STATUTORY RULES OF NORTHERN IRELAND

2009 No. 222

TRANSPORT

The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations (Northern Ireland) 2009

Made - - - - 2nd June 2009
Coming into operation in accordance with regulation 1(1)

The Department for Regional Development(**1**) being a Department(**2**) designated for the purposes of section 2(2) of the European Communities Act 1972(**3**) in relation to measures relating to railways and railway transport, in exercise of the powers conferred by that section and paragraph 1A of Schedule 2 to that Act makes the following Regulations:

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Department that it is expedient for any reference to Regulation (EC) No 1370/2007 of the European Parliament and of the Council(**4**) to be construed as a reference to that Regulation as amended from time to time.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Railways Infrastructure (Access and Management) (Amendment) Regulations (Northern Ireland) 2009 and come into operation—

(a) for the purposes of this regulation and regulation 2(2)(e) (f), (4), (5), (6), (7) (10) and (11), on 1st July;

(b) for all other purposes on 1st January 2010.

(2) The Interpretation Act (Northern Ireland) 1954(**5**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(**1**) S.I. 1999/283
(**2**) S.I. 1996/266
(**3**) 1972 c. 68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a); paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and paragraph 2(2) was amended by section 27(2) of the 2006 Act. The enabling powers of section 2(2) were extended by virtue of the amendment of section 1(2) of the 1972 Act by section 1 of the European Economic Area Act 1993 (c. 51)
(**4**) O.J. L315, 3.12.07, p. 1. These Regulations enter into force on 3 December 2009
(**5**) 1954 c. 33 (N.I.)

Amendment of the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005

2.—(1) The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005(**6**) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) for the definition of "access and transit rights" or "transit rights" substitute—

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

(b) in the definition of "applicant"—

(i) at the end of sub-paragraph (a), insert "or";

(ii) omit sub-paragraph (b);

(iii) in sub-paragraph (c) omit the words ", in particular public authorities under Regulation (EEC) No 1191/69 and shippers, freight-forwarders, and combined transport operators";

(c) after the definition of "charging scheme" insert—

""competent authority" has the same meaning as in Article 2 of Regulation (EC) No 1370/2007, as amended from time to time;";

(d) "charging body" means a body or undertaking, other than the infrastructure manager, which is responsible, by virtue of regulation 11(4), for the functions and obligations of the infrastructure manager under Part 4 and Schedule 2;

(e) in the definition of "Council Directives"—

(i) in sub-paragraph (a) for the words after "Directive 2001/12/EC(**7**)" to the end of that sub-paragraph, substitute—
",Directive 2004/51/EC(**8**) dated 29th April 2004 and Directive 2007/58/EC(**9**) dated 23rd October 2007, all of the European Parliament and of the Council and";

(ii) in sub-paragraph (b) for after the words "Council Directive 2004/49/EC(**10**)" insert —
"and Directive 2007/58/EC dated 23rd October 2007, all of the European Parliament and of the Council;";

(f) after the definition of "infrastructure manager" insert—

""public passenger transport" has the meaning as in Article 2 of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007(**11**), as amended from time to time;

"public service contract" has the same meaning as in Article 2 of Regulation (EC) No 1370/2007, as amended from time to time;

"public service operator" has the same meaning as in Article 2 of Regulation (EC) No 1370/2007, as amended from time to time;";

(g) after the definition of "railway infrastructure" insert—

""Regulation (EC) No 1370/2007" means Regulation (EC) No 1370/2007 of the European Parliament and the Council of 23rd October 2007 on public passenger

(**6**) S.R. 2005 No. 537
(**7**) O.J. No. L.175, 15.3.01, p. 1
(**8**) O.J. l164, 30.4.04, p. 16
(**9**) O.J. L.315 03.12.07, p. 44
(**10**) O.J. No. L164, 30.4.04, p. 58
(**11**) O.J. L315, 3.12.07, p. 1

transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70;"

""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 the international passenger service notified to the Department under regulation 16(4A);

"relevant public service operator" means a public service operator providing public passenger transport, the route or routes of which overlap with the route of the international passenger notified to the Department under regulation 16(4A);";

(h) omit the definition of "transit rights".

(3) For regulation 4 (access and transit rights) substitute—

"**Access rights**

4.—(1) A railway undertaking is entitled on equitable conditions to such access as may be necessary for the purpose of the operation of any type of rail freight service or international passenger service.

(2) Subject to paragraph (3), the access rights of a railway undertaking for the purpose of the operation of an international passenger service includes the right to pick up passengers at any station and set them down at another, including stations located in the same Member State.

(3) The rights conferred by paragraphs (1) and (2) are exercisable subject to the provisions of regulation 27A.

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

(5) Without prejudice to the generality of regulation 27, if a railway undertaking is denied the entitlements conferred on it by this regulation other than pursuant to a decision of the Department under regulation 27A, that railway undertaking has a right of appeal to the Department in accordance with regulation 27.".

(4) In regulation 15 (capacity allocation), insert after paragraph (4)—

"(4A) An applicant that applies for infrastructure capacity with a view to operating an international passenger service must give notice of that fact to the infrastructure manager concerned and the Department and provide them with such information as the Department may reasonably require or prescribe.

(4B) When the Department receives a notice from an applicant under paragraph (4A), it must provide any competent authority that has awarded a rail passenger service defined in a relevant public service contract and any railway undertaking which is a relevant public service operator and any other competent authority with a right to limit access along the route or routes of the international passenger service notified under paragraph 4A with a copy of the information in relation to the proposed international passenger service furnished to it in accordance with that paragraph.".

(5) In regulation 16 (framework agreements)—

(a) in paragraph (3) insert "and without prejudice to paragraph (9B)" between "applicant" and ", a framework";

(b) in paragraph (7)—

(i) for "and (9)" substitute ", (9) and (9A)"; and

(ii) after "years" at the end of the paragraph insert ", renewable for periods equal to its original duration; provided that the infrastructure manager may agree to a shorter or longer period in specific cases.";