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STATUTORY INSTRUMENTS

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**2016 No. 645**

**TRANSPORT**

**The Railways (Access, Management and Licensing  
of Railway Undertakings) Regulations 2016**

<i>Made</i>	- - - -	<i>21st June 2016</i>
<i>Laid before Parliament</i>		<i>7th July 2016</i>
<i>Coming into force</i>	- -	<i>29th July 2016</i>

The Secretary of State for Transport makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>(1)</sup>.

The Secretary of State is a Minister designated<sup>(2)</sup> for the purposes of that section in relation to measures relating to railways and railway transport.

**PART 1**

**Preliminary**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 and come into force on 29th July 2016.

(2) With the exception of paragraph 5 of Schedule 1, these Regulations do not extend to Northern Ireland.

**Amendments and revocations**

2.—(1) The following instruments are revoked—

- (a) the Railways Infrastructure (Access and Management) Regulations 2005<sup>(3)</sup>;

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(1) 1972 c. 68. Section 2(2) is amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a) and the European Union (Amendment) Act 2008 (c. 7), Schedule, Part 1.

(2) S.I. 1996/266, to which there have been amendments not relevant to these Regulations.

(3) S.I. 2005/3049, amended by S.I. 2009/1122, regulation 2; S.I. 2010/675, Schedule 26, Part 2, paragraph 27; S.I. 2011/1043, article 6(2)(a); S.I. 2015/786, regulations 3 to 8; and S.I. 2015/1682, Schedule, Part 2, paragraph 5.

- (b) the Railways Infrastructure (Access and Management) (Amendment) Regulations 2009(4); and
  - (c) the Railways Infrastructure (Access and Management) (Amendment) Regulations 2015(5).
- (2) Schedule 1 (amendments) has effect.

### Interpretation

#### 3. In these Regulations—

“the Act” means the Railways Act 1993(6);

“the 1996 Act” means the Channel Tunnel Rail Link Act 1996(7);

“access rights” means rights of access to railway infrastructure for the purpose of operating a service for the transport of goods or passengers;

“access charges review” means a review of access charges carried out in accordance with Schedule 4A to the Act(8);

“*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” means the allocation of railway infrastructure capacity by an infrastructure manager;

“allocation body” means a body or undertaking, other than the infrastructure manager, which is responsible, by virtue of regulation 19(4), for the functions and obligations of the infrastructure manager under Part 5 and Schedule 4;

“alternative route” means another route between the same origin and destination where there is substitutability between the two routes for the operation of the freight or passenger service concerned by the railway undertaking;

“applicant” means a railway undertaking or an international grouping of railway undertakings or other persons or legal entities, such as competent authorities under Regulation (EC) No 1370/2007 and shippers, freight forwarders and combined transport operators, with a public-service or commercial interest in procuring infrastructure capacity;

“capacity enhancement plan” means a measure or series of measures with a calendar for their implementation which aim to alleviate the capacity constraints which led to the declaration of an element of railway infrastructure as “congested infrastructure”;

“the Channel Tunnel charging framework” means the charging framework set out in the Annex to the IGC regulation;

“charging body” means a body or undertaking, other than the infrastructure manager, which is responsible, by virtue of regulation 14(9), 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 14 by the Office of Rail and Road or the infrastructure manager;

(4) S.I. 2009/1122.

(5) S.I. 2015/786, amended by S.I. 2015/1682, Schedule, Part 2, paragraph 10(oo).

(6) 1993 c. 43.

(7) 1996 c. 61 to which supplementary provisions relating to the rail link are applied under the Channel Tunnel Rail Link (Supplementary Provisions) Act 2008 (c. 5).

(8) Schedule 4A was inserted by the Transport Act 2000 (c. 38), Schedule 24. It is amended by the Enterprise Act 2002 (c. 40), Schedule 25, paragraph 30(1) and (15); the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, Part 1, paragraphs 1 and 3; the Railways Act 2005 (c. 14), Schedule 4 and Schedule 13, Part 1; the Enterprise and Regulatory Reform Act 2013 (c. 24), Schedule 6, Part 1, paragraphs 69 and 81; S.I. 2014/892, Schedule 1, Part 2, paragraphs 99, 110, 111 and 112; and S.I. 2015/1682, Schedule, Part 1, paragraph 1(ccc).

“charging system” means the system established by an infrastructure manager to determine access charges under regulation 14(2), (4) or (5);

“competent authority” has the same meaning as in Article 2 of Regulation (EC) No 1370/2007;

“congested infrastructure” means an element of railway infrastructure for which demand for infrastructure capacity cannot be fully satisfied during certain periods, even after coordination of the different requests for capacity;

“coordination” means the process through which the infrastructure manager and applicants will attempt to resolve situations in which there are conflicting applications for infrastructure capacity;

“cross-border agreement” means any agreement between two or more Member States or between Member States and third countries intended to facilitate the provision of cross-border rail services;

“development agreement” has the same meaning as in the 1996 Act;

“the Directive” means Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)(9);

“dominant body or firm” means a body or firm which is active and holds a dominant position in the national railway transport services market in which the relevant service facility is used;

“electrical plant” has the same meaning as in the Electricity Act 1989(10);

“factory” has the same meaning as in the Factories Act 1961(11);

“framework agreement” means either—

- (a) an access contract described in section 18(2)(a) of the Act(12) 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 section 17 or 18 of the Act(13) 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;

“the IGC regulation” means the regulation of the Intergovernmental Commission of 23rd March 2015 transferring economic rail regulation competence from the Intergovernmental Commission to the national regulatory bodies, setting out principles for the cooperation between them and establishing a charging framework for the Channel Fixed Link(14);

“infrastructure capacity” means the potential to schedule train paths requested for an element of railway infrastructure for a certain period;

“infrastructure manager” means any body or undertaking that is responsible in particular for—

- (a) the establishment, management and maintenance of railway infrastructure, including traffic management and control-command and signalling; and

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(9) O.J. No. L 343, 14.12.12, p. 32, as corrected by Corrigendum, O.J. L 67, 12.3.15, p. 32.

(10) 1989 c. 29. See section 64, amended by the Utilities Act 2000 (c. 27), Schedule 6, Part 2, paragraphs 24 and 38(1) and (3). There are other amendments to this provision which are not relevant to these Regulations.

(11) 1961 c. 34. See section 175, amended by S.I. 1983/978, regulation 3(1) and Schedule 1.

(12) Section 18 is amended by the Transport Act 2000 (c. 38), sections 212(6) and 230(1) and (2), Schedule 27, paragraphs 17 and 22, and Schedule 31, Part 4; the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, Part 1, paragraphs 1 and 3(b); the Railways Act 2005 (c. 14), Schedule 1, Part 1, paragraph 12(1) and (3); S.I. 2005/3049, Schedule 1, Part 1, paragraph 4(c); and S.I. 2015/1682, Schedule, Part 1, paragraph 1(z).

(13) Section 17 is amended by the Transport Act 2000 (c. 38), section 233(1), Schedule 27, paragraphs 17 and 21, and Schedule 31, Part 4; the Railways Act 2005 (c. 14), Schedule 1, Part 1, paragraph 12(1) and (2) and Schedule 11, paragraphs 1 and 3(a); S.I. 1998/1340, regulation 21(5); S.I. 2005/3049, Schedule 1, Part 1, paragraph 4 (a) and (b); and S.I. 2015/1682, Schedule, Part 1, paragraph 1(y).

(14) See the Schedule to S.I. 2015/785.

(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 19(4) and 14(9) respectively;

“international passenger service” means a passenger service where the train crosses at least one border of a Member State and where the principal purpose of the service is to carry passengers between stations located in different Member States; the train may be joined and/ or split, and the different sections may have different origins and destinations, provided that all carriages cross at least one border;

“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<sup>(15)</sup>;

“network” means, except in those cases where the context otherwise requires, the entire railway infrastructure managed by an infrastructure manager;

“network statement” means the statement required to be prepared and published under regulation 13;

“nuclear site” has the same meaning as in the Energy Act 2013<sup>(16)</sup>;

“public passenger transport”, “public service contract” and “public service operator” have the same meaning as in Article 2 of Regulation (EC) No 1370/2007;

“quarry” has the same meaning as in the Quarries Regulations 1999<sup>(17)</sup>;

“the Office of Rail and Road” means the body established under section 15 of the Railways and Transport Safety Act 2003<sup>(18)</sup>;

“rail link facility” has the same meaning as in section 17(5) of the 1996 Act, except that rail link facility also includes any rail maintenance depot which provides maintenance services primarily for rail vehicles providing services on the rail link (as defined in section 56 of the 1996 Act) to which the rail access is via that rail link;

“railway infrastructure” consists of the items described as “network”, “station” and “track”, in section 83 of the Act<sup>(19)</sup>, 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;
- (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;

<sup>(15)</sup> 1954 c. 70; see section 180, substituted by S.I. 2014/3248, Schedule 5, Part 1, paragraph 1.

<sup>(16)</sup> 2013 c. 32; see section 112.

<sup>(17)</sup> S.I. 1999/2024; see regulation 3, amended by S.I. 2014/3248, Schedule 5, Part 2, paragraph 12.

<sup>(18)</sup> 2003 c. 20. Section 15 is amended by S.I. 2015/1682, Schedule, Part 1, paragraph 2(b).

<sup>(19)</sup> Amendments have been made to this section which are not relevant to these Regulations.

“railway undertaking” means any public or private undertaking licensed according to the Directive, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking ensure traction; this also includes undertakings which provide traction only;

“reasonable profit” means a rate of return on own capital that takes account of the risk, including that to revenue, or the absence of such risk, incurred by the operator of the service facility and is in line with the average rate for the sector concerned in recent years;

“regional” means, in relation to a transport service, such a service whose principal purpose is to meet the transport needs of a region, including a cross-border region;

“Regulation (EC) No 1370/2007” means Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23rd October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) No 1191/69 and 1107/70(20);

“Regulation (EU) No 913/2010” means Regulation (EU) No 913/2010 of the European Parliament and of the Council of 22nd September 2010 concerning a European rail network for competitive freight(21);

“relevant public service contract” means a public service contract under which a relevant public service operator provides public passenger transport, the route or routes of which overlap with the route of an international passenger service notified to the Office of Rail and Road under regulation 19(7);

“relevant public service operator” means a public service operator providing public passenger transport, the route or routes of which overlap with the route of an international passenger service notified to the Office of Rail and Road under regulation 19(7);

“service facility” means the installation, including ground area, building and equipment, which has been specially arranged, as a whole or in part, to allow the supply of one or more of the services listed in paragraph 2, 3 or 4 of Schedule 2;

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

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

or which manages a service facility used for this supply, whether or not that body or undertaking is also an infrastructure manager;

“train path” means the infrastructure capacity needed to run a train between two places over a given period;

“the Treaty” means the Treaty on the Functioning of the European Union(22);

“tunnel system” has the same meaning as in the Channel Tunnel Act 1987(23);

“urban” or “suburban” means, in relation to a transport service, such a service whose principal purpose is to meet the transport needs of an urban centre or conurbation, including a cross-border conurbation, together with transport needs between such a centre or conurbation and surrounding areas;

“viable alternative” means access to another service facility which is economically acceptable to the railway undertaking, and allows it to operate the freight or passenger services concerned;

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(20) O.J. No. L 315, 3.12.07, p.1; amendments have been made which are not relevant to these Regulations.

(21) O.J. No. L 276, 20.10.10, p. 22; amended by Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11th December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010, O.J. L 348, 20.12.13, p. 129.

(22) O.J. C 326, 26.10.12, p. 47.

(23) 1987 c. 53; see section 49.

“working day” means any day which is not a Saturday, Sunday, Good Friday, Christmas Day or a bank holiday under the Banking and Financial Dealings Act 1971(24) in England and Wales or Scotland;

“working timetable” means the data defining all planned train and rolling-stock movements which will take place on the relevant railway infrastructure during the period for which it is in force; and

“working timetable period” means the calendar year commencing at midnight on the second Saturday in December.

## Scope

4.—(1) These Regulations apply to domestic and international rail traffic.

(2) Subject to paragraphs (3) and (6), Parts 2 and 3 (save for regulation 13), regulations 14(9) and (10), 15(1) to (6), 19(4), 33 and Schedule 2 lay down the rules applicable 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.

(3) The provisions referred to in paragraph (2) do not apply to railway undertakings whose activity is limited to the provision of solely urban, suburban or regional services on local and regional stand-alone networks for transport services on railway infrastructure or on networks intended only for the operation of urban or suburban rail services.

(4) Notwithstanding paragraph (3), the following regulations apply where a railway undertaking referred to in that paragraph is under the direct or indirect control of an undertaking or another entity performing or integrating rail transport services other than urban, suburban or regional services—

- (a) regulation 8;
- (b) regulation 9, with regard to the relationship between the railway undertaking and the undertaking or entity which controls it, directly or indirectly; and
- (c) regulation 12(4) to (7).

(5) Subject to paragraphs (6), (7) and (8), regulation 13, Parts 4 to 6 and Schedules 3 to 5 lay down the principles and procedures applicable to—

- (a) the setting and collection of railway infrastructure charges; and
- (b) the allocation of railway infrastructure capacity.

(6) The following provisions do not apply to the networks listed in paragraph (7)—

- (a) regulation 6;
- (b) regulation 10;
- (c) regulation 11;
- (d) regulation 12(1), (2) and (3);
- (e) regulation 13;
- (f) Parts 4 to 6; and
- (g) Schedules 2 to 5.

(7) The networks referred to in paragraph (6) are—

- (a) local and regional stand-alone networks for passenger services on railway infrastructure;
- (b) networks intended only for the operation of urban or suburban rail passenger services;

(c) until such time as capacity is requested by another applicant, regional networks used for regional freight services solely by a railway undertaking referred to in paragraph (3); and

(d) networks—

(i) situated within a factory, nuclear site, or site housing electrical plant;

(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 sub-paragraph.

(8) With the exception of regulations 5, 9(1) and (3), 19(14) and (16)(b), 33 and 36 (so far as it relates to regulation 33), these Regulations do not apply to undertakings the business of which is limited to providing solely shuttle services for road vehicles through undersea tunnels or to transport operations in the form of shuttle services for road vehicles through such tunnels.

(9) Parts 6 and 8 and Schedule 1 apply to all matters within—

(a) any part of the scope of Parts 2 to 5 and Schedules 2 to 5; and

(b) the Channel Tunnel (International Arrangements) (Charging Framework and Transfer of Economic Regulation Functions) Order 2015(25).

## PART 2

### Access to Railway Infrastructure and Services

#### Access rights

5.—(1) A railway undertaking must be granted, on equitable, non-discriminatory and transparent conditions, access rights to such railway infrastructure as may be necessary for the purpose of operating all types of rail freight, or international passenger, services.

(2) The access rights described in paragraph (1) include access to railway infrastructure connecting the service facilities referred to in paragraph 2 of Schedule 2.

(3) The access rights described in paragraph (1) for the purpose of operating rail freight services include the right of access to railway infrastructure serving, or potentially serving, more than one final customer.

(4) The access rights of a railway undertaking for the purpose of the operation of an international passenger service include the right to pick up passengers at any station located on the international route and set them down at another, including stations located in the same Member State.

(5) The access rights conferred by paragraphs (1) to (4) are exercisable subject to the provisions of regulation 33, and to paragraph (6).

(6) Subject to paragraph (7), the Office of Rail and Road may limit the access rights granted by this regulation on services between a place of departure and a destination which are covered by one or more public service contracts which are in accordance with the law of the European Union.

(7) The access rights granted under paragraph (4) must not be restricted except where the exercise of such rights would compromise the economic equilibrium of a public service contract.

(8) It is the duty of the infrastructure manager to ensure that the entitlements conferred by this regulation are honoured.

