
STATUTORY INSTRUMENTS

2005 No. 3049

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

PART 6

REGULATION AND APPEALS

Regulatory body

28.—(1) Section 4 of the Act has effect, to the extent relevant and consistent with the Council Directives, as if the reference to the functions assigned or transferred to the Office of Rail Regulation under or by virtue of Part 1 of the Act included the functions assigned to it under or by virtue of these Regulations.

(2) The Office of Rail Regulation or, in the case of a rail link facility, the Secretary of State, must ensure that charges for the use of railway infrastructure imposed by the infrastructure manager comply with the requirements of Part 4 and Schedule 3.

(3) Subject to paragraph (4), negotiations between an applicant and the infrastructure manager about the level of infrastructure charges shall only be permitted if these are carried out under the supervision of the Office of Rail Regulation and, if such negotiations are likely to contravene the requirements of these Regulations, it shall be the duty of the Office of Rail Regulation to intervene.

(4) Where negotiations described in paragraph (3) relate to the level of infrastructure charges in respect of a rail link facility, references in that paragraph to the Office of Rail Regulation shall be taken to be references to the Secretary of State.

(5) The Office of Rail Regulation must exchange information about its—

- (a) work;
- (b) decision making principles; and
- (c) practice,

with other national regulatory bodies for the purpose of co-ordinating decision making principles across the Community.

(6) Where the Office of Rail Regulation, by virtue of regulations 20(7)(b), 29(4) or 30(2), prescribes the manner and form of any notification, appeal or complaint to be lodged in accordance with those regulations, that Office must make that prescription and details of such manner and form publicly available.

Appeals to the regulatory body

29.—(1) An applicant has a right of appeal to the Office of Rail Regulation if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager, an allocation body, a charging body, a service provider or, as the case may be, a railway undertaking, concerning any of the matters described in paragraph (2).

(2) Those matters are—

- (a) the network statement produced in accordance with regulation 11;
- (b) the information which, by virtue of regulation 11(4), must be included in that network statement;
- (c) the allocation process and its result as prescribed in Part 5 and Schedule 4;
- (d) the charging scheme and charging system established in accordance with regulation 12;
- (e) the level or structure of infrastructure fees, the principles of which are prescribed in Part 4 and Schedule 3, which it is, or may be, required to pay; and
- (f) the arrangements in connection with the entitlements to access granted under Part 2 and Schedule 2.

(3) Where the matter of an appeal under this regulation is one in relation to which directions may be sought from the Office of Rail Regulation under sections 17 or 22A of the Act, the applicant must lodge the appeal by way of an application under the relevant section and, subject to any applicable provisions of these Regulations, the appropriate provisions of that Act shall apply to the consideration of that application.

(4) Where the matter of an appeal under this regulation is one to which paragraph (3) does not apply because—

- (a) the railway facility to which the appeal relates is, by virtue of section 20 of the Act, an exempt facility;
- (b) the appeal relates to a rail link facility; or
- (c) the subject matter of the appeal is not within the scope of directions which may be sought under sections 17 or 22A of the Act,

the applicant must lodge the appeal by way of an application under this regulation, in such form and manner as the Office of Rail Regulation may from time to time prescribe.

(5) When considering an appeal in respect of circumstances described in paragraph (6), the Office of Rail Regulation is under a duty to determine whether, in respect of the access to which the appeal relates, viable alternatives under market conditions exist.

(6) Those circumstances are when the appeal contests that—

- (a) viable alternatives by rail under market conditions do not exist so as to justify a request under regulation 6(2) being subject to restrictions; or
- (b) viable alternative means of the service being provided under market conditions do not exist so as to justify the refusal of a request for the supply of services under regulation 7(4).

(7) Subject to paragraph (8), the Office of Rail Regulation must, within two months of the date of receipt of all relevant information (including information provided pursuant to regulation 31)—

- (a) make a decision on; and
- (b) where appropriate, issue a direction to the infrastructure manager, allocation body, charging body, service provider or, as the case may be, railway undertaking, to remedy the situation arising out of,

an appeal brought under this regulation.

