

**2005 No. 537**

**TRANSPORT**

**The Railways Infrastructure (Access, Management and  
Licensing of Railway Undertakings) Regulations  
(Northern Ireland) 2005**

*Made - - - - - 1st December 2005*

*Coming into operation in accordance with regulation 1*

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The Department for Regional Development(a), being a Department designated(b) for the purposes of section 2(2) of the European Communities Act 1972(c) in relation to measures relating to railways and railway transport, in exercise of the powers conferred by that section, and of all other powers enabling it in that behalf, hereby makes the following Regulations:

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(a) SI 1999/283

(b) SI 1996/266

(c) 1972 c. 68. By virtue of the amendment of section 1(2) of the European Communities Act 1972 by section 1 of the European Economic Act 1993 (c. 51) regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the agreement signed at Brussels on 17th March 1993 (Cm 2183)

# PART I

## PRELIMINARY

### Citation and commencement

1.—(1) These Regulations may be cited as the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 and, with the exception of regulations 10, 15, 16, 21, 22, 23, and 24, shall come into operation on 3rd January 2006.

(2) Regulations 10, 15, 16, 21, 22, 23, and 24 shall come into operation on 15th March 2008.

### Interpretation

2.—(1) In these Regulations—

“access and transit rights” or “transit rights” means access and transit rights or transit rights in relation to railway infrastructure;

“*ad hoc* request” means a request for individual train paths made outside the timetable for the capacity allocation process as set out in Schedule 3;

“allocation body” means a body or undertaking, other than the infrastructure manager, which is responsible, by virtue of regulation 15(3), for the functions and obligations of the infrastructure manager under Part 5 and Schedule 3;

“applicant” means—

- (a) a railway undertaking licensed in accordance with the provisions of Directive 95/18/EC, as amended by Directive 2001/13/EC;
- (b) an international grouping of railway undertakings; or
- (c) a legal entity with public service or commercial interest in procuring infrastructure capacity, in particular public authorities under Regulation (EEC) no. 1191/69(a), shippers, freight forwarders, and combined transport operators;

“charging scheme” means the framework and rules governing the determination of access charges as set out in Part 4;

“charging system” means the charging system established by the infrastructure manager to determine access charges;

“the Council Directives” means—

- (a) Council Directive No 91/440/EC of 29th July 1991 on the development of the Community’s railways(b) as amended by Directive 2001/12/EC(c) and Council Directive 2004/51/EC(d); and
- (b) Council Directive No. 2001/14/EC of 26th February 2001 on the allocation of railway infrastructure and the levying of charges for the use of railway infrastructure and safety certification(e), as amended by Council Directive 2004/49/EC(f);
- (c) Council Directive 95/18/EC dated 19th June 1995 on the licensing of railway undertakings(g), as amended by Directive 2001/13/EC dated 26th February 2001(h) and Directive 2004/49/EC dated 29th April 2004(i) of the European Parliament and of the Council;

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(a) Regulation (EEC) no. 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (O.J. L156, 28.6.1969, p. 1). Regulation last amended by Regulation (EC) No. 1893 (O.J.L 169, 29.6. 1991, p. 1)

(b) O.J. No. L237, 24.8.91, p. 25: the text of the Directive is subject to the amendments in a corrigendum published in O.J. No. L305, 6.11.91. p. 22

(c) O.J. No. L175, 15.3.01, p. 1

(d) O.J. No. L164, 30.4.04, p. 16

(e) O.J. No L175, 15.3.01, p. 75

(f) O.J. No. L164, 30.4.04, p. 58

(g) O.J. No. L143, 27.6.1995, p. 70

(h) O.J. No. L175, 15.3.2001, p. 26

(i) O.J. No. L164, 30.4.2004, p. 44, to which there has been a corrigendum, which is not relevant to these Regulations

“the Department” means the Department for Regional Development;

“EEA state” means a Member State, Norway, Iceland or Liechtenstein;

“European licence” means a licence granted to a railway undertaking pursuant to these Regulations (valid throughout the territory of any EEA State) by which the capacity of the railway undertaking as such is recognised and which authorises the undertaking to provide in and between EEA States such as train services as may be specified in the licence;

“framework agreement” means a legally binding agreement made on the basis of public or private law, setting out the rights and obligations of an applicant and the infrastructure manager in relation to the infrastructure capacity to be allocated and the charges to be levied over a period in excess of one working timetable period;

“infrastructure manager” means the body or undertaking that is responsible in particular for establishing and maintaining railway infrastructure.

“railway infrastructure” means all the items listed in Annex IA to Commission (EEC) No. 2598/70(a);

“SNRP” means a statement of national regulatory provisions, issued under regulation 36;

“service provider” means a body or undertaking that supplies any of the services—

- (a) to which access is granted by virtue of regulation 5; or
- (b) listed in paragraph 2, 3 or 4 of Schedule 1

“the Treaty” means the consolidated versions of the Treaty on European Union and of the Treaty establishing the European Community(b);

“train service” means a service for the transport of goods or passengers (or both) by rail;

“transit rights” means rights of transit through a Member State using the railway infrastructure located in the Member State;

“working day” means any day which is not a Saturday, Sunday, or a public holiday; and

“working timetable period” means the calendar year commencing at midnight on the second Saturday in December.

(2) Except where a definition in paragraph (1) applies, expressions used in these Regulations and in the Council Directives have the meanings given by the Directives.

(3) The Interpretation Act (Northern Ireland) 1954(c) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

## Scope

3.—(1) These Regulations apply to—

- (a) the management of railway infrastructure;
- (b) the rail transport activities of the railway undertakings established or to be established in an EEA State; and
- (c) the licensing of railway undertakings and groupings in respect of international services and international combined transport goods services which they operate.

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(a) O.J. No. L278, 23.12.70, p. 1-5

(b) 2002/C325/01

(c) 1954 c. 33 (N.I.)

## PART II

### ACCESS TO RAILWAY INFRASTRUCTURE AND SERVICES

#### **Access and transit rights**

- 4.—(1) An international grouping is entitled to—
- (a) in the case of an international grouping which includes a railway undertaking established in Northern Ireland such access or transit rights, or
  - (b) in the case of any other grouping, such transit rights,

as may be necessary for the provision of international transport services between the EEA States where the undertakings constituting the grouping are established.

(2) A railway undertaking is entitled to such access as may be necessary for the purpose of the operation of any type of rail freight service

(3) It is the duty of the infrastructure manager to ensure that the entitlements conferred by this regulation are honoured.

(4) Without prejudice to the generality of regulation 27, if an international grouping or railway undertaking is denied the entitlements conferred on it by this regulation, that international grouping or railway undertaking has a right of appeal to the Department in accordance with regulation 27.

#### **Access to services**

- 5.—(1) Subject to paragraph (2), applicants are entitled to services comprising—
- (a) the minimum access package; and
  - (b) the track access to service facilities and the supply of services,

described in paragraphs 1 and 2 of Schedule 1.

(2) If the infrastructure manager or service provider to whom a request has been made for the supply of a service referred to in paragraph (1) does not supply such a service, the infrastructure manager must, if he is the provider of the main infrastructure, use all reasonable endeavours to facilitate the supply of that service through the appropriate service provider.

(3) The infrastructure manager or, as the case may be, service provider must ensure that the entitlements granted by this regulation are honoured, and access to the services referred to in paragraph (1) must be provided in a non-discriminatory manner.

(4) Where the infrastructure manager or service provider supplies any of the services described in paragraph 2 of Schedule 1, requests for the supply of such services may only be refused if a viable alternative means of the service being provided under market conditions exists.

(5) Where the infrastructure manager or service provider offers to supply any of the services described in paragraph 3 of Schedule 1 he must, in response to a request from an applicant, supply the services to that applicant.

(6) An applicant may request the supply of any of the services described in paragraph 4 of Schedule 1 from an infrastructure manager or service provider but that infrastructure manager or service provider is under no obligation to supply the services requested.

Without prejudice to the generality of regulation 27, if an applicant is denied the entitlements conferred on it by this regulation, that applicant has a right of appeal to the Department in accordance with regulation 27.

#### **Access to training facilities**

6.—(1) Railway undertakings applying for a safety certificate in accordance with the requirements of Council Directive 2004/49/EC shall be entitled to a fair and non-discriminatory access to training facilities for train drivers and staff accompanying the trains, whenever such training is necessary for the fulfilment of requirements to obtain that certificate.

- (2) The services offered under paragraph (1) must include training on—
- (a) necessary route knowledge;
  - (b) operating rules and procedures
  - (c) the signalling and control command system; and
  - (d) emergency procedures,

in respect of the routes operated.

(3) The infrastructure manager, and any of his staff with responsibility for safety critical tasks, must have a fair and non-discriminatory access to the services listed in paragraph (2)

(4) It is the responsibility of the safety authority set up in accordance with the requirements of Council Directive 2004/49/EC to ensure that the provision of training services meets the safety requirements laid down in the National Safety Rules.