(9) Without prejudice to the generality of regulation 32, if a railway undertaking is denied the entitlements conferred on it by this regulation other than pursuant to a decision of the Office of Rail and Road under paragraph (6) or regulation 33, that railway undertaking has a right of appeal to the Office of Rail and Road in accordance with regulation 32.

### **Access to services**

**6.—(1)** An infrastructure manager must supply to all railway undertakings, in a non-discriminatory manner, the minimum access package described in paragraph 1 of Schedule 2.

(2) Subject to paragraph (4) a service provider must supply to all railway undertakings, in a non-discriminatory manner, access, including track access, to service facilities and the supply of services described in paragraph 2 of Schedule 2.

(3) Requests by railway undertakings for access to, and the supply of, services described in paragraph 2 of Schedule 2 must be answered within a reasonable time limit as stipulated by the Office of Rail and Road.

(4) Subject to paragraph (7), where a service provider supplies any of the services described in paragraph 2 of Schedule 2, a request for access to, and the supply of, such services may only be refused if a viable alternative exists which would enable the railway undertaking to operate the freight or passenger service concerned on the same or an alternative route under economically acceptable conditions.

(5) Where—

- (a) a request referred to in paragraph (3) concerns access to and the supply of services described in paragraph 2(a), (b), (c), (d), (e), (f) and (i) of Schedule 2; and
- (b) such request is made to a service provider which is under the direct or indirect control of a dominant body or firm,

the service provider must justify, in writing, any decision to refuse such a request, and provide information about the viable alternative described in paragraph (4).

(6) Paragraph (4) does not oblige the service provider to make investments in resources or facilities in order to accommodate all requests by railway undertakings.

(7) Where a service provider encounters a conflict between different requests for access to, and the supply of, services described in paragraph 2 of Schedule 2, it must attempt to meet all requests in so far as possible.

(8) If no viable alternative is available, and it is not possible to accommodate all requests for capacity for the relevant facility on the basis of demonstrated needs, the applicant may appeal to the Office of Rail and Road.

(9) Where a service facility described in paragraph 2 of Schedule 2 has not been in use for at least two consecutive years and interest by a railway undertaking for access to this facility has been expressed to the service provider on the basis of demonstrated need, the service provider must—

- (a) offer the operation of the service facility, or part of it, for lease as a rail service facility, and,
- (b) publicise this offer.

(10) Paragraph (9) does not apply if the service provider can demonstrate that ongoing redevelopment work reasonably prevents the use of the service facility by any railway undertaking.

(11) Where the service provider offers to supply any of the services described in paragraph 3 of Schedule 2 as an additional service it must, in response to a request from a railway undertaking, supply the services to that railway undertaking in a non-discriminatory manner.

(12) A railway undertaking may request the supply of any of the services described in paragraph 4 of Schedule 2 from a service provider but that service provider is under no obligation to supply



the services requested; where the service provider does offer to supply such services, it must do so in a non-discriminatory manner.

(13) Without prejudice to the generality of regulation 32, if a railway undertaking is denied the entitlements conferred on it by this regulation, that railway undertaking has a right of appeal to the Office of Rail and Road in accordance with regulation 32.

### **Cross-border agreements**

7.—(1) The Secretary of State must ensure that provisions contained in cross-border agreements do not discriminate between railway undertakings, or restrict their freedom to operate cross-border services.

(2) Without prejudice to the division of competence between the European Union and Member States, the Secretary of State must notify the European Commission of any intention to enter into negotiations on, to conclude, or to revise a cross-border agreement.

(3) The Secretary of State must keep the European Commission regularly informed of any negotiations referred to in paragraph (2) and, where appropriate, must invite the European Commission to participate as an observer.

(4) The Secretary of State may apply or conclude a new or revised cross-border agreement with countries which are not EEA States provided that it is compatible with European Union law and does not harm the object and purpose of the transport policy of the European Union.

## **PART 3**

### **Infrastructure Management and Independence of Undertakings**

#### **Management independence**

8.—(1) Railway undertakings which are directly or indirectly owned or controlled by a Member State must, in their management, administration and internal control over administrative, economic and accounting matters, maintain the status of an independent operator and hold, in particular, assets, budgets and accounts which are separate from those of the State.

(2) Subject to the requirements set out in Parts 4 and 5 and Schedules 3 and 4 about the determination of railway infrastructure charges and the allocation of infrastructure capacity, an infrastructure manager must be responsible for its own management, administration and internal control.

#### **Separation of accounts**

9.—(1) Any body which incorporates the functions of both infrastructure manager and railway undertaking must—

- (a) prepare and publish separate profit and loss accounts and balance sheets in respect of business relating to the—
  - (i) provision of transport services as a railway undertaking; and
  - (ii) management of railway infrastructure; and
- (b) ensure that public funds granted to such a body are not transferred between that part of the body responsible for the provision of transport services and that responsible for the management of railway infrastructure.

(2) Any body which conducts business activities relating to the provision of both rail freight transport services and passenger transport services must—

- (a) prepare and publish separate profit and loss accounts and balance sheets in respect of each of these business activities;
  - (b) account separately for public funds granted for activities relating to the provision of transport services as public service remits in accordance with article 7 of Regulation (EC) No 1370/2007; and
  - (c) ensure that public funds granted as described in sub-paragraph (b) are not transferred to activities relating to the provision of other transport services, or any other business.
- (3) Accounts for the areas of activity described in paragraphs (1) and (2) must be kept in such a way as to allow for monitoring of—
- (a) the prohibition set out in those paragraphs relating to the transfer of public funds; and
  - (b) the use of income from railway infrastructure charges and surpluses from other commercial activities.

### **Independence of service providers from dominant bodies and firms**

**10.**—(1) Where the service provider of a service described in paragraph 2 of Schedule 2 is under direct or indirect control of a dominant body or firm, it must hold separate accounts from that body or firm, including separate balance sheets and profit and loss accounts.

(2) Where the service provider of a service described in paragraph 2(a), (b), (c), (d), (e), (f) and (i) of Schedule 2 is under direct or indirect control of a dominant body or firm, it must be independent in organisational and decision making terms from that body or firm.

(3) Paragraph (2) does not require the establishment of a separate legal entity to provide such services, and may be fulfilled by the formation of distinct divisions within a single legal entity.

(4) Where any of the services referred to in paragraph (2) are provided, and the operation of the service facility is ensured by either—

- (a) an infrastructure manager; or
- (b) a service provider under the direct or indirect control of an infrastructure manager,

the requirements of paragraphs (1) and (2) are met if regulations 14(9) and 19(4) are complied with.

### **Indicative railway infrastructure strategy**

**11.**—(1) The Secretary of State must, by 19th December 2019 and after consultation with interested parties, publish an indicative railway infrastructure strategy for England and Wales which must—

- (a) be drafted with a view to meeting future mobility needs in terms of the maintenance, renewal and development needs of the railway infrastructure in England and Wales;
- (b) take into account, as necessary, the general needs of the European Union, including the need to cooperate with neighbouring countries which are not EEA States; and
- (c) be based on sustainable financing.

(2) The Scottish Ministers must, by 19th December 2019 and after consultation with interested parties, publish an indicative railway infrastructure strategy for Scotland which must—

- (a) be drafted with a view to meeting future mobility needs in terms of the maintenance, renewal and development needs of the railway infrastructure in Scotland;
- (b) take into account, as necessary, the general needs of the European Union, including the need to cooperate with neighbouring countries which are not EEA States; and
- (c) be based on sustainable financing.

(3) The strategies referred to in paragraphs (1) and (2) must—

- (a) be in respect of such period as the Secretary of State must determine; and
  - (b) be renewed following this period, in respect of successive periods of time, the length and commencement of which the Secretary of State must determine.
- (4) The strategies described in paragraphs (1) and (2) are to be known as the indicative railway infrastructure strategy for Great Britain.
- (5) In paragraph (2), the term “interested parties” includes the Secretary of State.

### **Business Plans**

**12.**—(1) Each infrastructure manager must draw up a business plan which is designed for the purpose of ensuring—

- (a) optimal and efficient use, provision and development of the railway infrastructure; and
  - (b) financial balance.
- (2) The plan referred to in paragraph (1) must—
- (a) include details of investment and financial programmes;
  - (b) provide the means by which the objectives set out in paragraph (1) are to be achieved; and
  - (c) take into account the strategy referred to in regulation 11 and the financing provided to it.

(3) Before it is approved the infrastructure manager must ensure that applicants known to it and, upon their request, potential applicants have access to the relevant information and are given the opportunity to express their views on the content of the draft business plan regarding the conditions for access and use, and the nature, provision and development of the railway infrastructure.

(4) Each railway undertaking must draw up a business plan, which must include its investment and financing programmes, and which is designed for the purpose of ensuring—

- (a) financial equilibrium; and
- (b) other technical, commercial and financial management objectives.

(5) The plan referred to in paragraph (4) must provide the means by which the objectives set out in that paragraph are to be achieved.

(6) The Office of Rail and Road must, at least once a year, request confirmation that a business plan has been produced in accordance with paragraphs (1) and (4), and each infrastructure manager or, as the case may be, railway undertaking, to whom such a request is made, is under an obligation to comply with that request.

(7) For the purposes of regulation 36, a request by the Office of Rail and Road in accordance with paragraph (6) is to be treated as a request for information.

### **Network Statement**

**13.**—(1) The infrastructure manager must, following consultation with all interested parties, develop and publish a network statement containing the information relating to its network described in paragraph (4).

(2) Where, by virtue of regulation 14(9) or 19(4) a charging body or, as the case may be, allocation body, is responsible for the functions of the infrastructure manager in Parts 4 or 5, that charging body or allocation body must provide the infrastructure manager with such information as is necessary to enable that infrastructure manager to—

- (a) include the information described in paragraph (4) in the network statement; and
- (b) keep the network statement up to date in accordance with paragraph (7).

- (3) A service provider who is not the infrastructure manager must provide the infrastructure manager of the railway infrastructure to which the relevant service facility is connected with such information as is necessary to enable that infrastructure manager to—
- (a) include the information described in paragraph (4)(b) in the network statement; and
  - (b) keep the network statement up to date in accordance with paragraph (7).
- (4) The information referred to in paragraph (1) is—
- (a) a section setting out the nature of the railway infrastructure which is available to applicants and the conditions of access to it;
  - (b) information on access to and charges for the supply of service facilities listed in Schedule 2, including those service facilities which are provided by only one supplier, and including information on technical access conditions, or details of a website where such information is available free of charge in electronic format;
  - (c) a description of the charging principles and tariffs, including appropriate details of the charging scheme, framework, methodology, rules and, where applicable, scales used in relation to the application of regulations 14, 16 and 17, of Schedule 3 and of the Channel Tunnel charging framework, as regards both costs and charges;
  - (d) information relating to the performance scheme referred to in regulation 16;
  - (e) the list of market segments to be published under paragraph 2(9) of Schedule 3, subject to any amendments made by the Office of Rail and Road;
  - (f) information about procedures for dispute resolution and appeals relating to matters of access to railway infrastructure and services and to the performance scheme referred to in regulation 16;
  - (g) a description of the principles and criteria for the allocation of infrastructure capacity, setting out the general capacity characteristics of the railway infrastructure available and any restrictions on its use, including likely capacity requirements for maintenance;
  - (h) the procedures and deadlines in the capacity allocation process and specific criteria employed in that process, in particular—
    - (i) the procedures according to which applicants may request infrastructure capacity from the infrastructure manager;
    - (ii) the requirements governing applicants under regulation 19(17);
    - (iii) the schedule for the application and allocation processes, and the procedures to be followed to request information about that schedule;
    - (iv) the procedures for scheduling planned and unforeseen maintenance work;
    - (v) principles governing the coordination process regarding requests for infrastructure capacity referred to in regulation 23, which must reflect the difficulty of arranging international train paths and the effect that modification of such paths might have on other infrastructure managers;
    - (vi) the dispute resolution procedure established as part of the coordination process in accordance with regulation 23(7);
    - (vii) information about the procedures established in accordance with regulation 20(4) for the allocation of infrastructure capacity at an international level, including information about the membership and methods of operation of any representative groups, and all relevant criteria used to assess and allocate infrastructure capacity which crosses more than one network;

- (viii) the procedures to be followed and criteria used where railway infrastructure is congested infrastructure, including any priority criteria for the allocation of congested infrastructure set in accordance with regulation 26(5) and (6);
  - (ix) details of restrictions on the use of railway infrastructure;
  - (x) the threshold quota to be applied by the infrastructure manager in requiring a train path to be surrendered under regulation 29(1); and
  - (xi) the conditions relating to previous levels of utilisation of capacity to be taken into account by the infrastructure manager in determining priorities in accordance with regulation 29(3);
  - (i) details of any section of railway infrastructure which has been designated for use by specified types of rail services in accordance with regulation 25;
  - (j) the measures taken by the infrastructure manager to ensure fair treatment of rail freight services and international services, and in responding to *ad hoc* requests for infrastructure capacity;
  - (k) a template form for requests for capacity and detailed information about the allocation procedures for international train paths;
  - (l) information relating to applications for —
    - (i) a licence, as published under regulation 6(2) of the Railway (Licensing of Railway Undertakings) Regulations 2005(26);
    - (ii) a rail safety certificate issued in accordance with regulation 7 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006(27); and
    - (iii) a Part B certificate issued by the Intergovernmental Commission under Article 39(ii) of the Schedule to the Channel Tunnel (Safety) Order 2007(28);
- or, as an alternative to the information described in (i) to (iii), a reference to a website where such information is made available free of charge in electronic format;
- (m) a model agreement for the conclusion of a framework agreement between an infrastructure manager and an applicant in accordance with regulation 21; and
  - (n) the criteria to determine failure to use capacity published under regulation 17(3)(a).
- (5) The information provided under paragraph (4)(a) must be made consistent, on an annual basis with, or must refer to, the register of infrastructure published in accordance with Article 35 of [Directive 2008/57/EC](#) of the European Parliament and of the Council of 17th June 2008 on the interoperability of the rail system within the Community (Recast)(29).
- (6) The information provided under paragraph (4)(b) and (c) must include—
- (a) information on changes to charges referred to in that paragraph already decided upon or foreseen in the next five years, if available; and
  - (b) information on charges as well as other relevant information on access applying to services listed in Schedule 2 which are provided only by one supplier.
- (7) The infrastructure manager must keep the network statement up to date and modify it as necessary.
- (8) The infrastructure manager must publish the network statement in at least two official languages of the European Union.

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(26) [S.I. 2005/3050](#), amended by Part 7 of these Regulations. There are other amendments not relevant to these Regulations.

(27) [S.I. 2006/599](#), amended by [S.I. 2015/1682](#), Schedule, Part 2, paragraph 6(d).

(28) [S.I. 2007/3531](#), substituted by [S.I. 2013/407](#), article 2(1) and (8) and the Schedule. There have been other amendments to this provision which are not relevant to these Regulations.

(29) O.J. No. L 191, 18.7.08, p.1, to which there are amendments not relevant to these Regulations.

(9) The infrastructure manager must publish the network statement not less than four months before the deadline for applications for infrastructure capacity as described under paragraph 2(1) of Schedule 4.

(10) Any fee charged by the infrastructure manager for the provision, on request, of a copy of the network statement must not exceed the cost of producing that copy.

(11) The content of the network statement must be made available free of charge in electronic format on the web portal of the infrastructure manager and must be accessible through a common web portal.

(12) The common web portal referred to in paragraph (11) must be set up by the infrastructure manager in the framework of its cooperation with infrastructure managers from other Member States, in accordance with regulations 18 and 20.

