

CRR-P-010

Representation and Appeals Procedure

Issue	Prepared by	Reviewed by	Approved by	Issue Date
03	C. Boland M. Neale	M. Molloy	B. Higgisson	21 st June 2021

Contents

1	Preface	3
2	Glossary	4
3	Introduction	4
4	Procedure Overview	5
4.1	General Procedure.	5
	Appendix I – Railway Safety Act 2005 Representations and Appeals.....	7
	Appendix II – Recognition of Designated Body Representations and Appeals.....	9
	Appendix III – Cableways Representations and Appeals.....	10
	Appendix IV – Fixed Installations Representations and Appeals (IoD)	11
	Appendix V – Vehicles Representations and Appeals (IoD)	12
	Appendix VI – Safety Certification and Safety Authorisation Representations and Appeals.....	13
	Appendix VII – Train Driver Directive Representations and Appeals	14
	Appendix VIII – Regulation of Railway representation and appeals.....	15

1 Preface

Purpose

The Commission for Railway Regulation (CRR) has a range of statutory functions where it makes a decision or takes specific actions based on legislation. The legislation in many instances allows for the party to the decision to engage with the CRR and or have redress to the courts to have that decision reviewed. In this procedure, engagement with the CRR directly is referred to as a representation and engagement with the courts is referred to as an appeal.

The purpose of this procedure is to describe the processes that the CRR have in place where a party has a statutory basis to have a decision or action of the CRR reviewed.

Separately a party may express a concern about how the CRR as an organisation, or its staff members, perform their role. The means of expressing such a concern is covered by a separate procedure.

Parties who may have recourse to seek such a review include applicants, Railway Organisations, Infrastructure Managers and Railway Undertakings.

Scope

The scope of this procedure covers representations and appeals on the actions and decisions taken by the CRR in exercising its regulatory function where there is a statutory basis for such representation or appeal.

This procedure and associated appendices are prepared in accordance with the requirements of the following documentation, namely:

1. Railway Safety Act 2005, as amended.
2. European Directive 2016/798 - Railway Safety Directive
3. S.I. 476 of 2020 - European Union (Railway Safety) Regulations 2020
4. European Directive 2016/797 – Interoperability Directive
5. S.I. 477 of 2020 – European Union (Interoperability of the Rail System) Regulations 2020
6. 2007/59/EC, Directive for the certification of train drivers
7. S.I. 399 of 2010 – European Communities (Train Drivers Certification) Regulations 2010
8. Commission Regulations (EU) No. 2018/761 (supervision),
9. S.I. 543 of 2020 - European Union (Cableways Installations) Regulations 2020
10. ISO/IEC 17011:2017
11. ISO/IEC 17020: 2012
12. ISO/IEC 17021: 2015
13. S.I. 249 of 2015 – European Union (Regulation of Railways) Regulations 2015, as amended (S.I. No. 398 of 2020).

2 Glossary

CRR	Commission for Railway Regulation
ECM	Entity in Charge of Maintenance
PI	Principal Inspector
RO	Railway Organisation
RSC	Railway Safety Commission
S.I.	Statutory Instrument

Appeal Means an appeal to the courts as allowed for under the relevant legislation.

Concern An expression of dissatisfaction, other than a statutory based representation or appeal, by any person or organisation to the CRR in relation to its function or staff.

Railway Organisation As per Regulation 6 of S.I. 476 of 2020.

Representation Means a formal request allowed for in legislation to the CRR by a relevant party to review a decision, or action made by the CRR.

3 Introduction

This Representation and Appeals procedure outlines how the CRR receive, and manage, representations and appeals made by Railway Organisations and other relevant parties based on their statutory right to do so. The CRR aims to provide an efficient and helpful service to both Railway Organisations and those who contact the CRR for information on railway issues. The CRR aims to deliver its service in an open and transparent way.

Should a Railway Organisation or other relevant party seek a review of a CRR decision or action then that party may be able to make a representation to the CRR to undertake an internal review of that decision or action.

The following principles apply to any such internal review undertaken by the CRR. In addition, individual decisions or actions that the CRR takes based on legislation may have their own indicated

steps for a review by the CRR or the courts. Where this is the case, the specific details are included in the legislation specific appendices to this procedure.