(5) If the training facilities to which access is granted by virtue of this regulation are available only through the services of one single railway undertaking, or the infrastructure manager, the Department must ensure that those facilities and services are available to applicants at a reasonable and non-discriminatory price, which is cost-related and may include a profit margin.

(6) Railway undertakings recruiting new train drivers, on-board staff, or staff with responsibility for safety critical tasks must take into account any training, qualifications and experience acquired by job-applicants from any previous employment with another railway undertaking.

(7) The staff described in paragraph (6) must be granted access to all documents attesting to their training, qualifications and experience, and be entitled to have copies of such documentation.

(8) It is the responsibility of each railway undertaking and infrastructure manager to provide the appropriate level of training and qualification of staff set out in article 8 and Annex III to Council Directive 2004/49/EC.

- (9) For the purposes of this regulation—
- (a) “national safety rules” means any legislation and other requirements—
    - (i) applicable to Northern Ireland; and
    - (ii) which contain requirements (including common operating rules) relating to railway safety,

except that where the requirements in paragraph 9(a)(i) consist of common operating rules of the railway it shall not include such rules which regulate matters which are covered by a technical specification for interoperability; and

- (b) “safety critical task” means—
  - (i) in relation to vehicle used on a railway—
    - (aa) driving, despatching or any other activity which is capable of controlling or affecting the movement of that vehicle;
    - (bb) signalling, and signalling operations, the operation of level crossing equipment, receiving and relaying of communications or any other activity which is capable of controlling or affecting the movement of that vehicle;
    - (cc) coupling or uncoupling;
    - (dd) installation of components;
    - (ee) maintenance; or
    - (ff) checking that that vehicle is working properly and, where carrying goods, is correctly loaded before being used;
  - (ii) in relation to a railway—
    - (aa) installation or maintenance of any part of it or of the telecommunications system relating to it or used in conjunction with it, or of the means of supplying electricity directly to that transport system or to any vehicles using it or to the telecommunications system;

- (bb) controlling the supply of electricity directly to it or to any vehicles used on it;  
or
- (cc) receiving and relaying of communications;
- (iii) in relation to ensuring worker safety on a railway, any person ensuring the safety of any persons working on or near the track, whether or not the persons working on or near the track are carrying out safety critical work; and
- (iv) in relation to training, any practical training or the supervision of any practical training in any of the tasks set out in sub-paragraphs (i) to (ii),

which could significantly affect the health or safety of persons on a railway.

(10) An applicant denied access to training facilities contrary to the provisions of this regulation shall have a right of appeal to the Department in accordance with regulation 27.

## PART III INFRASTRUCTURE MANAGEMENT

### **Management independence**

7.—(1) Railway undertakings must, in their management, administration and internal control over administrative, economic and accounting matters, maintain the status of an independent operator and hold, in particular, assets, budgets and accounts which are separate from those of the State.

(2) Subject to the requirements set out in Parts 4 and 5 and Schedules 2 and 3 about the determination of infrastructure charges and the allocation of infrastructure capacity an infrastructure manager must be responsible for its own management, administration and internal control.

(3) Railway companies must keep and publish profit and loss accounts and either balance sheets or annual statements of assets and liabilities for business relating to the provision of rail-freight services.

(4) Funds paid for activities relating to the provision of passenger-transport services as public service remits must be shown separately in the relevant accounts and may not be transferred to activities relating to the provision of other transport services or any other business.

### **Separation between infrastructure management and transport operations**

8.—(1) Any body which incorporates the functions of both infrastructure manager and railway undertaking must—

- (a) prepare and publish separate profit and loss accounts and balance sheets in respect of the—
  - (i) provision of transport services as a railway undertaking; and
  - (ii) management of railway infrastructure; and
- (b) ensure that public funds granted to such a body is not transferred between that part of the body responsible for the provision of transport services and that responsible for management of railway infrastructure.

(2) Accounts for the two areas of activity described in paragraph (1) must be kept in such a way as to reflect the prohibition set out in that paragraph.

(3) The monitoring of the observance of public service obligations, where stipulated in the terms of a contract required by regulation 15(10), must be carried out by bodies or undertakings which do not provide rail transport services.



## **Business Plans**

9.—(1) The infrastructure manager must draw up a business plan which is designed for the purpose of ensuring—

- (a) optimal and efficient use and development of the infrastructure; and
- (b) financial balance.

(2) The plan referred to in paragraph (1) must include details of investment and financial programmes, and provide the means by which the objectives set out in that paragraph are to be achieved.

(3) Railway undertakings must draw up a business plan, which must include their investment and financing programmes, and which is designed for the purpose of ensuring—

- (a) financial equilibrium; and
- (b) other technical, commercial and financial management objectives.

(4) The plan referred to in paragraph (3) must provide the means by which the objectives set out in that paragraph are to be achieved.

(5) The Department shall, at least once a year, request confirmation that a business plan has been produced in accordance with paragraphs (1) and (3) and each infrastructure manager or, as the case may be, railway undertaking, to whom such a request is made shall be under an obligation to comply with that request.

## **Network Statement**

10.—(1) The infrastructure manager must, following consultation with all interested parties, develop and publish a network statement containing the information described in paragraph (4).

(2) Where, by virtue of regulations 11(4) or 15(3) a charging body or, as the case may be, allocation body is responsible for the functions of the infrastructure manager in Parts 4 or 5, that charging body or allocation body must provide the infrastructure manager with such information as is necessary to enable that infrastructure manager to—

- (a) include the information described in paragraph (4) in the network statement; and
- (b) keep the network statement up to date in accordance with paragraph (5).

(3) A service provider who is not the infrastructure manager must provide the infrastructure manager with such information as is necessary to enable that infrastructure manager to—

- (a) include the information described in paragraph (4)(b) and, where applicable, (d) in the network statement; and
- (b) keep the network statement up to date in accordance with paragraph (5).

(4) The information referred to in paragraph (1) is—

- (a) a section setting out the nature of the railway infrastructure which is available to applicants and the conditions of access to it;
- (b) details as to where further information may be obtained about the nature of the track access to, and supply of services in, any of the service facilities to which access may be obtained pursuant to regulation 5;
- (c) a description of the charging principles and tariffs, including details of the charging methodology, exceptions to the charging principles, and discounts;
- (d) details for the supply of those services listed in Schedule 1 which are provided by only one supplier;
- (e) a description of the principles and criteria for the allocation of infrastructure capacity, setting out the general capacity characteristics of the infrastructure available and the restrictions on its use, including likely capacity requirements for maintenance;
- (f) the procedures and deadlines in the capacity allocation process and specific criteria employed in that process, in particular—
  - (i) the procedures according to which applicants can request infrastructure capacity from the infrastructure manager;
  - (ii) the information to be provided by applicants;

- (iii) the timetable for the application and allocation process;
  - (iv) the principles governing the co-ordination process, in particular the arrangement of international train paths, and the effect the modification of such paths might have on other infrastructure managers;
  - (v) the dispute resolution procedure established in accordance with regulation 18(5);
  - (vi) details of any section of railway infrastructure which has been designated for use by specified types of rail services in accordance with regulation 20;
  - (vii) the procedures to be followed for congested infrastructure, and any priority criteria for the allocation of congested infrastructure set in accordance with regulation 21(5) and (6);
  - (viii) the findings of any capacity enhancement plan completed in accordance with regulation 23;
  - (ix) details of restrictions on the use of infrastructure;
  - (x) the threshold quota to be applied by the infrastructure manager in requiring a train path to be surrendered under regulation 24(1); and
  - (xi) the conditions relating to previous levels of utilisation of capacity to be taken into account by the infrastructure manager in determining priorities in accordance with regulation 24(3); and
- (g) the measures taken by the infrastructure manager to ensure fair treatment of freight services and international services, and in responding to *ad hoc* requests for infrastructure capacity.
- (5) The infrastructure manager must keep the network statement up to date and modify it as necessary.
- (6) The infrastructure manager must publish the network statement not less than four months before the deadline for applications for infrastructure capacity as described under paragraph (4)(f)(iii).
- (7) Any fee charged by the infrastructure manager for the provision, on request, of a copy of the network statement must not exceed the cost of producing that copy.
- (8) If the information required under paragraphs (2) or (3) is not provided to the satisfaction of the infrastructure manager, he may refer the matter to the Department for a determination as to whether additional information must be supplied.
- (9) Where a matter is referred to the Department in accordance with paragraph (8), it is the duty of the Department to make the determination within such period as is reasonable in all the circumstances, and any such determination shall be binding on all parties.

