
STATUTORY INSTRUMENTS

2005 No. 3049

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

PART 5

ALLOCATION OF INFRASTRUCTURE CAPACITY

Capacity allocation

16.—(1) Whilst respecting the requirements for management independence stipulated in regulation 8, the Office of Rail Regulation or, in the case of a rail link facility, the Secretary of State, 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 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 4 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 4.

(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 18 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 purposes 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 19(5), the infrastructure manager must take into account the effect of that reservation on applicants.

Co-operation in the allocation of infrastructure capacity crossing more than one network

17.—(1) This regulation applies to an application for infrastructure capacity crossing more than one network.

- (2) The infrastructure managers must—
- (a) co-operate to enable the efficient creation and allocation of infrastructure capacity pursuant to a request for capacity crossing more than one network; and
 - (b) before consulting on the draft working timetable agree with the other relevant infrastructure managers which international train paths are to be included in that draft working timetable.

(3) The international train paths referred to in paragraph 2(b) may only be adjusted if absolutely necessary.

(4) The infrastructure managers must establish such procedures as are appropriate, in accordance with the requirements set out in these Regulations, to enable the co-operation referred to in paragraph 2(a) to take place, and such procedures must include representatives of the infrastructure managers whose allocation decisions have an impact on one or more infrastructure managers.

(5) Subject to paragraph (6), the procedures established by virtue of paragraph (4) may permit appropriate representatives of infrastructure managers outside the European Community to be associated with these procedures.

(6) Where paragraph (5) applies, the infrastructure managers must inform the European Commission and invite representatives to attend appropriate meetings as an observer.

(7) At any meeting or other activity undertaken to facilitate the allocation of infrastructure capacity across more than one network, decisions may only be taken by representatives of the relevant infrastructure managers.

(8) In acting in accordance with paragraph (2) the infrastructure managers must assess the need for and, where necessary, propose and organise international train paths in such a way as to enable *ad hoc* capacity for freight services to be granted in accordance with regulation 21.

(9) The prearranged train paths referred to in paragraph (8) must be made available to applicants through any infrastructure manager who participates in the international co-ordination of train paths referred to in this regulation.

Framework agreements

18.—(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 purpose of specifying the characteristics of the infrastructure capacity required by and offered to the applicant over a period of time exceeding one working timetable period.

(2) An applicant who is a 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 better 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 up to 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 only be made in exceptional cases, in particular where there is large-scale and long-term investment, and particularly 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.

(11) This regulation is without prejudice to section 18 of the Act in the case of a framework agreement which is an access contract to which that section applies.

(12) Except where section 17(3) of the 1996 Act applies—

- (a) a framework agreement in relation to a rail link facility shall not be subject to the approval of the Office of Rail Regulation under section 18 of the Act; and
- (b) nothing in these Regulations shall have the effect of applying any of sections 17 to 22C of the Act to a rail link facility.

Application for infrastructure capacity

19.—(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 4.

(3) Applicants may submit a request to a single infrastructure manager for infrastructure capacity crossing more than one network and, where such an application is made, that infrastructure manager is permitted to act on behalf of that applicant in seeking from other infrastructure managers the infrastructure capacity requested.

(4) The infrastructure manager must ensure that, for infrastructure capacity crossing more than one network, applicants may apply direct to any joint body established by the infrastructure managers.

(5) Requests 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 4.

Scheduling and co-ordination

20.—(1) The infrastructure manager must, so far as possible—

- (a) meet all requests for infrastructure capacity, including those requests for train paths which cross more than one network; and
- (b) in so doing, 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 22 and 23.

(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, and through co-ordination of the requests, to ensure the best possible matching of all requirements 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 Office of Rail Regulation, in such form or manner as that Office 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

21.—(1) In addition to making an application for capacity in accordance with the annual timetable process described in regulation 19, 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 respond rapidly to foreseeable *ad hoc* requests for infrastructure capacity.

Declaration of specialised infrastructure

22.—(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) before making such a designation the infrastructure manager must consult—
 - (i) the Secretary of State;
 - (ii) where an element of the infrastructure which it is proposed to designate is in Scotland, Scottish Ministers;
 - (iii) the Office of Rail Regulation; and
 - (iv) all other interested parties; 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

23.—(1) Where, after the co-ordination of requests for capacity and consultation with the applicants in accordance with regulation 20(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 Office of Rail Regulation;
- (d) the Secretary of State; and
- (e) where any element of the infrastructure which has been declared to be congested is in Scotland, Scottish Ministers.

(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 24, unless a capacity enhancement plan, as described in regulation 25, 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 paragraph (1).

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

Capacity analysis

24.—(1) Where required in accordance with regulation 23(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 Secretary of State or, where any part of the capacity analysis relates to railway infrastructure in Scotland, Scottish Ministers, 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 23(1) or (2) and make the findings of the analysis available to the parties described in regulation 23(3).

Capacity enhancement plan

25.—(1) The infrastructure manager must, within six months of the publication of a capacity analysis in accordance with regulation 24, produce a capacity enhancement plan.

- (2) In producing the capacity enhancement plan, the infrastructure manager must—
- (a) consult such interested parties as he considers necessary, including those described in regulation 23(3); and
 - (b) at least one month before the deadline for completion of the plan seek the prior approval of the Secretary of State or, if any part of the capacity enhancement plan relates to infrastructure in Scotland, Scottish Ministers, to the capacity enhancement plan.
- (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 subparagraph (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 3, the infrastructure manager must cease the levying of such charge in situations where—
- (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, as required by this regulation; or
 - (b) he fails to make progress with implementation of those areas of the action plan produced in accordance with paragraph (4).
- (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 Office of Rail Regulation or, in the case of a rail link facility, the Secretary of State.
- (7) At the end of the six month period starting with the publication of the capacity analysis in accordance with regulation 24, 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

26.—(1) Subject to paragraph (2) the infrastructure manager must, in particular where infrastructure has been declared to be congested in accordance with regulation 23, 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

27.—(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.