STATUTORY RULES OF NORTHERN IRELAND

2016 No. 420

TRANSPORT

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

Made - - - -	*1st December 2016*
Coming into operation	*23rd January 2017*

The Department for Infrastructure [F1], being a Department designated [F2] for the purposes of section 2(2) of the European Communities Act [F3] in relation to measures relating to railways and railway transport, in exercise of the powers conferred by that section, and of all other powers enabling it in that behalf, hereby makes the following Regulations:

F1 The Department for Regional Development was renamed the Department for Infrastructure by virtue of section 1(6) of 2016 c.5 (N.I.)
F2 S.I. 1996/266
F3 1972 c.68

PART 1

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016 and shall come into operation on 23rd January 2017.

2.—(1) In these Regulations—

[[F4]"the 1995 Directive" means Council Directive 95/18/EC dated 19 June 1995 on the licensing of railway undertakings as amended by Directive 2001/13/EC dated 26 February 2001 and Directive 2004/49 dated 29 April 2004, both of the European Parliament and of the Council;**]**

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

"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 3;

"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(3), for the functions and obligations of the infrastructure manager under Part 5 and Schedule 3;

"applicant" means a railway undertaking or an international grouping of railway undertakings or other persons or legal entities, such as competent authorities under Regulation No. 1370/2007 [F5] 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 infrastructure as congested infrastructure;

"charging body" means a body or undertaking, other than the infrastructure manager, which is responsible, by virtue of regulation 14(6), for the functions and obligations of the infrastructure manager under Part 4 and Schedule 2;

"charging scheme" means the specific charging rules established in accordance with regulation 14 by the Office of Rail and Road or the infrastructure manager; governing the determination of access charges as set out in Part 4;

"competent authority" has the same meaning as in Article 2 of Regulation No. 1370/2007;

[[F6]"cross-border agreement" means any agreement between Northern Ireland and the Republic of Ireland intended to facilitate the provision of cross-border rail services;**]**

"the Department" means the Department for Infrastructure;

[[F7]"development", in relation to railway infrastructure, means network planning, financial and investment planning as well as the building and upgrading of the infrastructure;**]**

[[F8]"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), as amended from time to time, before and after exit day;**]**

"the environment" means all or any of the following media, namely the air, water and land (and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground);

[[F9]"essential functions", in relation to infrastructure management, means decision-making concerning—

(a) train path allocation, including both the definition and the assessment of availability and the allocation of individual train paths, and

(b) infrastructure charging, including determination and collection of charges, in accordance with the charging framework and the capacity allocation framework established pursuant to regulations 14 and 19 respectively;**]**

[[F10]"European licence" means a licence granted to a railway undertaking pursuant to these regulations by which the capacity of the railway undertaking as such is recognised and which authorises the undertaking to provide such train services as may be specified in the licence;**]**

"framework agreement" means a legally binding general agreement under public or private law, setting out the rights and obligations of an applicant and the infrastructure manager 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;

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

"infrastructure manager" means any body or undertaking that is responsible in particular for establishing and maintaining railway infrastructure;

[[F11]"international freight service" means a transport service where the train crosses the border between Northern Ireland and the Republic of Ireland; the train may be joined or split (or joined and split) and the different sections may have different origins and destinations provided that all wagons cross the border;**]**

[[F12]"international grouping" means any association of at least two railway undertakings, at least one of which is established in the United Kingdom for the purpose of providing international transport and at least one of which is established in the Republic of Ireland for that purpose;**]**

[[F13]"international passenger service" means a passenger service where the train crosses the border between Northern Ireland and the Republic of Ireland and where the principal purpose of the service is to carry passengers between stations located in Northern Ireland and the Republic of Ireland; the train may be joined or split (or joined and split) and the different sections may have different origins and destinations provided all the carriages cross the border;**]**

[[F14]"maintenance", in relation to railway infrastructure, means works intended to maintain the condition and capability of the existing infrastructure;

"management board" means the senior body of an undertaking performing executive and administrative functions, which is responsible and accountable for day-to-day management of the undertaking;**]**

"network" means the entire railway infrastructure managed by an infrastructure manager;

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

[[F15]"Northern Ireland Department" means a department listed in Schedule 1 to the the Departments Act (Northern Ireland) 2016;**]**

"the Office of Rail and Road" means the body established under section 15 of the Railways and Transport Safety Act 2003 [F16];

[[F17]"operation", in relation to railway infrastructure, means train path allocation, traffic management and infrastructure charging;**]**

[[F18]"public passenger transport" and "public service operator" have the same meanings as in Article 2 of Regulation EC No. 1370/2007;