## PART IV

### INFRASTRUCTURE CHARGES

#### **Establishing, determining and collecting charges**

- 11.**—(1) The Department must establish the charging framework and the specific charging rules governing the determination of the fees to be charged in accordance with paragraph (5).
- (2) Subject to paragraph (7), the infrastructure manager must—
- (a) determine the fees to be charged for use of the infrastructure in accordance with the charging framework, the specific charging rules, and the principles and exceptions set out in Schedule 2; and
  - (b) collect those fees.
- (3) Applicants must, subject to the right of appeal to the Department provided in regulation 27, pay such fees as are charged by the infrastructure manager for use of the railway infrastructure.

(4) An infrastructure manager responsible for any of the functions of the infrastructure manager described in this Part and Schedule 2 must, in its legal form, organisation or decision-making functions, be independent of any railway undertaking and, where he is not so independent, that infrastructure manager must ensure that the functions described in this Part and Schedule 2 are performed by a charging body that is so independent.

(5) The separation require by paragraph (4) does not apply to the function of the collection of fees charged in accordance with paragraph (2)(b).

(6) The infrastructure manager must be able to justify that the charges invoiced to each railway undertaking for access to the infrastructure comply with the methodology, rules and, where applicable, scales laid down in the network statement and, where information about the charges imposed is requested by the Department the infrastructure manager must supply the information requested.

(7) Infrastructure managers must co-operate to achieve the efficient operation of train services which cross more than one infrastructure network and should, in particular, aim to guarantee the optimum competitiveness of international rail freight.

(8) Infrastructure managers may establish such joint organisations as may be appropriate to enable the co-operation referred to in paragraph (7) to be achieved and any such organisations, or co-operation arising out of the operation of such organisations, must be bound by the rules set out in these regulations.

(9) The infrastructure manager must respect the commercial confidentiality of information provided to it by applicants for infrastructure capacity.

#### **Infrastructure costs and accounts**

**12.**—(1) The Department through the access charges review must lay down conditions including where appropriate advance payments, to ensure that, under normal business conditions and over a reasonable time period, the accounts of an infrastructure manager shall at least balance—

- (a) income from infrastructure charges;
- (b) surpluses from other commercial activities; and
- (c) public funding,

with infrastructure expenditure.

(2) The infrastructure manager must, with due regard to safety and to maintaining and improving the quality of the infrastructure service, be provided with incentives to reduce the costs of provision of infrastructure and the level of access charges.

(3) It shall be the responsibility of the Department to ensure that the requirements set out in paragraph (2) are implemented.

#### **Performance scheme**

**13.**—(1) The infrastructure manager must establish a performance scheme as part of the charging system to encourage railway undertakings and the infrastructure manager to minimise disruption and improve the performance of the railway network.

- (2) The performance scheme referred to in paragraph (1) may include—
  - (a) penalties for actions which disrupt the operation of the rail network;
  - (b) compensation for undertakings which suffer from disruption; and
  - (c) bonuses that reward better than planned performance.

(3) The basic principles of the performance scheme must apply without discrimination throughout the network to which that scheme relates.

## **Reservation charges**

**14.**—(1) The infrastructure manager may levy an appropriate charge for capacity that is requested but not used, and the imposition of this charge must provide incentives for efficient use of capacity.

(2) The infrastructure manager must provide, to any interested party, information about the infrastructure capacity allocated to applicants.

## **PART V**

### **ALLOCATION OF INFRASTRUCTURE CAPACITY**

#### **Capacity allocation**

**15.**—(1) Whilst respecting the requirements for management independence stipulated in regulation 7, the Department may establish a framework for the allocation of infrastructure capacity.

(2) The infrastructure manager shall, subject to paragraph (3), be responsible for the establishment of specific capacity allocation rules and for the process of allocating of infrastructure capacity in respect of the infrastructure for which he has responsibility.

(3) An infrastructure manager responsible for any of the functions of the infrastructure manager described in this Part and Schedule 3 must, in its legal form, organisation or decision-making functions, be independent of any railway undertaking and, where he is not so independent, that infrastructure manager must ensure that the functions of the infrastructure manager described in this Part are performed by an allocation body that is so independent.

(4) Subject to paragraph (7), any applicant may apply to the infrastructure manager for the allocation of infrastructure capacity.

(5) The infrastructure manager must ensure that the allocation process is conducted in accordance with the timetable set out in Schedule 3.

(6) Subject to paragraph (8), an applicant who has been granted capacity by the infrastructure manager, whether that capacity is in the form of—

- (a) a framework agreement made in accordance with regulation 16 specifying the characteristics of the infrastructure granted; or
- (b) specific infrastructure capacity in the form of a train path,

must not trade that capacity with another applicant or transfer it to another undertaking or service.

(7) Any person who trades in capacity contrary to the provisions of paragraph (6) shall not be entitled to apply for capacity under paragraph (4) for the period of the working timetable period to which the allocation of capacity transferred related.

(8) The use of capacity by a railway undertaking on behalf of an applicant who is not a railway undertaking, in order to further the business of that applicant, is not a transfer for the purpose of paragraph (6).

(9) The infrastructure manager must not allocate capacity in the form of specific train paths for any period in excess of one working timetable period.

(10) A contract, either in the form of a framework agreement or any other type of contract, setting out the rights and obligations of the parties, must be concluded between the infrastructure manager and any applicant to whom infrastructure capacity is allocated before that infrastructure capacity is utilised.

(11) The infrastructure manager must—

- (a) ensure that infrastructure capacity is allocated on a fair and non-discriminatory basis;

- (b) ensure that the contracts referred to in paragraph (10) are non-discriminatory, transparent, and in accordance with the requirements of these Regulations; and
- (c) respect the confidentiality of information supplied to him as part of the capacity allocation process.

(12) In reserving infrastructure capacity for the purposes of scheduled track maintenance, as requested under regulation 17(3), the infrastructure manager must take into account the effect of that reservation on applicants.

### **Framework agreements**

**16.**—(1) Subject to the requirements of this regulation, and without prejudice to articles 81, 82 and 86 of the Treaty, an infrastructure manager may enter into a framework agreement with an applicant for the purposes of specifying the characteristics of the infrastructure capacity required by and offered to the applicant over a period of time exceeding one working time period.

(2) An applicant who is party to a framework agreement may apply for the allocation of capacity in accordance with the terms of that agreement.

(3) Whilst seeking to meet the legitimate commercial needs of the applicant, a framework agreement must not specify any train path in detail.

(4) The effect of a framework agreement must not be such as to preclude the use of the railway infrastructure subject to that framework agreement by other applicants or services.

(5) A framework agreement must contain terms permitting the amendment or limitation of any condition contained in that framework agreement if such amendment or limitation would enable more efficient use to be made of the railway infrastructure.

(6) A framework agreement may contain penalties applicable on modification or termination of the agreement by any party.

(7) Other than in circumstances described in paragraphs (8) and (9), a framework agreement made in accordance with paragraph (1) shall in principle be for a period of five years.

(8) A framework agreement for a period of between five and ten years must be justified by the existence of commercial contracts, specialised investments or risks.

(9) A framework agreement for a period in excess of ten years may be made in exceptional cases, which may be justified by the existence of large-scale and long-term investment and in particular where such investment is covered by contractual commitments.

(10) Whilst respecting commercial confidentiality, the general nature of each framework agreement must be made available by the infrastructure manager to any interested party.

### **Application for infrastructure capacity**

**17.**—(1) Applicants may submit a request to the infrastructure manager, for an agreement granting rights to use railway infrastructure against a charge as provided for in Part 4.

(2) An applicant wishing to apply for infrastructure capacity must submit an application to the infrastructure manager in accordance with the timetable for the allocation process set out in Schedule 3.

(3) Requests by applicants for infrastructure capacity to enable maintenance of the network to be carried out must be submitted in accordance with the timetable set out in Schedule 3.

### **Scheduling and co-ordination**

**18.**—(1) The infrastructure manager must, so far as is reasonable—

- (a) meet all requests for infrastructure capacity; and
- (b) in doing so, take account of all constraints on applicants, including the economic effect on their business.

(2) The infrastructure manager may give priority to specific services within the scheduling and co-ordination process, but only in accordance with the provisions in regulations 20 and 21.

(3) The infrastructure manager must consult interested parties about the draft working timetable, and must allow such interested parties a period of at least one calendar month to submit their comments.

(4) In the event of conflict between different requests for infrastructure capacity, the infrastructure manager must use all best endeavours, in consultation with the appropriate applicants, to co-ordinate the requests and, in so far as it is reasonable to do so, may propose alternative infrastructure capacity from that requested in order to resolve the conflict.

(5) The infrastructure manager must facilitate the establishment and operation of a dispute resolution system to resolve disputes about the allocation of infrastructure capacity and, where that system is applied, a decision on the matters in dispute must be reached no later than ten working days after the final submission of all relevant information in accordance with that system.

(6) The infrastructure manager must take such measures as are appropriate to deal with any concerns about the allocation process raised by interested parties.

