
STATUTORY INSTRUMENTS

2005 No. 3050

The Railway (Licensing of Railway Undertakings) Regulations 2005

PART 1

GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Railway (Licensing of Railway Undertakings) Regulations 2005 and shall come into force on 28th November 2005.

(2) These Regulations do not extend to Northern Ireland.

Interpretation

2.—(1) In these Regulations, except where the context otherwise requires—

“the 1993 Act” means the Railways Act 1993(1);

“the 1995 Directive” means Council Directive 95/18/EC dated 19th June 1995 on the licensing of railway undertakings(2), as amended by Directive 2001/13/EC dated 26th February 2001(3) and Directive 2004/49/EC dated 29th April 2004(4), both of the European Parliament and of the Council;

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

“European licence” means a licence granted to a railway undertaking pursuant to these Regulations (valid throughout the territory of any EEA State) by which the capacity of the railway undertaking as such is recognised and which authorises the undertaking to provide in and between EEA States such train services as may be specified in the licence;

“ORR” means the Office of Rail Regulation, being the body established under section 15 of the Railways and Transport Safety Act 2003(5);

“SNRP” means a statement of national regulatory provisions, issued pursuant to regulation 10; and

“train service” means a service for the transport of goods or passengers (or both) by rail.

(2) Except where the context otherwise requires, other expressions used in these Regulations and in the 1995 Directive shall have the same meaning as in that Directive.

(1) 1993 c. 43.

(2) O.J. L 143, 27.6.1995, p. 70. 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. L 57, 7.3.96, p.37).

(3) O.J. L 75, 15.3.2001, p. 26. 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. L 322, 6.12.2001, p.32).

(4) O.J. L 164, 30.4.2004, p. 44, to which there has been a corrigendum which is not relevant to these Regulations. 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. L 102, 21.4.2005, p.27).

(5) 2003 c. 20.

Repeals and revocations, and consequential amendments

3. Schedule 1 (amendments, repeals and revocations) shall have effect.

Scope

4.—(1) Subject to paragraph (2), these Regulations apply in relation to the licensing of railway undertakings which provide train services and are established or to be established in an EEA State.

(2) These Regulations do not apply in relation to a railway undertaking whose activity is limited to any of the following—

- (a) operating rail passenger services on local and regional stand-alone railway infrastructure;
- (b) operating urban or suburban rail passenger services;
- (c) the provision of regional rail freight services that are not covered by the scope of Council Directive 91/440/EEC dated 29th July 1991 on the development of the Community's railways⁽⁶⁾;
- (d) carrying out freight operations on privately owned railway infrastructure that exists solely for use by the infrastructure owner for its own freight operations; or
- (e) providing shuttle services for road vehicles through the Channel Tunnel.

PART 2

EUROPEAN LICENCES

Prohibition of unlicensed provision of services

5.—(1) Where a person is a railway undertaking to which these Regulations apply, that person shall not provide a train service in Great Britain unless he is authorised to do so by a European licence which is appropriate for that train service, and any person who provides such a service without such a licence shall be guilty of an offence.

(2) Any person who is guilty of an offence under this regulation shall be liable—

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

(3) No proceedings shall be instituted in England and Wales in respect of an offence under this regulation except by or on behalf of the ORR.

(4) In this regulation the expression “European licence” includes a licence granted pursuant to any action taken by an EEA State for the purpose of implementing the 1995 Directive.

Appointment of licensing authority and grant of European licences

6.—(1) The ORR is designated as the body responsible for granting European licences.

(2) The ORR shall determine and publish on its website the procedures for the granting of European licences and inform the Commission of those procedures.

(3) Subject to and in accordance with these Regulations, the ORR shall grant a European licence to a railway undertaking if that undertaking—

- (a) is established in Great Britain, and
- (b) makes an application to the ORR in accordance with the published procedures.

⁽⁶⁾ O.J. L 237, 24.8.1991, p.25.

(4) A European licence may authorise the provision of train services generally or be restricted to particular types of service specified in the licence.