(13) If the information required under paragraph (2) or (3) is not provided to the satisfaction of the infrastructure manager, the infrastructure manager may refer the matter to the Office of Rail and Road for a determination as to whether additional information must be supplied.

(14) Where a matter is referred to the Office of Rail and Road in accordance with paragraph (13), it is the duty of that Office to make the determination within such period as is reasonable in all the circumstances, and any such determination is binding on all parties.

## PART 4

### Infrastructure Charges

#### **Establishing, determining and collecting charges**

**14.—**(1) Subject to paragraph (3), the Office of Rail and Road must establish the charging framework and the specific charging rules governing the determination of the fees to be charged in accordance with paragraphs (6) and (7).

(2) Subject to paragraphs (3) and (9), the infrastructure manager must—

- (a) determine the fees to be charged for use of the railway infrastructure in accordance with the charging framework, the specific charging rules, and the principles and exceptions set out in Schedule 3; and
- (b) collect those fees.

(3) Paragraphs (1) and (2) do not apply where the railway infrastructure to which the charge relates is a rail link facility or is part of the tunnel system.

(4) Where paragraph (3) applies because the railway infrastructure to which the charge relates is a rail link facility, the Secretary of State must establish the charging framework through the development agreement, and the infrastructure manager must, subject to paragraph (9)—

- (a) establish the specific charging rules governing the determination of the fees to be charged in accordance with paragraph (6);
- (b) determine the fees to be charged for the use of the railway infrastructure in accordance with the charging framework, the specific charging rules and the principles and exceptions set out in Schedule 3; and
- (c) collect those fees.

(5) Where paragraph (3) applies because the railway infrastructure to which the charge relates is part of the tunnel system the infrastructure manager must, subject to paragraph (9)—

- (a) establish the specific charging rules in accordance with Article 2 of the Channel Tunnel charging framework;

- (b) determine the fees to be charged for use of the infrastructure in accordance with the Channel Tunnel charging framework, the specific charging rules and the principles and exceptions set out in Schedule 3; and
  - (c) collect those fees.
- (6) Subject to the provisions in paragraphs (1) to (5), the infrastructure manager must—
- (a) charge fees for use of the railway infrastructure for which the infrastructure manager is responsible; and
  - (b) utilise such fees as are received to fund the infrastructure manager’s business.
- (7) A service provider must—
- (a) charge fees for the use of a service facility for which the service provider is responsible; and
  - (b) utilise such fees as are received to fund the service provider’s business.
- (8) Applicants must, subject to the right of appeal to the Office of Rail and Road provided in regulation 32, pay such fees as are charged by the infrastructure manager or service provider under paragraphs (6) and (7) for use of the railway infrastructure or service facility.
- (9) Subject to paragraph (10), if the infrastructure manager in its legal form, organisation or decision-making functions, is not independent of any railway undertaking, the infrastructure manager must ensure that the functions referred to in this Part and Schedule 3 are performed by a charging body that is independent in its legal form, organisation and decision-making from any railway undertaking.
- (10) The separation required by paragraph (9) does not apply to the function of the collection of fees charged in accordance with paragraph (2)(b), (4)(c), and (5)(c).
- (11) The infrastructure manager or service provider must be able to demonstrate to each railway undertaking that any fees invoiced to it under paragraphs (6) or (7) comply with the methodology, rules and, where applicable, scales laid down in the network statement.
- (12) Subject to paragraph (13), where information about such fees is necessary for the Office of Rail and Road to carry out its functions under regulations 31, 32, 34 and 35 and Schedule 5 and is requested by the Office of Rail and Road, the infrastructure manager or service provider must supply the information requested.
- (13) The infrastructure manager must respect the commercial confidentiality of information provided to it by applicants for infrastructure capacity.

### **Infrastructure costs and accounts**

**15.**—(1) Subject to section 2 of the Channel Tunnel Act 1987(30), the authorities designated by paragraphs (2) to (4) must, in the case of the railway infrastructure in relation to which they are designated by those paragraphs, ensure, in the way set out in the relevant paragraph, that, under normal business conditions and over a reasonable time period which must not exceed five years, the accounts of an infrastructure manager at least balance—

- (a) income from railway infrastructure charges;
  - (b) surpluses from other commercial activities;
  - (c) non-refundable incomes from private sources; and
  - (d) state funding, including, where appropriate, advance payments from the state,
- with railway infrastructure expenditure.

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(30) 1987 c. 53.

(2) For the purposes of paragraph (1), the Office of Rail and Road is designated in relation to railway infrastructure subject to an access charges review, and must discharge its obligations under that paragraph through that review.

(3) For the purposes of paragraph (1), the Secretary of State is designated in relation to a rail link facility, and must discharge obligations under that paragraph through the development agreement.

(4) For the purposes of paragraph (1), the Office of Rail and Road is designated in relation to railway infrastructure that is not covered by paragraphs (2) or (3) and has, in order to discharge its obligations under that paragraph, the power to issue such directions limiting, to any extent necessary, an infrastructure manager's ability to finance infrastructure expenditure out of borrowed funds.

(5) Without prejudice to the right of any person to make an application to the court under Part 54 of the Civil Procedure Rules 1998(31), it is the duty of any person to whom a direction is given under paragraph (4) to comply with and give effect to that direction.

(6) The infrastructure manager must enter into an agreement with the Secretary of State or, in the case of the tunnel system, British Railways Board(32), which must fulfil the basic parameters of Annex V of the Directive, and cover a period of not less than five years.

(7) The Office of Rail and Road must, with due regard to safety and to maintaining and improving the quality of the infrastructure service, provide infrastructure managers with incentives to reduce the costs of provision of railway infrastructure and the level of access charges.

(8) The Office of Rail and Road must—

(a) in the case of a rail link facility, exercise its rights and responsibilities under or by virtue of the relevant development agreement; and

(b) in any other case, exercise its functions under the Act,

in order to ensure that the requirements set out in paragraph (7) are complied with.

(9) In fulfilling its obligations under paragraph (8), the Office of Rail and Road must base its decisions on an analysis of the achievable cost reductions.

(10) The infrastructure manager must develop and maintain a register of its assets and the assets it is responsible for managing insofar as this information is required to assess any funding needed to repair or replace such assets.

(11) The register referred to in paragraph (10) must be accompanied by details of expenditure on renewal and upgrading of the railway infrastructure.

(12) The infrastructure manager must establish a method for apportioning costs to the different categories of services offered to railway undertakings, which must be updated from time to time on the basis of best international practice.

(13) Where required by the Office of Rail and Road, the infrastructure manager must seek prior approval for the method for apportioning costs referred to in paragraph (12).

## Performance scheme

**16.—**(1) The infrastructure manager must establish a performance scheme as part of the charging system to encourage railway undertakings and the infrastructure manager to minimise disruption and improve the performance of the network.

(2) The performance scheme referred to in paragraph (1) may include—

(31) *S.I. 1998/3132*. Part 54 is amended by the Constitutional Reform Act 2005 (c. 4), Schedule 11, Part 1, paragraph 1(2); *S.I. 2000/2092*, Schedule; *S.I. 2002/2058*, rule 21; *S.I. 2003/364*, rule 5(a)-(e); *S.I. 2003/3361*, rules 12 and 13; *S.I. 2007/3543*, rule 7(b) and (c); *S.I. 2009/3390*, rule 29(b); *S.I. 2010/2577*, rules 3 and 4; *S.I. 2012/2208*, rules 2 and 9(b) and (c); *S.I. 2013/262*, rule 18; *S.I. 2013/1412*, rule 4; *S.I. 2015/102*, Schedule 6, Part 2, paragraph 11; and *S.I. 2015/670*, rules 4, 7, 9 and 10. There are other amendments to Part 54 which are not relevant to these Regulations.

(32) The British Railways Board was established by section 1 of the Transport Act 1962 (c. 46). This provision is to be repealed by the Transport Act 2000 (c. 38), Schedule 31, Part 4 on a date to be appointed.



- (a) penalties for actions which disrupt the operation of the network;
- (b) compensation for undertakings which suffer from disruption; and
- (c) bonuses that reward better than planned performance.

(3) The performance scheme referred to in paragraph (1) must be based on the basic principles listed in paragraph 7 of Schedule 3 and must apply in a non-discriminatory manner throughout the network to which that scheme relates.

(4) The infrastructure manager must, as soon as possible, communicate to the railway undertaking a calculation of payments due under the performance scheme.

(5) A calculation under paragraph (4) must encompass all delayed train runs within a period of at most one month.

(6) Without prejudice to existing appeal procedures and to the right of appeal under regulation 32, in the case of disputes relating to the performance scheme, a dispute resolution system must be made available in order to settle such matters promptly.

(7) The dispute resolution system described in paragraph (6) must be impartial towards the parties involved and, if this system is applied, a decision must be reached within a time limit of 10 working days.

(8) Once a year, the infrastructure manager must publish the annual average level of performance achieved by the railway undertakings on the basis of the main parameters agreed in the performance scheme.

### **Reservation charges**

17.—(1) The infrastructure manager may levy an appropriate charge (“reservation charge”) for capacity that is requested but not used.

(2) Where the infrastructure manager makes provision for a reservation charge to be imposed, that charge—

- (a) must provide incentives for efficient use of capacity; and
- (b) is mandatory in the case of a regular failure by an applicant to use the paths, or part of the paths, allocated to them.

(3) Where provision for a reservation charge has been made—

- (a) the infrastructure manager must publish in its network statement the criteria used to determine the failure to use allocated paths; and
- (b) the Office of Rail and Road must control such criteria in accordance with regulations 32 and 34.

(4) The infrastructure manager must provide, at the request of any interested party, information about the infrastructure capacity allocated to applicants.

### **Cooperation in relation to charging systems on more than one network**

18.—(1) The infrastructure manager must cooperate with other infrastructure managers to enable the application of efficient charging schemes, and must associate with them to coordinate the charging or to charge for the operation of train services which cross more than one network of the rail system within the European Union.

(2) The infrastructure manager must, in particular, aim to guarantee the optimal competitiveness of international rail services and ensure the efficient use of the networks; to this end the infrastructure manager must cooperate with other infrastructure managers to establish appropriate procedures, subject to the rules set out in these Regulations.

(3) For the purpose of paragraphs (1) and (2) the infrastructure manager must cooperate with other infrastructure managers to enable mark-ups (as referred to in Schedule 3, paragraph 2) and performance schemes (as referred to in regulation 16) to be efficiently applied for traffic crossing more than one network of the rail system within the European Union.

## PART 5

### Allocation of Infrastructure Capacity

#### Capacity allocation

**19.**—(1) Subject to paragraph (2), whilst respecting the requirements for management independence stipulated in regulation 8, the Office of Rail and Road 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 framework for the allocation of capacity referred to in paragraph (1) must, in the case of railway infrastructure comprised in a freight corridor established under Regulation (EU) No 913/2010<sup>(33)</sup>, be defined by the executive board of that corridor, within the meaning of that Regulation, and, in such a case, paragraph (1) does not apply.

(3) The infrastructure manager must, subject to paragraph (4), be responsible for the establishment of specific capacity allocation rules and for the process of allocating infrastructure capacity in respect of the railway infrastructure for which it has responsibility.

(4) If the infrastructure manager, in its legal form, organisation or decision-making functions, is not independent of any railway undertaking, the infrastructure manager must ensure that the functions referred to in this Part and Schedule 4 are performed by an allocation body that is independent in its legal form, organisation and decision-making from any railway undertaking.

(5) Subject to paragraph (11), any applicant may apply to the infrastructure manager for the allocation of infrastructure capacity.

(6) In order to use such capacity, an applicant which is not a railway undertaking must appoint a railway undertaking to conclude a contract with the infrastructure manager in accordance with paragraph (14); this is without prejudice to the right of the applicant to conclude an agreement with the infrastructure manager under regulation 22(1).

(7) An applicant applying for infrastructure capacity with a view to operating an international passenger service must give notice of that fact to the infrastructure manager concerned and to the Office of Rail and Road and provide such information as the Office of Rail and Road may reasonably require or prescribe.

(8) When the Office of Rail and Road receives a notice from an applicant under paragraph (7), it must provide—

- (a) any competent authority that has awarded a rail passenger service defined in a relevant public service contract;
- (b) any railway undertaking which is a relevant public service operator; and
- (c) any other competent authority with a right to limit access along the route of the international passenger service notified under paragraph (7),

with a copy of the information in relation to that service provided to it in accordance with that paragraph.

<sup>(33)</sup> O.J. No. L 276, 20.10.10, p. 22; amended by Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11th December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010, O.J. L 348, 20.12.13, p. 129.

(9) The infrastructure manager must ensure that the allocation process is conducted in accordance with the timetable set out in Schedule 4.

(10) Subject to paragraph (12), 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 21 specifying the characteristics of the infrastructure capacity 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.

(11) Any person who trades in capacity contrary to the provisions of paragraph (10) is not entitled to apply for capacity under paragraph (5) for the period of the working timetable period to which the allocation of capacity transferred related.

(12) 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 (10).

(13) The infrastructure manager must not allocate capacity in the form of specific train paths for any period in excess of one working timetable period.

(14) Any railway undertaking engaged in rail transport services must conclude the necessary agreements under public or private law with the infrastructure manager of the railway infrastructure used.

(15) The respective rights and obligations of infrastructure managers and applicants in respect of any allocation of capacity must be laid out in a contract.

(16) The infrastructure manager must—

- (a) ensure that infrastructure capacity is allocated on a fair and non-discriminatory basis;
- (b) ensure that the agreements referred to in paragraph (14) are non-discriminatory, transparent, and in accordance with the requirements of these Regulations; and
- (c) respect the confidentiality of information supplied as part of the capacity allocation process, including the identity of other applicants during disclosure under regulation 23(5), unless the relevant applicant has agreed to disclosure of their identity.

(17) The infrastructure manager may set requirements with regard to applicants to ensure that its legitimate expectations about future revenues and utilisation of the infrastructure capacity are safeguarded.

(18) Requirements under paragraph (17)—

- (a) must be appropriate, transparent and non-discriminatory;
- (b) must be specified in the network statement; and
- (c) may only include the provision of a financial guarantee by an applicant if the level of such guarantee does not exceed an appropriate level which is proportional to the contemplated level of activity of the applicant, and where such guarantee provides assurance of the applicant's capability to prepare compliant bids for infrastructure capacity.

(19) The infrastructure manager must set any requirements under paragraph (17) in accordance with the criteria contained in Commission Implementing Regulation (EU) 2015/10 of 6th January 2015 on criteria for applicants for rail infrastructure capacity and repealing Implementing Regulation (EU) No 870/2014<sup>(34)</sup>.

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(34) O.J. No. L 3, 7.1.15, p. 34.

(20) In reserving infrastructure capacity for the purposes of scheduled track maintenance, as requested under regulation 22(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**

**20.**—(1) This regulation applies to the allocation of infrastructure capacity in the form of a train path crossing more than one network of the rail system within the European Union.

(2) Infrastructure managers must—

- (a) co-operate to enable the efficient creation and allocation of infrastructure capacity to which this regulation applies, including under a framework agreement; and
- (b) before consulting on the draft working timetable in relation to relevant train paths, 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 coordination with representatives of the infrastructure managers whose allocation decisions have an impact on one or more other infrastructure managers.

(5) Allocation of infrastructure capacity to which this regulation applies must be without prejudice to the specific rules contained in European Union law on rail freight oriented networks.

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

(7) The infrastructure managers must inform the European Commission of, and invite representatives of the Commission to attend, in an observing capacity, main meetings at which common principles and practices for the allocation of railway infrastructure crossing more than one network are developed.

(8) The infrastructure managers must provide the Office of Rail and Road with sufficient information about the development of common principles and practices for the allocation of railway infrastructure and from any IT-based allocation systems, to allow it to perform its regulatory functions under Part 6.