4 Procedure Overview

The CRR's representation and appeals procedure is guided by the following principles:

- **Consistency** of approach.
- **Transparency** about how the CRR operates and what those regulated may expect.
- **Accountability** for the CRR's decisions or actions.
- **Independence** of those involved in the review process from those involved in the decision.
- **Impartiality** in the review process.

4.1 General Procedure.

This is the general procedure for addressing representations to the CRR in relation to decisions and actions it takes that are based on statute. These general procedures may be further expanded on based on individual specific legislation, where this is the case, the procedure is expanded on in the relevant appendix.

Representations for review of decisions or actions taken must be in writing and be received within 14 days of the date of issue unless otherwise stated in the subsequent specific appendices.

Representations should be addressed to info@crr.ie.

Representations must provide the following information:

- a) state the name, organisation and address of the person making the representation,
- b) state the relevant decision or action taken by the CRR,
- c) provide an evidence-based justification for the representation,
- d) provide all relevant supporting evidence.

Each representation will have an assigned administrator as follows:

For Railway Safety, Interoperability and Cableways the assigned administrator of representations will be the Head of Corporate Governance and Regulation.

For Railway Regulation representations the assigned administrator of the representation will be a Principal Inspector.

The assigned administrator will first verify that the required information has been provided for the representation, and then confirm with the head of the relevant division that the decision or action was taken, and that the representation is within the allowed timeline.

If the representation application is valid the administrator will advise the head of the division to identify the appropriate records and identify the staff who have been involved in the decision or action taken.

If the representation application is invalid the administrator will advise the relevant party within 14 days.

The assigned administrator will establish a review panel of no less than two staff members one of whom must be at principal inspector level or above. The most senior staff member will chair the review panel. The members of the review panel will be independent of the decision or action being reviewed.

Members of the review panel must confirm that they have no conflict of interest in relation to the representation. If the review panel are of the opinion that a level of independence to adjudicate over the process is not available internally, the CRR will then seek an independent party to facilitate the review. This can also be done where the review panel is of the opinion that it does not have the required expertise to undertake the review.

The review panel will then undertake the review based on the representation made and the information that has been provided to it by the head of the relevant division.

The review panel may seek any clarification on the basis of the decision or action from those involved in the original activity.

The review panel will within 28 days communicate its decision or the status of its review with the relevant party.

Should the review panel support the representation then they will recommend an amendment to the initial decision or action and will advise the head of the division and assigned administrator of the outcome. The assigned administrator will then advise, in writing, the relevant party of the outcome of the review.

Should the review panel not support the representation then they cannot amend the initial decision or action and will advise the head of the division and assigned administrator of the outcome. The assigned administrator will then advise, in writing, the relevant party of the outcome of the review and where there is access for an appeal to the courts advise accordingly.

Appendix I – Railway Safety Act 2005 Representations and Appeals

This appendix outlines the statutory directions and notices subject to representation and or appeal under the Railway Safety Act 2005, as amended.

Section 40 - Co-operation between railway organisations. — The Commission may give a direction to a railway organisation requiring it to make an agreement or to co-operate with another railway organisation and the railway organisation shall comply with such direction.

A railway organisation shall not operate trains on the railway infrastructure of another railway organisation, and an operator of railway infrastructure shall not give permission for such trains to operate, unless all parties have an agreement, and the safety management document of each relevant railway organisation has been accepted by the Commission. Where a railway organisation is contravening this, the Commission may give a direction to it to cease operating its trains on the railway infrastructure of the other railway organisation.

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

Such representation will follow the General Procedure as laid out in Section 4.

Where the Commission decides to give a direction under this section, the railway organisation 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. On hearing an appeal, the Court may either confirm or vary the decision of the Commission or allow the appeal.

A decision of the High Court on an appeal 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.

Section 44 - Transfer of ownership. - A railway organisation from which ownership or rights are transferring shall provide its safety management document and all other relevant information to the new railway organisation. Where a railway organisation fails to comply with this, the Commission may give a direction to it to comply.

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

Such representation will follow the General Procedure as laid out in Section 4.

Where the Commission decides to give a direction under this section, the railway organisation 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. On hearing an appeal, the court may either confirm or vary the decision of the Commission or allow the appeal.

A decision of the High Court on an appeal under 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.