(5) An applicant shall submit with his application such application fee as the ORR may reasonably require and such information, specified in the published procedures referred to in paragraph (3)(b), as the ORR reasonably requires in order to be satisfied that the applicant satisfies the requirements referred to in Schedule 2.

(6) At any time after submitting the application the applicant shall submit such further information as the ORR may reasonably require in connection with the application.

(7) The ORR shall grant a European licence if, and only if, it is satisfied before the start of the applicant's activities that the applicant will be able at any time to satisfy the requirements referred to in Schedule 2 as to good repute, financial fitness, professional competence and insurance cover for civil liabilities.

(8) An application for a European licence shall be determined by the ORR as soon as possible and in any event within three months of receipt of all the information referred to in paragraphs (5) and (6).

(9) In respect of each application for a European licence the ORR shall give notice stating—

- (a) that the applicant has made an application for a European licence;
- (b) the name of the applicant and the address of its registered or principal office; and
- (c) a summary of the activities which the applicant wishes to carry out pursuant to the European licence.

(10) A notice under paragraph (9) shall be given by publishing the notice in such manner as the ORR considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the European licence.

(11) The ORR shall inform the applicant of its decision and, where it refuses to grant a European licence, the refusal shall state the reasons for its decision.

(12) When the ORR grants a European licence in accordance with this regulation it shall forthwith inform the European Commission of the grant.

(13) Any sums received by the ORR under this regulation shall be paid into the Consolidated Fund.

(14) Schedule 2 (qualifications for European licence) shall have effect.

Validity of European licences

7.—(1) A European licence shall, unless previously revoked or surrendered in accordance with any provision in these Regulations or the licence, continue in force as long as the ORR is satisfied that the railway undertaking concerned continues—

- (a) to satisfy the requirements referred to in Schedule 2 as to good repute, financial fitness, professional competence and insurance cover for civil liabilities, and
- (b) to submit the licence to the ORR for review or approval when so required under regulation 8.

(2) A European licence may incorporate specific provisions governing the suspension or revocation of the licence.

Monitoring, suspension and revocation of European licences

8.—(1) Subject to paragraph (5), this regulation applies to a railway undertaking to which a European licence has been granted by the ORR.

(2) If at any time the ORR considers that there is serious doubt whether a railway undertaking complies with a requirement referred to in Schedule 2, it may take such steps as are necessary to enable it to determine whether or not the undertaking does so comply.

(3) If, having taken the steps referred to in paragraph (2), the ORR is satisfied that a railway undertaking does not comply with any such requirement, it shall revoke the European licence held by the railway undertaking or suspend it.

(4) The ORR shall revoke a European licence if—

- (a) proceedings have been commenced for the winding up of a railway undertaking on the grounds that the undertaking is unable to pay its debts, or
- (b) an application for a railway administration order has been made in relation to the railway undertaking under section 60 of the 1993 Act on the grounds that the undertaking is or is likely to be unable to pay its debts,

and the ORR is satisfied that there is no realistic prospect of satisfactory financial restructuring of the undertaking within a reasonable period of time.

(5) Where the ORR is satisfied that there is serious doubt whether a railway undertaking to which a European licence has been granted by a licensing authority other than itself complies with any requirement of the 1995 Directive, it shall without delay so notify that licensing authority; and in this paragraph, the expression “European licence” means a licence granted pursuant to any action taken by an EEA State for the purpose of implementing the 1995 Directive.

(6) Where the ORR has suspended or revoked a European licence solely on the grounds of the non-compliance by the railway undertaking with the requirements of financial fitness specified in Schedule 2, the ORR may grant to the undertaking a temporary European licence pending the re-organisation of the railway undertaking.

(7) A temporary European licence under paragraph (6) shall not be granted—

- (a) where the ORR considers that safety would be jeopardised, or
- (b) for a period exceeding six months.

(8) Where a railway undertaking to which a European licence has been granted has either ceased the operations to which the licence relates for a continuous period of six months or, subject to paragraph (9), has not commenced such operations within six months of the date of such grant, then the ORR may either require the railway undertaking to resubmit its licence to the ORR for approval or suspend the licence.

