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STATUTORY INSTRUMENTS

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**2005 No. 3049**

**The Railways Infrastructure (Access and Management) Regulations 2005**

**PART 1**

**PRELIMINARY**

**Citation, commencement and extent**

**1.**—(1) These Regulations may be cited as the Railways Infrastructure (Access and Management) Regulations 2005 and shall come into force on 28th November 2005.

(2) With the exception of paragraphs 1 to 3 of Schedule 1, these Regulations do not extend to Northern Ireland.

**Amendments, repeals, revocations and transitional provisions**

**2.**—(1) Subject to the transitional provisions in paragraphs (2) and (3), the Railways Regulations 1998<sup>(1)</sup>, in so far as they continue to have effect, are revoked.

(2) The transitional provisions are that the Railways Regulations 1998 shall continue to have effect in relation to any—

- (a) application for transit, or access and transit rights under regulation 11; or
- (b) appeal brought under regulation 14,

of those regulations made, but not concluded, prior to their revocation by virtue of paragraph (1).

(3) In the case of an application or appeal to which paragraph (2) applies, references in regulations 11 and 14 of the Railways Regulations 1998 to the International Rail Regulator shall be taken to be a reference to the Office of Rail Regulation.

(4) Schedule 1 (amendments and repeals) shall have effect.

**Interpretation**

**3.**—(1) In these Regulations—

“access and transit rights” means rights of access to railway infrastructure and rights of transit through a Member State using the railway infrastructure;

“the Act” means the Railways Act 1993<sup>(2)</sup>;

“access charges review” means a review of access charges carried out in accordance with Schedule 4A to the Act<sup>(3)</sup>;

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(1) S.I. 1998/1340, amended by S.I. 1998/1519, regulations 1 and 2; S.I. 2001/3291, regulations 13 - 16; the Railways and Transport Safety Act 2003 (c. 20) section 16(4), (5) and paragraph 4 of Schedule 3, and the British Overseas Territories Act 2002 (c. 8) section 2(3).

(2) 1993 c. 43.

(3) Schedule 4A is amended by Schedule 4 to the Railways Act 2005 (c. 14) on a date to be appointed.

“the 1996 Act” means the Channel Tunnel Rail Link Act 1996(4);

“*ad hoc* request” means a request for individual train paths made other than in accordance with the timetable for the capacity allocation process as set out in Schedule 4;

“allocation body” means a body or undertaking, other than the infrastructure manager, which is responsible, by virtue of regulation 16(3), for the functions and obligations of the infrastructure manager under Part 5 and Schedule 4;

“applicant” means—

- (a) a railway undertaking licensed in accordance with the provisions of Council Directive 95/18/EC dated 19th June 1995 on the licensing of railway undertakings (5), as amended by Directive 2001/13/EC dated 26th February 2001(6) and Directive 2004/49/EC dated 29th April 2004(7), both of the European Parliament and of the Council;
- (b) an international grouping of railway undertakings; or
- (c) a body or undertaking with public service or commercial interest in procuring infrastructure capacity, such as public authorities under Regulation (EEC) No. 1191/69(8) and shippers, freight forwarders, and combined transport operators;

“charging body” means a body or undertaking, other than the infrastructure manager, which is responsible, by virtue of regulation 12(7), for the functions and obligations of the infrastructure manager under Part 4 and Schedule 3;

“charging scheme” means the specific charging rules established in accordance with regulation 12 by the Office of Rail Regulation or, as the case may be, the infrastructure manager;

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

“the Concessionaires”, “the tunnel system” and “shuttle service” have the same meanings as in the Channel Tunnel Act 1987(9);

“the Council Directives” means—

- (a) Council Directive No 91/440/EEC dated 29th July 1991 on the development of the Community’s railways(10), as amended by Directive 2001/12/EC dated 26th February 2001(11) and Directive 2004/51/EC(12) dated 29th April 2004, both of the European Parliament and of the Council; and
- (b) Directive No 2001/14 dated 26th February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway

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(4) 1996 c. 61.

(5) O.J. No L143, 27.6.1995, p70. Added to Annex XIII of the EEA Agreement by Article 1 of the Decision of the EEA Joint Committee No. 71/95 of 15th December 1995 (O.J. No. L57, 7.3.96, p.37).

(6) O.J. No L75, 15.3.2001, p26. Added to Annex XIII of the EEA Agreement by Article 2 of the Decision of the EEA Joint Committee No. 118/2001 of 28th September 2001 (O.J. No. L322, 6.12.2001, p32).

(7) O.J. No. L164, 30.04.04, p58. Added to Annex XIII of the EEA Agreement by Article 1 of the Decision of the EEA Joint Committee No. 151/2004 of 29th October 2004 (O.J. No. L102, 21.4.2005, p27).

(8) Regulation (EEC) No. 1191/69 of the Council of 26th 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, p1). Regulation as last amended by Regulation (EC) No. 1893 (O.J. No. L169, 29.6.1991, p1).

(9) 1987 c. 53. see section 49.

(10) O.J. L237, 24.8.91, p25: the text of the Directive is subject to the amendments in a corrigendum published in O.J. No. L305, 6.11.91, p22.

(11) O.J. No L75, 15.03.01, p1. Added to Annex XIII of the EEA Agreement by Article 1 of the Decision of the EEA Joint Committee No. 118/2001 of 28th September 2001 (O.J. No. L322, 6.12.2001, p32).