(9) 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.

(10) 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 24.

(11) The prearranged train paths referred to in paragraph (2)(b) must be made available to applicants through any infrastructure manager who participates in the international coordination of train paths referred to in this regulation.

### **Framework agreements**

**21.**—(1) Subject to the requirements of this regulation, and without prejudice to articles 101, 102 and 106 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 must 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 and without prejudice to paragraph (11), 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), (9) and (10), a framework agreement made in accordance with paragraph (1) will in principle be for a period of five years, renewable for periods equal to its original duration, provided that the infrastructure manager may agree to a shorter or longer period in specific cases.

(8) Subject to paragraphs (9) and (10), a framework agreement for a period longer than five years must be justified by the existence of commercial contracts, specialised investments or risks.

(9) Subject to paragraph (10), a framework agreement in relation to railway infrastructure which has been designated in accordance with regulation 25(2) (“a designated infrastructure framework agreement”) may be for a period of up to fifteen years where there is a substantial and long-term investment justified by the applicant.

(10) A designated infrastructure framework agreement may be for a period in excess of fifteen years in exceptional circumstances, in particular where there is large-scale and long-term investment and particularly where such investment is covered by contractual commitments including a multi-annual amortisation plan.

(11) An application for a designated infrastructure framework agreement to which paragraph (9) or (10) applies may specify the capacity characteristics, including the frequency, volume and quality of the train paths to be provided to the applicant for the duration of the framework agreement, in sufficient detail to ensure that these are clearly established.

(12) The infrastructure manager may reduce capacity reserved under the terms of a designated infrastructure framework agreement to which paragraph (9) or (10) applies where, over a continuous period of at least one month, that capacity has been used less than the threshold quota stipulated in the network statement.

(13) Whilst respecting commercial confidentiality, the general nature of each framework agreement must be made available by the infrastructure manager to any interested party.

(14) This regulation is without prejudice to section 18 of the Act(35) in the case of a framework agreement which is an access contract to which that section applies.

(15) Before entering into a framework agreement in relation to a rail link facility, and before amending any such agreement, the infrastructure manager and the applicant must obtain the approval of the Office of Rail and Road.

(16) Nothing in these Regulations has the effect of applying any of sections 17 to 22C of the Act(36) to a rail link facility.

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(35) 1993 c. 43. Section 18 is amended by the Transport Act 2000 (c. 38), sections 212(6) and 230(1) and (2), Schedule 27, paragraphs 17 and 22 and Schedule 31, Part 4; the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, Part 1, paragraphs 1 and 3(b); the Railways Act 2005 (c. 14), Schedule 1, Part 1, paragraph 12(1) and (3); S.I. 2005/3049, Schedule 1, Part 1, paragraph 4(c); and S.I. 2015/1682, Schedule, Part 1, paragraph l(z).

(36) Section 17 is amended by the Transport Act 2000 (c. 38), section 233(1), Schedule 27, paragraphs 17 and 21, and Schedule 31, Part 4; the Railways Act 2005 (c. 14), Schedule 1, Part 1, paragraph 12(1) and (2) and Schedule 11, paragraphs 1 and 3(a); S.I. 1998/1340, regulation 21(5); S.I. 2005/3049, Schedule 1, Part 1, paragraph 4(a) and (b); and S.I. 2015/1682, Schedule,

(17) In fulfilling its duties under this regulation the infrastructure manager must observe the measures relating to the procedure and criteria for the application of this regulation set out in Commission Implementing Regulation (EU) 2016/545 of 7th April 2016 on procedures and criteria concerning framework agreements for the allocation of rail infrastructure capacity<sup>(37)</sup>.

### **Application for infrastructure capacity**

**22.**—(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) Without prejudice to Regulation (EU) No 913/2010<sup>(38)</sup> applicants may submit a request to a single infrastructure manager, or to a joint body established by the relevant infrastructure managers, for infrastructure capacity in the form of a train path crossing more than one network.

(4) Where an application under paragraph (3) is made to a single infrastructure manager, that infrastructure manager is permitted to act on behalf of that applicant in seeking the infrastructure capacity requested.

(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.

(6) The infrastructure manager must inform interested parties as soon as possible about the unavailability of infrastructure capacity due to unscheduled maintenance work.

### **Scheduling and coordination**

**23.**—(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 coordination process, but only in accordance with the provisions in regulations 25 and 26.

(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 attempt, in consultation with the appropriate applicants, and through coordination of

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Part 1, paragraph 1(y). Sections 19 to 22A and 22C are amended by [S.I. 2015/1682](#), Schedule, Part 1, paragraph 1(aa) to (gg). Section 19 is amended by the Transport Act 2000 sections 230(3) and (4) and 233(2) and Schedule 31, Part 4; the Railways and Transport Safety Act 2003 ([c. 20](#)), Schedule 2, Part 1, paragraphs 1 and 3; and the Railways Act 2005, Schedule 1, Part 1, paragraph 12 and Schedule 11, paragraphs 1 and 3(b). Section 19A was inserted by the Transport Act 2000, section 231(1). Section 20 is amended by the Transport Act 2000, Schedule 27, paragraphs 17 and 23 and Schedule 31, Part 4; and the Railways and Transport Safety Act 2003, Schedule 2, Part 1, paragraphs 1, 3 and 9. Section 21 is amended by the Railways and Transport Safety Act 2003, Schedule 2, Part 1, paragraphs 1, 3 and 10, and Schedule 8. Section 22 is amended by the Competition Act 1988 ([c. 41](#)), Schedule 10, Part 4, paragraph 15; the Transport Act 2000, section 232(1) and Schedule 31, Part 4; the Railways and Transport Safety Act 2003, Schedule 2, Part 1, paragraphs 1 and 3; and [S.I. 2014/892](#), Schedule 1, Part 2, paragraphs 99 and 104. Sections 22A, 22B and 22C were inserted by the Transport Act 2000 section 232(2). Section 22A is amended by [S.I. 2005/3049](#), Schedule 1(1), paragraph 4(d). Section 22C is amended by the Railways and Transport Safety Act 2003, Schedule 2, Part 1, paragraphs 1 and 3.

(37) O.J. No. L 94, 8.4.16, p. 1.

(38) O.J. No. L 276, 20.10.10, p. 22; amended by Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11th December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010, O.J. L 348, 20.12.2013, p. 129.

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) Consultation under paragraph (4) must be based on the disclosure by the infrastructure manager of the following information within a reasonable time, free of charge and in written or electronic form—

- (a) train paths requested by all other applicants on the same routes;
- (b) train paths allocated on a preliminary basis to all other applicants on the same routes;
- (c) alternative train paths proposed on the relevant routes in accordance with paragraph (4); and
- (d) full details of the criteria being used in the capacity allocation process.

(6) Information disclosed by the infrastructure manager in accordance with paragraph (5) must not disclose the identity of other applicants, unless the applicants concerned have agreed to such disclosure.

(7) The infrastructure manager must facilitate the establishment and operation of a dispute resolution system, which must be set out in the network statement, to resolve disputes about the allocation of infrastructure capacity promptly 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.

(8) The dispute resolution system provided for under paragraph (7) is without prejudice to the right of appeal to the Office of Rail and Road under regulation 32(1).

(9) The infrastructure manager must take such measures as are appropriate to deal with any concerns about the allocation process raised by interested parties.

(10) 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 and Road, in such form or manner as that Office may from time to time require, 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***

**24.**—(1) In addition to making an application for capacity in accordance with the annual timetable process described in regulation 22, an applicant may submit *ad hoc* requests for 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 it 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 it to respond rapidly to foreseeable *ad hoc* requests for infrastructure capacity.

### **Declaration of specialised infrastructure**

**25.**—(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 railway infrastructure, as defined in the infrastructure manager's network statement.

(2) Subject to the provisions set out in paragraph (3), and without prejudice to articles 101, 102 and 106 of the Treaty, an infrastructure manager may designate particular railway infrastructure for use by specified types of rail service and, once the railway 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 railway infrastructure which it is proposed to designate is in Scotland, Scottish Ministers;
  - (iii) the Office of Rail and Road; and
  - (iv) all other interested parties; and
- (c) such designation must not prevent the use of that designated railway infrastructure by other types of rail transport service when capacity is available.

### **Congested infrastructure**

**26.**—(1) Where, after the coordination of requests for capacity and consultation with the applicants in accordance with regulation 23(4), it is not possible for the infrastructure manager to satisfy requests for infrastructure capacity adequately, the infrastructure manager must declare that element of the railway 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 railway infrastructure is likely to become congested during the period to which that working timetable relates, the infrastructure manager must declare that element of the railway infrastructure to be congested.

(3) When railway infrastructure has been declared to be congested under the provisions of this regulation the infrastructure manager must inform—

- (a) existing users of that railway infrastructure;
- (b) new applicants for infrastructure capacity which includes that element of the railway infrastructure which has been declared to be congested;
- (c) the Office of Rail and Road;
- (d) the Secretary of State; and
- (e) where any element of the railway infrastructure which has been declared to be congested is in Scotland, Scottish Ministers.

(4) Where railway infrastructure has been declared to be congested in accordance with paragraph (1) or (2), the infrastructure manager must undertake a capacity analysis of the congested infrastructure, as described in regulation 27, unless a capacity enhancement plan, as described in regulation 28, is in the process of being implemented.

(5) When an element of the railway infrastructure has been declared to be congested in accordance with paragraph (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 sub-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 railway 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) For the purposes of paragraph (6) an international freight service is a transport service where all wagons of the train cross at least one border of a Member State; the train may be joined or split and the different sections of the train may have different origins and destinations.

(8) 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).

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

### **Capacity analysis**

**27.**—(1) Where required in accordance with regulation 26(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 railway infrastructure; and
- (c) characteristics of the different rail services which have been allocated capacity to operate on that railway 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) railway infrastructure improvements.

(4) The infrastructure manager must consult the Secretary of State and, where any part of the capacity analysis relates to railway infrastructure in Scotland, the 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 railway infrastructure is declared to be congested in accordance with regulation 26(1) or (2) and make the findings of the analysis available to the parties described in regulation 26(3).

**Capacity enhancement plan**

28.—(1) The infrastructure manager must, within six months of the publication of a capacity analysis in accordance with regulation 27, produce a capacity enhancement plan.

(2) In producing the capacity enhancement plan, the infrastructure manager must—

- (a) consult such interested parties as it considers necessary, including those described in regulation 26(3); and
- (b) seek the prior approval of the appropriate Minister at least one month before the deadline for completion of the plan.

(3) The capacity enhancement plan must identify the—

- (a) reasons for the congestion;
- (b) likely future development of traffic;
- (c) constraints on railway 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 railway 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 a capacity enhancement plan for that part of the railway infrastructure which is subject to the scarcity charge has not been produced, as required by this regulation; or
- (b) the infrastructure manager 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 and Road 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 27, 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.

(8) For the purposes of this regulation the “appropriate Minister” means—

- (a) where the capacity enhancement plan relates wholly to railway infrastructure in Scotland, the Scottish Ministers;
- (b) where the capacity enhancement plan relates in part to railway infrastructure in Scotland, the Secretary of State and the Scottish Ministers acting jointly; and
- (c) in all other cases the Secretary of State.

### **Use of train paths**

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

**30.**—(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 various 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 railway 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 it deems it to be necessary, require railway undertakings to make available to it such resources as the infrastructure manager considers appropriate to restore the normal operation of the network as quickly as possible.

(5) Where a contract or framework agreement between a railway undertaking 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.

## **PART 6**

### **Regulation and Appeals**

#### **Regulatory body**

**31.**—(1) Section 4 of the Act<sup>(39)</sup> has effect, to the extent relevant and consistent with the Directive, as if the reference to the functions assigned or transferred to the Office of Rail and Road 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 and Road 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.

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<sup>(39)</sup> 1993 c. 43. Section 4(1) is amended by the Competition Act 1988 (c. 41), Schedule 10, paragraph 6(3); the Transport Act 2000 (c. 38), section 224(1) and (2); the Enterprise Act 2002 (c. 40), Schedule 25, paragraphs 30(1) and (2) and Schedule 26; the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, Part 1, paragraphs 1 and 3; the Railways Act 2005 (c. 14), section 3 and Schedule 13, Part 1; S.I. 2014/892, Schedule 1, Part 2, paragraphs 99 and 100 and S.I. 2015/1682, Schedule, Part 1, paragraph 1(a). There are further amendments to section 4 which are not relevant to these Regulations.

(3) Negotiations between an applicant and the infrastructure manager about the level of railway infrastructure charges are only permitted if carried out under the supervision of the Office of Rail and Road and, if such negotiations are likely to contravene the requirements of these Regulations, it is the duty of the Office of Rail and Road to intervene.

(4) The Office of Rail and Road may in particular, as part of the intervention mentioned in paragraph (3), issue such directions to the applicant or the infrastructure manager as it considers appropriate for the purpose of ensuring that no contravention arises or, to the extent that a contravention has arisen, that it ceases.

(5) Where the Office of Rail and Road, by virtue of regulation 32(4), specifies the manner and form in which any notification or appeal must be lodged in accordance with these Regulations, it must publicise this information in such manner as it considers appropriate.

(6) Without prejudice to the requirements of paragraph 18 of Schedule 1 to the Railways and Transport Safety Act 2003(40), procedural arrangements made by the Office of Rail and Road under paragraph 8 of that Schedule must ensure that a person with ultimate responsibility for taking a decision under regulations 32, 33, 34 and 35 complies with the criteria listed in paragraph (7).

(7) The criteria are that such persons—

(a) must make an annual declaration of—

(i) their commitment to the impartial fulfilment of their duties under these Regulations; and

(ii) any direct or indirect interests which may be considered prejudicial to their independence and which might influence their performance of any function;

(b) must withdraw from decision making in cases which concern an undertaking with which they have had a direct or indirect connection in the period of 12 months prior to the date on which any procedure relating to a decision described in paragraph (6) commences;

(c) must not seek or take instructions from any government or other entity when carrying out their functions; and

(d) must have no professional position or responsibility with any regulated undertaking or entity for a period of not less than 12 months commencing at the end of their term of employment to take decisions under paragraph (6).

(8) Without prejudice to the right of any person to make an application to the court under Part 54 of the Civil Procedure Rules 1998(41), it is the duty of any person to whom a direction is given under paragraph (4) to comply with and give effect to that direction.

### Appeals to the regulatory body

32.—(1) Subject to paragraph (3), an applicant has a right to appeal to the Office of Rail and Road 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 13, in its provisional and final versions;

(40) 2003 c. 20. Amendments have been made to Schedule 1 which are not relevant to these Regulations.

(41) S.I. 1998/3132. Part 54 is amended by the Constitutional Reform Act 2005 (c. 4), Schedule 11, Part 1, paragraph 1(2); S.I. 2000/2092, Schedule; S.I. 2002/2058, rule 21; S.I. 2003/364, rule 5(a)-(e); S.I. 2003/3361, rules 12 and 13; S.I. 2007/3543, rule 7(b) and (c); S.I. 2009/3390, rule 29(b); S.I. 2010/2577, rules 3 and 4; S.I. 2012/2208, rules 2 and 9(b) and (c); S.I. 2013/262, rule 18; S.I. 2013/1412, rule 4; S.I. 2015/102, Schedule 6, Part 2, paragraph 11; and S.I. 2015/670, rules 4, 7, 9 and 10. There are other amendments to Part 54 which are not relevant to these Regulations.

- (b) the information which, by virtue of regulation 13(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, the charging system and the Channel Tunnel charging framework;
- (e) the level or structure of railway infrastructure charges, the principles of which are prescribed in Part 4 and Schedule 3, which it is, or may be, required to pay;
- (f) the arrangements for access provided under Part 2 and Schedule 2; and
- (g) access to and charging for services provided under Part 2 and Schedule 2.