(7) For the purposes of this regulation “interested parties” includes—

(a) all applicants for infrastructure capacity as part of the specific allocation process to which the draft working timetable relates; and

(b) other parties who have indicated to the Department, in such form or manner as the Department may from time to time prescribe, that they wish to have the opportunity to comment as to the effect that the working timetable might have on their ability to procure rail services during the working timetable period to which the draft working timetable relates.

#### **Ad hoc requests**

**19.**—(1) In addition to making an application for capacity in accordance with the annual timetable process described in regulation 17 an applicant may submit *ad hoc* requests for infrastructure capacity in the form of individual train paths to the infrastructure manager.

(2) The infrastructure manager must respond to a request described in paragraph (1) as quickly as possible and, in any event, no later than five working days from receipt of the request.

(3) The infrastructure manager must make available, to all potential applicants for such individual train paths, information about available spare capacity on the network for which he is responsible.

(4) The infrastructure manager must, including in the case of congested infrastructure, undertake an evaluation of the need for reserve capacity to be kept available within the final working timetable to enable him to be able to respond rapidly to foreseeable *ad hoc* requests for infrastructure capacity.

#### **Declaration of specialised infrastructure**

**20.**—(1) Subject to paragraph (2), all infrastructure capacity must be available for the use of all types of rail transport service which conform to the characteristics necessary for use of that infrastructure, as defined in the infrastructure manager’s network statement.

(2) Subject to the provisions set out in paragraph (3), the infrastructure manager may designate particular sections of the infrastructure for use by specified types of rail service without prejudice to articles 81, 82 and 86 of the Treaty and, once the infrastructure is so designated, may give priority to that specified type of rail service in the allocation of infrastructure capacity.

(3) Those provisions are that—

(a) suitable alternative routes for other types of rail transport service must exist and be available;

(b) the infrastructure manager must consult the Department and all other interested parties before making such a decision; and

- (c) such designation must not prevent the use of that designated infrastructure by other types of rail transport service when capacity is available and an application for that capacity is submitted by an applicant wishing to operate a service using rolling stock which conforms to the technical characteristics necessary for operation on that infrastructure.

### **Congested infrastructure**

**21.**—(1) Where, after the co-ordination of requests for capacity and consultation with the applicants in accordance with regulation 18(4), it is not possible for the infrastructure manager to satisfy requests for infrastructure adequately, the infrastructure manager must declare that element of the infrastructure on which such requests cannot be satisfied to be congested.

(2) Where, during the preparation of the working timetable for the next timetable period, the infrastructure manager considers that an element of the infrastructure is likely to become congested during the period to which that working timetable relates, he must declare that element of the infrastructure to be congested.

(3) When infrastructure has been declared to be congested under the provisions of this regulation the infrastructure manager must inform—

- (a) existing users of that infrastructure;
- (b) new applicants for infrastructure capacity which includes that element of the infrastructure which has been declared to be congested;
- (c) the Department.

(4) When infrastructure has been declared to be congested in accordance with paragraphs (1) or (2) the infrastructure manager must undertake a capacity analysis of the congested infrastructure, as described in regulation 22, unless a capacity enhancement plan, as described in regulation 23, is in the process of being implemented.

(5) When an element of the infrastructure has been declared to be congested in accordance with paragraphs (1) or (2) and either—

- (a) a charge as described in paragraph 1(8) of Schedule 3 has not been levied; or
- (b) the charge described in paragraph (a) has been levied but has not achieved a satisfactory result,

the infrastructure manager may set priority criteria for the allocation of infrastructure capacity which includes that congested element of the infrastructure.

(6) The priority criteria referred to in paragraph (5) must—

- (a) take account of the importance of a service to society, relative to any other service which will consequently be excluded; and
- (b) ensure that freight services, and in particular international freight services, are given adequate consideration in the determination of those criteria.

(7) If during the course of the working timetable period to which the declaration of congested infrastructure relates, but before the completion of the capacity analysis, the congestion is resolved, the infrastructure manager may revoke the declaration made in accordance with sub-paragraph (1).

(8) Where sub-paragraph (7) applies, the infrastructure manager must inform the persons referred to in sub-paragraph (3) that the declaration has been revoked.

### **Capacity analysis**

**22.**—(1) Where required in accordance with regulation 21(4), the infrastructure manager must carry out a capacity analysis of the congested infrastructure in order to identify the reasons for the congestion and the measures which might be taken in the short and medium term to ease that congestion.

(2) In conducting the capacity analysis, and in order to identify the reasons for the congestion, the infrastructure manager must consider the—

- (a) characteristics of the congested infrastructure;
- (b) operating procedures used on that infrastructure; and

- (c) characteristics of the different rail services which have been allocated capacity to operate on that infrastructure.
- (3) In seeking to determine measures to alleviate congestion the infrastructure manager must consider, in particular—
  - (a) re-routing of services;
  - (b) re-timing of services;
  - (c) alterations to the line-speed; and
  - (d) infrastructure improvements.
- (4) The infrastructure manager must consult the Department during the preparation of the capacity analysis.
- (5) The infrastructure manager must complete the capacity analysis within six months from the date on which the infrastructure is declared to be congested in accordance with regulation 21(1) or (3) and make the findings of the analysis available to the parties described in regulation 21(3).

### **Capacity enhancement plan**

- 23.**—(1) The infrastructure manager must, within six months of the publication of a capacity analysis in accordance with regulation 22, produce a capacity enhancement plan.
- (2) In producing the capacity enhancement plan, the infrastructure manager must—
    - (a) consult each interested parties as he considers necessary, including those described in regulation 21(3); and
    - (b) at least one month before the deadline for completion of the plan seek the prior approval of the Department.
  - (3) The capacity enhancement plan must identify the—
    - (a) reasons for the congestion;
    - (b) likely future development of traffic;
    - (c) constraints on infrastructure development; and
    - (d) options for and costs of enhancing the capacity, including the potential effect on access charges.
  - (4) On the basis of a cost benefit analysis of the potential measures for action identified in the capacity enhancement plan, that plan must include—
    - (a) details of the action to be taken to enhance the capacity of the congested infrastructure; and
    - (b) a timetable for the completion of the detailed measures identified in accordance with sub-paragraph (a)
  - (5) Subject to paragraph (6), if the utilisation of capacity on that element of the infrastructure which is the subject of the capacity enhancement plan attracts a scarcity charge, in accordance with paragraph 1(8) of Schedule 2 the infrastructure manager must cease the levying of such charge in situations when—
    - (a) paragraph (1) applies but he does not produce a capacity enhancement plan for that part of the infrastructure which is subject to the scarcity charge within the requirements of this regulation; or
    - (b) he fails to make progress with implementation of those areas of the action plan produced in accordance with paragraph (4) that are within his control.
  - (6) Paragraph 5 does not apply where—
    - (a) the action plan produced in accordance with paragraph (4) cannot be implemented for reasons beyond the immediate control of the infrastructure manager; or
    - (b) the options identified in that action plan are not economical or financially viable,
 provided that prior approval to continue to levy the scarcity charge is obtained from the Department.



(7) At the end of the six month period starting with the publication of the capacity analysis in accordance with regulation 22, whether or not the approval sought under paragraph (2)(b) has been received, the infrastructure manager must provide the parties consulted under paragraph (2)(a) with a copy of the plan and the timetable for completion of the measures identified to resolve the congestion.

#### **Use of train paths**

**24.**—(1) Subject to paragraph (2) the infrastructure manager must, in particular where infrastructure has been declared congested in accordance with regulation 21, require an applicant who has, over a period of at least one month, used a train path less often than the threshold quota stipulated in the network statement, to surrender that train path.

(2) Paragraph (1) does not apply if in the view of the infrastructure manager, the failure to use the train path in accordance with the threshold quota stipulated in the network statement arose as a result of non-economic reasons outside the control of the applicant.

(3) The infrastructure manager may in the network statement specify conditions under which previous levels of capacity utilisation will be taken into account in determining the priorities to be used in making decisions on the allocation of capacity.

#### **Special measures to be taken in the event of disruption**

**25.**—(1) In the event of disruption to train movements caused by technical failure or accident, the infrastructure manager must take all such steps as are necessary to restore the normal operation of the network.

(2) The infrastructure manager must have in place a contingency plan listing the public bodies who are required to be informed in the event of a serious incident or serious disruption to train movements.

(3) The infrastructure manager may, in the event of an emergency and where absolutely necessary on account of a breakdown which renders a part of the infrastructure temporarily unusable, withdraw allocated train paths without warning and with immediate effect for such period as is necessary to repair the affected infrastructure.

(4) Subject to paragraph (5), the infrastructure manager may, if he deems it to be necessary, require applicants to make available to him such resources as he considers appropriate to restore the normal operation of the network as quickly as possible.

