
STATUTORY INSTRUMENTS

1998 No. 1340

The Railways Regulations 1998

PART III

ACCESS AND TRANSIT MATTERS

Allocation bodies

10.—(1) The Secretary of State shall, after consulting the International Rail Regulator and such allocation bodies and infrastructure managers as appear to him to be appropriate, designate one or more infrastructure managers to be allocation bodies and specify the classes or descriptions of applications for access or transit rights in respect of which each such manager is to act as the allocation body.

(2) As soon as practicable after designating an allocation body pursuant to paragraph (1) the Secretary of State shall procure publication of a notice in the Official Journal of the European Communities containing the following particulars—

- (a) the name of the allocation body and the address to which applications for the allocation of infrastructure capacity should be sent; and
- (b) the classes or descriptions of applications for access or transit rights in respect of which the allocation body is to act as such.

(3) Any allocation body and any infrastructure manager shall ensure that such capacity is allocated on a fair and non-discriminatory basis.

(4) The Secretary of State may give directions to any allocation body or infrastructure manager for the purpose of ensuring that priority in the allocation of infrastructure capacity is given to rail services provided—

- (a) pursuant to Council Regulation (EEC) No 1191/69 on public service obligations in transport⁽¹⁾; or
- (b) wholly or partly operated on infrastructure constructed or developed for specialised high speed or freight services.

(5) Where the Secretary of State has given a direction pursuant to paragraph (4)(a) which imposes a particular allocation of infrastructure capacity in the interests of public service, and which results in an infrastructure manager sustaining financial loss, he shall pay to that manager such compensation in respect of the loss as the Secretary of State thinks fair and reasonable in the circumstances of the case.

(6) The Secretary of State may give directions to any allocation body or infrastructure manager requiring the grant of access or transit rights to railway undertakings providing particular types of services or providing services in particular areas if in his opinion the grant of such rights is indispensable to secure the provision of adequate public services, the efficient use of railway infrastructure or the financing of new railway infrastructure.

⁽¹⁾ OJNo. L156, 28.6.69, p.1. Amended by Regulation (EEC) No. 1893/91 (OJ No. L169, 29.6.91, p. 1).

(7) It shall be the duty of any person to whom the Secretary of State gives a direction pursuant to this regulation to comply with and give effect to the direction.

(8) Each allocation body and infrastructure manager shall in allocating infrastructure capacity have regard to any guidance issued by the International Rail Regulator after consultation with the Secretary of State.

Allocation of infrastructure capacity: application in Great Britain

11.—(1) Any international grouping may make an application—

- (a) in the case of a grouping which includes a railway undertaking established in the United Kingdom, for such access and transit rights, or
- (b) in the case of any other grouping, for 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) Any railway undertaking established or to be established in an EEA State may make an application for the grant of such access and transit rights as may be necessary for the purpose of the operation of international combined transport goods services.

(3) Any agreement for the grant of access or transit rights to which paragraph (1) or (2) applies which is entered into otherwise than in pursuance of this Part shall be void.

(4) Any application referred to in paragraph (1) or (2) shall be in writing and shall be made to the allocation body designated pursuant to paragraph (1) of regulation 10 in respect of the class or description of application within which the application falls (“the GB allocation body”) whenever the departure point of the service in question is situated in Great Britain.

(5) On receipt by the GB allocation body of any such application, that body shall immediately send a copy of the application to any relevant infrastructure manager and to any relevant EEA allocation body.

(6) As soon as possible, but in any event no later than one month, after receiving all relevant information relating to such an application any relevant EEA allocation body and any relevant infrastructure manager shall decide whether to grant or to refuse the application and shall immediately inform the GB allocation body of its decision.

(7) As soon as possible, but in any event no later than two months, after receiving all relevant information relating to such an application the GB allocation body shall, together with each relevant EEA allocation body and each relevant infrastructure manager, decide whether the application should be granted or refused and shall inform the applicant of the decision.

(8) If an application is refused, the GB allocation body shall give to the applicant the reasons for such refusal.

(9) Where an application has been refused on the grounds of insufficient capacity, the GB allocation body, any relevant EEA allocation body and any relevant infrastructure manager shall if the applicant so requests reconsider the application on the next occasion that the timetables for the routes concerned are adjusted.

