STATUTORY RULES OF NORTHERN IRELAND

2005 No. 537

TRANSPORT

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

Made - - - - 1st December 2005

Coming into operation in accordance with regulation 1

The Department for Regional Development(**1**), being a Department designated(**2**) 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 of all other powers enabling it in that behalf, hereby makes the following Regulations:

PART I

PRELIMINARY

Citation and commencement

1.—(1) These Regulations may be cited as the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 and, with the exception of regulations 10, 15, 16, 21, 22, 23, and 24, shall come into operation on 3rd January 2006.

(2) Regulations 10, 15, 16, 21, 22, 23, and 24 shall come into operation on 15th March 2008.

Interpretation

2.—(1) In these Regulations—

"access and transit rights" or "transit rights" means access and transit rights or transit rights in relation to railway infrastructure;

(**1**) SI 1999/283
(**2**) SI 1996/266
(**3**) 1972 c. 68. By virtue of the amendment of section 1(2) of the European Communities Act 1972 by section 1 of the European Economic Act 1993 (c. 51) regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the agreement signed at Brussels on 17th March 1993 (Cm 2183)

"*ad hoc* request" means a request for individual train paths made outside the timetable for the capacity allocation process as set out in Schedule 3;

"allocation body" means a body or undertaking, other than the infrastructure manager, which is responsible, by virtue of regulation 15(3), for the functions and obligations of the infrastructure manager under Part 5 and Schedule 3;

"applicant" means—

(a) a railway undertaking licensed in accordance with the provisions of Directive 95/18/EC, as amended by Directive 2001/13/EC;

(b) an international grouping of railway undertakings; or

(c) a legal entity with public service or commercial interest in procuring infrastructure capacity, in particular public authorities under Regulation (EEC) no. 1191/69(**4**), shippers, freight forwarders, and combined transport operators;

"charging scheme" means the framework and rules governing the determination of access charges as set out in Part 4;

"charging system" means the charging system established by the infrastructure manager to determine access charges;

"the Council Directives" means—

(a) Council Directive No 91/440/EC of 29th July 1991 on the development of the Community's railways(**5**) as amended by Directive 2001/12/EC(**6**) and Council Directive 2004/51/EC(**7**); and

(b) Council Directive No.2001/14/EC of 26th February 2001 on the allocation of railway infrastructure and the levying of charges for the use of railway infrastructure and safety certification(**8**), as amended by Council Directive 2004/49/EC(**9**);

(c) Council Directive 95/18/EC dated 19th June 1995 on the licensing of railway undertakings(**10**), as amended by Directive 2001/13/EC dated 26th February 2001(**11**) and Directive 2004/49/EC dated 29th April 2004(**12**) of the European Parliament and of the Council;

"the Department" means the Department for Regional Development;

"EEA state" means a Member State, Norway, Iceland or Liechenstein;

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

"framework agreement" means a legally binding agreement made on the basis of 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;

(**4**) Regulation (EEC) no. 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (O.J. L156, 28.6.1969, p. 1). Regulation last amended by Regulation (EC) No. 1893 (O.J.L 169, 29.6. 1991, p. 1)
(**5**) O.J. No. L237, 24.8.91, p. 25: the text of the Directive is subject to the amendments in a corrigendum published in O.J. No. L305, 6.11.91. p. 22
(**6**) O.J. No. L175, 15.3.01, p. 1
(**7**) O.J. No. L164, 30.4.04, p. 16
(**8**) O.J. No L175, 15.3.01, p. 75
(**9**) O.J. No. L164, 30.4.04, p. 58
(**10**) O.J. No. L143, 27.6.1995, p. 70
(**11**) O.J. No. L175, 15.3.2001, p. 26
(**12**) O.J. No. L164, 30.4.2004, p. 44, to which there has been a corrigendum, which is not relevant to these Regulations

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

"railway infrastructure" means all the items listed in Annex IA to Commission (EEC) No. 2598/70(**13**);

"SNRP" means a statement of national regulatory provisions, issued under regulation 36;

"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

"the Treaty" means the consolidated versions of the Treaty on European Union and of the Treaty establishing the European Community(**14**);

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

"transit rights" means rights of transit through a Member State using the railway infrastructure located in the Member State;

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

"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(**15**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Scope

3.—(1) These Regulations apply to—

(a) the management of railway infrastructure;

(b) the rail transport activities of the railway undertakings established or to be established in an EEA State; and

(c) the licensing of railway undertakings and groupings in respect of international services and international combined transport goods services which they operate.

PART II

ACCESS TO RAILWAY INFRASTRUCTURE AND SERVICES

Access and transit rights

4.—(1) An international grouping is entitled to—

(a) in the case of an international grouping which includes a railway undertaking established in Northern Ireland such access or transit rights, or

(b) in the case of any other grouping, such transit rights,

as may be necessary for the provision of international transport services between the EEA States where the undertakings constituting the grouping are established.