(5) Where a contract or framework agreement between an applicant and the infrastructure manager incorporates conditions as to the special measures to be taken in the event of disruption, the resources required by the infrastructure manager under paragraph (4) must be in accordance with those conditions.

## **PART VI REGULATION AND APPEALS**

#### **Regulatory body**

**26.**—(1) The Department is designated as the regulatory body for the purposes of these Regulations.

(2) The Department must ensure that charges for the use of railway infrastructure imposed by the infrastructure manager comply with the requirements of Part 4 and Schedule 2.

(3) Negotiations between an applicant and the infrastructure manager about the level of infrastructure charges shall only be permitted if these are carried out under the supervision of the Department and, if such negotiations are likely to contravene the requirements of these Regulations, it shall be the duty of the Department to intervene.

- (4) The Department must exchange information about its—
  - (a) work;
  - (b) decision making principles; and
  - (c) practice

with other national regulatory bodies for the purpose of co-ordinating decision making principles across the Community.

(5) Where the Department by virtue of regulations 18(7)(b), or 28(2), prescribes the manner and form of any notification, appeal or complaint to be lodged in accordance with those regulations, the Department must make that prescription and details of such manner and form publicly available.

### **Appeals to the regulatory body**

27.—(1) An applicant has the right of appeal to the Department if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved and, in particular, against decisions adopted by the infrastructure manager or as the case may be, a railway undertaking or any interested party, in respect of any of the matters described in paragraph (2).

- (2) Those matters are—
  - (a) the network statement produced in accordance with regulation 10;
  - (b) the information which, by virtue of regulation 10(4), must be included in that network statement;
  - (c) the allocation process and its result as prescribed in Part 5 and Schedule 3;
  - (d) the charging scheme and charging system established in accordance with regulation 11;
  - (e) the level of structure of infrastructure fees, the principles of which are prescribed in Part 4 and Schedule 2, which it is, or may be, required to pay; and
  - (f) the arrangements in connection with the entitlements to access granted under Part 2 and Schedule 1.

(3) The applicant must lodge the appeal by way of an application under this regulation, in such form and manner as the Department may from time to time prescribe.

(4) When considering an appeal in respect of the circumstances described in paragraph (5), the Department is under a duty to determine whether, in respect of the access to which the appeal relates, viable alternatives under market conditions exist.

(5) Those circumstances are when the appeal contests that viable alternative means of the service being provided under market conditions do not exist so as to justify the refusal of a request for the supply of services under regulation 5(4).

(6) The Department must, within two months of the date of receipt of all relevant information—

- (a) make a decision on; and
- (b) where appropriate, issue a direction to the infrastructure manager, or, as the case may be, a railway undertaking or any interested party, to remedy the situation arising out of,

an appeal brought under this regulation.

(7) In making a decision on an appeal brought under this regulation against refusal by the infrastructure manager to allocate infrastructure capacity, or against the terms of an offer of infrastructure capacity, the Department must either—

- (a) confirm that no modification of the infrastructure manager or allocation body's decision is required; or
- (b) require modification of that decision in accordance with directions issued by the Department.

(8) Without prejudice to the right of any person to make an application to the court under Order 53 of the Rules of the Supreme Court (Northern Ireland) 1980(a).

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(a) S.I. 1980/346

- (a) a decision by the Department on an appeal brought under this regulation is binding on all parties affected by that decision; and
- (b) it is the duty of any person to whom a direction is given under this regulation to comply with and give effect to that direction.

#### **Competition in the rail services market**

**28.**—(1) The Department shall be responsible for—

- (a) monitoring; and
- (b) determining complaints lodged under paragraph (2) relating to,

competition in the rail services markets, including the rail freight transport market.

(2) Any applicant or interested party may submit a complaint to the Department, in such form and manner as the Department may from time to time prescribe, if it believes that it has been treated unjustly, been the subject of discrimination or has been injured in any other way.

(3) Subject to paragraph (4) where, following receipt of—

- (a) complaints lodged under paragraph (2); or
- (b) information gathered on its own initiative,

the Department identifies undesirable developments in relation to competition in the rail services markets it must, at the earliest possible opportunity, determine measures and take appropriate action to correct those developments.

(4) Paragraph (3) is without prejudice to the rights of any person to make an application to the court under Order 53 of the Rules of the Supreme Court (Northern Ireland) 1980.

#### **Provision of information to the regulatory body**

**29.** It shall be the duty of the infrastructure manager, applicant, service provider or any other party to furnish to the Department in such form and manner as it may by notice request, within such period as is specified in the notice, such information specified in the notice as the Department considers necessary for the purpose of facilitating the performance of its functions under regulations 9, 27 or 28.

## **PART VII**

### **EUROPEAN LICENCES**

#### **Prohibition of unlicensed provision of International services**

**30.**—(1) Where a person is a railway undertaking to which these Regulations apply, that person shall not provide international train services in Northern Ireland unless he is authorised to do so by a European licence which is appropriate for that train service, and any person who provides such services without such a licence shall be guilty of an offence.

(2) Any person who is guilty of an offence under this regulation shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(3) No proceedings shall be instituted in Northern Ireland in respect of an offence under this regulation except by or on behalf of the Department.

(4) In this regulation the expression “European licence” includes a licence granted pursuant to any action taken by an EEA State for the purpose of implementing the 1995 Directive.

#### **Appointment of licensing authority and grant of European licences**

**31.**—(1) The Department is hereby designated as the body responsible for granting European licences.

(2) The Department shall determine and publish the procedures for the granting of European licences and inform the Commission of those procedures.

(3) Subject to and in accordance with these Regulations, the Department shall grant a European licence to a railway undertaking if that undertaking—

- (a) is established in Northern Ireland, and
- (b) makes an application to the Department in accordance with the published procedures.

(4) Before granting or modifying a European licence the Department shall consult the Health and Safety Executive for Northern Ireland.

(5) A European licence may authorise the provision of train services generally or be restricted to particular types of service specified in the licence.

(6) At any time after submitting the application the applicant shall submit such further information as the Department may reasonably require in connection with the application.

(7) The Department shall grant a European licence if, and only if, it is satisfied that the applicant will be able at any time to satisfy the requirements referred to in Schedule 4 as to good repute, financial fitness, professional competence and insurance cover for civil liberties.

(8) An application for a European licence shall be determined by the Department as soon as possible and in any event within three months of receipt of the information referred to in paragraph (6).

(9) In respect of each application for a European licence the Department shall give notice stating—

- (a) that the applicant has made an application for a European licence;
- (b) the name of the applicant and the address of its registered or principal office; and
- (c) a summary of the activities which the applicant wishes to carry out pursuant to the European licence.

(10) A notice under paragraph (9) shall be given by publishing the notice in such manner as the Department considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the European licence.

(11) The Department shall inform the applicant in writing of its decision and, where it refuses to grant a European licence, the refusal shall state the reasons for its decision.

(12) When the Department grants a European licence in accordance with this regulation it shall inform the European Commission of the grant.

(13) As soon as practical after granting a European licence the Department shall send a copy of the licence to the Health and Safety Executive for Northern Ireland.

(14) Any sums received by the Department under this regulation shall be paid into the Consolidated Fund.

(15) Schedule 4 (qualifications for European licence) shall have effect.

### **Validity of European licences**

**32.**—(1) A European licence shall, unless previously revoked or surrendered in accordance with any provision in these Regulations or the licence, continue in force as long as the Department is satisfied that the railway undertaking concerned continues—

- (a) to satisfy the requirements referred to in Schedule 4 as to good repute, financial fitness, professional competence and insurance cover for civil liabilities, and
- (b) to submit the licence to the Department for review or approval when so required under regulation 33.

(2) A European licence may incorporate specific provisions governing the suspension or revocation of the licence.

### **Monitoring, suspension and revocation of European licences**

**33.**—(1) Subject to paragraph (5), this regulation applies to a railway undertaking to which a European licence has been granted.

(2) If at any time the Department considers that there is serious doubt whether a railway undertaking complies with a requirement referred to in Schedule 4, it may take such steps as are necessary to enable it to determine whether or not the undertaking does so comply.

(3) If, having taken the steps referred to in paragraph (2), the Department is satisfied that a railway undertaking does not comply with any such requirement, it shall revoke the European licence held by the railway undertaking or suspend it.

(4) The Department shall revoke a European licence if proceedings have been commenced for the winding up of a railway undertaking on the grounds that the undertaking is unable to pay its debts and the Department is satisfied that there is no reasonable prospect of satisfactory financial restructuring of the undertaking within a reasonable period of time.

(5) Where the Department is satisfied that there is a serious doubt whether a railway undertaking to which a European licence has been granted by a licensing authority other than itself complies with any requirement of the 1995 Directive, it shall without delay so notify that licensing authority; and in this paragraph, the expression “European licence” means a licence granted pursuant to any action taken by an EEA State for the purpose of implementing the 1995 Directive.

