
STATUTORY INSTRUMENTS

1998 No. 1340

The Railways Regulations 1998

PART V

MISCELLANEOUS

Amendment of Railways Act 1993

21.—(1) The Railways Act 1993 shall be amended in accordance with the following provisions of this regulation.

(2) After subsection (1) insert—

“(1A) This section does not apply to a person who acts as the operator of a railway asset to the extent that the asset is operated for the purpose of providing international services”.

(3) In subsection (2) of that section, before the definition of “operator”, insert the following definitions—

““international licence” means a licence granted pursuant to a provision contained in subordinate legislation made for the purpose of implementing the Directive of the Council of the European Union dated 19th June 1995 on the licensing of railway undertakings or pursuant to any action taken by an EEA State for that purpose;” and

““international services” means services the provision of which requires an international licence;”.

(4) After subsection (2) of section 6 there shall be inserted the following subsection—

“(2A) In subsection (2) above “EEA State” means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;”.

(5) In subsection (1) of section 17 delete the word “or” after paragraph (b) and after paragraph (c) insert “or” followed by—

“(d) the permission to use a railway facility to which the application relates could be applied for under subordinate legislation made for the purpose of implementing Council Directive [95/19/EC](#) on the allocation of railway infrastructure capacity and the charging of infrastructure fees.”.

(6) In subsection (7) of section 17 for the definition of “the Directive” substitute the following definition—

““the Directives” mean Council Directive No.[91/440/EEC](#) on the development of the Community’s railways and Council Directive No. [95/19/EC](#) on the allocation of railway infrastructure capacity and the charging of infrastructure fees;”.

(7) In that subsection, in the definition of “implementing regulation” substitute “the Directives” for “the Directive” in both places.

(8) In that subsection, in the definition of “international railway access contract”—

(a) substitute “the Directives” for “the Directive” in both places;

- (b) substitute “allocation body” for “infrastructure manager” in both places; and
- (c) delete “other than the United Kingdom”.
- (9) In subsection (1) of section 83, after the definition of “installation owner”, insert—
““international licence” has the meaning given by section 6(2) above;”.
- (10) In subsection (2) of section 145, at the end of paragraph (g) insert—
“or Council Directive [95/18/EC](#) on the licensing of railway undertakings or Council Directive [95/19/EC](#) on the allocation of railway infrastructure capacity and the charging of infrastructure fees”.

Statutory authority to run trains

22. 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 and railway undertakings granted access or transit rights not to be common carriers

23. International groupings and railway undertakings granted access or transit rights under these Regulations shall not in relation to the provision of international services in exercise of those rights be regarded as common carriers by railway.

Application of enactments concerning railways

24. Paragraphs 2 (disapplication of enactments in the case of Concessionaires and through service operators), 3 (extension of enactments in relation to through service operators) and 4 (modification of enactments applying to Concessionaires and through service operators) of Schedule 6 to the Channel Tunnel Act 1987 shall apply to international groupings and railway undertakings, other than the Concessionaires and the British Railways Board, in relation to the provision of international services in exercise of access or transit rights under these Regulations who are not through service operators within the meaning of that Schedule as they apply to those who are.

International groupings

25. 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 or under the Health and Safety at Work, etc. Act 1974⁽¹⁾ each railway undertaking comprised in the grouping shall be guilty of the offence and liable to be proceeded against and punished accordingly; 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

26.—(1) The obligation to comply with regulation 5, paragraph (1) of regulation 6, paragraph (2) of regulation 7, paragraph (2) of regulation 8, paragraph (3) of regulation 10, or paragraphs (12) and

(1) [1974 c. 37.](#)

(14) of regulation 11 (including those paragraphs as applied by paragraph (5) of regulation 12), a decision under paragraph (8) or direction under paragraph (9) of regulation 14, or the rules specified in Schedule 1 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 an allocation body, infrastructure manager, international grouping or railway undertaking in pursuance of 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 International Rail Regulator for an injunction or for interdict or any other relief.

Making of false statements etc.

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

(2) No proceedings shall be instituted in England or Wales in respect of an offence under this regulation except by or with the consent of the Secretary of State or the Director of Public Prosecutions.

Offences by bodies corporate and Scottish partnerships

28.—(1) Where an offence under these Regulations has been committed by a body corporate and it is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where a Scottish partnership is guilty of an offence under these Regulations in Scotland and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Restrictions on disclosure of information

29. Section 145 of the Railways Act 1993 shall have effect in relation to information which has been obtained under or by virtue of any provision of these Regulations and which relates to the affairs of any individual or to any particular business as it has effect in relation to such information obtained under or by virtue of any of the provisions of that Act.

Offences outside the United Kingdom

30.—(1) For the purpose of determining whether a breach of the duty imposed by regulation 5 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(2) is a British subject, or
 - (c) a British protected person (within the meaning of that Act).