(10) The GB allocation body shall on request furnish interested parties with details of the dates of all relevant timetable adjustments and other administrative arrangements as they may reasonably require in connection with any request or proposed request under paragraph (9).

(11) The GB allocation body, any relevant EEA allocation body and any relevant infrastructure manager may require the payment of a charge to cover their reasonable costs of dealing with an application.

(12) Every international grouping and every railway undertaking to which railway infrastructure capacity is allocated in accordance with these Regulations shall conclude an agreement with

each relevant infrastructure manager covering the necessary administrative, technical and financial matters to regulate traffic control and safety issues concerning the services to be provided by them.

(13) An agreement concluded pursuant to paragraph (12) shall include provision requiring the parties thereto to make such amendments thereto as the International Rail Regulator may direct in order to give effect to any decision he makes on a reference to him under regulation 14.

(14) The terms and conditions of an agreement concluded pursuant to paragraph (12) shall not be discriminatory between railway undertakings or between railway undertakings and the infrastructure manager as a provider of rail services.

(15) Within fourteen days of the conclusion of an agreement pursuant to paragraph (12) each relevant infrastructure manager shall send a copy thereof to the Regulator and the International Rail Regulator and shall notify the GB allocation body and each relevant EEA allocation body of the conclusion of the agreement.

(16) Within twenty one days of receiving a copy of such an agreement the International Rail Regulator shall procure publication of a notice in the Official Journal of the European Communities including the following particulars—

- (a) the name of the applicant railway undertaking or international grouping;
- (b) the name of the GB allocation body, each relevant infrastructure manager and relevant EEA allocation body;
- (c) brief particulars of the access or transit rights granted; and
- (d) a statement that any railway undertaking aggrieved by the decision of the GB allocation body as given effect by the agreement may by notice in writing refer the matter to the International Rail Regulator.

(17) The International Rail Regulator shall if so requested in writing by a railway undertaking which he reasonably considers has an interest in the matter provide to that undertaking such particulars of the agreement as that undertaking may reasonably require, including particulars as to the infrastructure fees payable under the agreement.

(18) In making information available pursuant to paragraph (17) the International Rail Regulator shall have regard to the need for excluding, so far as practicable, any particulars of or about the agreement which, if disclosed, would or might in the opinion of the International Rail Regulator seriously and prejudicially affect the interests of any party to the agreement.

(19) Any infrastructure manager which grants access or transit rights under this regulation shall so operate its control and safety systems as to take account of the services operated in exercise of such rights.

(20) Nothing in this regulation shall be taken to prevent an applicant from making direct contact with any relevant EEA allocation body but, if it does so, it shall so inform the GB allocation body.

(21) In this regulation and regulations 12, 13 and 14—

“EEA allocation body” means an allocation body in an EEA State other than the United Kingdom;

“GB allocation body” has the meaning given by paragraph (4);

“relevant EEA allocation body” means an EEA allocation body which is responsible for the allocation of capacity on railway infrastructure to which the application relates; and

“relevant infrastructure manager” means any infrastructure manager which manages infrastructure in Great Britain to which the application relates (including any allocation body which is also such an infrastructure manager).

Allocation of infrastructure capacity: application outside Great Britain

12.—(1) On receipt by a GB allocation body from an EEA allocation body of a copy of an application for access or transit rights made to the EEA allocation body, the GB allocation body shall immediately send a copy of the application to any relevant infrastructure manager.

(2) As soon as possible but in any event no later than three weeks after receiving all relevant information relating to the application, any such infrastructure manager shall decide whether to grant or to refuse the application in respect of the infrastructure which it manages and shall immediately after making the decision inform the GB allocation body thereof.

(3) As soon as possible but in any event no later than one week after being informed of the decision of each relevant infrastructure manager, the GB allocation body shall inform the EEA allocation body of each such decision.

(4) If an application for infrastructure capacity is refused, the GB allocation body shall give to the EEA allocation body the reasons for such refusal, and if such an application is granted the GB allocation body shall promptly notify the International Rail Regulator of that decision and provide him with the following particulars—

- (a) the name of the applicant, railway undertaking or international grouping;
- (b) the name of the GB allocation body, each relevant infrastructure manager and relevant EEA allocation body; and
- (c) brief particulars of the access or transit rights granted.