(6) Where the Department has suspended or revoked a European licence solely on the grounds of the non-compliance by the railway undertaking with the requirements of financial fitness specified in Schedule 4 but the Department considers that there is a realistic prospect of a satisfactory financial restructuring of the undertaking taking place within a reasonable period of time, it may grant to the undertaking a temporary European licence pending such financial restructuring.

(7) A temporary European licence under paragraph (6) shall not be granted—

- (a) where the Department considers that safety would be jeopardised, or
- (b) for a period exceeding six months.

(8) Where railway undertaking to which a European licence has been granted has either ceased the operations to which the licence relates for a continuous period of six months or, subject to paragraph (9), has not commenced such operations within six months of the date of such grant, then the Department may either require the railway undertaking to resubmit its licence to the Department for approval or suspend the licence.

(9) When making an application for a European licence, or where the Department has required a railway undertaking to resubmit its European licence in pursuance of paragraph (8) on the grounds that the railway undertaking has not commenced such operations, the railway undertaking shall be entitled to request that a period longer than six months be granted in which it can commence operations, taking into account the specific nature of the services to be provided.

(10) In the event of a change affecting the legal situation of a railway undertaking, in particular following a change in the control or ownership of the railway undertaking as a result of a merger with or take-over by another undertaking, the Department may require the railway undertaking to submit the licence to the Department for approval.

(11) Where a licence is submitted for approval pursuant to paragraph (10), the railway undertaking may continue operations whilst its licence is under review unless the Department decides that safety is jeopardised by the change referred to in paragraph (10).

(12) If the Department decides that safety is jeopardised by that change, it shall notify the railway undertaking of its decision and of the grounds for it.

(13) When a railway undertaking intends significantly to change or extend its activities from those in respect of which a licence was granted to it, the railway undertaking shall submit its licence to the Department for review.

(14) When the Department amends, suspends or revokes a European licence pursuant to this regulation it shall forthwith inform the European Commission of such an amendment, suspension or revocation.

## PART VIII

### STATEMENTS OF NATIONAL REGULATORY PROVISIONS

#### **Prohibition on operating trains without a statement of national regulatory provisions**

**34.**—(1) Where a person is a railway undertaking to which these Regulations apply, that person may not act as the operator of a train for the purpose of providing train services in Northern Ireland unless (in addition to being authorised by a European licence) he holds a valid statement of national regulatory provisions (SNRP”).

(2) Any person who provides such services without holding such a statement shall be guilty of an offence.

(3) Any person who is guilty of an offence under this regulation shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum, or

(b) on conviction on indictment, to a fine.

(4) No proceedings shall be instituted in Northern Ireland in respect of an offence under this regulation except by or on behalf of the Department.

(5) In this regulation and in regulations 35 and 36, the expression “European licence” includes a licence granted pursuant to any action taken by an EEA State for the purpose of implementing the 1995 Directive.

#### **Statements of national regulatory provisions (“SNRPs”)**

**35.**—(1) Upon application being made, the Department shall issue a SNRP to a holder of a valid European licence.

(2) Any application for a SNRP—

(a) shall be made in writing to the Department and in such form and manner as the Department may from time to time determine and publish, and

(b) shall be accompanied by a copy of the European licence, if already held.

(3) A SNRP shall continue in force for such period as may be specified in or determined by or under the SNRP.

#### **Condition of SNRPs**

**36.**—(1) Subject to paragraph (3), a SNRP may include one or more conditions (whether or not relating to the activities for which the applicant for the SNRP requires a European licence) as appear to the Department to be requisite or expedient.

(2) Without prejudice to the generality of paragraph (1), conditions included in a SNRP by virtue of paragraph (1) may impose any of the following requirements—

(a) specific technical and operational requirements for rail services;

(b) safety requirements applying to staff, rolling stock and the internal organisation of the undertaking;

(c) provisions on health, safety, social conditions and the rights of workers and consumers;

(d) requirements applying to all undertakings in the relevant railway sector designed to offer benefits or protection to consumers.

(3) A condition may not—

(a) impose any requirement which is incompatible with Community law, or

(b) be applied in a discriminatory manner.

(4) Any sums received by the Department in consequence of the provisions of any condition of a SNRP shall be paid into the Consolidated Fund.

#### **Referral for Commission’s opinion**

**37.**—(1) A railway undertaking may at any time refer to the European Commission the question of whether a condition included in a SNRP—

- (a) is compatible with Community law, or
- (b) has been applied in a non-discriminatory manner.

(2) Where a railway undertaking refers a question referred to in paragraph (1) to the European Commission, and the European Commission delivers an opinion that a requirement imposed through a condition in a SNRP is incompatible with Community law or has been applied in a discriminatory manner, the Department shall review the condition.

#### **Modification of SNRPs by consent**

**38.**—(1) Subject to regulation 36 and to the following provisions of this regulation, the Department may modify the conditions of a SNRP if the SNRP holder consents to the modifications.

- (2) Before making modifications under this regulation, the Department shall give notice—
- (a) stating that it proposes to make the modifications and setting out their effect,
  - (b) stating the reasons why it proposes to make the modifications, and
  - (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall, before making the modifications, consider any representations or objections which are duly made and not withdrawn.

- (3) A notice under paragraph (2) shall be given—
- (a) by publishing the notice in such manner as the Department considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by serving a copy of the notice on the SNRP holder.

## PART IX MISCELLANEOUS

#### **Statutory authority to run trains**

**39.** Any international grouping or railway undertaking granted access or transit rights under these Regulations shall, if and to the extent that it would not, apart from this regulation, have statutory authority to run trains over any track in exercise of such rights, be taken to have statutory authority to do so.

#### **International groupings**

**40.** In the event of a contravention of, or a refusal or failure to comply with, a requirement or prohibition imposed by these Regulations on an international grouping—

- (a) where the contravention, or refusal or failure to comply would be an offence under these Regulations each railway undertaking comprised in the grouping shall be guilty of the offence and liable to be proceeded against and punished accordingly unless that undertaking proves that the contravention, refusal or failure occurred without the consent or connivance of that undertaking and that the undertaking exercised all due diligence to prevent that contravention, refusal or failure; and
- (b) where a civil remedy would be available to any person in respect of any loss, damage or injury caused by the contravention, or refusal or failure to comply, each railway undertaking comprised in the grouping shall be jointly and severally liable in respect of such loss, damage or injury.

## **Civil proceedings**

- 41.**—(1) The obligation to comply with—
- (a) regulation 7;
  - (b) regulation 8;
  - (c) paragraphs (4) and (9) of regulation 11;
  - (d) paragraphs (3), (10) and (11)( c) of regulation 15;
  - (e) paragraph (8) of regulation 27;

shall be a duty owed to any person who may be affected by a breach of that duty and shall be actionable by any such person who sustains loss, damage or injury caused by the breach at the suit or instance of that person.

(2) In any proceedings brought against the infrastructure manager, international grouping, railway undertaking or applicant under paragraph (1), it shall be defence for it to prove that it took all reasonable steps and exercised all due diligence to avoid the breach of duty.

(3) Without prejudice to the right, which any person may have by virtue of paragraph (1) to bring civil proceedings in respect of any breach of duty, the obligation to comply shall be enforceable by civil proceedings by the Department for an injunction or any other relief.

## **Making of false statements etc.**

**42.**—(1) If any person, in giving any information or making any application under or for the purposes of any provision of these Regulations, makes any statement which he knows to be false in a material particular, he is guilty of an offence and shall be liable—

- (a) on summary conviction, to fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(2) No proceedings shall be instituted in Northern Ireland in respect of an offence under this regulation except by or with the consent of the Department or the Director of Public Prosecutions.

## **Offences by bodies corporate**

**43.** For the purposes of these Regulations section 20(2) of the Interpretation Act (Northern Ireland) 1954<sup>(a)</sup> applies with the omission of the words “the liability of whose members is limited” and where the affairs of the body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

## **Offences outside the United Kingdom**

**44.**—(1) For the purpose of determining whether a breach of the duty imposed by regulation 8 has occurred, it is immaterial that the relevant acts or omissions occurred outside the United Kingdom if, when they occurred, the person—

- (a) was a United Kingdom national, or
- (b) was a body incorporated under the law of any part of the United Kingdom, or
- (c) was a person (other than a United Kingdom national or such a body) maintaining a place of business in the United Kingdom.

(2) In this regulation “United Kingdom national” means an individual who is—

- (a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas citizen;
- (b) a person who under the British Nationality Act 1981<sup>(b)</sup> is a British subject; or
- (c) a British protected person (within the meaning of that Act).

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<sup>(a)</sup> 1954 c. 33 (N.I.)  
<sup>(b)</sup> 1981 c. 61



**Amendments and revocation**

45. Schedule 5 (amendments and revocation) shall have effect.

Sealed with the Official Seal of the Department for Regional Development on 1st December 2005.