(8) Where a decision or direction under paragraph (7) would affect a rail link facility or, as the case may be, the operation of the development agreement, the Office of Rail Regulation must consult and, subject to paragraph (9), take into account any representations made by, the Secretary of State before making or issuing such a decision or direction.

(9) Where paragraph (8) applies and, following consultation, the Secretary of State submits representations, the Office of Rail Regulation must, before making or issuing a decision or direction,

consult such interested parties as it considers appropriate on the representations submitted by the Secretary of State.

(10) In making a decision on an appeal brought under this regulation against refusal by an infrastructure manager or allocation body to allocate infrastructure capacity, or against the terms of an offer of infrastructure capacity, the Office of Rail Regulation must either—

- (a) confirm that no modification of the infrastructure manager or allocation body's decision is required; or
- (b) require modification of that decision in accordance with directions issued by that Office.

(11) Without prejudice to the right of any person to make an application to the court under Part 54 of the Civil Procedure Rules 1998⁽¹⁾—

- (a) a decision by the Office of Rail Regulation on an appeal brought under this regulation is binding on all parties affected by that decision; and
- (b) it is the duty of any person to whom a direction is given under this regulation to comply with and give effect to that direction.

(12) Where the subject matter of an appeal relates to the allocation of capacity crossing more than one network and, in particular, the procedures described in regulation 17, the Office of Rail Regulation may, where the decision of an infrastructure manager in another Member State is a material fact, refer that appeal to the Commission for a decision.

Competition in the rail services markets

30.—(1) The Office of Rail Regulation shall be responsible for—

- (a) monitoring; and
- (b) determining complaints lodged under paragraph (2) relating to,

competition in the rail services markets, including the rail freight transport market.

(2) Any applicant or interested party may submit a complaint to the Office of Rail Regulation, in such form and manner as that Office may from time to time prescribe, if it believes that it has been treated unjustly, been the subject of discrimination or has been injured in any other way.

(3) Subject to paragraph (4) where, following receipt of—

- (a) a complaint lodged under paragraph (2); or
- (b) information gathered on its own initiative,

the Office of Rail Regulation identifies undesirable developments in relation to competition in the rail services markets it must, at the earliest possible opportunity, determine measures and take appropriate action to correct those developments.

(4) Paragraph (3) is without prejudice to the rights of any person to make an application to the court under Part 54 of the Civil Procedure Rules 1998.

Provision of information to the regulatory body

31. If the Office of Rail Regulation requests information in connection with its functions under regulations 10, 29 or 30, section 80 of the Act (duty of certain persons to furnish information on request) shall apply as if—

- (a) in subsection (1)—
 - (i) for “Licence holders” there were substituted “An infrastructure manager, allocation body, charging body, applicant, service provider or any other party”;

(1) S.I.1998/3132. Regulation 54 was inserted by S.I. 2000/2092, regulation 22 and the Schedule.

- (ii) for “he, they or it” in both places there were substituted “it”; and
 - (iii) for “functions of the Secretary of State, the Scottish Ministers or (as the case may be) that Office under this Part, the Transport Act 2000 or the Railways Act 2005 or any other function or activity of his, theirs or its in relation to railway services” there were substituted “of its functions under subordinate legislation made for the purpose of implementing Council Directive [91/440/EEC](#) dated 29 July 1991 on the development of the Community’s railways, as amended by Directive [2001/12/EC](#) dated 26 February 2001 and Directive [2004/51/EC](#) dated 29 April 2004, both of the European Parliament and of the Council, and Directive [2001/14/EC](#) dated 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure, as amended by Directive [2004/49/EC](#) dated 29 April 2004 on safety on the Community’s railways, both of the European Parliament and of the Council”; and
- (b) for “Secretary of State, the Scottish Ministers or the Office of Rail Regulation” in each place there were substituted “Office of Rail Regulation”.

The International Rail Regulator

32.—(1) Subject to the transitional provisions set out in regulation 2, the office of “International Rail Regulator”, as provided for in the Railways Regulations 1998⁽²⁾, is abolished.

(2) All property, rights and liabilities to which the International Rail Regulator is entitled or subject at the coming into force of this regulation (including rights and liabilities relating to staff) are transferred to the Office of Rail Regulation.

(2) S.I. [1998/1340](#), see regulation 9 and Schedule 2.