Section 77 – Improvement Notice - Where an inspector is of the opinion that a railway organisation or other person is contravening or has contravened or is failing to comply or has failed to comply with any of the provisions of the Railway Safety Act or has failed, to submit or implement an appropriate improvement plan, the inspector may serve on that railway organisation or person a notice (“improvement notice”) in writing signed by him or her. An improvement notice may include directions as to the measures to be taken to remedy the alleged contraventions set out in the notice.

Where an inspector proposes to serve an improvement notice, he or she shall first notify the railway organisation or person concerned in writing of his or her intention to serve the improvement notice and the railway organisation or person may, within 21 days, make representations to the inspector, who shall consider them.

Note this representation **does not** follow the General Procedure as laid out in Section 4, but rather is made directly to the inspector.

Where an inspector decides, having considered any representations made to him or her, to serve an improvement notice, a railway organisation 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. In determining the appeal, the judge may confirm the notice with or without modification or cancel the notice.

Section 78 - Prohibition notice. — 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 railway organisation and the activity involves, or is likely to involve, an immediate and substantial risk to the safety of persons, or 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, or where a railway organisation or person fails to comply with a requirement of this Act, the inspector may serve on that railway organisation or person a notice (“prohibition notice”) signed by him or her.

Note: Representation cannot be made to the inspector or Commission in relation to a Prohibition Notice.

A railway organisation 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 confirm the notice with or without modification or cancel the notice.

Appendix II – Recognition of Designated Body Representations and Appeals

In relation to the recognition of designated bodies, where the CRR Recognition Committee decides to:

- a) refuse an application, or part of an application, for recognition,
- b) refuse to maintain the recognition,
- c) refuse to expand the scope of recognition,
- d) suspends the recognition,
- e) refuses to restore the recognition,
- f) refuses to grant re-recognition, or
- g) withdraws recognition,

it shall by notice inform the Applicant of its decision.

The applicant for recognition may, within 14 days of service of the notice, make representations to the CRR. The CRR shall consider any such representations, if made, and confirm, adjust or withdraw the decision.

The CRR costs of the representation shall be borne by the applicant for recognition unless the representation results in the CRR overturning its prior decision.

Appendix III – Cableways Representations and Appeals

Where the CRR decides to:

- h) refuse to grant an authorisation for the construction, modification or entry into service of an installation under Regulation 5 of S.I. 543 of 2020, or
- i) direct the person responsible for a cableway installation to cease or restrict operations under Regulation 8 of S.I. 543 of 2020,

it shall by notice inform the person responsible for the cableway installation concerned of its decision.

In relation to cableways an appeal to the CRR should be read as a representation as described in Section 2 – Glossary.

The person responsible for the cableway installation concerned may, within 14 days of service of the notice, make representations to the CRR. The CRR shall consider any such representations, if made, and confirm, adjust or withdraw the decision.

Where the CRR confirms a decision, the person responsible for the cableway installation concerned may, not later than 14 days from the date of the notice or the confirmation of the decision, appeal the decision to an appeal panel established by the CRR for the purpose of hearing the appeal and stating the grounds on which the appeal is made.

An appeal shall:

- a) be made in writing to the CRR,
- b) state the name and address of the person making the appeal, and
- c) be accompanied by the fee set out in column (3) of the Schedule at reference number 3 of S.I. 543 of 2020.

An appeal panel shall consist of at least two but not more than three independent and suitably qualified persons appointed by the CRR, one of whom shall be designated by the CRR to be chairperson of the appeal panel. The appeal panel shall determine its own procedure.

Where an appeal is made following a decision by the CRR, the decision relating to it stands, unless upon application to it the appeal panel decides otherwise, pending the outcome or withdrawal of the appeal.

An appeal under S.I. 543 of 2020 shall be heard in a fair and transparent manner. On hearing the appeal, the appeal panel may confirm the decision, vary it or allow the appeal and shall notify the appellant of its decision. An appeal panel shall notify the person making the appeal and the CRR of its decision. The CRR shall publish notice of the decision of the appeal panel. The decision of an appeal panel is final other than on a point of law on which an appeal lies to the High Court.

Appendix IV – Fixed Installations Representations and Appeals (IoD)

A decision by the CRR refusing a request for an authorisation for the placing in service of fixed installations shall be duly substantiated.

The applicant for an authorisation for the placing in service of fixed installations may, within one month of receipt of the negative decision, submit a request that the CRR review its decision. The request from the applicant shall be accompanied by a justification.