(L.S.)

*B. R. D. White*

A senior officer of the Department

## SERVICES TO BE SUPPLIED TO APPLICANTS

1. The minimum access package referred to in regulation 5(1) shall comprise—
  - (a) handling of requests for infrastructure capacity;
  - (b) the right to utilise such capacity as is granted and, in particular—
    - (i) the right to use such running track points and junctions as are necessary to utilise that capacity;
    - (ii) train control, including signalling, train regulation, dispatching and the communication and provision of information on train movements; and
    - (iii) all other information as is necessary to implement or to operate the service for which capacity has been granted.
2. Track access to services facilities and the supply of services, referred to in regulation 5(1), shall comprise—
  - (a) where available, the use of electrical supply equipment for traction current;
  - (b) refuelling facilities;
  - (c) passenger stations, including buildings and other facilities;
  - (d) freight terminals
  - (e) marshalling yards;
  - (f) train formation facilities;
  - (g) storage sidings; and
  - (h) maintenance and other technical facilities.
3. The additional services referred to in regulation 5(5) may comprise;
  - (a) traction current;
  - (b) pre-heating of passenger trains;
  - (c) the supply of fuel, shunting and all other services provided at the access services facilities referred to in paragraph (2); and
  - (d) tailor-made contracts for:
    - (i) control of the transport of dangerous goods; and
    - (ii) assistance in running abnormal trains
4. The ancillary services referred to in regulation 5(4) may comprise:
  - (a) access to the telecommunications network;
  - (b) the provision of supplementary information; and
  - (c) technical inspection of rolling stock.

## ACCESS CHARGING

**Principles of access charging**

- 1.—(1) The infrastructure manager must ensure that the application of the charging scheme—
  - (a) complies with the rules set out in the Network Statement produced in accordance with regulation 10; and
  - (b) results in equivalent and non-discriminatory charges for different railway undertakings that perform services of an equivalent nature in a similar part of the market.

(2) The calculation of the fee may in particular take into account the mileage, composition of the train and any specific requirements in terms of such factors as speed, axle load and the degree or period of utilisation of the infrastructure.

(3) Except where specific arrangements are made in accordance with paragraph 3, the infrastructure manager must ensure that the charging scheme in use is based on the same principles over the whole of his network.

(4) The charges for the minimum access package and track access to service facilities referred to in paragraphs 1 and 2 of Schedule 1 shall be set at the cost that is directly incurred as a result of operating the train service.

(5) Subject to sub-paragraph (6), the supply of services referred to in paragraph 2 of Schedule 1 shall not be subject to the principles set out in this paragraph.

(6) In setting the charge for the supply of services referred to in sub-paragraph (5), account must be taken of the competitive situation of rail transport.

(7) If the additional or ancillary services referred to in paragraphs 3 and 4 of Schedule 1 are offered by only one supplier the charge imposed for the supply of those services must relate to the cost of providing the service, calculated on the basis of the actual level of use.

(8) The infrastructure charge may include a charge to reflect the scarcity of capacity of the identifiable segment of the infrastructure during periods of congestion.

(9) The charges referred to in sub-paragraph (8) may be averaged over a reasonable spread of train services and times, but the relevant magnitudes of the infrastructure charges must be related to the costs attributable to the services.

### **Exceptions to the charging principles**

2.—(1) In order to obtain full recovery of the costs incurred the infrastructure manager, with the approval of the Department under the access charges review may levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, whilst guaranteeing optimum competitiveness, in particular in respect of international rail freight.

(2) The effect of sub-paragraph (1) must not be to exclude the use of infrastructure by market segments, which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear.

(3) The charging system shall respect the productivity increases achieved by applicants.

3.—(1) Subject to sub-paragraph (2), for specific investment projects completed—

(a) since 15th March 1988; or

(b) following the coming into operation of these Regulations,

the, infrastructure manager may set or continue to set higher charges on the basis of the long-term costs of the project.

(2) For sub-paragraph (1) to apply—

(a) the effect of the higher charges must be to increase the efficiency or cost-effectiveness of the project; and

(b) it must be the case that the project could not otherwise have been undertaken without the prospect of such higher charges.

(3) A charging arrangement to which sub-paragraph (1) applies may incorporate agreements on the sharing of the risk associated with new investments.

4.—(1) The infrastructure manager's average and marginal charges for equivalent uses of his infrastructure must be comparable and comparable services in the same market segment are subject to the same charges.

(2) The network statement produced by the infrastructure manager in accordance with regulation 10 must demonstrate that the charging system meets these requirements in so far as this can be done without the disclosure of commercially confidential information.

5. If the infrastructure manager intends to modify the essential elements of the charging system referred to in paragraph 2 that infrastructure manager must make such modifications public at least three months in advance of the modification taking effect.

### **Discounts**

6.—(1) Subject to the provisions of articles 81, 82, 86 and 87 of the Treaty, and paragraph 1(2), any discount on the charges levied on a user of railway infrastructure by the infrastructure manager, for any service, must comply with the principles set out in this paragraph.

(2) Except where sub-paragraph (3) applies, discounts shall be limited to the actual saving of the administrative cost to the infrastructure manager and, in determining the level of discount to be applied, no account may be taken of cost savings already incorporated in the charge levied.

(3) The infrastructure manager may introduce schemes available to all users of the infrastructure, with reference to specified traffic flows, granting time limited discounts to encourage the development of new rail services, or encouraging the use of considerably under-utilised lines.

(4) The discounts available must be in accordance with the access charges review.

(5) Discounts may relate only to charges levied for a specified infrastructure section.

(6) Similar discount schemes must be applied to similar services.

## SCHEDULE 3

Regulation 15(5) and 17(2)

### TIMETABLE FOR THE ALLOCATION PROCESS

#### **Date of timetable change**

1.—(1) Subject to sub-paragraph (2) the working timetable shall be established once per calendar year, and the change of working timetable shall take place at midnight on the second Saturday in December.

(2) Where a change or adjustment to the working timetable is carried out after the winter, in particular to take account, where appropriate, of changes in regional passenger traffic timetables, it shall take place at midnight on the second Saturday in June and at such other intervals between these dates as are required.

(3) The infrastructure manager may agree different dates and, in this case, shall inform the European Commission if international traffic may be affected.

#### **Timetable for the production of the working timetable**

2.—(1) The final date for receipt of requests for capacity to be incorporated into the working timetable shall be no more than 12 months in advance of the entry into force of the working timetable in accordance with paragraph 1.

(2) No later than four months after the deadline for submission of bids by applicants, the infrastructure manager shall prepare a draft working timetable.

## SCHEDULE 4

Regulation 31 (15)

### QUALIFICATIONS FOR EUROPEAN LICENCE

#### **Good repute**

1. In determining whether a railway undertaking is of good repute, the Department shall have regard to all relevant evidence, including any information in its possession as to the previous conduct of any appropriate officer of the undertaking if that conduct appears to it to relate to the undertaking's fitness to hold a European licence.

2. Without prejudice to the generality of its powers under paragraph 1, the Department shall not determine that a railway undertaking is of good repute if—

- (a) an order has been made by the court for the winding up of the undertaking under insolvency legislation or any appropriate officer of the undertaking for the time being has been adjudged bankrupt or his estate has been sequestrated under that legislation;
- (b) the undertaking or any appropriate officer of the undertaking has been convicted of a serious offence, including in particular an offence contrary to the law relating to commercial transactions, or the law relating to transport; or
- (c) the undertaking or any appropriate officer of the undertaking has been convicted of a serious offence which is contrary to either of the following laws—
  - (i) social or labour law (including legislation relating to occupational health and safety); or
  - (ii) in the case of an undertaking seeking to operate cross-border goods transport subject to customs procedures, customs law.

3.—(1) For the purposes of paragraph 2, a person has been convicted of a serious offence if that offence was committed under the law of any part of the United Kingdom or under the law of a country or territory outside the United Kingdom and if on conviction there was imposed on him for that offence a sentence of imprisonment for a term exceeding three months.

(2) In sub-paragraph (1), the reference to a sentence of imprisonment includes a reference to any form of custodial sentence or order, other than one imposed under the enactments relating to mental health.

4.—(1) Any reference in paragraph 3 to an offence under the law of any part of the United Kingdom includes a reference to a civil offence (wherever committed) within the meaning of the Army Act 1955(a), the Air Force Act 1955(b) or as the case may be the Naval Discipline Act 1957(c).

(2) For the purposes of paragraphs 1 to 3—

- (a) convictions which are spent for the purposes of the Rehabilitation of Offenders (Northern Ireland) Order 1978(d) shall be disregarded; and
- (b) the Department may also disregard an offence if such time as it thinks proper has elapsed since the date of the conviction.