(**13**) O.J. No. L278, 23.12.70, p. 1–5
(**14**) 2002/C325/01
(**15**) 1954 c. 33 (N.I.)

(2) A railway undertaking is entitled to such access as may be necessary for the purpose of the operation of any type of rail freight service

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

(4) Without prejudice to the generality of regulation 27, if an international grouping or railway undertaking is denied the entitlements conferred on it by this regulation, that international grouping or railway undertaking has a right of appeal to the Department in accordance with regulation 27.

Access to services

5.—(1) Subject to paragraph (2), applicants are entitled to services comprising—

(a) the minimum access package; and

(b) the track access to service facilities and the supply of services,

described in paragraphs 1 and 2 of Schedule 1.

(2) If the infrastructure manager or service provider to whom a request has been made for the supply of a service referred to in paragraph (1) does not supply such a service, the infrastructure manager must, if he is the provider of the main infrastructure, use all reasonable endeavours to facilitate the supply of that service through the appropriate service provider.

(3) The infrastructure manager or, as the case may be, service provider must ensure that the entitlements granted by this regulation are honoured, and access to the services referred to in paragraph (1) must be provided in a non-discriminatory manner.

(4) Where the infrastructure manager or service provider supplies any of the services described in paragraph 2 of Schedule 1, requests for the supply of such services may only be refused if a viable alternative means of the service being provided under market conditions exists.

(5) Where the infrastructure manager or service provider offers to supply any of the services described in paragraph 3 of Schedule 1 he must, in response to a request from an applicant, supply the services to that applicant.

(6) An applicant may request the supply of any of the services described in paragraph 4 of Schedule 1 from an infrastructure manager or service provider but that infrastructure manager or service provider is under no obligation to supply the services requested.

Without prejudice to the generality of regulation 27, if an applicant is denied the entitlements conferred on it by this regulation, that applicant has a right of appeal to the Department in accordance with regulation 27.

Access to training facilities

6.—(1) Railway undertakings applying for a safety certificate in accordance with the requirements of Council Directive 2004/49/EC shall be entitled to a fair and non-discriminatory access to training facilities for train drivers and staff accompanying the trains, whenever such training is necessary for the fulfilment of requirements to obtain that certificate.

(2) The services offered under paragraph (1) must include training on—

(a) necessary route knowledge;

(b) operating rules and procedures

(c) the signalling and control command system; and

(d) emergency procedures,

in respect of the routes operated.

(3) The infrastructure manager, and any of his staff with responsibility for safety critical tasks, must have a fair and non-discriminatory access to the services listed in paragraph (2)

(4) It is the responsibility of the safety authority set up in accordance with the requirements of Council Directive 2004/49/EC to ensure that the provision of training services meets the safety requirements laid down in the National Safety Rules.

(5) If the training facilities to which access is granted by virtue of this regulation are available only through the services of one single railway undertaking, or the infrastructure manager, the Department must ensure that those facilities and services are available to applicants at a reasonable and non-discriminatory price, which is cost-related and may include a profit margin.

(6) Railway undertakings recruiting new train drivers, on-board staff, or staff with responsibility for safety critical tasks must take into account any training, qualifications and experience acquired by job-applicants from any previous employment with another railway undertaking.

(7) The staff described in paragraph (6) must be granted access to all documents attesting to their training, qualifications and experience, and be entitled to have copies of such documentation.

(8) It is the responsibility of each railway undertaking and infrastructure manager to provide the appropriate level of training and qualification of staff set out in article 8 and Annex III to Council Directive 2004/49/EC.

(9) For the purposes of this regulation—

(a) "national safety rules" means any legislation and other requirements—

(i) applicable to Northern Ireland; and

(ii) which contain requirements (including common operating rules) relating to railway safety,

except that where the requirements in paragraph 9(a)(i) consist of common operating rules of the railway it shall not include such rules which regulate matters which are covered by a technical specification for interoperability; and

(b) "safety critical task" means—

(i) in relation to vehicle used on a railway—

(aa) driving, despatching or any other activity which is capable of controlling or affecting the movement of that vehicle;

(bb) signalling, and signalling operations, the operation of level crossing equipment, receiving and relaying of communications or any other activity which is capable of controlling or affecting the movement of that vehicle;

(cc) coupling or uncoupling;

(dd) installation of components;

(ee) maintenance; or

(ff) checking that that vehicle is working properly and, where carrying goods, is correctly loaded before being used;

(ii) in relation to a railway—

(aa) installation or maintenance of any part of it or of the telecommunications system relating to it or used in conjunction with it, or of the means of supplying electricity directly to that transport system or to any vehicles using it or to the telecommunications system;

(bb) controlling the supply of electricity directly to it or to any vehicles used on it; or

(cc) receiving and relaying of communications;