"public service contract" means one or more legally binding acts confirming the agreement between a competent authority and a public service operator to entrust to that public service operator the management and operation of public passenger transport services subject to public service obligations; the contract may also consist of a decision adopted by the competent authority—

(a) taking the form of an individual legislative or regulatory act, or

(b) containing conditions under which the competent authority itself provides the services or entrusts the provision of such services to an internal operator,

and for the purposes of this definition "competent authority" means any public authority or group of public authorities of Northern Ireland and the Republic of Ireland which has the power to intervene in public passenger transport in a given geographical area or any body vested with such authority, "competent local authority" means any competent authority whose geographical area of competence is not national and "internal operator" means a legally distinct

entity over which a competent local authority, or in the case of a group of authorities at least one competent local authority, exercises control similar to that exercised over its own departments and "public service obligation" has the same meaning as in Regulation EC No. 1370/2007;**]**

[[F19]"public-private partnership" means a binding arrangement between public bodies and one or more undertakings other than the main infrastructure manager, under which the undertakings—

(a) partially or totally construct or fund railway infrastructure; or

(b) acquire the right to exercise any of the functions of the infrastructure manager for a predefined period of time;**]**

"railway infrastructure" means all the items listed in Annex 1 to the Directive;

"railway service performance" includes, in particular, performance in securing each of the following in relation to railway services—

(a) reliability (including punctuality);

(b) the avoidance or mitigation of passenger overcrowding; and

(c) that journey times are as short as possible;

"railway undertaking" means any public or private undertaking licensed according to the Directive;

"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 services" means transport services whose principal purpose is to meet the transport needs of a region, including a cross-border region;

"Regulation EC No. 1370/2007" means Regulation 1370/2007 [F20] of the European Parliament and of the Council of 23rd October 2007 on public passenger transport services by rail and road and by repealing Council Regulations (EEC) No. 1191/69[F21] and 1107/70 [F22];

"Regulation 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 [F23];

[[F24]"renewal", in relation to railway infrastructure, means major substitution works on the existing infrastructure which do not change its overall performance**]**

"SNRP" means a statement of national regulatory provisions, issued under regulation 46;

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

(a) to which access is granted by virtue of regulation 5; or

(b) listed in paragraph, 2, 3 or 4 of Schedule 1;

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

[[F25]"supervisory board" means the most senior body of an undertaking that fulfils supervisory tasks, including the exercise of control over the management board and general strategic decisions regarding the undertaking;**]**

"the Treaty" means the Treaty on the Functioning of the European Union [F26];

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

"train service" means a service for the transport of goods or passengers (or both) by rail;

[[F27]"transit rights" means rights of transit through Northern Ireland using its railway infrastructure;**]**

[[F28]"upgrade" in relation to railway infrastructure, means major modification works to the infrastructure which improve its overall performance;**]**

"urban" or "suburban" means, in relation to a transport service, 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;

[[F29]"vertically integrated undertaking" means an undertaking where, within the meaning of Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (the EC Merger Regulation)—

(a) an infrastructure manager is controlled by an undertaking which at the same time controls one or several railway undertakings that operate rail services on the infrastructure manager's network;

(b) an infrastructure manager is controlled by one or several railway undertakings that operate rail services on the infrastructure manager's network; or

(c) one or several railway undertakings that operate rail services on the infrastructure manager's network are controlled by an infrastructure manager,

and includes an undertaking consisting of distinct divisions, including an infrastructure manager and one or several divisions providing transport services that do not have a distinct legal personality.

Where an infrastructure manager and a railway undertaking are fully independent of each other, but both are controlled directly by a Member State without an intermediary entity, they are not considered to constitute a vertically integrated undertaking for the purposes of these Regulations**]**

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

"working day" means any day which is not a Saturday, Sunday or a public holiday;

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

(2) Except where a definition in paragraph (1) applies, expressions used in these regulations and in the Council Directives have the meanings given by the Directives.

(3) The Interpretation Act (Northern Ireland) 1954 [F30] shall apply to these regulations as it applies to an Act of the Northern Ireland Assembly.

F4 Words in reg. 2(1) inserted (31.12.2020) by The Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 (S.I. 2019/826), regs. 1(2), **3(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F5 L.315, 3.12.2007

F6 Words in reg. 2(1) substituted (31.12.2020) by The Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 (S.I. 2019/826), regs. 1(2), **3(2)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

F7 Words in reg. 2 inserted (15.3.2019) by The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations (Northern Ireland) 2019 (S.R. 2019/15), regs. 1(1), **3(a)**

F8 Words in reg. 2(1) substituted (31.12.2020) by The Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 (S.I. 2019/826), regs. 1(2), **3(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)