

SCHEDULE 1

Regulation 5

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.

SCHEDULE 2

Regulation 11

ACCESS CHARGING

Principles of access charging

- 1.—(1) The infrastructure manager must ensure that the application of the charging scheme—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (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.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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(1), the Air Force Act 1955(2) or as the case may be the Naval Discipline Act 1957(3).

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

(1) 1955 c. 18
 (2) 1955 c. 19
 (3) 1957 c. 53

- (a) convictions which are spent for the purposes of the Rehabilitation of Offenders (Northern Ireland) Order 1978(4) 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;
- (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.

(4) [S.I.1978/1908 \(N.I; 27\)](#)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(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⁽⁵⁾ (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 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⁽⁶⁾ (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⁽⁷⁾ (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

⁽⁵⁾ 1905 c. 11

⁽⁶⁾ 1923 c. 27

⁽⁷⁾ 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.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (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(8) (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.”.

PART II

REVOCATION

The Railway Regulations (Northern Ireland) 2003

- 5. The Railway Regulations (Northern Ireland) 2003(9) are hereby revoked.

(8) 2002 c. 40
(9) S.R. 2003/53