NOTE

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

The purpose of these Regulations is to give effect to Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007, concerning the certification of train drivers operating locomotives and trains on the railway system in the European Community.

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