(3) Where the matter of an appeal under paragraph (1) is one in relation to which directions may be sought from the Office of Rail and Road under section 17 or 22A of the Act(42), the applicant must lodge the appeal by way of an application under the relevant section.

(4) Where the matter of an appeal under paragraph (1) 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(43), an exempt facility;
- (b) the appeal relates to a rail link facility; or
- (c) the subject matter of the appeal is not capable of being addressed by directions which may be sought under section 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 and Road may from time to time specify.

(5) Where the matter of an appeal under paragraph (1) is one to which paragraph (3) does not apply, the Office of Rail and Road must—

- (a) as appropriate, ask for relevant information and initiate a consultation with the relevant parties within one month of the date of receipt of the appeal; and
- (b) within a predetermined and reasonable time, and, in any case, within six weeks of the date of receipt of all relevant information (including information provided pursuant to section 80 of the Act(44), as modified by regulation 36)—
  - (i) make a decision;
  - (ii) inform the relevant parties of its decision and the reasons for that decision;
  - (iii) 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 from which the appeal arose; and
  - (iv) publish the decision.

(6) Where a decision or direction under paragraph (5) would affect a rail link facility or, as the case may be, the operation of the development agreement, the Office of Rail and Road must consult and, subject to paragraph (7), take into account any representations made by the Secretary of State before making or issuing such a decision or direction.

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(42) 1993 c. 43. Section 17 is amended by the Transport Act 2000 (c. 38), section 233(1), Schedule 27, paragraphs 17 and 21, and Schedule 31, Part 4; the Railways Act 2005 (c. 14), Schedule 1, Part 1, paragraph 12(1) and (2) and Schedule 11, paragraphs 1 and 3(a); S.I. 1998/1340, regulation 21(5); S.I. 2005/3049, Schedule 1, Part 1, paragraph 4(a) and (b); and S.I. 2015/1682, Schedule, Part 1, paragraph 1(y). Section 22A was inserted by the Transport Act 2000, section 232(2), and amended by S.I. 2005/3049, Schedule 1(1), paragraph 4(d); and S.I. 2015/1682, Schedule, Part 1, paragraph 1(ff).

(43) 1993 c. 43. Section 20 is amended by the Transport Act 2000 (c. 38), Schedule 27, paragraphs 17 and 23 and Schedule 31, Part 4; and the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, part 1, paragraphs 1, 3 and 9.

(44) 1993 c. 43. Section 80 is amended by the Transport Act 2000 (c. 38), Schedule 27, paragraphs 17 and 38 and Schedule 31, Part 4; the Railways Act 2005 (c. 14), Schedule 1, Part 1, paragraph 33 and Schedule 11, paragraphs 1 and 12; S.I. 2005/3050, Schedule 1, Part 1, paragraphs 3(1) and 7 and S.I. 2015/1682, Schedule, Part 1, paragraph 1(xx). Section 80 is also amended by these Regulations (see Schedule 1, paragraph 3(3)).

(7) Where paragraph (6) applies and, following consultation, the Secretary of State submits representations, the Office of Rail and Road 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.

(8) When an appeal under paragraph (1) contests a decision under regulation 6(4) to refuse a request for access to, and the supply of, services described in paragraph 2 of Schedule 2, a decision under paragraph (5) must include a determination as to whether, in respect of the access and provision of services to which the appeal relates, a viable alternative exists.

(9) When an appeal under paragraph (1) contests a decision to refuse or restrict the provision of services in circumstances where there are conflicting requests as described in regulation 6(7), a determination under paragraph (5) must include a determination, as appropriate and in respect of the circumstances to which the appeal relates, of—

- (a) whether a viable alternative as described in regulation 6(4) exists;
- (b) whether it is possible to accommodate the conflicting requests on the basis of demonstrated need; and
- (c) whether, and if so what, part of the service capacity must be granted to the applicant.

(10) Where a decision under paragraph (5) concerns a refusal by an infrastructure manager or allocation body to allocate infrastructure capacity, or concerns an appeal against the terms of an offer of infrastructure capacity, the Office of Rail and Road must, in such a decision, either—

- (a) confirm that no modification of the infrastructure manager or allocation body's decision is required; or
- (b) require modification of that decision and issue directions to that effect.

(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—

- (a) a decision by the Office of Rail and Road on an appeal brought under this regulation is binding on all parties affected by that decision;
- (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.

### **Regulatory decisions concerning international passenger services**

**33.**—(1) The Office of Rail and Road must, at the request of a competent authority or interested railway undertaking, determine whether the principal purpose of a service is to carry passengers between stations located in different Member States.

(2) In fulfilling its function under paragraph (1), the Office of Rail and Road must follow the procedure and criteria set out in Commission Implementing Regulation (EU) No 869/2014 of 11th August 2014 on new rail passenger services<sup>(45)</sup>.

(3) The Office of Rail and Road must—

- (a) at the request of a relevant party and in accordance with paragraphs (5) and (6), determine whether the exercise of the right conferred under regulation 5 by an applicant for infrastructure capacity notified under regulation 19(7) would compromise the economic equilibrium of a relevant public service contract; and
- (b) make the determination on the basis of an objective economic analysis and in accordance with pre-determined criteria published by it.

(4) For the purposes of paragraph (3), and (6)(d) a relevant party is—

<sup>(45)</sup> O.J. No. L 239, 12.8.14, p. 1.

- (a) the competent authority or authorities that awarded the relevant public service contract;
- (b) any other competent authority with a right to limit access along the route of the international passenger service notified under regulation 19(7);
- (c) the infrastructure manager; and
- (d) the railway undertaking performing the relevant public service contract to which the request relates.

(5) Within one month of receipt of a request under paragraph (3)(a), the Office of Rail and Road must consider the information provided (including information provided pursuant to section 80 of the Act, as modified by regulation 36), and, as appropriate, ask for further relevant information from, and initiate consultation with, all relevant parties.

(6) The Office of Rail and Road must, within six weeks of receipt of all relevant information and, where appropriate, of any representations made by the Secretary of State under paragraph (9)—

- (a) complete a consultation initiated under paragraph (5) or, as the case may be, under paragraph (9) if required;
- (b) make a decision on a request made under paragraph (3)(a);
- (c) where appropriate, issue a direction to the infrastructure manager, allocation body, charging body, service provider or, as the case may be, railway undertaking, limiting the access rights conferred under regulation 5, if the exercise of those rights would compromise the economic equilibrium of a relevant public service contract; and
- (d) provide the relevant parties and any railway undertaking seeking access for the purpose of operating an international passenger service with the grounds for its decision, and specify a reasonable time period within which, and the conditions under which, any of those parties may request a reconsideration of the decision or direction or both.

(7) Where the Office of Rail and Road has received a properly made request for a reconsideration of its decision or direction in accordance with paragraph (6)(d), any decision or direction it has made under paragraph (6) will not take effect pending reconsideration.

(8) Where the Office of Rail and Road has received a properly made request for a reconsideration of its decision or direction in accordance with paragraph (6)(d), it must, within six weeks of the date of receipt of all relevant information (including information provided pursuant to section 80 of the Act, as modified by regulation 36) and of any representations made by the Secretary of State under paragraph (9)—

- (a) make a reconsidered decision on the request; and
- (b) where appropriate, issue or reissue a decision or direction to the infrastructure manager, allocation body, charging body, service provider or, as the case may be, railway undertaking.

(9) Where a decision or direction under paragraph (6) or (8) would affect a rail link facility or, as the case may be, the operation of the development agreement, the Office of Rail and Road must consult and, subject to paragraph (10), take into account any representations made by the Secretary of State before making or issuing such a decision or direction.

(10) Where paragraph (9) applies and, following consultation, the Secretary of State submits representations, the Office of Rail and Road must, before making or issuing a decision or direction, or reconsidered decision or direction, consult such interested parties as it considers appropriate on the representations submitted by the Secretary of State.

(11) In making a decision on a request made under paragraph (3), or a request for a reconsideration of its decision under paragraph (6), the Office of Rail and Road must either—

- (a) confirm that no modification of the infrastructure manager or allocation body's decision to award access rights is required; or

(b) require modification of that decision in accordance with directions issued by the Office of Rail and Road.

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

(a) a decision by the Office of Rail and Road on a request made under paragraph (3), or a request for a reconsideration of its decision under paragraph (6), 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.

(13) Without prejudice to paragraphs (9) and (10) the procedure and criteria to be applied by the Office of Rail and Road in the performance of its functions under paragraphs (3) to (8) shall be subject to, and include, the relevant procedures and criteria set out in Commission Implementing Regulation (EU) No 869/2014 of 11th August 2014 on new rail passenger services.

### **Monitoring the rail services markets**

**34.**—(1) The Office of Rail and Road must monitor the competitive situation in the rail services markets.

(2) In particular it must—

(a) control the matters referred to in regulation 32(2) on its own initiative and with a view to preventing discrimination against applicants; and

(b) check whether the network statement contains discriminatory clauses or creates discretionary powers for the infrastructure manager that may be used to discriminate against applicants.

(3) The Office of Rail and Road must, where appropriate and on its own initiative, give appropriate directions to correct—

(a) discrimination against applicants;

(b) market distortion; or

(c) undesirable developments in relation to the competitive situation in the rail services markets, in particular with reference to the matters referred to in regulation 32(2).

(4) Without prejudice to the right of any person to make an application to the court under Part 54 of the Civil Procedure Rules 1998, it is the duty of any person to whom a direction is given under paragraph (3) to comply with and give effect to that direction.

(5) The Office of Rail and Road and the safety authority for the Channel Tunnel within the meaning of the Railways (Interoperability) Regulations 2011<sup>(46)</sup> must cooperate closely, in particular with a view jointly to develop a framework for information-sharing and cooperation aimed at preventing adverse effects on competition or safety in the rail services markets.

(6) The framework must include a mechanism for—

(a) the Office of Rail and Road to provide the safety authority referred to in paragraph (5) with recommendations on issues that may affect competition in the rail services markets; and

(b) that safety authority to provide the Office of Rail and Road with recommendations on issues which may affect safety.

(7) Without prejudice to their independence within the field of their competence, the Office of Rail and Road and the safety authority referred to in paragraph (5) must each examine any relevant

<sup>(46)</sup> S. I. 2011/3066; see the definition of “safety authority” in regulation 2. Amendments have been made to S.I. 2011/3066 which are not relevant to these Regulations. The IGC is the safety authority for the Channel Tunnel.



recommendation which it receives under paragraph (6)(a) or (b), as the case may be, before making a relevant decision or direction and must give reasons if it deviates from the recommendation.

(8) The Office of Rail and Road must regularly, and in any case at least every two years, consult representatives of users of the rail freight and passenger transport services, to take into account their views on the rail services markets.

(9) The Secretary of State must, while respecting the role of social partners, supply to the European Commission on an annual basis necessary information on the use of the networks and evolution of framework conditions in the rail sector.

(10) Information supplied under paragraph (9) must conform with any provisions to ensure consistency in the reporting obligations contained in Commission Implementing Regulation (EU) 2015/1100 of 7th July 2015 on the reporting obligations of the Member States in the framework of rail market monitoring<sup>(47)</sup>.

### **Audits**

**35.**—(1) The Office of Rail and Road may carry out an audit or initiate an external audit of an infrastructure manager, service provider and, where relevant, railway undertaking to verify compliance with the accounting separation provisions laid down in regulation 9.

(2) For the purposes of paragraph (1) the power of the Office of Rail and Road under section 80 of the Act<sup>(48)</sup>, as modified by regulation 36, to request relevant information to perform its functions includes a power to request any relevant party to provide all or part of the accounting information listed in Schedule 5 with a sufficient level of detail as is deemed necessary and proportionate.

(3) For the purposes of paragraph (2) “any relevant party” includes an infrastructure manager, service provider, railway undertaking or other entity performing or integrating different types of rail transport or infrastructure management as referred to in regulations 6 and 9(1).

(4) The Office of Rail and Road may draw conclusions from the accounts concerning state aid issues, which it must report to the Secretary of State.

### **Provision of information to the regulatory body**

**36.**—(1) If the Office of Rail and Road requests information in connection with its functions under these Regulations, section 80 of the Act (duty of certain persons to furnish information on request) applies 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”;

(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 purposes of implementing [Directive 2012/34/EU](#) of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast).”;

(b) after subsection (1A) there were added—

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<sup>(47)</sup> O.J. No. L 181, 9.7.15, p.1.

<sup>(48)</sup> 1993 c. 43. Section 80 is amended by the Transport Act 2000 (c. 38), Schedule 27, paragraphs 17 and 38 and Schedule 31, Part 4; the Railways Act 2005 (c. 14), Schedule 1, Part 1, paragraph 33 and Schedule 11, paragraphs 1 and 12; S.I. 2005/3050, Schedule 1, Part 1, paragraphs 3(1) and 7 and S.I. 2015/1682, Schedule, Part 1, paragraph 1(xx). Section 80 is also amended by these Regulations (see Schedule 1, paragraph 3(3)).

“(1B) In subsection (1) “allocation body”, “charging body”, “applicant”, “infrastructure manager” and “service provider” have the same meanings as in the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016(49).”;

(c) in subsection (2) —

(i) for “being not less than 28 days” there were substituted “being not more than one calendar month”; and

(ii) at the end of that subsection there were added:

“save that, in exceptional circumstances, the Office of Rail and Road may authorise a time extension of a further two weeks for compliance with the request.”; and

(d) for “the Secretary of State, the Scottish Ministers or the Office of Rail and Road” in each place there were substituted “the Office of Rail and Road”.

(2) Information which may be requested under section 80 of the Act, as modified by paragraph (1), includes data which are necessary for statistical and market observation purposes.

### **Cooperation between regulatory bodies**

37.—(1) Without prejudice to Article 3 of the IGC regulation, the Office of Rail and Road must exchange information about its work, decision making principles, and practice with the national regulatory bodies of other Member States, and in particular it must exchange information on the main issues of its procedures and on the problems of interpreting transposed European Union railway law.

(2) The Office of Rail and Road must cooperate with such bodies for the purpose of coordinating their decision-making across the European Union, and for this purpose it must participate and work together with them in a network, to be coordinated and supported by the Commission, that convenes at regular intervals.

(3) The Office of Rail and Road must cooperate closely with such bodies, including through working arrangements, for the purpose of mutual assistance in their market monitoring tasks and handling appeals or investigations.

(4) In the case of an appeal or an own-initiative investigation on issues of access or charging relating to an international train path, as well as in the framework of monitoring competition on the market related to international rail transport services, the Office of Rail and Road must consult the national regulatory bodies of all other Member States through which the international train path concerned runs and, where appropriate, the European Commission, and must request all necessary information from them before taking its decision.

(5) The Office of Rail and Road must use any information it receives pursuant to paragraph (4) only for the purpose of handling the appeal or investigation.

(6) If the Office of Rail and Road receives a request for information from the regulatory body of another Member State in relation to an appeal or investigation of a type described in paragraph (4) for which that regulatory body is responsible, the Office of Rail and Road must use its best endeavours to provide all such information that it has the right to request under these Regulations.

(7) If the Office of Rail and Road receives an appeal, or conducts an investigation on its own initiative in relation to an issue for which another regulatory body is responsible, it must transfer relevant information to that regulatory body in order for that body to take measures regarding the parties concerned.

(8) Infrastructure managers required to co-operate in the allocation of infrastructure capacity crossing more than one network, as referred to in regulation 20(2)(a), must provide, without delay,

all the information requested by the Office of Rail and Road, which is necessary for the purpose of handling the appeal or investigation referred to in paragraph (4).