5. In paragraphs 1 and 2 the reference to any appropriate officer of the undertaking is to any director, manager, secretary or similar officer of the undertaking or any person purporting to act in any such capacity.

### **Financial fitness**

6. Subject to paragraph 8 an applicant for a European licence shall be considered to meet the required standard of financial fitness when it can demonstrate that it will be able to meet its actual and potential obligations, established under realistic assumptions, for a period of twelve months.

7. For the purpose of demonstrating its financial fitness a railway undertaking shall make available to the Department the undertaking's annual accounts, or if the undertaking is not able to provide annual accounts then the undertaking's balance sheet, together with details of the following matters (in so far as these cannot be ascertained from the annual accounts, or as the case may be, the balance sheet)—

- (a) the railway undertaking's available funds, including the bank balance, pledged overdraft provisions and loans;

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(a) 1955 c. 18  
(b) 1955 c. 19  
(c) 1957 c. 53  
(d) S.I.1978/1908 (N.I.; 27)

- (b) the railway undertaking's funds and assets available as security;
- (c) the railway undertaking's working capital;
- (d) relevant costs, including the railway undertaking's purchase costs of payments to account for vehicles, land, buildings, installations and rolling stock; and
- (e) charges on the railway undertaking's assets.

8. The Department shall not find the railway undertaking to be financially fit if the railway undertaking has substantial arrears of taxes or social security payments which are owed as a result of the undertaking's activity.

9. Without prejudice to regulation 31(6) the Department may request that the railway undertaking provide to it audit reports or other suitable documents as the Department considers necessary in relation to the matters listed in paragraph 7(a) to (e) which have been prepared by a body other than the railway undertaking such as a bank, building society, accountant or auditor.

### **Professional competence**

10. For the purposes of these Regulations the requirements of professional competence are satisfied by a railway undertaking when the undertaking has or will have a management organisation which possesses the knowledge or experience (or both) necessary to exercise safe and reliable operational control and supervision of the type of operations specified in the licence.

### **Insurance cover**

11.—(1) An applicant for a European licence shall be considered to meet the requirement of insurance cover where in accordance with the law of the United Kingdom and any relevant international law the undertaking maintains adequate insurance cover, or has made arrangements having equivalent effect, covering its liabilities in the event of accident to passengers, luggage, freight, mail and third parties.

(2) In sub-paragraph (1) "international law" means any provisions contained in any international agreement or arrangement to which the United Kingdom is a party and which have the force of law in the United Kingdom.

(3) Insurance cover shall be considered to be "adequate" for the purposes of paragraph (1) if it has been approved by the Department

## SCHEDULE 5

Regulation 45

### AMENDMENTS AND REVOCATION

#### PART I

#### AMENDMENTS

### **The Railway Fires Act 1905**

1. In section 4 of the Railway Fires Act 1905(a) (definitions and application)—

(a) after the definition of "agricultural crops" there shall be inserted—

"The expression "EEA State" means a member State, Norway, Iceland or Liechtenstein;" and

(b) after the definition of "railway" there shall be inserted—

"The expression "railway company" includes a reference to a person who holds a European licence granted pursuant to a provision contained in any instrument made for

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(a) 1905 c. 11

the purpose of implementing Council Directive 1995/18/EC dated 19th June 1995 on the licensing of railway undertakings, as amended by Directive 2001/13/EC dated 26th February 2001 and Directive 2004/49/EC dated 29th April 2004, both of the European Parliament and of the Council, or pursuant to any action taken by an EEA State for that purpose.”.

### **The Railways Fires Act (1905) Amendment Act 1923**

2. In section 2 of the Railways Fires Act (1905) Amendment Act 1923(a) (conditions precedent to application of principal Act) after “railway company” where it first occurs there shall be inserted “as defined in section 4 of that Act”.

### **The Insolvency (Northern Ireland) Order 1989**

3. In Schedule 1A to the Insolvency (Northern Ireland) Order 1989(b) (exceptions to prohibitions on appointment of administrative receiver; supplementary provisions)—

(a) at the end of paragraph 10(1)(e) “or” shall be omitted; and

(b) at the end of paragraph 10(1)(f) there shall be added—

“or

(g) in reliance of a European licence granted pursuant to a provision contained in any instrument made for the purpose of implementing Council Directive 1995/18/EC dated 19th June 1995 on the licensing of railway undertakings, as amended by Directive 2001/13/EC dated 26th February 2001 and Directive 2004/49/EC dated 29th April 2004, both of the European Parliament and of the Council, or pursuant to any action taken by an EEA State for that purpose .”;

(c) after paragraph 10(2) there shall be added—

“(3) In sub-paragraph (1)(g), an “EEA State” means a member State, Norway, Iceland or Liechtenstein.”.

### **The Enterprise Act 2002**

4. Section 168 of the Enterprise Act 2002(c) (regulated markets) shall be amended as follows—

(a) in subsection (3) after paragraph (h) there shall be inserted—

“(hh) modifying the conditions of a SNRP issued pursuant to the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005;”;

(b) in subsection (4) after paragraph (h) there shall be inserted—

“(hh) in relation to a SNRP issued pursuant to the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 where none of the conditions of the SNRP relate to consumer protection, the duties of the Department for Regional Development under regulation 36 of those Regulations;”;

(c) in subsection (5)—

(i) at the end of paragraph (i) “or” shall be omitted, and

(ii) after paragraph (j) there shall be added—

“or

(k) the Department for Regional Development.”.

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(a) 1923 c. 27

(b) S.I. 1989/2405 (N.I. 19); Schedule 1A was inserted by the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10) Article 5(2), Schedule 3.

(c) 2002 c. 40

PART II  
REVOCATION

**The Railway Regulations (Northern Ireland) 2003**

5. The Railway Regulations (Northern Ireland) 2003<sup>(a)</sup> are hereby revoked.

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<sup>(a)</sup> S.R. 2003/53



## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement:

- (a) Council Directive 91/44/EC of the Council of 29 July 1991 on the development of the Community's railways, as amended by Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 and Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 ("the amended 1991 Directive"); and
- (b) Council Directive 2001/14/EC dated 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure as amended by Directive 2004/49/EC dated 29 April 2004 on safety on the Community's railways both of the European Parliament and of the Council; and
- (c) Council Directive 95/18/EC dated 19 June 1995 on the licensing of railway undertakings, as amended by two further Directives ("the amended 1995 Directive"). These are Directive 2001/13/EC dated 26 February 2001, and Directive 2004/49/EC dated 29 April 2004, both being of the European Parliament and the Council.

Part 1 contains preliminary provisions. Part 2 grants access and transit rights to international groupings and freight operators to the Northern Ireland rail network. It also grants all applicants the right of access to, and the supply of, the services listed in Schedule 1 to the Regulations.

Part 3 imposes certain separation requirements between the bodies responsible for management of the railway infrastructure and railway undertakings. The infrastructure manager is placed under a requirement to produce a network statement containing the information set out in regulation 10.

Part 4, together with Schedule 2, sets out the structure for the charging of fees for use of railway infrastructure, and the charging principles.

Part 5, together with Schedule 3, sets out the framework and timetable for the process of allocating infrastructure capacity. the trading of capacity is prohibited, and allocation in the form of fixed train paths cannot be granted for longer than one timetable period. Regulations 22 to 24 set out the procedure that must be followed where an element of the railway infrastructure is congested, and regulation 25 provides a 'use it or lose it' provision in respect of allocated capacity.

Part 6 allocates certain regulatory functions to the Department for Regional Development. Regulation 27 provides a right of appeal to the regulatory body for applicants aggrieved with various aspects of the allocation of capacity and the fees charged for the use of that capacity, and requires the regulatory body to make a decision on such appeals within two months. Regulation 28 requires the Department to monitor competition in the rail services market and to take appropriate action to deal with undesirable developments in the market, either arising out of its own investigations, or from complaints which have been submitted.

Part 7 imposes requirements for licensing of railway undertakings; the provision of train services without having a European licence is made a criminal offence (regulation 30). The Department for Regional Development is appointed as the body to issue European licences (regulation 31). Applicants for such licences must satisfy requirements as to good repute, professional competence, financial fitness and insurance cover for liabilities (regulation 31 and Schedule 4). Such licences are valid as long as the licence holder complies with the requirements referred to in Schedule 4 and the requirements to submit the licence for review or approval (regulation 32). The licence is subject to monitoring and review by the Department, who may suspend or revoke such licences in certain circumstances (regulation 33).

In addition to requiring a European licence, railway undertakings providing services in Northern Ireland will require a Statement of National Regulatory Provisions (a "SNRP")

(regulation 34). One or more conditions will be included in a SNRP by the Department, but these conditions must be compatible with Community law and must not be discriminatory (regulation 36). SNRPs may be modified by consent (regulation 38).

Schedule 5 contains consequential amendments, and revocations to miscellaneous provisions.