STATUTORY INSTRUMENTS

2016 No. 645

TRANSPORT

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

Made - - - -	*21st June 2016*
Laid before Parliament	*7th July 2016*
Coming into force - -	*29th July 2016*

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 [F1].

The Secretary of State is a Minister designated [F2] for the purposes of that section in relation to measures relating to railways and railway transport.

F1 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), **Sch**edule, Part 1.
F2 S.I. 1996/266, to which there have been amendments not relevant to these Regulations.

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 [F3];

(b) the Railways Infrastructure (Access and Management) (Amendment) Regulations 2009 [F4]; and

(c) the Railways Infrastructure (Access and Management) (Amendment) Regulations 2015 [F5].

(2) Schedule 1 (amendments) has effect.

F3 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, **Sch**edule, Part 2, paragraph 5.
F4 S.I. 2009/1122.
F5 S.I. 2015/786, amended by S.I. 2015/1682, **Sch**edule, Part 2, paragraph 10(oo).

Interpretation

3. In these Regulations—

"the Act" means the Railways Act 1993 [F6];

"the 1996 Act" means the Channel Tunnel Rail Link Act 1996 [F7];

"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 [F8];

"*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;

"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;

[F9"cross-border agreement" means any agreement between the United Kingdom and any other country 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) F10;

"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 F11;

"factory" has the same meaning as in the Factories Act 1961 F12;

"framework agreement" means either—

(a) an access contract described in section 18(2)(a) of the Act F13 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 F14 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 F15;

"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

(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 **[**F16the border between the United Kingdom and a member State**]** and where the principal purpose of the service is to carry passengers between stations located **[**F16in the United Kingdom and a member State**]**; 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 [F17];

[[F18]"national authority" means the Secretary of State, the Scottish Ministers or the Welsh Ministers;**]**

"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 [F19];

"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 [F20];

"the Office of Rail and Road" means the body established under section 15 of the Railways and Transport Safety Act 2003 [F21];

"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 [F22], 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;

"railway undertaking" means any public or private undertaking licensed according to the **[**[F23]Railway (Licensing of Railway Undertakings) Regulations 2005**]**, 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 [F24];

"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 [F25];

"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;

[F26]...

"tunnel system" has the same meaning as in the Channel Tunnel Act 1987 [F27];

"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;

"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 [F28] 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.

F6 1993 c. 43.

F7 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).

F8 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, **Sch**edule, Part 1, paragraph 1(ccc).