(9) The Office of Rail and Road may transfer such information regarding the international train path concerned to the regulatory bodies referred to in paragraph (4).

(10) The Office of Rail and Road must work with the regulatory bodies of other Member States to develop common principles and practices for making the decisions for which it is empowered under these Regulations.

(11) The Office of Rail and Road must review decisions and practices of infrastructure managers required to co-operate over train services which cross more than one network, as referred to in paragraph (8) and regulation 20, that implement provisions in these Regulations or which otherwise facilitate international rail transport.

### **Enforcement of decisions, directions and notices**

**38.**—(1) If the Office of Rail and Road is satisfied that a relevant operator has contravened, or is contravening, a relevant decision, direction or notice, it may impose on the relevant operator a penalty of such amount as is reasonable.

(2) In this regulation—

(a) “relevant decision, direction or notice” means—

- (i) a decision made, or direction issued, by the Office of Rail and Road under regulation 31, 32, 33 or 34;
- (ii) a direction given by the Office of Rail and Road under section 17 or 22A of the Act(50), where the direction relates to a matter referred to in regulation 32(2)(c) to (g) and was applied for as a result of regulation 32(3); or
- (iii) a notice served by the Office of Rail and Road under section 80 of the Act, as modified by regulation 36; and

(b) “relevant operator” means—

- (i) a person issued with a decision or direction under regulation 31, 32, 33 or 34;
- (ii) a person to whom a direction of the kind described in sub-paragraph (a)(ii) has been given; or
- (iii) a person on whom a notice is served under section 80 of the Act, as modified by regulation 36.

(3) Sections 57A(2), (3), (6) and (7), 57B(1) to (6), 57C, 57D(1), 57E and 57F of the Act(51) (“the applicable provisions”) have effect in relation to a penalty imposed under paragraph (1) as if it had been imposed under section 57A(1) of the Act.

(4) For the purposes of paragraph (3)—

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(50) 1993 c. 43. Section 17 is amended by the Transport Act 2000 (c. 38), section 233(1), Schedule 27, paragraphs 17 and 21, and Schedule 31, Part 4; the Railways Act 2005 (c. 14), Schedule 1, Part 1, paragraph 12(1) and (2) and Schedule 11, paragraphs 1 and 3(a); S.I. 1998/1340, regulation 21(5); S.I. 2005/3049, Schedule 1, Part 1, paragraph 4(a) and (b); and S.I. 2015/1682, Schedule, Part 1, paragraph 1(y). Section 22A was inserted by the Transport Act 2000, section 232(2), and amended by S.I. 2005/3049, Schedule 1(1), paragraph 4(d); and S.I. 2015/1682, Schedule, Part 1, paragraph 1(ff).

(51) 1993 c. 43. Sections 57A–57F were inserted by the Transport Act 2000 (c. 38), section 225(1). Section 57A is amended by the Railways Act 2005 (c. 14), Schedule 1, Part 1, paragraph 23(1) and (2); the Enterprise and Regulatory Reform Act 2013 (c. 24), Schedule 14, paragraphs 11 and 13; and S.I. 2015/1682, Schedule, Part 1, paragraph 1(ll). There are other amendments to section 57A not relevant to these Regulations. Section 57B is amended by the Railways Act 2005, Schedule 1, Part 1, paragraph 24(1); the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, Part 1, paragraphs 1 and 18(a), and Schedule 8; and S.I. 2015/1682, Schedule, Part 1, paragraph 1(mm). Section 57C is amended by the Railways and Transport Safety Act 2003, Schedule 2, Part 1, paragraphs 1 and 3(b); the Railways Act 2005, Schedule 1, Part 1, paragraph 25; and S.I. 2015/1682, Schedule, Part 1, paragraph 1(nn). Paragraph 57F is amended by the Railways Act 2005, Schedule 11, paragraphs 1 and 8.

- (a) references in the applicable provisions to the “relevant operator” are to be construed in accordance with this regulation;
- (b) references in the applicable provisions to the “appropriate authority” are to be read as references to the Office of Rail and Road;
- (c) section 57A(2) has effect as if for paragraphs (a) and (b) there were substituted “to the Secretary of State.”;
- (d) references in section 57B(1) and (3) to (6) to “the Secretary of State, the Scottish Ministers and the Office of Rail and Road” are to be read as references to the Office of Rail and Road;
- (e) references in section 57B(3) and (4) to “his, their or its” are to be read as references to “its”;
- (f) in sections 57B(2) and 57C, any reference to a “relevant condition or requirement or order” has effect as if it included a reference to a relevant decision, direction or notice;
- (g) section 57D(1) has effect as if for paragraphs (a) and (b) there were substituted—
  - “of a relevant decision, direction or notice (within the meaning of regulation 38 of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016(52)),”; and
- (h) section 57F(1) has effect as if for paragraph (a) there were substituted—
  - “(a) that it was not within the powers of regulation 38(1) of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016.”.

## PART 7

### The Railway (Licensing of Railway Undertakings) Regulations 2005

#### **Amendment of the Railway (Licensing of Railway Undertakings) Regulations 2005**

**39.**—(1) The Railway (Licensing of Railway Undertakings) Regulations 2005(53) are amended as follows.

- (2) In regulation 2 (interpretation)—
  - (a) after the definition of “the 1995 Directive” insert—
    - ““the 2012 Directive” means [Directive 2012/34/EU](#) of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)(54).”;
  - (b) after the definition of “ORR” insert the following definition—
    - ““railway undertaking” means any public or private undertaking, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking ensure traction; this includes undertakings which provide traction only.”; and
  - (c) omit paragraph (2).
- (3) In regulation 4 (scope)—
  - (a) in paragraph (2)(c) omit the words “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”; and

(52) [S.I. 2016/645](#).

(53) [S.I. 2005/3050](#); amended by [S.I. 2010/439](#), Schedule, Part 2, paragraph 13 and [S.I. 2015/1682](#), Schedule, Part 2, paragraph 10(1). There are other amendments not relevant to these Regulations.

(54) O.J. No. L 343, 14.12.12, p. 32, as corrected by Corrigendum, O.J. L 67, 12.3.15, p. 32.

- (b) after paragraph (2) insert—
- “(3) For the purposes of paragraph (2)—
- (a) “urban or suburban rail passenger services” means transport services whose principal purpose is to meet the passenger transport needs of an urban centre or conurbation, including a cross-border conurbation, together with transport needs between such a centre or conurbation and surrounding areas; and
- (b) “regional rail freight services” means transport services whose principal purpose is to meet the rail freight transport needs of a region, including a cross-border region.”.
- (4) In regulation 5 (prohibition of unlicensed provision of services), paragraph (4), after the words “the 1995 Directive” add “or the 2012 Directive”.
- (5) In regulation 6 (appointment of licensing authority and grant of European licences)—
- (a) after paragraph (4) insert—
- “(4A) In the exercise of its functions under these Regulations, the ORR shall comply with Commission Implementing Regulation (EU) 2015/171 of 4th February 2015 on certain aspects of the procedure of licensing railway undertakings(55).”; and
- (b) in paragraph (11) after the words “The ORR shall” insert “without delay”.
- (6) In regulation 8 (monitoring, suspension and revocation of European licences)—
- (a) for paragraph (2) substitute—
- “(2) The ORR shall take such steps as are necessary to enable it to determine whether or not a railway undertaking complies with a requirement referred to in Schedule 2—
- (a) at regular intervals of at least every 5 years, or
- (b) at any time the ORR considers that there is serious doubt whether the railway undertaking complies with the requirement.”;
- (b) in paragraph (5) for the words “the 1995 Directive”, where they first appear, substitute “the 2012 Directive” and for the words after “that licensing authority;” to the end substitute—
- “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 or the 2012 Directive and a “licensing authority” means the body responsible for granting licences within an EEA State.”; and
- (c) in paragraph (14), for the words “the European Commission”, substitute “the European Railway Agency”.
- (7) In regulation 9 (prohibition on operating trains without a statement of national regulatory provisions), paragraph 5, after the words “the 1995 Directive” add “or the 2012 Directive”.
- (8) In regulation 17 (general duties of the Rail Passengers’ Council), paragraph 2, after the words “the 1995 Directive” add “or the 2012 Directive”.
- (9) In regulation 19 (duties of the London Transport Users’ Committee), paragraph 2, after the words “the 1995 Directive” add “or the 2012 Directive”.
- (10) After regulation 20 insert—

#### “Review

- 21.**—(1) The Secretary of State must from time to time—
- (a) carry out a review of these Regulations;

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(55) O.J. No. L 29, 5.2.15, p. 3.

- (b) set out the conclusions of the review in a report; and
  - (c) publish the report.
- (2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the 2012 Directive (which is implemented in part by means of these Regulations) is implemented in other EEA States.
- (3) The report must in particular—
- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
  - (b) assess the extent to which those objectives are achieved; and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016~~(56)~~ come into force.
- (5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.”.
- (11) In Schedule 2—
- (a) At the end of paragraph 7(d) omit “and”;
  - (b) after paragraph 7(e) insert—
    - “; and
    - (f) taxes and social security payments.”;
  - (c) in paragraph 8 for the word “substantial” substitute “considerable or recurrent”; and
  - (d) after paragraph 11(1) insert—
    - “(1A) In determining whether adequate insurance cover is maintained, the ORR may take into account the specificities and risk-profile of different types of services, in particular of railway operations for cultural or heritage purposes.”.

## PART 8

### Miscellaneous

#### **Statutory authority to run trains**

**40.** Any applicant granted access rights under these Regulations is, 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, taken to have statutory authority to do so.

#### **Civil proceedings**

- 41.—**(1) Any obligation which a person owes under or arising from—
- (a) regulation 5;
  - (b) regulation 6;
  - (c) regulation 8;

- (d) regulation 9;
- (e) regulation 10;
- (f) paragraphs (1) to (5) of regulation 12;
- (g) paragraphs (2)(a), (5)(b), (9), and (13) of regulation 14;
- (h) paragraph (5) of regulation 15;
- (i) paragraph (4), (14) and (16)(c) of regulation 19;
- (j) paragraphs (4), (5), and (6) of regulation 21;
- (k) paragraph (8) of regulation 31;
- (l) paragraph (11) of regulation 32;
- (m) paragraph (12) of regulation 33; or
- (n) paragraph (4) of regulation 34,

is a duty owed to any person who may be affected by a breach of that obligation and is 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 infrastructure manager, railway undertaking, service provider, allocation body, charging body or applicant under paragraph (1), it is a 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 is enforceable by civil proceedings by the Office of Rail and Road for an injunction or for interdict or any other relief.

#### **Making of false statements etc.**

**42.**—(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 that person knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, that person is guilty of an offence and liable—

- (a) on summary conviction in England and Wales, to a fine;
- (b) on summary conviction in Scotland, to a fine not exceeding the statutory maximum;
- (c) on conviction on indictment, to a fine.

(2) The consent of the Secretary of State or the Director of Public Prosecutions is required before proceedings are instituted in England or Wales in respect of an offence under this regulation.

#### **Offences by bodies corporate and Scottish partnerships**

**43.**—(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, that person as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with that member's functions of management as if the member 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, or any person who was purporting to act in any such capacity,

that partner as well as the partnership is guilty of that offence and liable to be proceeded against and punished accordingly.

### Restriction on disclosure of information

**44.** Section 145 of the Act<sup>(57)</sup> (general restrictions on disclosure of information) has effect in relation to information which—

- (a) relates to the affairs of any individual or to any particular business; and
- (b) has been obtained—
  - (i) under or by virtue of any provision of these Regulations; or
  - (ii) by the regulatory bodies, within the meaning of the IGC regulation, in pursuance of functions conferred by Article 3 of that regulation,

as it has effect in relation to such information obtained under or by virtue of any of the provisions of the Act.

### Breaches of duty outside the United Kingdom

**45.—**(1) For the purpose of determining whether a breach of the duty imposed by regulation 9 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<sup>(58)</sup> is a British subject; or
  - (c) a British protected person (within the meaning of that Act).

### Review

**46.—**(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive (which is implemented in part by these Regulations) is implemented in other EEA States.

(3) The report must in particular—

<sup>(57)</sup> 1993 c. 43. Section 145 is amended by the Competition Act 1998 (c. 41), Schedule 10, paragraph 15(10); the Transport Act 2000 (c. 38), Schedule 27, paragraphs 17, 41(1) and (3); the Enterprise Act 2002 (c. 40), Schedule 25, paragraph 30(1) and (14)(c)(ii); the Railways Act 2005 (c. 14), Schedule 11, paragraphs 1 and 16(2) and Schedule 13, Part 1; S.I. 2005/3049, Schedule 1, Part 1, paragraph 4(e)(ii); S.I. 2005/3050, Schedule 1, Part 1, paragraph 3(1) and (9); S.I. 2009/1122, Schedule, paragraph 1(1) and (2)(a); S.I. 2010/439, Schedule, Part 1, paragraph 6(1) and (6); S.I. 2011/1043, article 6(3) and (1)(e); S.I. 2014/892, Schedule 1, Part 2, paragraphs 99, 105(1) and (4) and 109(1) and (5); S.I. 2015/786, regulation 7(3); and S.I. 2015/1682, Schedule, Part 1, paragraphs 1(aaa) and 10(oo)(ii). There are other amendments which are not relevant to these Regulations.

<sup>(58)</sup> 1981 c. 61.



- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
  - (b) assess the extent to which those objectives are achieved; and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.
- (5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Signed by authority if the Secretary Of State

21st June 2016

*Claire Perry*  
Parliamentary Under Secretary of State  
Department for Transport

## SCHEDULE 1

## Amendments

Regulation 2(2)

## PART 1

## Amendments to Primary Legislation

**The Railway Fires Act 1905**

1. In section 4 of the Railway Fires Act 1905(**59**) (definitions and application), for paragraph (c) of the definition of “railway company” substitute—

- “(c) who holds a European licence granted pursuant to—
- (i) a provision contained in any instrument made for the purpose of implementing Council [Directive 1995/18/EC](#) dated 19th June 1995 on the licensing of railway undertakings(**60**) or Chapter III of [Directive 2012/34/EU](#) of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)(**61**), or
  - (ii) any action taken by an EEA State for that purpose.”

**The Insolvency Act 1986**

2. In Schedule 2A to the Insolvency Act 1986(**62**) (exceptions to prohibition on appointment of administrative receiver: supplementary provisions), for paragraph 10(1)(n) substitute—

- “(n) in reliance on a European licence granted pursuant to—
- (i) a provision contained in any instrument made for the purpose of implementing Council [Directive 1995/18/EC](#) dated 19th June 1995 on the licensing of railway undertakings or Chapter III of [Directive 2012/34/EU](#) of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast), or
  - (ii) any action taken by an EEA State for that purpose.”

**The Railways Act 1993**

3.—(1) The Railways Act 1993(**63**) is amended as follows.

(2) In section 6(2) (prohibition on unauthorised operators of railway assets), for the definition of “European licence”(b) substitute—

- ““European licence” means a licence granted pursuant to—
- (a) a provision contained in any instrument made for the purpose of implementing—

(59) [1905 c. 11](#); the definition of “railway company” in section 4 was inserted in relation to England, Scotland and Wales by the Railways Act 1993 ([c. 43](#)), Schedule 12, paragraph 2(2). Paragraph (c) was inserted by [S.I. 2005/3050](#), Schedule 1, Part 1, paragraph 1(b).

(60) O.J. No. L 143, 27.6.95, p. 70.

(61) O.J. No. L 343, 14.12.12, p. 32, as corrected by Corrigendum, O.J. L 67, 12.3.2015, p. 32.