Within two months from the date of receipt of the request for review the CRR will confirm or reverse its decision.

If the negative decision of the CRR is confirmed, the applicant may bring an appeal before the High Court. The court may confirm or reverse the decision (with or without modification). The decision of the High Court is final, other than on a point of law, which lies to the Court of Appeal.

Legal References – (EU) 2016/797 Article 18 (7) and S.I. 477 of 2020 Regulation 18 (8).

Appendix V – Vehicles Representations and Appeals (IoD)

A decision by the CRR refusing a request for vehicle authorisation or excluding part of the network must be made within four months of receipt of all relevant information and must be duly substantiated.

The applicant for authorisation for placing on the market may, within one month of receipt of the negative decision, submit a request that the CRR review its decision. The request from the applicant shall be accompanied by a justification.

Within two months from the date of receipt of the request for review the CRR will confirm or reverse its decision.

If the negative decision of the CRR is confirmed, the applicant may bring an appeal before an appeal panel set up by the safety authority and independent of the safety authority. The appeal panel shall determine its own procedure and may confirm, reverse or vary the decision. The decision of the appeal panel is final, save on a specified point of law an appeal lies to the Circuit Court in whose circuit the applicant carries on business.

Legal References – (EU) 2016/797 Article 21 (4) and (11), and S.I. 477 of 2020 Regulation 21 (11).

Appendix VI – Safety Certification and Safety Authorisation Representations and Appeals

A decision by the CRR refusing a request for a single safety certificate, safety authorization or safety management certificate shall be duly substantiated.

The applicant may, within one month of receipt of the negative decision, submit a request that the CRR review its decision. The request from the applicant shall be accompanied by a justification.

Within two months from the date of receipt of the request for review the CRR will confirm or reverse its decision.

If the negative decision of the CRR is confirmed, the applicant may not later than 14 days of receipt of the negative decision bring an appeal before the High Court. The High Court may confirm or reverse the decision (with or without modification). The decision of the High Court is final, other than on a point of law, which lies to the Court of Appeal.

Legal References – (EU) 2016/798 Article 10 (12) and S.I. 476 of 2020 Regulation 11.

Appendix VII – Train Driver Directive Representations and Appeals

Recognition of a training centre or examination centre

A decision by the CRR to withdraw or suspend a recognition shall be duly substantiated and documented. The CRR will inform the recognized entity the requirements that are no longer fulfilled.

The CRR may before suspension or withdrawal becomes effective provide a notice period within which the entity may adapt its practices in order to meet the requirements for recognition.

After suspension or withdrawal of recognition the recognized entity may, within one month of receipt of the negative decision, submit a request that the CRR review its decision. The request from the recognized entity shall be accompanied by a justification.

Within two months from the date of receipt of the request for review the CRR will confirm or reverse its decision using the general procedure Section 4.

Train Driver Licence

A decision by the CRR to withdraw or suspend a train driver licence shall be duly substantiated, documented and communicated to the train driver.

After suspension or withdrawal of a licence the train driver may, within one month of receipt of the negative decision, submit a request that the CRR review its decision. The request from the train driver shall be accompanied by a justification.

Within two months from the date of receipt of the request for review the CRR will confirm or reverse its decision using the general procedure Section 4.

Legal References – 2007/57/EC Article 21, 2011/766/EC points 21-23, 44-46, 58 and S.I. 399 of 2010 Regulation 4 (4).

Appendix VIII – Regulation of Railway representation and appeals.

This appendix outlines the statutory directions and notices subject to representation and or appeal under the European Union (Regulation of Railways) Regulations 2015, as amended.

Section 30 – Appeals *(in the context of this CRR policy and procedure, references as a representation).*

An applicant who believes it has been unfairly treated, discriminated against or is in any other way aggrieved by a decision of the EFB, the infrastructure manager or, where appropriate, the railway undertaking or the operator of a service facility may, within 21 days of being notified of the decision make representations in writing against that decision to the regulatory body.

Such representation will follow the General Procedure as laid out in Section 4, except that the review panel has two months to make its decision and communicate its decision to the party making the representation and any other relevant applicable parties of the decision and the reasons for that decision.

If the party making the representation is dissatisfied with the decision of the regulatory body, they may appeal to the High Court within 21 days of the date of the decision of the regulatory body.