(12) O.J. L164, 30.4.04, p16. Added to Annex XIII of the EEA Agreement by Article 1 of the Decision of the EEA Joint Committee No. 151/2004 of 29th October 2004 (O.J. No. L102, 21.4.2005, p27).

infrastructure(13), as amended by Directive 2004/49/EC dated 29th April 2004 on safety on the Community's railways, both of the European Parliament and of the Council;

“development agreement” and “rail link facility” have the same meanings as in the 1996 Act(14), except that the definition of “rail link facility” shall also include any rail maintenance depot which provides maintenance services primarily for rail vehicles providing services on the rail link, as defined in section 56 of that Act, and to which the rail access is via that rail link;

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

“electrical plant” has the same meaning as in the Electricity Act 1989(15);

“factory” has the same meaning as in the Factories Act 1961(16);

“framework agreement” means either—

- (a) an access contract described in section 18(2)(a) of the Act which satisfies one of the conditions in sub-section (1) of that section; or
- (b) a legally binding agreement made other than in pursuance of sections 17 or 18 of the Act setting out the rights and obligations of an applicant and the infrastructure manager or, as the case may be, allocation body 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 any body or undertaking that is responsible in particular for—

- (a) the establishment and maintenance of railway infrastructure; and
- (b) the provision with respect to that infrastructure of network services as defined in section 82 of the Act,

but, notwithstanding that some or all of the functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings, the obligations in respect of those functions remain with the infrastructure manager except where the functions and obligations pass to an allocation or charging body by virtue of regulations 16(3) and 12(7) respectively;

“military establishment” means an establishment intended for use for naval, military or air force purposes or for the purposes of the Department of the Secretary of State responsible for defence;

“mine” has the same meaning as in the Mines and Quarries Act 1954(17);

“nuclear site” has the same meaning as in the Radioactive Substances Act 1993(18);

“quarry” has the same meaning as in the Quarries Regulations 1999(19);

“the Office of Rail Regulation” means the body established under section 15 of the Railways and Transport Safety Act 2003(20);

“railway infrastructure” consists of the items described as “network”, “station” and “track”, in section 83 of the Act, but excludes such items—

- (a) which consist of, or are situated on, branch lines and sidings whose main operation is not directly connected to the provision of train paths;
- (b) within a maintenance or goods depot, or a marshalling yard;

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(13) O.J. No. L75, 15.3.01, p29. Added to Annex XIII of the EEA Agreement by Article 3 of the Decision of the EEA Joint Committee No. 118/2001 of 28th September 2001 (O.J. No. L322, 6.12.2001, p32).

(14) see sections 56 and 17 respectively.

(15) 1989 c. 29. See section 64, to which amendments have been made which are not relevant to this instrument.

(16) 1961 c. 34. See section 175, amended by S.I. 1983/978, regulations 3(1) and Schedule 1.

(17) 1954 c. 70; see section 180, amended by S.I. 1974/2013, regulation 2(1)(b) and Schedule 2, paragraph 3; S.I. 1993/1897, regulation 41(2) and Schedule 3, Part II; S.I. 1999/2024, regulation 47(1) and Schedule 2, Parts 1 and Part II.

(18) 1993 c. 12. See section 47, to which amendments have been made which are not relevant to this instrument.

(19) S.I. 1999/2024, see regulation 3.

(20) 2003 c. 20.

- (c) within a railway terminal, port, factory, mine, quarry, nuclear site or site housing electrical plant;
- (d) which consist of, or are situated on, networks reserved mainly for local, historical or touristic use; and
- (e) within a military establishment;

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

- (a) to which access is granted by virtue of regulations 6 or 7; or
- (b) listed in paragraphs 2, 3 or 4 of Schedule 2,

whether or not that body or undertaking is also an infrastructure manager;

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

“the Treaty” means the consolidated versions of the Treaty on European Union and of the Treaty establishing the European Community<sup>(21)</sup>;

“working day” means any day which is not a Saturday, Sunday, Good Friday, Christmas Day or a bank holiday in England and Wales by virtue of section 1 of the Banking and Financial Dealings Act 1971<sup>(22)</sup>; 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 shall have the same meaning as in the Council Directives.

### Scope

4.—(1) Subject to paragraph (2), regulations 5, 6, 8 to 10, 12(5) and (6) and paragraph 1(2) of Schedule 3 apply to—

- (a) the management of railway infrastructure; and
- (b) the rail transport activities of the railway undertakings established or to be established in an EEA State.

(2) Paragraph (1) does not apply to railway undertakings whose activity is limited to the provision of solely urban, suburban or regional services.

(3) Subject to paragraphs (4) and (5), Parts 2 to 5 and Schedules 2 to 4, with the exception of the provisions referred to in paragraph (1), apply to the use of—

- (a) railway infrastructure; and
- (b) to the extent stated to apply, the services described in regulation 7 and Schedule 2,

for domestic and international rail traffic.

(4) Paragraph (3) does not apply—

- (a) to stand-alone local and regional networks for passenger services on railway infrastructure;
- (b) to networks intended only for the operation of urban or suburban passenger services;
- (c) until such time as capacity is requested by another applicant, to regional networks used for regional freight services solely by a railway undertaking referred to in paragraph (2); or
- (d) to networks—
  - (i) situated within a factory, nuclear site, or site housing electrical plant;

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(21) 2002/C325/01.

(22) 1971 c. 80.

- (ii) within a mine or quarry;
- (iii) used solely in connection with the carrying out of any building works; or
- (iv) within a military establishment,

that are used only by the person responsible for that network for the purposes of freight operations connected with the premises or building works referred to in this subparagraph.

- (5) Part 5 and Schedule 4 do not apply to the services referred to in regulation 6.
- (6) Parts 6 and 7 and Schedule 1 apply to all matters within any part of the scope of Parts 2 to 5 and Schedules 2 to 4.
- (7) These Regulations do not apply to the management of the tunnel system and the rail transport activity of the Concessionaires in respect of any shuttle service.