(62) [1986 c. 45](#); Schedule 2A was inserted by the Enterprise Act 2002 ([c. 40](#)) section 250(2), Schedule 18. Paragraph 10(1)(n) was inserted by [S.I. 2005/3050](#), Schedule 1, Part 1, paragraph 2(b). Paragraph 10(2B) of that Schedule was inserted by [S.I. 2005/3050](#), Schedule 1, Part 1, paragraph 2(c).

(63) [1993 c. 43](#).

(64) The definition of “European Licence” was substituted for the definition of “international licence” by [S.I. 2005/3050](#), Schedule 1, Part 1, paragraph 3(1) and (3)(a).

- (i) Council [Directive 1995/18/EC](#) dated 19th June 1995 on the licensing of railway undertakings, or
  - (ii) Chapter III of [Directive 2012/34/EU](#) of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast), or
  - (b) any action taken by an EEA State for that purpose;”.
- (3) For section 80(1A)(65) (duty of certain persons to furnish information to the Secretary of State, the Scottish Ministers or the Office of Rail and Road on request) for the words from “for the purpose of implementing” to the end substitute—  
“for the purpose of implementing—
- (a) Council [Directive 1995/18/EC](#) dated 19th June 1995 on the licensing of railway undertakings, or
  - (b) Chapter III of [Directive 2012/34/EU](#) of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast).”.
- (4) In section 145(2) (general restrictions on disclosure of information)—
- (a) in paragraph (ga)(66), for the words from “for the purpose of implementing” to the end substitute—  
“for the purpose of implementing—
  - (i) Council [Directive 1995/18/EC](#) dated 19th June 1995 on the licensing of railway undertakings, or
  - (ii) [Directive 2012/34/EU](#) of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast);”;
  - (b) omit paragraph (gb)(67).

#### **The Greater London Authority Act 1999**

4. In section 235(2)(b) of the Greater London Authority Act 1999(68) (restrictions on disclosure of information), for the words from “implementing” to the end substitute “implementing [Directive 2012/34/EU](#) of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast);”.

#### **The Railways and Transport Safety Act 2003**

5. In section 17 of the Railways and Transport Safety Act 2003(69) (extent)—
- (a) omit “only”, and
  - (b) after paragraph (b) insert—  
“, and
  - (c) Northern Ireland.”.

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(65) Subsection (1A) was inserted by [S.I. 2005/3050](#), Schedule 1, Part 1, paragraph 3(1) and (7)(a) and amended by [S.I. 2015/1682](#), Schedule, Part 1, paragraph 1(xx).

(66) Section 145(2)(ga) was inserted by [S.I. 2005/3050](#), Schedule 1, Part 1, paragraph 3(1) and (9) and amended by [S.I. 2015/1682](#), Schedule, Part 1, paragraph 1(aaa).

(67) Section 145(2)(gb) was inserted by [S.I. 2005/3049](#), Schedule 1, Part 1, paragraph 4(e)(ii) and amended by [S.I. 2009/1122](#), Schedule, paragraph 1(1) and (2)(a) and [S.I. 2015/1682](#), Schedule, Part 1, paragraph 1(aaa).

(68) [1999 c.29](#). Subsection (2)(b) was amended by the Railways Act 2005 (c. 14), Schedule 12, paragraph 14(1) and (5) and Schedule 13, Part 1; [S.I. 2005/3049](#), Schedule 1, Part 1, paragraph 5(a); [S.I. 2009/1122](#), Schedule, paragraph 2; [S.I. 2014/892](#), Schedule 1, Part 2, paragraph 119(1) and (2); and [SI 2015/1682](#), Schedule, Part 1, paragraph 4(n)(iv).

(69) [2003 c. 20](#).

**The Civil Contingencies Act 2004**

6.—(1) Schedule 1 to the Civil Contingencies Act 2004(70) is amended as follows.

(2) For paragraph 24(1) substitute—

“(1) A person who provides services in connection with railways in Great Britain and who holds a European licence granted pursuant to—

(a) a provision contained in any instrument made for the purpose of implementing—

(i) Council [Directive 1995/18/EC](#) dated 19th June 1995 on the licensing of railway undertakings, or

(ii) Chapter III of [Directive 2012/34/EU](#) of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast), or

(b) any action taken by an EEA State for that purpose.”.

(3) For paragraph 35(1) substitute—

“(1) A person who provides services in connection with railways, in so far as such services are provided in Scotland, and who holds a European licence granted pursuant to—

(a) a provision contained in any instrument made for the purpose of implementing—

(i) Council [Directive 1995/18/EC](#) dated 19th June 1995 on the licensing of railway undertakings, or

(ii) Chapter III of [Directive 2012/34/EU](#) of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast), or

(b) any action taken by an EEA State for that purpose.”.

**PART 2****Amendments to Secondary Legislation****The Town and Country Planning (Control of Advertisements) Regulations 1992**

7. In regulation 2(1) (interpretation) of the Town and Country Planning (Control of Advertisements) Regulations 1992(71), in the definition of “statutory undertaker” for the words from “Council Directive” to “of the Council” substitute “Council [Directive 1995/18/EC](#) dated 19th June 1995 on the licensing of railway undertakings or Chapter III of [Directive 2012/34/EU](#) of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)”.

**The London Underground (East London Line Extension) (No. 2) Order 2001**

8. In Schedule 11 (protection for Railtrack) to the London Underground (East London Line Extension) (No. 2) Order 2001(72), in the definition of “train operator” in paragraph 1(2) for the words from “Council Directive” to the end substitute “Council [Directive 1995/18/EC](#) dated 19th June 1995 on the licensing of railway undertakings or Chapter III of [Directive 2012/34/EU](#) of the

(70) [2004 c. 36](#). Schedule 1, paragraphs 24 and 35 were substituted by [S.I. 2005/3050](#), Schedule 1, Part 1, paragraph 4.

(71) [S.I. 1992/666](#); revoked in relation to England by [S.I. 2007/783](#), regulation 32. The words to be substituted in the definition of “statutory undertaker” were inserted by [S.I. 2005/3050](#), Schedule 1, Part 2, paragraph 7(1) and (3). There are other amendments to the definition but none is relevant.

(72) [S.I. 2001/3682](#). The words to be substituted in the definition of “train operator” were inserted by [S.I. 2005/3050](#), Schedule 1, Part 2, paragraph 9(1) and (2)(b). There are other amendments to this definition but none is relevant.

European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast).”.

#### **The Docklands Light Railway (Silvertown and London City Airport Extension) Order 2002**

9. In Part 1 of Schedule 11 (for protection of railway undertakers) to the Docklands Light Railway (Silvertown and London City Airport Extension) Order 2002(73), in the definition of “train operator” in paragraph 13(6) for the words from “Council Directive” to the end substitute “Council [Directive 1995/18/EC](#) dated 19th June 1995 on the licensing of railway undertakings or Chapter III of [Directive 2012/34/EU](#) of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast).”.

#### **The Docklands Light Railway (Woolwich Arsenal Extension) Order 2004**

10. In Schedule 13 (for protection of railway interests) to the Docklands Light Railway (Woolwich Arsenal Extension) Order 2004(74), in the definition of “train operator” in paragraph 15(6) for the words from “Council Directive” to the end substitute “Council [Directive 1995/18/EC](#) dated 19th June 1995 on the licensing of railway undertakings or Chapter III of [Directive 2012/34/EU](#) of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast).”.

#### **The British Transport Police (Police Services Agreement) Order 2004**

11. In article 2(1)(b) (requirement to enter into a police services agreement) of the British Transport Police (Police Services Agreement) Order 2004(75) for the words from “Council Directive” to “of the Council” substitute “Council [Directive 1995/18/EC](#) dated 19th June 1995 on the licensing of railway undertakings or Chapter III of [Directive 2012/34/EU](#) of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast).”.

#### **The Central Rating List (Wales) Regulations 2005**

12. In regulation 7(3) (railway hereditaments) of the Central Rating List (Wales) Regulations 2005(76), in the definition of ““licence exempt operator” and “licence holder”” for the words from “Council Directive” to “of the Council” substitute “Council [Directive 1995/18/EC](#) dated 19th June 1995 on the licensing of railway undertakings or Chapter III of [Directive 2012/34/EU](#) of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast).”.

#### **The Central Rating List (England) Regulations 2005**

13. In regulation 6(4) (railway hereditaments) of the Central Rating List (England) Regulations 2005(77) in the definition of ““licence exempt operator” and “licence holder”” for the words from “Council Directive” to the end substitute “Council [Directive 1995/18/EC](#) dated 19th June 1995 on the licensing of railway undertakings or Chapter III of [Directive 2012/34/EU](#) of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast).”.

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(73) [S.I. 2002/1066](#). The words to be substituted in the definition of “train operator” were inserted by [S.I. 2005/3050](#), Schedule 1, Part 2, paragraph 10(1) and (2)(b).

(74) [S.I. 2004/757](#). The words to be substituted in the definition of “train operator” were inserted by [S.I. 2005/3050](#), Schedule 1, Part 2, paragraph 11(1) and (2)(b).

(75) [S.I. 2004/1522](#). The words to be substituted were inserted by [S.I. 2005/3050](#), Schedule 1, Part 2, paragraph 12(2).

(76) [S.I. 2005/422](#). The words to be substituted were inserted by [S.I. 2005/3050](#), Schedule 1, Part 2, paragraph 13(1) and (2)(b).

(77) [S.I. 2005/551](#). The words to be substituted were inserted by [S.I. 2005/3050](#), Schedule 1, Part 2, paragraph 14(1) and (2)(b).

**The Railways (Interoperability) Regulations 2011**

14. In regulation 36(10)(b)(i) (national vehicle register) of the Railways (Interoperability) Regulations 2011(78), for the words from “article 30” to the end substitute “article 55 of [Directive 2012/34/EU](#) of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast);”.

**The Channel Tunnel (International Arrangements) (Charging Framework and Transfer of Economic Regulation Functions) Order 2015**

15.—(1) The Channel Tunnel (International Arrangements) (Charging Framework and Transfer of Economic Regulation Functions) Order 2015(79) is amended as follows.

(2) In regulation 2 (interpretation) for the definitions of “the 2005 Regulations” and “the 2015 Regulations” substitute—

““the 2016 Regulations” means the Railway (Access, Management and Licensing of Railway Undertakings) Regulations 2016(80);”.

(3) In regulation 5(2) for the words “the 2005 Regulations, as amended by the 2015 Regulations,” substitute “the 2016 Regulations”.

(4) In regulation 5(2)(a) and (2)(b) for the words “the 2005 Regulations as so amended,” in both places, substitute “the 2016 Regulations”.

## SCHEDULE 2

Regulations 5, 6 and 10

## Services to be supplied to railway undertakings

1. The minimum access package referred to in regulation 6(1) must comprise—
  - (a) handling of requests for infrastructure capacity; and
  - (b) the right to utilise such capacity as is granted and, in particular—
    - (i) such railway infrastructure including track, points and junctions as are necessary to utilise that capacity;
    - (ii) electrical supply equipment for traction current, where available and as is necessary to utilise that capacity;
    - (iii) train control, including signalling, train regulation, dispatching and the communication and provision of information on train movements; and
    - (iv) all other information as is necessary to implement or to operate the service for which capacity has been granted.
2. Access, including track access to services facilities and the supply of services referred to in regulations 5, 6 and 10 must comprise, where they exist—
  - (a) refuelling facilities, and supply of fuel in these facilities, charges for which must be shown on the invoices separately;
  - (b) passenger stations, including buildings and other facilities such as travel information display and a suitable location for ticketing services;
  - (c) freight terminals;

(78) [S.I. 2011/3066](#); paragraph (10)(b)(i) is amended by [S.I. 2015/1682](#), Schedule, Part 2, paragraph 9(b).

(79) [S.I. 2015/785](#). There are amendments to regulation 5 which are not relevant to these Regulations.

(80) [S.I. 2016/645](#).

- (d) marshalling yards;
  - (e) train formation facilities including shunting facilities;
  - (f) storage sidings specifically dedicated to the temporary parking of railway vehicles between two assignments;
  - (g) maintenance facilities, with the exception of heavy maintenance facilities dedicated to high-speed trains or to other types of rolling stock requiring specific facilities;
  - (h) other technical facilities, including cleaning and washing facilities;
  - (i) maritime and inland port facilities which are linked to rail activities; and
  - (j) relief facilities.
3. The additional services referred to in regulation 6(11) may comprise—
- (a) traction current, charges for which must be shown on the invoices separately from charges for using the electrical supply equipment, without prejudice to the application of [Directive 2009/72/EC](#) of the European Parliament and of the Council of 13th July 2009 concerning common rules for the internal market in electricity and repealing [Directive 2003/54/EC](#)(**81**);
  - (b) pre-heating of passenger trains;
  - (c) tailor-made contracts for—
    - (i) control of the transport of dangerous goods; and
    - (ii) assistance in running abnormal trains.
4. The ancillary services referred to in regulation 6(12) may comprise—
- (a) access to the telecommunication network;
  - (b) the provision of supplementary information;
  - (c) technical inspection of rolling stock;
  - (d) ticketing services in passenger stations; and
  - (e) heavy maintenance services supplied in maintenance facilities dedicated to high-speed trains or to other types of rolling stock requiring specific facilities.

### SCHEDULE 3

Regulations 14, 16 and 18

#### Access charging

##### **Principles of access charging**

- 1.—(1) The infrastructure manager must ensure that the application of the charging scheme—
- (a) complies with the rules set out in the network statement produced in accordance with regulation 13; and
  - (b) results in equivalent and non-discriminatory charges for different railway undertakings that perform services of an equivalent nature in a similar part of the market.
- (2) The calculation of the charge may in particular take into account the mileage, composition of the train and any specific requirements in terms of such factors as speed, axle load and the degree or period of utilisation of the railway infrastructure.

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(81) O.J. No. L 211, 14.8.09, p. 55; amendments have been made which are not relevant to these Regulations.

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(3) Except where specific arrangements are made in accordance with paragraph 3, the infrastructure manager must ensure that the charging system in use is based on the same principles over the whole of the network.

(4) Without prejudice to sub-paragraph (8) the charges for the minimum access package and track access to service facilities referred to in paragraphs 1 and 2 of Schedule 2 must be set at the cost that is directly incurred as a result of operating the train service.

(5) From 2nd August 2019 or earlier, the infrastructure manager must calculate the cost under sub-paragraph (4) or, as the case may be, under the first paragraph of Article 4 of the Channel Tunnel charging framework, in accordance with Commission Implementing Regulation (EU) 2015/909 of 12th June 2015 on the modalities for the calculation of the cost that is directly incurred as a result of operating the train service<sup>(82)</sup>.

(6) The charge imposed for track access within service facilities referred to in paragraph 2 of Schedule 2 and the supply of services in such service facilities must not exceed the cost of providing it, plus a reasonable profit.

(7) If the additional or ancillary services referred to in paragraphs 3 and 4 of Schedule 2 are offered by only one supplier the charge imposed for the supply of those services must not exceed the cost of providing the service, plus a reasonable profit.

(8) The infrastructure charge may include a charge to reflect the scarcity of capacity of the identifiable segment of the infrastructure during periods of congestion.

(9) The charges referred to in sub-paragraphs (4) and (8) may be averaged over a reasonable spread of train services and times, but the relative magnitudes of the railway infrastructure charges must be related to the costs attributable to the services.

### **Exceptions to the charging principles**

2.—(1) In order to obtain full recovery of the costs incurred the infrastructure manager, with the approval of the Office of Rail and Road or, in relation to a rail link facility, the Secretary of State, may levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, whilst guaranteeing optimum competitiveness, in particular in respect of rail market segments.

(2) For the purposes of this paragraph—

(a) approval given by the Secretary of State in relation to a rail link facility must be given through the development agreement; and

(b) approval given by the Office of Rail and Road must—

(i) in relation to railway infrastructure subject to the access charges review, be given as part of that review; and

(ii) in relation to any other railway infrastructure, be given in such form or manner as the Office may require.