(5) Paragraphs (9) to (19) and (21) of regulation 11 shall have effect in relation to applications to which this regulation applies with the following modifications—

- (a) subject to sub-paragraph (c) references to any relevant EEA allocation body shall be disregarded;
- (b) in paragraph (9) the reference to the applicant shall be read as a reference to the EEA allocation body acting at the request of the applicant; and
- (c) in paragraph (15) the reference to each relevant EEA allocation body shall be read as a reference to the EEA allocation body.

Safety certificates

13.—(1) No railway undertaking or international grouping may exercise access or transit rights contained in an agreement with an infrastructure manager concluded pursuant to regulation 11 or 12 unless the undertaking or grouping has produced to the infrastructure manager a safety certificate.

(2) For the purposes of paragraph (1) a safety certificate is any document issued by the Health and Safety Executive confirming that—

- (a)
 - (i) the railway undertaking or international grouping has prepared a safety case under regulation 4 of the Railways (Safety Case) Regulations 1994⁽²⁾ in respect of the operation of trains under the agreement;
 - (ii) the safety case has been accepted by the relevant infrastructure controller (as defined in the said regulation 4); and
 - (iii) the Health and Safety Executive is satisfied with the safety case; or
- (b) the railway undertaking or international grouping is exempt from the said regulation 4 when it operates trains under the agreement.

(2) S.I.1994/237.

Appeals in respect of allocation of infrastructure capacity or the charging of fees

14.—(1) A railway undertaking aggrieved by a decision of the GB allocation body under regulation 11 or 12 for the allocation of railway infrastructure capacity or the charging of infrastructure fees may refer the matter to the International Rail Regulator.

(2) In the case of a decision to refuse an application, such notice shall be given by the applicant within twenty one days of being informed of the decision.

(3) In the case of a decision to grant an application, such notice shall be given within two months of the publication of the particulars of any agreement made pursuant to the decision in the Official Journal of the European Communities in accordance with paragraph (16) of regulation 11 (including that paragraph as applied by paragraph (5) of regulation 12).

(4) Any railway undertaking which refers a decision to the International Rail Regulator under paragraph (1) shall at the same time provide a statement of the reasons why it is aggrieved by the decision.

(5) The International Rail Regulator shall, within seven days of receiving such a notice and a statement of reasons, send a copy thereof to the Regulator, the GB allocation body, any relevant EEA allocation body, the relevant infrastructure manager and the international grouping or railway undertaking concerned.

(6) Any person notified under paragraph (5) may, within twenty one days of receiving such a copy, make such representations as he considers appropriate to the International Rail Regulator concerning the decision to which the notice relates and the statement of reasons.

(7) The International Rail Regulator shall reach a determination on a reference made under this regulation within two months of the date of receiving all relevant information (including any information provided pursuant to paragraph (12)) to enable him to determine the reference.

(8) On disposing of a reference under this regulation the International Rail Regulator may decide that the GB allocation body's decision should stand, be reversed or be modified.

(9) Where the decision of the International Rail Regulator requires the modification of any agreement made pursuant to an allocation body's decision or the grant of rights where an application has been refused he may give such directions as he thinks fit for that purpose and the infrastructure manager and railway undertaking concerned shall be under a duty to comply with and give effect to any such directions.

(10) The International Rail Regulator shall not make a decision requiring the grant of rights by an infrastructure manager or the modification of rights granted by an infrastructure manager unless he is satisfied that the grant would not involve the breach by the infrastructure manager of the duty imposed on him by paragraph (3) of regulation 10 or of any direction given by the Secretary of State pursuant to paragraph (4) of that regulation.

(11) If on a reference to the International Rail Regulator under the preceding provisions of this regulation a question arises as to any matter which may, in the opinion of the International Rail Regulator, have safety implications, he shall refer the question to the Health and Safety Executive whose opinion on the question shall be taken into account by the International Rail Regulator.

(12) It shall be the duty of any railway undertaking, any infrastructure manager and any GB allocation body to provide the International Rail Regulator with such information as he may reasonably require for the purpose of determining a reference to him under this regulation.