(9) When making an application for a European licence, or where the ORR has required a railway undertaking to resubmit its European licence in pursuance of paragraph (8) on the grounds that the railway undertaking has not commenced such operations, the railway undertaking shall be entitled to request that a period longer than six months be granted in which it can commence operations, taking into account the specific nature of the services to be provided.

(10) In the event of a change affecting the legal situation of a railway undertaking, in particular following a change in the control or ownership of the railway undertaking as a result of a merger with or take-over by another undertaking, the ORR may require the railway undertaking to submit the European licence to the ORR for approval.

(11) Where a European licence is submitted for approval pursuant to paragraph (10), the railway undertaking may continue operations whilst its licence is under review unless the ORR decides that safety is jeopardised by the change referred to in paragraph (10).

(12) If the ORR decides that safety is jeopardised by that change, it shall notify the railway undertaking of its decision and of the grounds for it.

(13) When a railway undertaking intends significantly to change or extend its activities from those in respect of which a European licence was granted to it, the railway undertaking shall submit its licence to the ORR for review.

(14) When the ORR amends, suspends or revokes a European licence it shall forthwith inform the European Commission of such amendment, suspension or revocation.

PART 3

STATEMENTS OF NATIONAL REGULATORY PROVISIONS

Prohibition on operating trains without a statement of national regulatory provisions

9.—(1) Where a person is a railway undertaking to which these Regulations apply, that person may not provide train services in Great Britain unless (in addition to being authorised by a European licence) he holds a valid statement of national regulatory provisions (“SNRP”).

(2) Any person who provides such services without holding such a statement shall be guilty of an offence.

(3) Any person who is guilty of an offence under this regulation shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
- (b) on conviction on indictment, to a fine.

(4) No proceedings shall be instituted in England or Wales in respect of an offence under this regulation except by or on behalf of the ORR.

(5) In this regulation and in regulations 10 and 11, the expression “European licence” includes a licence granted pursuant to any action taken by an EEA State for the purpose of implementing the 1995 Directive.

Statements of national regulatory provisions (“SNRPs”)

10.—(1) Upon application being made, the ORR shall issue a SNRP to a holder of a valid European licence who desires to provide train services in Great Britain.

(2) Any application for a SNRP—

- (a) shall be made to the ORR and in such form and manner as the ORR may from time to time determine and publish, and
- (b) shall be accompanied by a copy of the European licence, if already held.

(3) A SNRP shall continue in force for such period as may be specified in or determined by or under the SNRP.

Conditions of SNRPs

11.—(1) Subject to paragraph (4), a SNRP shall include one or more conditions (whether or not relating to the activities for which the applicant for the SNRP requires a European licence) as appear to the ORR to be requisite or expedient having regard to the duties imposed on it by section 4 of the 1993 Act; and in this context, the references in that section to the functions assigned or transferred to the ORR under or by virtue of Part 1 of the 1993 Act shall have effect as if they were references to the functions conferred on the ORR under or by virtue of this Part of these Regulations.

(2) Subject to paragraph (4), a SNRP may include conditions requiring the rendering to the ORR of a payment on the grant of the SNRP or payments during the currency of the SNRP, or both, of such amount or amounts as may be determined by or under the SNRP.

(3) Without prejudice to the generality of paragraph (1), conditions included in a SNRP by virtue of paragraph (1) may impose any of the following requirements—

- (a) specific technical and operational requirements for rail services;
- (b) safety requirements applying to staff, rolling stock and the internal organisation of the undertaking;
- (c) provisions on health, safety, social conditions and the rights of workers and consumers;
- (d) requirements applying to all undertakings in the relevant railway sector designed to offer benefits or protection to consumers.

(4) A condition may not—

- (a) impose any requirement which is incompatible with Community law, or
- (b) be applied in a discriminatory manner.

(5) Any sums received by the ORR in consequence of the provisions of any condition of a SNRP shall be paid into the Consolidated Fund.