(3) The effect of sub-paragraphs (1) and (2) must not be to exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear.

(4) The charging system must respect the productivity increases achieved by applicants.

(5) Before approving the levy of a mark-up under sub-paragraph (1) the Office of Rail and Road or, as the case may be, the Secretary of State, must ensure that the infrastructure manager evaluates the relevance of a mark-up for the specific market segments, considering at least the pairs listed in sub-paragraph (10) and retaining the relevant ones.

<sup>(82)</sup> O.J. No. L 148, 13.06.15, p.17.



(6) The list of market segments to be considered by the infrastructure manager under sub-paragraph (5) must contain at least the three following segments: freight services, passenger services within the framework of a public service contract and other passenger services.

(7) In addition to the market segments considered under sub-paragraph (5), the infrastructure manager may consider further market segments according to commodity or passengers transported.

(8) Market segments in which railway undertakings are not currently operating but in which they may provide services during the period of validity of the charging system must also be defined; the infrastructure manager must not include a mark-up in the charging system for those market segments.

(9) The list of market segments must be published in the network statement and reviewed at least every five years; the Office of Rail and Road must control that list in accordance with paragraph (2) of regulation 31.

(10) The pairs referred to in sub-paragraph (5) are—

- (a) passenger versus freight services;
- (b) trains carrying dangerous goods versus other freight trains;
- (c) domestic versus international services;
- (d) combined transport versus direct trains;
- (e) urban or regional versus interurban passenger services;
- (f) block trains versus single wagon load trains; and
- (g) regular versus occasional train services.

3.—(1) Subject to sub-paragraph (2), for specific investment projects completed—

- (a) since 1988; or
- (b) following the coming into force of these Regulations,

the infrastructure manager may set or continue to set higher charges on the basis of the long-term costs of the project.

(2) For sub-paragraph (1) to apply—

- (a) the project must increase efficiency or cost-effectiveness; and
- (b) the project must be one that could not otherwise have been undertaken without the prospect of such higher charges.

(3) A charging arrangement to which sub-paragraph (1) applies may incorporate agreements on the sharing of the risk associated with new investments.

4.—(1) An infrastructure manager's average and marginal charges for equivalent uses of the railway infrastructure must be comparable, and comparable services in the same market segment must be subject to the same charges.

(2) The network statement produced by the infrastructure manager in accordance with regulation 13 must demonstrate that the charging system meets the requirements in sub-paragraph (1) in so far as this can be done without the disclosure of commercially confidential information.

5. If an infrastructure manager intends to modify the essential elements of the charging system referred to in paragraph 2 that infrastructure manager must make such modifications public at least three months in advance of the deadline for the publication of the network statement in accordance with regulation 13(9).

**Discounts**

6.—(1) Subject to the provisions of articles 101, 102, 106 and 107 of the Treaty, and notwithstanding paragraph 1(4) and (5) of this Schedule, any discount on the charges levied on a user of railway infrastructure by the infrastructure manager, for any service, must comply with the principles set out in this paragraph.

(2) Except where sub-paragraph (3) applies, discounts must be limited to the actual saving of the administrative cost to the infrastructure manager and, in determining the level of discount to be applied, no account may be taken of cost savings already incorporated in the charge levied.

(3) The infrastructure manager may introduce schemes available to all users of the railway infrastructure, with reference to specified traffic flows, granting time limited discounts to encourage the development of new rail services, or discounts encouraging the use of considerably under-utilised lines.

(4) The discounts available must be in accordance with the access charges review, where it applies, or, in the case of a rail link facility, the development agreement.

(5) Discounts may relate only to charges levied for a specified railway infrastructure section.

(6) Similar discount schemes must be applied to similar services.

(7) Discount schemes must be applied in a non-discriminatory manner to any railway undertaking.

**Performance Schemes**

7.—(1) The basic principles referred to in regulation 16(3) are as follows.

(2) In order to achieve an agreed level of performance and not to endanger the economic viability of a service, the infrastructure manager must agree with applicants the main parameters of the performance scheme, in particular the value of delays, the thresholds for payments due under the performance scheme relative both to individual train runs and to all train runs of a railway undertaking in a given period of time.

(3) The infrastructure manager must communicate to the railway undertakings the working timetable, on the basis of which delays will be calculated, at least five days before the train run, except that the infrastructure manager may apply a shorter notice period in case of force majeure or late alterations of the working timetable.

(4) All delays must be attributable to one of the following delay classes and sub-classes—

(a) operation/planning management attributable to the infrastructure manager—

- (i) timetable compilation;
- (ii) formation of train;
- (iii) mistakes in operations procedure;
- (iv) wrong application of priority rules;
- (v) staff; or
- (vi) other causes;

(b) railway infrastructure installations attributable to the infrastructure manager—

- (i) signalling installations;
- (ii) signalling installations at level crossings;
- (iii) telecommunications installations;
- (iv) power supply equipment;
- (v) track;

- (vi) structures;
- (vii) staff; or
- (viii) other causes;
- (c) civil engineering causes attributable to the infrastructure manager—
  - (i) planned construction work;
  - (ii) irregularities in execution of construction work;
  - (iii) speed restriction due to defective track; or
  - (iv) other causes;
- (d) causes attributable to other infrastructure managers—
  - (i) caused by previous infrastructure manager; or
  - (ii) caused by next infrastructure manager;
- (e) commercial causes attributable to the railway undertaking—
  - (i) exceeding the stop time;
  - (ii) request of the railway undertaking;
  - (iii) loading operations;
  - (iv) loading irregularities;
  - (v) commercial preparation of train;
  - (vi) staff; or
  - (vii) other causes;
- (f) rolling stock attributable to the railway undertaking—
  - (i) roster planning/re-rostering;
  - (ii) formation of train by railway undertaking;
  - (iii) problems affecting coaches (passenger transport);
  - (iv) problems affecting wagons (freight transport);
  - (v) problems affecting cars, locomotives and rail cars;
  - (vi) staff; or
  - (vii) other causes;
- (g) causes attributable to other railway undertakings—
  - (i) caused by next railway undertaking; or
  - (ii) caused by previous railway undertaking;
- (h) external causes attributable to neither infrastructure manager nor railway undertaking—
  - (i) strike;
  - (ii) administrative formalities;
  - (iii) outside influence;
  - (iv) effects of weather and natural causes;
  - (v) delay due to external reasons on the next network; or
  - (vi) other causes; or
- (i) secondary causes attributable to neither infrastructure manager nor railway undertaking—
  - (i) dangerous incidents, accidents and hazards;

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- (ii) track occupation caused by the lateness of the same train;
- (iii) track occupation caused by the lateness of another train;
- (iv) turn-around;
- (v) connection; or
- (vi) further investigation needed.

(5) Wherever possible, delays must be attributed to a single organisation, considering both the responsibility for causing the disruption and the ability to re-establish normal traffic conditions.

(6) The calculation of payments must take into account the average delay of train services of similar punctuality requirements.

## SCHEDULE 4

Regulations 19 and 22

### Timetable for the Allocation Process

#### **Date of timetable change**

1.—(1) Subject to sub-paragraphs (2), (3) and (4) the working timetable must be established once per calendar year, and the change of working timetable must take place at midnight on the second Saturday in December.

(2) Where a change or adjustment to the working timetable is carried out after the winter, in particular to take account, where appropriate, of changes in regional passenger traffic timetables, it must take place at midnight on the second Saturday in June.

(3) Further changes to the working timetable may be made at such other intervals as are required.

(4) The infrastructure manager may agree different dates to those stipulated in sub-paragraphs (1) and (2) and, in this case, must inform the European Commission if international traffic may be affected.

#### **Timetable for the production of the working timetable**

2.—(1) The final date for receipt of requests for capacity to be incorporated into the working timetable must be no more than 12 months in advance of the entry into force of that working timetable.

(2) No later than 11 months before the working timetable comes into force, the infrastructure managers must ensure that provisional international train paths have been established in co-operation with other relevant infrastructure managers or, as the case may be, allocation bodies, in accordance with regulation 20.

(3) Infrastructure managers must ensure that, so far as possible, provisional international train paths established in accordance with sub-paragraph (2) are adhered to during the subsequent allocation process.

(4) No later than four months after the deadline for submission of bids by applicants, the infrastructure manager must prepare a draft working timetable.

## SCHEDULE 5

Regulation 35(2)

Accounting information to be supplied to the Office of Rail and Road upon request

1. The accounting information referred to in regulation 35(2) is as follows—

### *Account separation*

- (a) separate profit and loss accounts and balance sheets for freight, passenger and railway infrastructure management activities;
- (b) detailed information on individual sources and uses of public funds and other forms of compensation in a transparent and detailed manner, including a detailed review of the businesses' cash flows in order to determine in what way these public funds and other forms of compensation have been used;
- (c) cost and profit categories making it possible to determine whether cross-subsidies between these different activities occurred, according to the requirements of the Office of Rail and Road;
- (d) methodology used to allocate costs between different activities;
- (e) where the regulated firm is part of a group structure, full details of inter-company payments;

### *Monitoring of track access charges*

- (f) different cost categories, in particular providing sufficient information on marginal/direct costs of the different services or groups of services so that railway infrastructure charges can be monitored;
- (g) sufficient information to allow monitoring of the individual charges paid for services (or groups of services); if required by the Office of Rail and Road, this information must contain data on volumes of individual services, prices for individual services and total revenues for individual services paid by internal and external customers;
- (h) costs and revenues for individual services (or groups of services) using the relevant cost methodology, as required by the regulatory body, to identify potentially anti-competitive pricing (cross-subsidies, predatory pricing and excessive pricing);

### *Indication of financial performance*

- (i) a statement of financial performance;
- (j) a summary expenditure statement;
- (k) a maintenance expenditure statement;
- (l) an operating expenditure statement;
- (m) an income statement; and
- (n) supporting notes that amplify and explain the statements, where appropriate.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement [Directive 2012/34/EU](#) of the European Parliament and of the Council of 21st November 2012, establishing a single European railway area (recast) (O.J. No. L 343,

14.12.12, p. 32) (“the Directive”). The Directive repeals three key EU measures: (1) Council [Directive 91/440/EEC](#) of 29th July 1991 on the development of the Community’s railways (O.J. No. L 237, 24.8.91, p. 25); (2) Council [Directive 95/18/EC](#) of 19th June 1995 on the licensing of railway undertakings (O.J. No. L143, 27.6.95, p. 70); and (3) [Directive 2001/14/EC](#) of the European Parliament and of the Council of 26th February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure (O.J. No. L 75, 5.03.01, p. 29), together with the various directives which amend them (listed in Annex IX of the Directive), and consolidates these provisions in one place.

The repealed EU measures were previously implemented in Great Britain (excluding the Channel Tunnel) by the Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049), amended by S.I. 2009/1122 and S.I. 2015/786, (“the Access and Management Regulations”) and the Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050) (“the Licensing Regulations”). They were implemented for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 2005 (S.I. 2005/3207), amended by S.I. 2008/2366 and S.I. 2009/2081. This instrument is revoked and replaced by the Channel Tunnel (International Arrangements) (Charging Framework and Transfer of Economic Regulation Functions) Order 2015 (S.I. 2015/785) (“the Channel Tunnel Order”), which transfers responsibility for the economic regulation of the Tunnel to the Office of Rail and Road and Autorité de Régulation des Activités Ferroviaires.

These Regulations implement the substantive changes required by the Directive by revoking and re-enacting the Access and Management Regulations with amendments, and by amending the Licensing Regulations. Subject to one exception these Regulations do not apply to Northern Ireland.

*Part 1* contains preliminary provisions, including the scope of the Regulations (*regulation 4*).

*Part 2* grants access rights to operators of all types of rail freight and international passenger services to the entire rail network in Great Britain, including access to terminals and ports linked to the rail network, and access to, and the supply of, the services listed in *Schedule 2*. The list of services has been expanded and clarified by the Directive, and rights of access to infrastructure now include access to infrastructure which connects service facilities. *Regulation 6* imposes new obligations as to the rights to the supply of services, and when requests for these can be refused. *Regulation 7* includes a new provision ensuring that cross-border agreements do not discriminate between railway undertakings or restrict their freedom to operate cross-border services.

*Part 3* sets out the requirements about infrastructure management and the independence of railway undertakings. *Regulation 10* imposes new provisions relating to organisational independence and separation of accounts where service providers are under direct or indirect control of dominant bodies or firms. *Regulation 11* requires the Secretary of State and Scottish Ministers to publish an indicative railway infrastructure strategy by December 2019. *Regulation 12* requires infrastructure managers to produce a business plan, and applicants are given the opportunity to comment on a draft. Railway undertakings must also draw up a business plan. Infrastructure managers are placed under a requirement to produce a network statement containing the information set out in *regulation 13*, the detailed content of which has been expanded since the earlier Directives. New provisions in this Part include a requirement that bodies which provide rail freight and passenger transport services publish separate accounts for both elements of their business, with strengthened provisions regarding the separate treatment of public funds provided for public services.

*Part 4*, together with *Schedule 3* and the Channel Tunnel charging framework (set out in the Channel Tunnel Order), sets out the structure for the charging of fees for the use of railway infrastructure, and the charging principles. *Regulation 14* requires infrastructure managers and service providers to charge fees which must be used to fund their business. *Regulation 16* requires the establishment of performance schemes which may include penalties for poor performance and the payment of compensation arising from disruption. A dispute resolution system must be made available. *Regulation 17* permits a charge to be imposed for regular non-usage of allocated train paths. *Regulation 18* requires the infrastructure manager to cooperate with other infrastructure managers

within the European Union to coordinate charging for services crossing more than one network. *Schedule 3* sets out the principles of access charging and the calculation of the train operating costs to be calculated with reference to Commission Implementing Regulation (EU) 2015/909 (see *paragraph 1*). This means charges for the supply of such services must not exceed the costs of providing them, plus a reasonable profit. *Paragraph 2* of this Schedule requires the infrastructure manager to evaluate the relevance of any mark-up charges for different market segments. *Paragraph 7* of this Schedule imposes new principles to apply to performance schemes.

*Part 5*, together with *Schedule 4*, sets out the framework and timetable for the allocation of infrastructure capacity. The trading of capacity between applicants is prohibited, and allocation in the form of fixed train paths cannot be granted for longer than one timetable period. *Regulations 26 to 28* set out the procedure that must be followed where an element of the railway infrastructure is congested, and *regulation 29* provides a ‘use it or lose it’ provision in respect of allocated capacity.

*Part 6* allocates certain regulatory functions to the Office of Rail and Road (“ORR”). *Regulation 32* provides a right of appeal to the ORR for applicants aggrieved with various aspects of the allocation of capacity and the fees charged for its use, and requires the ORR to make a decision on such appeals within six weeks. *Regulation 34* requires the ORR to monitor competition in the rail services market and to take appropriate action to deal with undesirable developments in the market either arising out of its own investigations, or from appeals which have been submitted. *Regulation 35* gives the ORR the power to audit various bodies, and makes clear that its power to request information under section 80 of the Railways Act 1993 (c. 43) (as modified by *regulation 36*) includes a power to request the information listed in *Schedule 5*. *Regulation 37* requires cooperation between regulatory bodies across the European Union.

*Part 7* amends the Licensing Regulations to reflect amendments to the provisions which they implement, and also to update references to EU legislation as necessary.

*Schedule 1* contains consequential amendments to the Railways Act 1993 and other miscellaneous provisions.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector has been produced and is published with the Explanatory Memorandum and transposition note alongside the instrument at [www.legislation.gov.uk](http://www.legislation.gov.uk).