The High Court may either confirm or vary the decision of the regulatory body or uphold the representation.

On receipt of a notice of appeal by the EFB against a decision on the charging of infrastructure charges, the requirement to pay the charges shall be suspended pending the final determination of the appeal.

Section 31 – Complaints *(in the context of this CRR policy and procedure this is referenced as a representation).*

Any railway undertaking or interested party may lodge a representation with the regulatory body, if that railway undertaking, or interested party believes that it has been treated unjustly or treated in a non-equitable or discriminatory manner with regard to access or any other matters relevant to these Regulations.

Such representation will follow the General Procedure as laid out in Section 4, except that the regulatory body shall, in writing, inform the relevant parties of its decision, including the reason(s), within 6 weeks from receipt of all information relevant to the representation.

If the party that lodged the representation is dissatisfied with the decision of the regulatory body, that party may appeal to the High Court within 21 days of the date of the decision of the regulatory body. On hearing an appeal, the High Court may either confirm or vary the decision of the regulatory body or uphold the representation.

Section 32 – Compliance notice given by regulatory body, right of appeal and court compliance order.

Where the regulatory body proposes to give a compliance notice to the EFB, the infrastructure manager, or an operator of service facilities, it shall first notify the relevant party in writing of its intention.

The EFB, infrastructure manager or operator of service facilities in question may, within 21 days, make representations to the regulatory body. Such representations will follow the General Procedure as laid out in Section 4.

Where the regulatory body decides, having considered any representations made to it to give a compliance notice, the EFB, Iarnród Éireann infrastructure manager or operator of service facilities which is aggrieved may, within the period of 14 days beginning on the day on which the notice is given to it, appeal to the High Court against the notice.

The party who appeals against a compliance notice shall at the same time notify the regulatory body of the appeal, and the grounds for appeal and the regulatory body shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

In determining the appeal, the judge may confirm the notice with or without modification or cancel the notice.

Where an appeal against a compliance 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 one which it is to come into effect, whichever is the later.

An appeal may not be brought if the compliance notice has been subject of an order granted to the regulatory body by the High Court (but without prejudice to the right of a person, the subject of an order granted to apply subsequently to the High Court to have the order varied or discharged). A person who fails to comply with such an order shall be guilty of an offence and shall be liable on summary conviction to a class A fine.

Section 41 - Review of licence

Upon review of a licence, the regulatory body shall give a notice of its determination, in writing and no later than 2 months after receipt of information furnished to it, to the relevant parties. The notice shall give the grounds for its decision and specify the period within which, and the conditions under which, representations can be made. Representations to the regulatory body must be made by the licensee within one month of the giving of that notice.

Such representation will follow the General Procedure as laid out in Section 4.

Section 43 - Representations and appeals

Where the licensing authority proposes to refuse an application for, suspend, or revoke a licence the railway undertaking or the licensee as the case may be, may, not later than 21 days after notification of the proposal was issued to the railway undertaking or licensee, make written representations to the licensing authority to review the proposal. Such representations will follow the General Procedure as laid out in Section 4.

Where the licensing authority decides to refuse an application for, suspend, or revoke a licence the railway undertaking or the licensee, as the case may be, may, not later than 21 days after notification of the decision was issued to the railway undertaking or licensee, appeal against that decision to the High Court. A decision of the licensing authority to refuse an application for, suspend, or revoke, a licence shall take effect on the expiry of the period of 21 days after notification of the decision was issued to the railway undertaking or licensee.

On hearing an appeal, the High Court may either confirm the licensing authority's decision or allow the appeal. If an appeal is allowed, the licensing authority shall—

- (a) issue the licence, if the appeal is from a decision to refuse an application for a licence, or
- (b) cancel the suspension or revocation, if the appeal is from a decision to suspend or revoke the licence

In the case of an appeal from a decision of the licensing authority to suspend or revoke a licence, the licensee may apply to the High Court for an order suspending the decision of the licensing authority until such time as the appeal is determined by the High Court or otherwise disposed of by the parties. If the High Court grants such an order, it may do so subject to such terms and conditions deemed appropriate by the High Court.

Legal References. European Union (Regulation of Railways) Regulations 2015 (S.I. No. 249 of 2015), as amended (S.I. No. 398 of 2020).