Referral for Commission's opinion

12.—(1) A railway undertaking may at any time refer to the European Commission the question of whether a condition included in a SNRP—

- (a) is compatible with Community law, or
- (b) has been applied in a non-discriminatory manner.

(2) Where a railway undertaking refers a question referred to in paragraph (1) to the European Commission, and the European Commission delivers an opinion that a requirement imposed through a condition in a SNRP is incompatible with Community law or has been applied in a discriminatory manner, the ORR shall review the condition.

Modification of SNRPs by consent

13.—(1) Subject to regulation 11 and to the following provisions of this regulation, the ORR may modify the conditions of a SNRP if the SNRP holder consents to the modifications.

(2) Before making modifications under this regulation, the ORR shall give notice—

- (a) stating that it proposes to make the modifications and setting out their effect,
- (b) stating the reasons why it proposes to make the modifications, and
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall, before making the modifications, consider any representations or objections which are duly made and not withdrawn.

(3) A notice under paragraph (2) shall be given—

- (a) by publishing the notice in such manner as the ORR considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
- (b) by serving a copy of the notice on the SNRP holder.

Application and modification of statutory provisions in relation to SNRPs and SNRP holders

14. Schedule 3 (application and modification of statutory provisions in relation to SNRPs and SNRP holders) shall have effect for the purpose of applying certain enactments to SNRPs and SNRP holders.

PART 4

MISCELLANEOUS

Making of false statements etc

15.—(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, or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence and 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

16.—(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.

General duties of the Rail Passengers' Council

17.—(1) Subsection (5) of section 76 of the 1993 Act⁽⁷⁾ (general duties of the Rail Passengers' Council) has effect in relation to holders of European licences and to SNRPs as if—

- (a) the reference to the holder of a passenger licence included a reference to the holder of a European licence which authorises the carriage of passengers by railway;
- (b) the reference to any condition of the licence included a reference to any condition of a SNRP held by the holder of the European licence;
- (c) the reference to the Secretary of State, in the second and third places where it occurs, included a reference to the ORR; and

(7) Section 76(5) was amended by the Transport Act 2000, Schedule 22, Part 1, paragraphs 1 and 8, and Schedule 17, Part 2, paragraphs 17 and 20, and the Railways Act 2005 (c. 14), Schedule 1, paragraph 32.

- (d) the reference to the Secretary of State exercising such of his powers as he considers appropriate included a reference to the ORR exercising such of its powers as it considers appropriate.

(2) In paragraph (1), the expression “European licence” includes a licence granted pursuant to any action taken by an EEA State for the purpose of implementing the 1995 Directive.

Restrictions on disclosure of information

18. Section 145 of the 1993 Act (restriction on disclosure of information) 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.

Duties of the London Transport Users' Committee

19.—(1) Subsection (3) of section 252C of the Greater London Authority Act 1999⁽⁸⁾ (duties of the London Transport Users' Committee) has effect in relation to holders of European licences and to SNRPs as if—

- (a) the reference to the holder of a licence under Part 1 of the Railways Act 1993 contravening a condition of the licence included a reference to the holder of a European licence contravening a condition of a SNRP held by him;
- (b) the reference to the Secretary of State included a reference to the ORR;
- (c) the reference to his referring the matter to the Committee and their referring it back to him included a reference to the ORR's referring the matter to the Committee and their referring it back to the ORR; and
- (d) the reference to his exercising such of his powers as he considers appropriate included a reference to the ORR's exercising such of its powers as it considers appropriate.

(2) In paragraph (1), the expression “European licence” includes a licence granted pursuant to any action taken by an EEA State for the purpose of implementing the 1995 Directive.

Transitional provisions relating to existing licences and licence exemptions

20. Schedule 4 (transitional provisions relating to existing licences and licence exemptions) shall have effect.

Signed by authority of the Secretary of State for Transport

1st November 2005

Derek Twigg
Parliamentary Under Secretary of State
Department for Transport

(8) 1999 c. 29; section 252C was inserted by the Railways Act 2005 (c. 14), Schedule 6, paragraph 3.